Answers

1 *This question tested the ability of candidates to offer advice on the tax issues that arise when a business is transferred from one generation to the next. It also tested knowledge on the issues that arise in connection with the incorporation of a business in the context of such a transfer.*

(a)

ABC & Co
Chartered Certified Accountants
Any Street
Any Town

December 2007

Mr Senior Cullen
Pharmacist
Any Street
Any Town

Dear Mr Cullen

Retirement Planning and Incorporation of Business

As requested we are writing to address the taxation issues which were raised at our recent meeting.

(i) Transfer of business

Capital gains tax

Disposals of assets, either by way of gift or sale, are subject to capital gains tax at 20% on the difference between the market value of the assets and their original cost.

However, in the case of business assets, relief from capital gains tax (retirement relief) may be obtained where the following conditions are satisfied:

- The individual making the disposal has reached the age of 55.
- The assets comprise qualifying business assets.
- The individual has owned these assets for a period of, at least, ten years.
- The individual has used the assets for the purposes of a trade or business personally carried on throughout the whole of the last ten years of ownership.

Where the transfer or sale is to a child of the taxpayer, there is no upper limit on the value of qualifying assets which can benefit from this relief, provided the child retains ownership for a period of, at least, six years.

In the case of a disposal to a person other than a child, there is a lifetime maximum of €500,000 that can qualify. If the amount transferred is greater than €500,000 over the lifetime of the taxpayer, then no relief is granted.

Gift tax

In the case of a gift, the beneficiary is liable to tax at the rate of 20% on the amount by which the benefit exceeds the relevant tax free threshold. The threshold depends on the relationship to the person making the gift. The cumulative tax free thresholds for 2006 are €478,155 in the case of a child and €23,908 in the case of a stranger in blood.

As it is the intention that both John Cullen and Mark O'Shea should pay market value it may not be necessary to discuss this matter further. However, it is well to note that in the case of business assets it may be possible to obtain business property relief. This applies where qualifying business assets are transferred. Where the relief applies the taxable value is reduced to 10% of the full market value. In other words, if business assets to the value of €2m were transferred, they would be valued at €200,000 for the purposes of gift tax. This is an important relief insofar as, if the Revenue were to claim that the price paid did not represent full market value, the beneficiaries could probably sustain a claim for this relief, thus avoiding, or significantly reducing, the tax exposure in any event.

Stamp duty

Transfers of property are liable to stamp duty at rates of up to 9%. However, where the person taking the transfer has the necessary blood relationship to the person making the transfer, half the normal rate applies (consanguinity relief).

Conclusion on transfer of business

Therefore, it should be possible to transfer your interest in the business to both John Cullen and Mark O'Shea without giving rise to any liability to tax other than to stamp duty, provided the value taken by Mark O'Shea does not exceed €500,000.

(ii) Formation of a company

If the business were to be transferred to a company after it is transferred to John Cullen and Martin O'Shea then the principal tax issue will be the clawback of the retirement relief in the case of John Cullen.

Alternatively, if the business is transferred to a company before transferring anything to the two parties who would then take shares in the company, the difficulty is that you would not have owned the shares for the requisite ten year period. Likewise, you would not have been a director of the company for ten years or a fulltime working director for at least five years, both of which are further conditions of retirement relief in the case of a transfer of shares.

However, the period during which you carried on the business as a sole trader will count towards satisfying these conditions if the transfer of the business to the company qualifies for relief under s.600 of the Taxes Consolidation Act 1997. Normally, a transfer of assets by an individual to a company would be regarded as a disposal for capital gains tax purposes. Section 600 provides that capital gains tax does not arise on a disposal of business assets to a company in return for shares in that company, provided that all of the assets (or all of the assets other than cash) of the business are transferred to the company as a going concern.

In most situations it would not be usual to transfer land and buildings used in a business to a company on incorporation or to recognise goodwill so as to avoid any capital gains tax liability; gains are unlikely, in normal circumstances, to be realised on plant and machinery. Other assets, such as stocks and debtors, are not chargeable assets for capital gains tax purposes. However, in this case it will be necessary to include all assets in any transfer as otherwise, s.600 will not apply and the qualifying time period for retirement relief will not be satisfied.

(iii) Proposal

Assuming you decide to proceed with the incorporation of the business, the following approach is suggested:

- A new company would be incorporated.
- The initial shareholders in this company will be yourself and, possibly your son, John Cullen and the general manager Mark O'Shea.
- One might organise matters so that you and John Cullen have the majority of the shares, or even all of the shares, in the company when it is first formed.
- The business would be transferred to the company as a going concern.
- All of the assets would have to be transferred to the company in order for s.600 relief to apply.
- The company would issue further shares to you in return for the transfer of the assets.
- It will be necessary to pay stamp duty on the transfer of the shop premises to the company at the full rate. In addition, it would be necessary to pay stamp duty in the event that there are debtors to be assigned to the company. However, in practice, one might be able to organise matters so that there are no debtors at the time of the transfer.
- One would not assign creditors formally to the company; if the company does take over responsibility for paying off the creditors, that would be regarded as a cash payment.
- To the extent that the consideration for the transfer of the business to the company is satisfied in cash, by way of an outstanding loan from the company to you or by way of the company taking over responsibility for creditors, then the relevant proportion of the capital gain on the transfer of the shop premises would fall into charge to tax.
- It may still make sense to allow some of the proceeds to take the form of cash or an outstanding loan, as this would allow you the facility of drawing money from the company in repayment of the loan without having any further income tax liability on the monies withdrawn, as they would have already been taxed at the capital gains tax rate.
- Once the above has been implemented, you can transfer the additional shares to your son, John Cullen and to the general manager Mark O'Shea in return for payment and the appropriate claims can be made for retirement relief. Stamp duty at a flat rate of 1% will be payable on both these transfers as consanguinity relief does not apply to transfers of shares. However, as indicated above, they might already have quite a substantial shareholding in the company as a result of subscribing for shares.

I trust that the above addresses your requirements but please feel free to contact us if you require any further assistance.

Yours sincerely

ABC
Chartered Certified Accountants

(b) Funding of payment for shares

This is a separate issue that would need consideration in the light of both the market value of the shares and when John Cullen and Mark O'Shea will be required to make the payment. If they have to fund the consideration out of after tax earnings, the burden could be quite high. If they borrow to buy the shares, they can obtain tax relief for the interest paid, which can help to alleviate matters.

2 *This question tested knowledge of the tax issues which arise on disposals made by a group of companies. It included a disposal of a subsidiary where group relief had previously been claimed for a transfer of assets and a sale and lease back arrangement for a factory which had qualified for industrial buildings allowances.*

(a) MEMORANDUM

To: Directors, Holland Ltd
From: ABC, Chartered Certified Accountants
Date: December 2007
Subject: Financing the expansion of the manufacturing activity

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The purpose of this memorandum is to advise on the taxation implications of the proposals under consideration by the directors to finance the expansion of the group's manufacturing activities, namely:

(i) the sale of the group's shareholding in Hague Ltd; and
(ii) the sale and lease back of a factory.

(i) Sale of shareholding in Hague Ltd

Tax on the disposal of shares

A disposal of shares by a holding company may be exempt from corporation tax on chargeable gains by virtue of s.626B Taxes Consolidation Act 1997 (favourable holding company relief). This provides for exemption from capital gains tax on a disposal by a holding company of shares in a subsidiary company where the following conditions are satisfied:

– The holding company owns at least 5% of the ordinary share capital in the company sold (the 'investee company').

– The investee company is resident in Ireland or a member State of the European Union (EU) or a country with which Ireland has a double tax agreement.

– The business of the investee company or of the group as a whole must consist of the carrying on of a trade or trades.

However, the relief does not apply where the shares in the subsidiary derive their value, or the greater part of their value from land or buildings in the State. The information given demonstrates that, in fact, the shares in Hague Ltd do derive the greater part of their value from the showroom and office and consequently, derive the greater part of their value from land or buildings. As a result, Holland Ltd will be subject to corporation tax of €243,890 on the chargeable gain arising (see Appendix – Schedule 1).

Claw back of group relief

The event of Hague Ltd leaving the group will trigger a claw back of the capital gains tax deferred on any intra-group transfers of assets which have occurred within the previous ten years. Two assets were transferred to Hague Ltd from Holland Ltd within the last ten years:

1. The showroom on 1 April 2002. However, at that date Hague Ltd was not a 75% subsidiary of Holland Ltd and group relief was therefore not available.

2. The office on 1 April 2004. This transfer would have qualified for group relief and consequently the office is deemed to be sold and re-acquired by Hague Ltd at market value on 1 April 2004, giving rise to a corporation tax liability of €45,216 on the deemed chargeable gain (see Appendix – Schedule 2).

(ii) Sale and lease back of the factory

The sale of the factory will give rise to corporation tax of €122,944 on the chargeable gain arising (see Appendix – Schedule 3).

In addition, the disposal will give rise to a clawback of the industrial buildings allowances received of €152,320 in the form of a balancing charge (see Appendix – Schedule 4). However, as this will form part of the Schedule D Case I income of Amsterdam Ltd it will be sheltered by the losses brought forward. Consequently it will not result in an immediate tax liability.

Summary

The initial cash flows to the group from each proposal after allowing for taxes payable will thus be as follows:

	Sale of Hague Ltd	Sale of factory
	€	€
Gross proceeds	1,500,000	1,760,000
Corporation tax on chargeable gain	(243,890)	(122,944)
	1,256,110	1,637,056

The claw back of group relief suffered by Hague Ltd is payable by that company. It is assumed that the purchasers have factored this into the price. It cannot be sheltered by the trading losses brought forward.

Conclusion

The sale of the factory will provide an initial cash advantage of approximately €380,946 over the sale of Hague Ltd. However, this has to be balanced against the ongoing cost of €90,000 per annum in rent. While the rent may be deducted in computing the trading profits of Amsterdam Ltd there will not be an immediate saving in corporation tax due to the losses brought forward.

APPENDIX

Schedule 1

Holland Ltd
Corporation tax on chargeable gain
Disposal of shares in Hague Ltd

	€	€
Sales proceeds		1,500,000
Cost 1 April 1998	100,000	
Indexation	1·232	
		(123,200)
Cost 31 May 2002	150,000	
Indexation	1·049	
		(157,350)
Gain		1,219,450
Corporation tax: $€1,219,450 \times \frac{20}{12·5}$ at 12·5%		243,890

Schedule 2

Hague Ltd
Clawback of group relief on office

	€	€
Deemed proceeds 1 April 2004		300,000
Cost 1 July 1997 (to Holland Ltd)	60,000	
Indexation	1·232	
		(73,920)
Gain		226,080
Corporation tax: $€226,080 \times \frac{20}{12·5}$ at 12·5%		45,216

Schedule 3

Amsterdam Ltd
Corporation tax on chargeable gain
Sale and lease back of factory

	€	€
Sale proceeds		1,760,000
Cost 1 January 2000	960,000	
Indexation	1·193	
		(1,145,280)
Gain		614,720
Corporation tax: $€614,720 \times \frac{20}{12·5}$ at 12·5%		122,944

Schedule 4

Amsterdam Ltd
Balancing charge on factory

Qualifying expenditure		€
Total cost		960,000
Less: Land		(256,000)
General office	(Note 1)	(160,000)
		544,000
Allowances granted (4%)	(Note 2)	(152,320)
Tax written down value		391,680
Balancing charge – limited to allowances granted		152,320

(b) The non-tax factors to be taken into account in deciding between the two alternatives would include the following:

(i) There are no future commitments once Hague Ltd has been sold. The sale and leaseback arrangement will result in a liability to pay rent of €90,000 p.a.

(ii) The sale of the factory may result in the need for relocation in ten years time. The agreement could also cause problems if Amsterdam Ltd wanted to vacate the factory before that time, or if alterations were necessary to the factory.

(iii) The sale of Hague Ltd will mean the loss of that company's future profits.

(iv) The product range of Hague Ltd, and that company's expertise, may be lost to the group.

(v) The sale of Hague Ltd may provide a competitor with confidential information on the group's operations.

(vi) The sale of Hague Ltd would be more noticeable to shareholders, employees, customers, etc than the sale and leaseback arrangement

(c) The purchaser would not itself be able to utilise the losses carried forward in Hague Ltd as only current year losses can be group relieved. However, the losses could be utilised against the future trading profits of Hague Ltd, provided there was no change in the nature or conduct of its trade within a period of three years from the date of purchase.

Notes:

1. Cost of general offices

   As the construction cost of the general offices exceeds 10% of the total construction cost, the cost of the offices does not qualify for industrial buildings allowance.

2. Allowances granted

Years ended 31 December 2000 to 2006 inclusive	=	7 years
€544,000 x 4% x 7	=	€152,320

3 *This question tested knowledge of the close company rules. It tested ability to recognise a close company, and knowledge of the consequences of being regarded as a close company. It also tested ability to compute various liabilities which can be incurred by a close company and the ability to suggest methods of avoiding such liabilities.*

(a) A close company is a company which is under the control of five or fewer participators or of participators who are directors. Oldbridge Ltd clearly falls into this category as it has only four shareholders all of whom are relatives.

(b)

Oldbridge Ltd
Corporation tax – year ended 31 December 2006

			€
Trading income per accounts			152,400
Deduct:	Capital allowances		(19,000)
			133,400
Add:	Interest paid to directors	(Note 1)	2,700
	Rent on participator's apartment	(Note 2)	15,000
Schedule D Case I income			151,100
Schedule D Case III – interest			13,800
Schedule D Case V income			15,250
Total income			180,150
Chargeable gain			12,600
Profit subject to corporation tax			192,750

Corporation tax

€		€
151,100	at $12^1/_2$%	18,887
13,800	at 25%	3,450
15,250	at 25%	3,812
12,600	at $12^1/_2$%	1,575
192,750		27,724

Oldbridge Ltd
Close company surcharge – year ended 31 December 2006

Distributable estate and investment income	€
Estate income – rental income	15,250
Investment income – interest income	13,800
	29,050
Less: Corporation tax at 25%	(7,262)
	21,788
Add: Franked investment income	7,800
	29,588
Less: 7·5%	(2,219)
	27,369

Amount subject to surcharge		€	€
Distributable estate and investment income			27,369
Less: Distributions made			
Interest paid to directors	(Note 1)	2,700	
Rent on participator's apartment	(Note 2)	15,000	
			(17,700)
			9,669
Surcharge at 20%			1,934

Oldbridge Ltd
Income Tax – s.438 CTA 1997 – year ended 31 December 2006

		€
Loan made to participator	(Note 3)	35,000
Section 438 liability at $^{20}/_{80}$		8,750

Notes:

1 Interest on directors' loans

Interest paid to directors, who control more than 5% of the ordinary share capital is treated as a distribution to the extent that the interest paid exceeds 13% of the lower of:

– the total amount of the loans (or average balance where they fluctuate); and

– the nominal issued share capital plus the share premium account at the beginning of the accounting period.

Where there are two or more recipients of interest the overall limit is apportioned between them in proportion to the amounts of interest paid to each.

	€
13% of share capital – €10,000 at 13%	1,300
13% of loans – €80,000 at 13%	10,400
Total interest paid to directors	4,000
Maximum allowable	(1,300)
Balance treated as a distribution	2,700

2 Expenses and benefits paid by a close company for participators who are not employed by it are treated as distributions.

3 Loans made to participators or their associates result in the company being assessed to tax at the standard rate in force in the accounting period in which the loan is made. The loan is treated as a net payment made under deduction of tax at the standard rate. Although there are exceptions to this charge, they do not apply in this case, because Mary Browne's loan exceeds €19,050, she is not a full time employee and she owns more than 5% of the ordinary share capital of the company. Also, the loan was not made in the ordinary course of a business carried on by Oldbridge Ltd.

(c) Possible methods of avoiding the close company penalties include:

Directors' interest
Reduce the interest paid to nil or at least to €1,300 (as per Note 1 above). If the directors have borrowed to finance the loans to the company consideration should be given to paying additional salary to enable them to meet the repayments. The company can obtain a deduction for the additional salary while the directors can obtain a deduction under s.248 Taxes Consolidation Act 1997 in respect of the interest incurred on the loans.

Rent for apartment
Consideration might be given to appointing Anne Browne as a director of the company. In that way tax deductible fees may be paid to her for carrying out her duties as a director of the company, attending board meetings etc. While she would be subject to income tax on such fees it should be remembered that she is at present subject to income tax on the distribution in respect of the rent without the company benefiting from a corresponding deduction.

If she works for the company and the rent continues to be paid on her behalf, she will be assessed to Income Tax under the PAYE system on the €15,000 as a benefit-in-kind. The company would be in a position to claim the rent as a tax deduction.

Tutorial Note:
It should be noted that the excess directors' interest and rent for the apartment fulfill the role of distributions and, accordingly, reduce the surcharge. Thus, the company should weigh the advantage of this reduction in surcharge at 20% against the fact that additional salary would be deductible only against the trading income which suffers tax at $12^{1}/_{2}$% and would not reduce the amount of income subject to surcharge.

Close company surcharge
The close company surcharge is avoided if the company pays a dividend equivalent to its distributable income within eighteen months of the end of the accounting period. While such a dividend is subject to income tax in the hands of the shareholders, the company would avoid paying the surcharge for which no relief is available.

Loan to participator
The only way in which this liability can be avoided is if the loan is repaid to the company. In the absence of available funds to make the repayment, consideration should be given to borrowing from a financial institution. It will be possible to obtain tax relief, albeit restricted, in respect of interest on such a loan, as the money was used to refurbish the family home.

4 *This question tested knowledge of the tax treatment of a purchase or redemption by a company of its own shares.*

(a) Income tax treatment

The normal rule is that if a company buys back or redeems its shares for an amount greater than the original subscription monies, the excess is treated as a distribution or a dividend. The result of this is that the company is obliged to apply dividend withholding tax at 20% and the shareholder is subject to income tax at the top marginal rate while being allowed a credit for the 20% withholding tax applied by the company.

Capital gains tax treatment

However, if certain conditions are satisfied the excess can be treated as a gain subject to capital gains tax and not as income subject to income tax. The conditions to be satisfied may be summarised as follows:

(i) The vendor (shareholder) must not be a dealer in shares.

(ii) The acquisition must be made by an unquoted trading company or an unquoted holding company of a trading group.

(iii) The acquisition must be made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 51% subsidiaries.

(iv) The acquisition must not form part of an arrangement the main purpose, or one of the main purposes, of which is to avoid the treatment of the gain on the shares as a distribution.

(v) The shareholder must be resident and ordinarily resident in the State for the chargeable period in which the acquisition occurs.

(vi) After the acquisition the shareholder cannot be connected with the acquiring company or any other company which is a member of the same group as the acquiring company. A 30% shareholding is the trigger point for this purpose.

(vii) The shareholder's interest in the company must be substantially reduced following the acquisition. This means that the shareholder's percentage interest in the company or group after the acquisition must be less than 75% of the corresponding interest before the acquisition.

(viii) The shareholder must have owned the shares for at least five years prior to the disposal. A period of ownership by a spouse living with the shareholder is aggregated with that of the shareholder for this purpose. Where the shares were acquired under a will or intestacy the required period of ownership is reduced to three years including the period of ownership by the deceased.

Most of the above conditions are objective tests and therefore it can quite easily be determined whether or not they are satisfied. However, tests (iii) and (iv) are subjective in their nature.

Test (iii) requires that the acquisition must be made wholly or mainly for the purposes of benefiting a trade carried on by the company or by any of its 51% subsidiaries. It is not intuitively obvious that a buyback of its own shares by a company would be for the benefit of the trade of the company.

The Revenue have attempted to bring some clarity to this by a statement in Tax Briefing issue 25. In particular, they are prepared to accept that the condition is satisfied where there is a dispute between shareholders which is expected to have an adverse effect on the company's trade. The statement sets out the procedure for applying for advance clearance or agreement from the Revenue that the capital gains tax treatment will be applied.

(b) Stamp duty

Stamp duty is payable where a company buys back its own shares. The rate is 1%. In contrast, if a company redeems its shares (as opposed to buying them back) stamp duty is not payable by virtue of s.64 Companies Act 1963. It is therefore recommended that Lexer Ltd converts the shares into redeemable shares before they are acquired by the company and that the acquisition by the company should be by way of redemption rather than purchase.

(c) Other issues

There are also separate company law issues with regard to when a company may or may not buy back its own shares. The most important company law requirement is that the company must have sufficient reserves out of which to pay for the shares or, alternatively, the purchase may be made out of a new issue of shares. Furthermore, the appropriate resolutions would need to be passed.

5 *This question tested the ability of candidates to advise on the taxation factors relevant to the establishment of a holding company in Ireland to hold shares in subsidiaries operating outside of Ireland and also to appreciate the distinction between a domestic trade qualifying for the $12^1/_2$% rate of corporation tax and a trade carried on wholly abroad which is subject to the 25% rate of corporation tax.*

(a) Holding company

Capital gains tax

A holding company is exempt from Irish capital gains tax on disposals of shares in trading subsidiaries. The main conditions for this are:

1. The subsidiary company must be resident for tax purposes in either a Member State of the European Union (EU) or a country with which Ireland has a double tax agreement.
2. The holding company must hold at least 5% of the ordinary shares of the trading subsidiary.

A manufacturing company is regarded as a trading company for Irish tax purposes.

Dividend income

There is no exemption from tax on dividends received by an Irish holding company. Dividends received from a non-resident subsidiary suffer corporation tax at 25%.

In practice, however, the tax should not be payable because of the fact that a tax credit can be obtained for the foreign tax paid by the company paying the dividend. In addition, the parent company can claim credit not just for any withholding tax or direct tax levied on the dividend in the country of origin, but also in respect of the underlying tax paid on the profits of the company paying the dividends. Furthermore, the Irish company can pool the foreign tax suffered on dividends received from a number of different countries.

Interest relief

A company which borrows to acquire shares in a trading company can claim a deduction for the interest payable against its total income from all sources. The main requirements are as follows:

1. The subsidiary company must exist wholly or mainly for the purposes of carrying on a trade or trades.
2. The holding company must hold at least 5% of the ordinary share capital of the subsidiary company.
3. The holding company must not recover any capital from the subsidiary company, for example, by way of the sale of shares or loan.
4. At least one of the directors of the holding company must be a director of the subsidiary company.

While this relief is generous in so far as it is not restricted to any particular class of income, it has to be claimed in the year in which the interest is paid. Any unused relief is not available for carry forward to a subsequent accounting period.

It could, however, be claimed by another member of an Irish group if one existed. For that purpose there must be a 75% shareholding relationship between the Irish companies.

Note that interest paid to foreign associated companies is generally treated as a dividend and is not deductible. It is also necessary to obtain clearance to pay the interest without applying withholding tax, but most of Ireland's tax treaties provide for this exemption.

(b) Trading companies

An Irish trading company pays tax at $12^1/_2$% on its trading profits. However, this rate does not apply where the trade is carried on wholly outside of Ireland. In that case the tax rate is 25% of the profits.

In practice however, it is very unusual for an Irish company to be regarded as carrying on a trade wholly outside of Ireland. Essentially if anything is done in connection with the trade within Ireland then the trade is regarded as not wholly carried on outside of Ireland, i.e. it is in some part carried on within Ireland. In that event, the tax rate of $12^1/_2$% would apply.

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.

				Marks
1	**(a)**	**(i)**	Capital gains tax:	
			Disposal, by way of gift or sale, subject to capital gains tax	1
			Retirement relief	1
			Conditions	4
			Gift tax:	
			Benefit in excess of threshold liable at 20%	1
			No liability if pay full consideration	1
			Business property relief	2
			Stamp duty:	
			Rates up 9%	1
			Consanguinity relief	1
			Conclusion	1
				13
		(ii)	Incorporate after transfer, clawback of relief	1
			Incorporation before transfer will break 10 year ownership for retirement relief	2
			Section 600 relief avoids this	1
			Requires all assets be transferred to company	2
				6
		(iii)	Form a new company	1
			Transfer all assets as a going concern	2
			Stamp duty payable on transfer of premises	1
			Deal with debtors and creditors	2
			Possibly take some of the consideration in the form of cash or as a loan	2
			Stamp duty payable on transfer of shares	1
			Claim retirement relief for CGT	1
				10
			Appropriate format and presentation	1
			Effectiveness of communication	1
				2
	(b)		Payment out of after tax income	1
			Tax relief available for interest on loan to buy shares	1
				2
			Total	**33**

			Marks
2	**(a)**	Sale of Hague:	
		Tax on disposal of shares	1
		Favourable holding company relief conditions	2
		Does not apply, shares derive the greater part of their value from land and buildings	1
		Compute corporation tax on chargeable gain	2
		Clawback of group relief:	
		No clawback on showroom	1
		Clawback on office	1
		Compute corporation tax on clawback	1
		Sale and lease back of factory:	
		Compute corporation tax on chargeable gain	1
		Compute balancing charge	2
		Can be sheltered by losses	1
		Clawback suffered by Hague Ltd	1
		Compare and conclude	2
			16
		Appropriate format and presentation	1
		Effectiveness of communication, including use of schedules etc.	1
			2
	(b)	Identify factors (1 mark each) – maximum	4
	(c)	No group relief for losses brought forward	1
		Relief for Hague Ltd, subject to conditions	2
			3
		Total	**25**
3	**(a)**	Definitition of close company	2
	(b)	Corporation tax computation:	
		Correct identification of different categories of income and profits	1
		Interest paid to directors	2½
		Participator's benefit	1½
		Apply correct rates	2
		Surcharge computation:	
		Compute distributable estate and investment income	2½
		Deduct distributions made	1
		Compute surcharge	½
		Section 438 charge:	
		Identify loan as subject to this charge	1
		Compute liability	1
			13
	(c)	Directors' interest	1½
		Rent for apartment	2
		Surcharge	1
		Loan to participator	1½
			6
		Total	**21**

			Marks
4	**(a)**	Income tax:	
		Normal rule	1
		Treated as a dividend	1
		DWT and income tax apply	1
		Capital gains tax:	
		Conditions (i) to (v) (1 mark each)/(vi), (vii) and (viii) ($1^1/_2$ marks each)	$9^1/_2$
		Comment on trade benefit test and its applicability	2
		Refer to Revenue guidance and the availability of advance clearance from Revenue	$1^1/_2$
			16
	(b)	Stamp duty on buy-back	1
		No stamp duty on redemption	1
		Recommend redemption	1
			3
	(c)	Need to comply with relevant company law provisions	1
		Company must have sufficient distibutable reserves	1
			2
		Total	**21**

			Marks
5	**(a)**	Capital gains tax:	
		Exemption under s.626B	1
		Conditions	2
		Manufacturing equals trading	1
			4
		Dividend income:	
		No exemption	1
		Corporation tax 25%	1
		Credit for foreign tax on dividend	1
		Underlying tax	1
		Can pool foreign tax credits	1
			5
		Interest relief:	
		Relief for borrowing to acquire shares	1
		Conditions	4
		Must be used in the year it arises	1
		Is available for group relief	1
		Interest paid to foreign associates generally treated as a dividend	1
			8
	(b)	Foreign trade 25%	1
		Only if carried on wholly outside of Ireland	1
		Generally difficult to achieve, with reasons	2
			4
		Total	**21**