
Answers

1 (a) (i) Corporation tax

Morton Holdings Ltd, Jasper Ltd, Young Line Ltd and Betty Pink Ltd constitute a group for corporation tax losses purposes as Morton Holdings Ltd owns 75% or more of the shareholding in each company.

Based on the projections as provided by Bill Morton and minimising the tax exposure of Jasper Ltd in priority, the corporation tax liability of the group companies for the year ending 30 June 2012 would be as follows:

	Jasper Ltd €	Young Line Ltd €	Betty Pink Ltd €
Case I as adjusted	234,000	0	180,000
Less s.396(1) losses carried forward	(45,000)		
Less group relief (s.420A)	(189,000)		(180,000)
Case III	0	15,000	30,000
Total income	0	15,000	30,000
Chargeable gains/losses	185,000	0	0
Total profits	185,000	15,000	30,000
Tax at 12.5%	23,125	0	0
Tax at 25%	0	3,750	7,500
Total corporation tax	23,125	3,750	7,500
Loss relief (s.396B)		(3,750)	
Group relief (s.420B)	(10,750)		
Corporation tax due	12,375	0	7,500

Loss summary	Young Line Ltd €
Loss at 30 June 2012	(485,000)
Relieved as follows:	
S.396B relief	30,000
S.420A Jasper Ltd	189,000
S.420A Betty Pink Ltd	180,000
S.420B Jasper Ltd	86,000
Current year losses carried forward	0
S.396(1) loss carried forward from 2011	(160,000)

Tutorial note: While Betty Pink Ltd is not required to claim s.420A losses, it is deemed to have made such a claim for the purpose of calculating the available loss for s.420B purposes.

(ii) Chargeable gains

A chargeable gain of €185,000 arises from the sale of Jasper Ltd's investments. As Jasper Ltd and Young Line Ltd are members of a group, consideration could be given to Jasper Ltd transferring its investments to Young Line Ltd prior to sale.

For capital gains tax (CGT) purposes, Young Line Ltd would be deemed to have acquired the shares at the original date and cost as Jasper Ltd. Jasper Ltd would be deemed to have sold the shares at a value giving rise to a no-gain, no-loss position. To ease the cash flow issues in Jasper Ltd, Young Line Ltd could pay the market value of the investments to Jasper Ltd with no tax consequence. Young Line Ltd can then dispose of the investments, realising the chargeable gain of €185,000.

The building owned by Young Line Ltd was acquired in 2006, prior to it becoming a group company in 2008. As the building is a pre-entry asset, the loss arising on the disposal of the building must be divided between its pre- and post-entry element. The accrued loss at the date of joining the group in 2008 can only be offset against gains made on the disposal of other assets owned by Young Line Ltd at that date, or the disposal of an asset it acquired after joining the group and used for the purpose of the trade during its ownership. This applies, provided that there is no major change in the nature of the trade carried on within three years of the change of ownership.

The pre-entry loss is calculated as the lesser of the chargeable loss based on the market value of the property at the date of joining the group (€180,000) or the actual loss arising on the disposal (€310,000) as follows:

	Market value at 1 May 2008	Market value at date of disposal
	€	€
Sale proceeds	550,000	485,000
Less original cost	(640,000)	(640,000)
Capital loss	(90,000)	(155,000)
Chargeable loss	(180,000)	(310,000)

The pre-entry loss cannot be set against the gains arising on the investment disposal. However, the post-entry chargeable loss of €130,000 (€310,000 – 180,000) can reduce the taxable gain arising on the sale of the investments in Young Line Ltd to €55,000 (€185,000 – €130,000).

As a result, the corporation tax liability arising in Jasper Ltd will reduce to nil. The corporation tax position in Young Line Ltd will increase by €6,875 (€55,000 x 12.5%) due to the taxable net chargeable gain, but this will be covered by the current year losses (under s.396B) resulting in the following final group corporation tax position:

	Jasper Ltd	Young Line Ltd	Betty Pink Ltd
	€	€	€
Case I as adjusted	234,000	0	180,000
Less s.396(1) losses carried forward	(45,000)		
Less group relief (s.420A)	(189,000)		(180,000)
Case III	0	15,000	30,000
Total income	0	15,000	30,000
Chargeable gains/losses	0	55,000	0
Total profits	0	70,000	30,000
Tax at 12.5%	0	6,875	0
Tax at 25%	0	3,750	7,500
Total corporation tax	0	10,625	7,500
Loss relief (s.396B)		(10,625)	
Group relief (s.420B)			(3,875)
Corporation tax due	0	0	3,625

Loss summary	Young Line Ltd
	€
Loss at 30 June 2012	(485,000)
Relieved as follows:	
S.396B relief	85,000
S.420A Jasper Ltd	189,000
S.420A Betty Pink Ltd	180,000
S.420B Betty Pink Ltd	31,000
Current year losses carried forward	0
S.396(1) loss carried forward from 2011	(160,000)

Consequently, the overall group corporation tax exposure will be reduced from €19,875 to €3,625, giving rise to a tax saving of €16,250.

(b) Value added tax (VAT) issues in Jasper Ltd

As Jasper Ltd supplies goods to EU member states, the appropriate VAT rate is zero provided that the customer is a VAT registered trader and Jasper Ltd has been supplied with their VAT number. As a result of paying VAT on its purchases, it is likely that Jasper Ltd is in a continuous VAT refund position.

Jasper Ltd can apply to submit VAT returns on a monthly basis to facilitate earlier repayment of its input VAT. Alternatively, Jasper Ltd can apply for s.13B authorisation which allows all goods/services purchased by Jasper Ltd from whatever source, whether in Ireland or outside of the State, to be zero rated. This treatment can apply once sales to EU customers meet or exceed 75% of total turnover. A certificate will be issued to Jasper Ltd from the Revenue and thereafter Jasper Ltd must provide details of this certification to its suppliers, who are then obliged to charge zero VAT. This will help resolve some of Jasper Ltd's cash flow problems.

(c) Sale of Betty Pink Ltd

Morton Holdings Ltd is Irish resident and, as such, is liable to CGT on its worldwide disposals.

Disposal of shares

The participation exemption on a disposal of shares by Morton Holdings Ltd will be available as the necessary conditions are met. VAT does not arise on the sale of shares.

Disposal of assets

The disposal of the buildings and goodwill by Betty Pink Ltd will give rise to a tax liability of €266,250 as follows:

	Buildings	Goodwill
	€	€
Sale proceeds	1,050,000	765,000
Less cost	(750,000)	0
Gain	<u>300,000</u>	<u>765,000</u>
Total gain		<u>1,065,000</u>
Capital gains tax at 25%		266,250

The furniture and fittings are sold for less than cost and so will generate a balancing allowance/charge for corporation tax purposes.

No VAT arises on the transfer of business assets where those assets constitute an undertaking capable of being operated on an independent basis. Betty Pink Ltd must provide a capital goods scheme record to the purchaser who will step into its shoes as the original owner for VAT purposes.

Betty Pink Ltd would then need to be liquidated and the proceeds paid to Morton Holdings Ltd. This will give rise to a further CGT exposure of €388,325 ((€2,200,000 – (€350,000 x 1.087) – €266,250) x 25%).

The net of tax cash positions, as summarised below, confirms that the sale of assets will generate the greater net cash flow for Morton Holdings Ltd.

Summary	Sale of shares	Sale of assets
	€	€
Sale proceeds	1,500,000	2,200,000
Less CGT	0	(266,250)
Less CGT on liquidation		(388,325)
Net cash position	<u>1,500,000</u>	<u>1,545,425</u>

2 To: Taxation Manager
From: Taxation Senior
Subject: Walter Golden and Golden Manufacturing Ltd
Date: 15 June 2012

This report considers the taxation issues that may arise on the proposed gifting of the shares in Golden Manufacturing Ltd (GML) by Walter Golden to his son, Alex. It also considers a reconstruction of the company to facilitate the transfer of the investment portfolio to Walter Golden as tax efficiently as possible.

(i) Gift of shares to Alex

Walter will be liable to capital gains tax (CGT) on the gift of the shares in GML to Alex at market value. The fact that Alex may pay a contribution towards the shares is not relevant. Based on the current information, the shares will be valued at €2,009,500 (Schedule 1) and Walter's CGT liability, before relief, would be €352,320 (Schedule 2).

Walter will qualify for retirement relief as all the conditions appear to have been met. However, the relief only applies to gains arising from chargeable business assets. The current assets of the company and the investments are not chargeable business assets for the purpose of this relief. Consequently, €896,040 of the gain will be exempt (Schedule 3) and CGT of €128,628 will be payable by Walter on the remainder. The annual exemption of €1,270 is not available where retirement relief is claimed in the same year.

Alex will be liable to capital acquisitions tax (CAT) on the shares received from his father. Business relief will be available which will reduce the value of the benefit by 90%. However, the relief will only apply to the business assets, so that part of the value attributable to the investments must be excluded. The resultant CAT liability is calculated as €99,569 (Schedule 4). However, as CGT was paid by Walter on the same event, i.e. the gift of the shares, this CGT can be offset against the CAT reducing Alex's liability to nil.

Alex will also be liable to pay stamp duty on the transfer of the shares at 1% giving a liability of €20,095 (€2,009,500 x 1%). No consanguinity relief applies to the transfer of shares.

Value added tax (VAT) does not apply to a gift of shares.

(ii) Separating the trade from the investments

The trade could be separated from the investments by Walter setting up a new company 'Newco Ltd' and transferring the manufacturing trade to it in return for shares in Newco Ltd. This will constitute a three party share for undertaking exchange and, therefore, the following reliefs will apply:

- The assets acquired by Newco Ltd will be deemed to have been acquired at the same date and the same base cost as the original acquisition in GML.
- The base cost of the shares issued by Newco Ltd will be valued as part of the original GML shares acquired in 1994, based on an apportionment of the market value of the shareholdings in GML Ltd and Newco Ltd at the date of disposal of the shares in Newco Ltd.
- Stamp duty will not apply on the assets passing to Newco Ltd since at least 90% of the shares will be issued to Walter and provided the reconstruction is for *bona fide* commercial purposes and not for the avoidance of tax.
- The transfer of the business will be exempt for value added tax (VAT) purposes provided both companies are VAT registered.

Following the above steps, Walter will own 100% of Newco Ltd, which owns the manufacturing trade and he will also retain ownership of GML, which owns the investment portfolio. Walter can then gift the shares in Newco Ltd to Alex. This will give rise to a potential CGT liability; however, all of the assets in Newco now comprise trading assets which will qualify for retirement relief. The reconstruction will not cause any of the conditions for retirement relief to have been breached. The requirement to own the shares for ten years prior to the disposal can include the ownership of shares in a previous company where share for undertaking relief has applied. Therefore, full retirement relief will apply to the gift of the shares in Newco Ltd, so Walter will not have any CGT liability arising on this gift.

For CAT purposes, Alex will qualify for full business relief in addition to the Class 1 threshold. Therefore, again no CAT liability will arise, as 10% of €1,359,500 is less than the Class 1 threshold of €332,084.

Stamp duty will still be payable by Alex on the market value of the shares of €13,595 (€1,359,500 x 1%). Consanguinity relief does not apply to share transfers.

As a result of the transfer of assets to Newco Ltd, GML will become an investment holding company and liable to close company surcharge on its dividend income. Walter could continue to operate the company and pay dividends to himself to avoid the surcharge; however, Walter has specified that he wishes to own the investments personally and to achieve this, he should now liquidate GML with a view towards having the investments distributed to him *in specie*. The company will be liable to CGT on this liquidation of €75,000 and Walter will be liable to CGT on this distribution of €92,810 (Schedule 5).

Walter will not be liable to stamp duty on the distribution of the investments on liquidation.

APPENDIX

Schedule 1 Company valuation

	€
Building at market value	600,000
Fixtures and fittings at market value	232,000
Current assets	426,000
Investments	650,000
Goodwill	300,000
	<hr/>
	2,208,000
Less long-term loan	(198,500)
	<hr/>
	2,009,500
	<hr/>

Schedule 2 CGT on GML share disposal

		€
Market value of shares (per schedule 1)		2,009,500
Less original cost	€450,000	
Indexed by	1.331	(598,950)
		<hr/>
		1,410,550
Less annual exemption		(1,270)
		<hr/>
Taxable gain		1,409,280
Tax at 25%		352,320

Schedule 3 Retirement relief

		€
Capital gain before retirement relief (per Schedule 2)		1,410,550
Less retirement relief		
	1,410,550 x $\frac{1,132,000}{1,782,000}$	(896,040)
Taxable gain		514,510
Tax at 25%		128,628

Chargeable business assets (at market value)

		€
Building, furniture and fittings and goodwill		1,132,000
Chargeable non-business assets (investments)		650,000
		<u>1,782,000</u>

Schedule 4 Capital acquisitions tax

		€
Market value of shares		2,009,500
Stamp duty		20,095
Taxable value of shares		<u>1,989,405</u>
Business property relief (1)		(1,211,315)
		778,090
Less small gift exemption		(3,000)
Taxable value		<u>775,090</u>
Class 1 threshold		(332,084)
		<u>443,006</u>
Tax at 25%		110,752
Less credit for CGT paid by Walter		(110,752)
CAT due		<u>0</u>

Note 1

		€
Market value of shares		2,009,500
Investments		(650,000)
Market value of shares excluding investments		<u>1,359,500</u>
Stamp duty at 1%		(13,595)
Taxable value of shares excluding investments		<u>1,345,905</u>
Business property relief at 90%		<u>1,211,315</u>

Schedule 5 CGT on liquidation of GML

		€
Market value of shares		650,000
Less CGT paid by company on liquidation ((€650,000 – €315,000) x 25%)		(83,750)
Less remaining base cost:		
	€450,000 x $\frac{650,000}{650,000 + 1,359,500}$	€145,559
Indexed by	1.331	<u>(193,739)</u>
Capital gain		372,511
Less annual exemption		(1,270)
Taxable gain		<u>371,241</u>
Tax at 25%		<u>92,810</u>

- 3 (a)** Discretionary trust tax of 6% becomes payable by the trust on the assets taken as a result of Martin's death in November 2010, as at that time none of the principal objects of the trust, i.e. Joseph nor Alannah, were under the age of 21 years. A refund of 3% of the levy can be achieved where all of the trust assets are appointed absolutely within five years of Martin's death.

The 1% levy, normally due on 31 December annually, will not be payable in December 2010 as it is within 12 months of the 6% levy being paid; however, it will be payable on the value of the assets remaining in the trust on 31 December annually thereafter.

(b) (i) Alannah

Alannah was appointed a life interest in the residential unit in December 2010. As she does not own any other residence at the date of the inheritance, and has lived in the premises as her main residence, without Martin, for in excess of three years, this inheritance is exempt from CAT.

Stamp duty will not arise on the appointment out of the trust as it is deemed to arise on death.

(ii) Joseph

The appointment of the retail unit in December 2010 to Joseph will give rise to a capital acquisitions tax (CAT) exposure. As the retail unit is rented out, no business relief will apply. However, no CAT liability will arise due to the availability of the class 1 threshold (€175,000 < €332,084).

On Alannah's death in May 2012, Joseph takes the remainder interest in the residential unit. This is also deemed to be taken from Martin. Joseph will not qualify for principal private residence relief as this is not his main residence. CAT of €8,229 (€175,000 + €190,000 – €332,084 x 25%) will be payable by Joseph on this benefit.

The benefit of the investments appointed to Joseph in June 2012 is also liable to CAT. However, a credit is available against this liability for the capital gains tax (CGT) that is paid by the trustees on the transfer of the investments to Joseph. His CAT liability is as follows:

	€	€
Prior benefits – Retail unit	175,000	
Residential unit	<u>190,000</u>	365,000
Investments		<u>325,000</u>
		690,000
Less class 1 threshold		(332,084)
Taxable value		<u>357,916</u>
Tax at 25%		89,479
Less CAT paid on prior benefits		(8,229)
Less CGT credit from trustees		<u>(11,250)</u>
Net CAT payable		<u>70,000</u>

In addition, the income accumulated by the trust and now distributed to Joseph will be liable to income tax under Schedule D, case IV with a credit available for the tax (excluding surcharge) paid by the trust.

Stamp duty will not arise on the appointments out of the trust as they are deemed to arise on death.

(iii) The trustees

The trustees are liable to CGT on the increase in value of assets held by the trust on their appointment.

The limited interest appointment of the residential unit to Alannah in December 2010, as well as the absolute appointment to Joseph of the retail unit, will not give rise to CGT as there is no increase in value.

The increase in value on the absolute appointment of the remainder interest in the residential unit in May 2012 of €30,000 (€190,000 – €160,000) is exempt from CGT as it arises on the death of the life interest holder.

In June 2012, a CGT liability will arise on the increase in value of the investments of €11,250 ((€325,000 – €280,000) x 25%).

In relation to the investment income earned of €15,000 per annum in the period November 2010 to June 2012, as this is not distributed, the trust would be liable to income tax at 20% on this income. In addition, where trust income is accumulated and not distributed within 18 months from the end of the year of assessment in which it is received, a surcharge of 20% of the gross income of the trust also arises.

As mentioned in part (a), the trustees will be able to get a refund of half the 6% charge as all of the assets are appointed within five years.

(c) Nora

Where a child receives a taxable benefit from a parent within five years prior to the child's death, any benefits payable to the parents under their estate is exempt from CAT. As Alannah had taken an exempt benefit from her father, Martin, the inheritance of €20,000 taken by Nora, her mother, on Alannah's death will be liable to CAT. However, Nora would be entitled to Class A threshold of €332,084 and therefore no CAT will arise.

4 (a) Value added tax (VAT)

Catherine is carrying on a trade of selling clothes to unregistered individuals.

Where a trader in one EU member state sells goods to unregistered persons in another member state and is responsible for delivering the goods to that customer, it is called 'distance selling'. The place of supply for distance sales is the place where the dispatch ends, i.e. in Catherine's case, the UK. A trader may make supplies to that member state provided their turnover in any calendar year does not exceed the distance selling threshold set by that country. The UK has set a threshold of €70,000 below which a supplier need not register for UK VAT. If Catherine's sales to the UK do not breach this threshold, she must continue to charge Irish VAT on her sales and return this bi-monthly in her VAT return. If she breaches this threshold, she must register for VAT in the UK and charge UK VAT on her sales. No Irish VAT would then be chargeable.

Catherine may, if she so wishes, elect to register for VAT in the UK, even if the threshold is not exceeded. She may consider this to be advantageous where the equivalent VAT rate in the UK is lower than the Irish rate.

(b) Income tax exposure for the 2011 tax year

As Catherine and Joe returned to Ireland in January 2011, they will both be considered Irish resident for 2011. Catherine is Irish domiciled and is, therefore, taxable on her worldwide income. Joe is non-domiciled and, therefore, taxable on his Irish income and his foreign income to the extent that it is remitted to the State. He is also liable to Irish income tax on his employment income as the employment was carried on in the State.

In determining Joe's exposure to Irish income tax on his employment income, the limited remittance basis may apply where he meets the following conditions:

- Irish resident;
- before coming to Ireland he had been resident in a relevant double taxation agreement country;
- was employed by the same relevant employer, or associated company prior to becoming resident in the State;
- continues to be paid from abroad; and
- will be on assignment in Ireland for at least one year.

In addition, Joe's employer must be a company incorporated and resident in an EEA state or a non-EEA state with which Ireland has a double tax treaty.

On the basis of the information provided, Joe and his employer satisfy all of these conditions. He will therefore be taxable in Ireland on the greater of his income remitted to the State (€80,000) or €100,000 plus 50% of the excess of his Schedule E income over €100,000, i.e. €122,500 (€100,000 + (€45,000 x 50%)).

Catherine is taxable on the profits arising from the sole trade on a commencement basis. She is taxable for the tax year 2011 on her actual profits arising from the period 1 April to 31 December 2011 in the amount of €24,375 (€32,500 x 9/12). She is also taxable in Ireland on her share of the rental income, €4,000 (€8,000 x 50%) as well as her Australian dividend income of €5,250 and deposit interest of €850. Joe's element of the rent is not taxable as it was not remitted to the State.

(c) Capital gains tax (CGT)

Where an individual disposes of shares in an Irish company at a time when they are non-resident and Irish domiciled, anti-avoidance provisions may apply. These provisions state that where a non-resident individual resumes residency within five years of becoming non-resident, the disposal is deemed to have occurred on their last day of residency at the market value on that date. The provisions only apply where the shares disposed of exceed 5% of the issued share capital, or the share value is in excess of €500,000.

In Catherine's case, she has been non-resident for the years 2007 to 2010 inclusive. As she has resumed Irish residency within five years, she is deemed to have sold the shares in January 2007 for €350,000, thereby giving rise to a CGT liability of €19,746 ((€350,000 - €250,000 - €1,270) x 20%). The disposal is deemed to have occurred in the year of return for the purpose of paying the tax. The increase in value of the shares after her departure to €400,000 is not liable to Irish CGT.

5 (a) Redundancy payment

Dan's redundancy payment, net of the statutory redundancy of €28,200, is liable to income tax under Schedule E subject to a tax free entitlement. As the pay in lieu of notice was not provided for in his employment contract, it may be treated as part of the overall redundancy package for the purpose of calculating the taxable element. Had it been included in his employment contract, it would have been taxable as salary under the normal PAYE rules. The statutory redundancy element is exempt. The tax-free element is calculated as the higher of the following:

Basic exemption

10,160 +	(765 x 23 complete years service)	€ 27,755
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The increased basic exemption is not available as the pension lump sum of €30,000 exceeds the increased exemption of €10,000.

Standard capital superannuation benefit (SCSB)

Average remuneration over previous 36 months of employment

		€
1 April 2011 to 31 March 2012 (22,500 + (88,000 x 9/12))		88,500
1 April 2010 to 31 March 2011 ((88,000 x 3/12) + (80,000 x 9/12))		82,000
1 April 2009 to 31 March 2010 ((80,000 x 3/12) + (65,000 x 9/12))		68,750
Total remuneration over past three years		239,250
Average remuneration		79,750
SCSB	$79,750 \times \frac{23}{15}$	122,283
Less pension lump sum entitlement		(30,000)
Net tax free termination payment		92,283

Both the increased basic exemption and the SCSB are restricted by the actual pension lump sum entitlement or actuarial valuation of the lump sum in respect of a future entitlement. Where the pension lump sum is forfeited, no deduction occurs.

The SCSB provides the higher tax free amount of €92,283. However, the Finance Act 2011 provides that the maximum tax free amount receivable under the termination payment provisions is restricted to a lifetime limit of €200,000. Dan had previously received a tax free lump sum of €120,000, therefore the maximum he can now claim is €80,000. The taxable amount is therefore €106,800 (€215,000 – €28,200 – €80,000).

The tax applicable to this taxable amount is the lower of Dan's marginal rate for 2012 of 41%, as Dan will have used his full 20% band during the year, and his average tax rate for the previous three tax years, known as top slicing relief. The tax payable on the termination payment is therefore the lower of €43,788 (€106,800 x 41%) and €33,277 (€106,800 x €72,598/€233,000) and the net cash available will be €181,723 (€215,000 – €33,277).

(b) Seed capital relief

Dan may qualify for seed capital relief on his investment in the new business. To qualify for the relief a new company must be set up with the intention of carrying on a qualifying trade. Manufacturing activities constitute a qualifying trade for this purpose. In addition, the individual (Dan) must:

- (i) become a full-time employee or director with the new company at any time up to six months after the end of the tax year in which the business is established,
- (ii) derive not less than 75% of his total income from Schedule E sources, income from other sources must not exceed €25,000 in each of the three years of assessment preceding the year of assessment immediately prior to the year of assessment in which the employment commences (i.e. in Dan's case 2008, 2009 and 2010),
- (iii) not have, or be entitled to acquire, more than 15% of the ordinary share capital of any other company, except where that company is a trading company and its turnover in each of the three accounting periods prior to the accounting period in which the seed capital investment is made did not exceed €127,000,
- (iv) acquire at least 15% of the issued ordinary share capital of the seed capital company and retain it for one year from the date of investment or, if later, from the date the company commenced to trade.

The relief allows Dan to elect to have the amount of his investment allowed as a deduction against total income in any of the six years immediately prior to the year of the investment. Relief must be claimed up to the extent of Dan's total income of those years, subject to a maximum claim of €600,000 in total and a maximum in any one year of €100,000. Where full relief cannot be given in any one year, the balance is carried forward to the next year. Relief is given by way of a tax refund.

Dan should elect to have the investment relieved in the years 2010 and 2011 as these years have the highest earnings and, therefore, the highest effective tax rate; the balance of the available relief will be carried forward to 2012.

Tutorial note: *The seed capital relief as set out above is based on legislation in force at 30 September 2011. The Finance Act 2011 amended this relief with effect from 25 November 2011. Marks will be given for answers where the new provisions are used.*

(c) Michelle

Michelle is to work in the new company on a part-time basis. While Dan has concluded that Michelle is working on a consulting basis, for income tax purposes, we must consider whether Michelle is considered to be providing services to the company under a 'contract of service' or under a 'contract for services'.

Under a contract of service, Michelle would be considered an employee and liable to income tax under Schedule E. The company would be liable to register as an employer in the State within 21 days of the commencement of the contract and deduct PAYE/PRSI from Michelle's salary. A contract of service exists where Michelle is obliged to carry out the work herself and cannot hire another person to do that work. She works at a time and place determined by the company. She is entitled to holiday time, sick pay and pension facilities. Her work is carried out on behalf of the company.

Under a 'contract for services' the individual is considered self-employed and taxable under Schedule D, Case I on their profits. In this case, the individual is responsible for how their business is run, can hire people to do the work and determine where and when the work is done. They also provide their own equipment and are not entitled to any of the normal employee benefits.

In the circumstances as outlined, it is likely that the Revenue would consider Michelle an employee of the company and as such, it must operate PAYE/PRSI on her salary.

This marking scheme is given as a guide to markers in the context of the suggested answer. Scope is given to markers to award marks for alternative approaches to a question, including relevant comment, and where well reasoned conclusions are provided. This is particularly the case for essay based questions where there will often be more than one definitive solution.

		<i>Marks</i>
1	(a) (i) Corporation tax computation	
	Corporation tax computation	5
	Loss relief summary	1
		<hr style="width: 100%; border: 0.5px solid black;"/> 6
	(ii) Chargeable gain	
	Jasper should transfer investments to Young Line Ltd prior to sale	1
	Look through for CGT purposes	½
	Young Line Ltd could pay Jasper Ltd market value for the investments	½
	Building is a pre-entry asset	1
	Restricted use on pre-entry loss	1
	Post-entry loss can be used against investments	½
	Calculation of pre- and post-entry loss	2
	Revised group corporation tax position:	
	– Jasper Ltd	½
	– Young Line Ltd	1
	– Betty Pink Ltd	½
	Identification of group tax saving	½
		<hr style="width: 100%; border: 0.5px solid black;"/> 9
	(b) VAT	
	Submit VAT returns on monthly basis	1
	Apply for 13B authorisation	1
	Turnover must be over 75% to EU customers	1
	Jasper Ltd must advise suppliers of authorisation	1
		<hr style="width: 100%; border: 0.5px solid black;"/> 4
	(c) Sale of Betty Pink Ltd	
	Morton Holdings Ltd liable to CGT on disposal of subsidiary	½
	Participation exemption available	1½
	VAT does not arise on sale of shares	½
	Calculation of CGT arising on disposal of assets	1½
	Furniture and fittings generate balancing allowance/charge	½
	VAT will not arise on transfer of the business	1
	Capital goods scheme record to be provided	1
	Calculation of CGT on liquidation of dormant company	1½
	Calculation of the net cash position of each option	1½
	Recommendation/conclusion	½
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		Marks
2	(i) Gift of shares to Alex	
	Walter liable to CGT	½
	Based on market value	½
	Payment by Alex irrelevant,	½
	Calculation of share value	1
	Calculation of Walter's CGT liability prior to retirement relief	2
	Retirement relief will apply	1
	Current assets and investments will not qualify	½
	Calculation of resultant CGT after retirement relief	2
	Alex is liable to CAT	½
	Business relief will apply	½
	Calculation of CAT subject to relief	3
	CGT credit offset available	1
	Alex liable to stamp duty, no consanguinity relief on shares	1
	VAT does not apply	½
		<hr/> 14½
	Maximum	<hr/> 12
	(ii) Separating the trade from the investments	
	Walter sets up Newco and transfers the manufacturing trade to it	1
	Walter receives shares in Newco in exchange	1
	Assets in Newco assume original cost and date of purchase	1
	Base cost of shares in Newco apportioned over market value of both companies	1
	Stamp duty will not apply as 90% of shares issued to Walter	1
	Transfer of the trade is VAT exempt	1
	Gift of shares in Newco to Alex subject to CGT	½
	Explanation of why retirement relief conditions not breached by reconstruction	1½
	No CGT payable after retirement relief	½
	Alex gets shares subject to full business relief, no CAT	1
	Stamp duty applies, no consanguinity relief on shares	1
	GML becomes investment holding company, close company surcharge applies	1
	Walter can retain company and take dividends	½
	Walter can liquidate company subject to CGT charge	1
	Calculation of CGT on liquidation	2½
	No stamp duty on distribution <i>in specie</i>	1
		<hr/> 16½
	Maximum	<hr/> 15
	Format and presentation of the report	1
	Effectiveness of written communication	1
	Appropriate use of support schedules/appendix	1
	Logical flow	1
		<hr/> 4
		<hr/> 31 <hr/>

	Marks
3 (a) Discretionary trust tax of 6% payable on death with reasons	1
Refund available if assets distributed within five years	½
1% levy payable 31 December annually	½
Not 31 December 2010 as within 12 months of 6% levy	1
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(b) (i) Alannah	
Alannah liable to CAT on life interest	½
Inheritance of residential element of building exempt with conditions	1½
No stamp duty on appointment from a discretionary trust, with reason	½
(ii) Joseph	
Appointment of absolute interest in retail unit liable to CAT	½
Business relief not available	½
No CAT liability, value less than Class 1 threshold	½
Joseph takes remainder interest from Martin on Alannah's death	½
Principal private residence relief not available	½
Calculation of CAT liability	1
Calculation of CAT liability on investments	1½
Credit for CAT paid	½
Credit for CGT paid by trustees on investments	1
Income from investments liable to income tax under Case IV with credit	1
No stamp duty on appointments from discretionary trust, with reason	½
(iii) The trustees	
Trustees liable to CGT on increase in value of assets	½
No CGT on appointments of building, with reasons (2 x ½)	1
Calculation of CGT on increase in value of investments	1
Trustees liable to income tax on investment income at 20%	1
Undistributed investment income liable to surcharge at 20%	1
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(c) Nora	
Explanation why inheritance from Alannah does not give rise to CAT	2
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		Marks
4 (a) VAT		
	Catherine involved in 'distance selling'	1
	Place of supply is in the UK	1
	Catherine can make supplies to UK without registering if below threshold	1
	If threshold not exceeded, Catherine must charge Irish VAT	½
	If threshold exceeded, must register for UK VAT	1
	Charge UK not Irish VAT	½
	Catherine can elect to register if to her advantage	1
		<hr/> 6
(b) Income tax exposure		
	Catherine liable on worldwide income, not remittances	1
	Joe liable on remittance basis and Irish source income	1
	As Joe's employment carried on in the State, limited remittance basis may apply	1
	Conditions for limited remittance basis:	
	– Joe (5 x ½)	2½
	– employer	½
	Determination of Schedule E income	1
	Catherine taxable on profits based on commencement rules and calculation	1
	Catherine but not Joe taxable on rental income	½
	Catherine liable on dividend and interest income	½
		<hr/> 9
(c) Sale of shares		
	Anti-avoidance provisions will apply to share disposal with conditions	2
	Catherine deemed to have sold shares at market value at date of departure	1
	Calculation of CGT liability	1
	Disposal deemed to be in year of return for payment of tax	½
	Increase in value to €400,000 not taxable	½
		<hr/> 5
		<hr/> 20 <hr/>

	Marks
5 (a) Redundancy payment	
Redundancy payment liable to income tax under Schedule E	1/2
Statutory redundancy element is exempt	1/2
PAYE in lieu of notice, part of package, with reason	1
Calculation of tax free element	2 1/2
If pension lump sum forfeited, no deduction	1/2
Tax free amount restricted to lifetime limit	1
Top slicing relief available	1
Calculation of tax liability using top slicing relief/net lump sum	1
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(b) Seed capital relief	
Seed capital relief	1
Trading company	1/2
Conditions re individual (Dan) (4 x 1)	4
Deduction in any of six years prior to investment	1/2
Maximum claims (2 x 1/2)	1
Balance carried forward	1/2
Elect years with highest tax paid – 2010 and 2011	1/2
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(c) Michelle	
Contract of service v contract for services	1/2
Conditions for contract of service (any four)	1 1/2
Conditions for contract for services (any four)	1 1/2
Conclusion/Employer obligation to register and operate PAYE	1/2
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