Answers

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ABC & Co
Chartered Certified Accountants
Any Street
Any Town

2 June 2020

Albert Kelly
Any Street
Any Town

Re: Financial and taxation planning

Dear Albert

I refer to our recent meeting and am writing to give you my advice on the various issues raised.

(a) Recommended actions required to minimise the capital gains tax (CGT) arising on the sale of your Irish quoted shares

You have made a capital gain of €250,000 (€350,000 – €100,000) on the disposal of your Irish quoted shares in April 2020 and, in the absence of loss relief, CGT of €82,500 (33%) would be payable.

You do not currently have any losses brought forward to offset against the above gain. However, there are latent losses on your investments in Kelly Developments Ltd (KDL) and your holiday home.

Recommendations

1. Negligible value claim in respect of your KDL loss

Under the normal rules, the KDL loss of €75,000 (€0 – €75,000) would crystallise only when the liquidation of the company is complete, which will not be until 2021. As losses cannot be carried back for CGT purposes, this would be of no benefit to you in 2020.

However, a negligible value claim could be made in respect of this loss. Where an individual owns an asset which has dropped significantly in value such that the value of the asset has become small or negligible, they can make a claim to the Inspector of Taxes. Appropriate documentation such as the most recent set of accounts of the company should accompany the claim. If the claim is accepted, you will be treated as having disposed of the asset at market value and immediately re-acquired it at the same date. The loss is then available in the year in which the claim is made. It is, therefore, recommended that such a claim is made in 2020 in respect of your KDL shares in order to set the capital loss of €75,000 against the gain on the Irish quoted shares.

2. Sell your holiday home in 2020

The latent loss on this property is of no benefit until it is crystallised. It is, therefore, recommended that this property should be sold before 31 December 2020. If the suggested price of €390,000 is achieved, there will be an allowable loss of €117,000 (€390,000 – €7,000 – €500,000) arising in 2020.

If the steps outlined above are taken, the chargeable gain on the Irish quoted shares of €250,000 will be reduced by losses of €75,000 and €117,000 arising in 2020 and the taxable amount will be reduced to €58,000. This will result in a CGT liability of €19,140 (€58,000 x 33%).

(b) The taxation implications of the three alternative ways by which your aunt Sheila proposes to assist you, and our advice on which one should be chosen

The detailed calculations in relations to options 1 to 3 are included in Appendix 1.

Option 1: Sheila gifts the building to you for you to sell and use the proceeds to repay your borrowings

Value added tax (VAT)
The disposal of the office building is not subject to VAT because:

– It is not new because it was built more than 20 years ago and the most recent development (the extension) took place more than five years ago; and

– The cost of the extension was 22% of the proposed sales consideration (€55,000/€250,000) and as this is less than 25% and also the extension did not adapt the building for a materially altered use, the extension did not constitute a redevelopment of the building.

Tutorial note: *No capital goods scheme adjustment will arise because the most recent development took place more than 10 years ago.*

Capital gains tax (CGT)
A gift of property is chargeable to CGT on your aunt as if it were a sale at full market value. The CGT payable on the disposal at 33% will amount to €23,351. This amount is deductible in the calculation of the capital acquisitions tax (CAT) payable on the gift.

No additional CGT liability is expected to arise on the sale of the building by you to a third party, as the base cost and the proceeds are expected to be identical.

Retirement relief will not be available on the disposal of the office because it was not used as a business asset for the 10-year period ending on the date of disposal.

Stamp duty

The stamp duty rate applicable to all non-residential property is 6% and the liability is €15,000. This amount is deductible in the calculation of the CAT payable on the gift.

Capital acquisitions tax (CAT)

CAT (gift tax) will be levied at the rate of 33% on the benefit received less the normal (class 2) exempt threshold between aunt and nephew of €32,500.

Unfortunately, the higher exempt threshold applicable to favourite nephew relief is not available in relation to this transaction as it is a condition of the relief that you (the beneficiary) work substantially full time in the business for the five years ending on the date of the gift and your employment with your aunt ended in 1999.

A credit cannot be claimed against the CAT for any CGT payable on the same event, unless the relevant asset is held for two years, and in this case an immediate sale is required. The CAT liability amounts to €58,129.

Tutorial note: *The CGT may be claimed as a deduction/(liability) in the calculation of the value of the gift as it is clearly a condition of the gift that all taxes must be borne by Albert. However, the CGT may not be claimed as a credit against the CAT payable for the reasons outlined above. A credit would obviously have been of more value to Albert than a deduction.*

Total liability

The total taxes payable under option 1 will amount to €96,480, therefore the proceeds available to reduce your loan will be €153,520.

Option 2: Sheila sells the property and gifts the after-tax proceeds to you

The VAT and CGT implications under this option will be the same as in option 1. Again, the sale of the building to a third party and the gift of the net proceeds to you are clearly two separate events and it is, therefore, not possible to claim a credit for the CGT against the gift tax liability. No stamp duty is payable on the cash gift to you and stamp duty on the property will be paid by the third party.

The total tax cost of this option is €86,430, leaving proceeds available to you of €163,570.

Option 3: Sheila leaves the property to you in her will

In the case of a transfer by way of inheritance, the only tax which arises is CAT. There is no charge to CGT or to stamp duty. The total tax cost of this option, therefore, amounts to €71,775 and you would have €178,225 available to you but only when your aunt dies.

Recommended option

Option 2 is recommended, even though it involves paying an additional €14,655 in taxation compared with option 3.

The obvious advantage of option 2 is that it allows for the immediate transfer of the net proceeds from the sale of the property to you, which is essential in view of your financial situation. The disadvantage of option 3 is that you would not receive the property until sometime in the future when your aunt dies and there is also the possibility that she may change her mind in the meantime.

(c) The effect of implementing the recommendations arising at (a) and (b) above on your level of liabilities

	€
Borrowings prior to repayments	600,000
Add: CGT liability re Irish shares	19,140
Less: Proceeds from the sale of holiday home	(383,000)
Less: Net proceeds from sale of office building (€250,000 – €86,430)	(163,570)
Remaining borrowings	72,570

The sale of the holiday home and the office building will reduce your liabilities to approximately €72,570 and hopefully a suitable arrangement can be reached with the lender in relation to this.

You should note, however, that the above calculation has not taken loan interest into account for the period between now and the date of sale of the properties. Obviously the sooner the properties are disposed of, the less interest will be payable.

(d) The taxation implications of receiving a debt write-off

– If you were to receive a debt write-off of €50,000 in 2020, which is the same tax year in which you have been advised to sell the holiday home, then the base cost of the holiday home would be reduced by €50,000 and the loss relief arising on the sale of the property would be reduced by €50,000. This would result in additional CGT payable of €16,500 (€50,000 x 33%).

- However, your borrowings would be reduced to €39,070 (€72,570 – €50,000 + €16,500). The repayment of this may be more manageable on your current income.
- You would not be able to avoid this additional tax charge by arranging for the debt write-off to occur in the year after the sale of the holiday home. In that case, a gain of €50,000 (the amount of the debt released) would be deemed to arise in 2021 and the tax would be payable then, possibly without the facility to borrow the funds to pay it.

(e) Advice in relation to potential LPT liabilities

Properties affected by pyrite damage are specifically exempted from LPT, so you will have no liability for LPT on the holiday home.

Tutorial note: *The exemption from LPT may be claimed by submitting relevant details to the LPT branch of the Revenue. Revenue clearance in relation to LPT will be required before the property can be sold.*

(f) Minimising your tax liability in relation to the inheritance of your aunt's principal private residence

It would be possible for you to get an exemption from CAT (called the dwelling house exemption) if the following conditions are met:

- The house must be your aunt's principal private residence. This is the case. Furthermore, she must occupy the house at her date of death unless she is required to move to a nursing home due to ill health.
- You are required to occupy your aunt's house continuously for a period of three years prior to the inheritance. You would need to move in with your aunt.
- At the date of the inheritance, you must not have a beneficial interest in any other dwelling house. This is the case at present as you are living in rented accommodation and you will have sold your holiday home.
- If your aunt dies before you are 65, you must continue to occupy the house for a period of six years commencing on the date of the inheritance. Otherwise the relief will be clawed back.

If you have any queries in relation to the above or wish to discuss these matters further, please contact me.

Yours sincerely

A.N. Accountant

Appendix 1

Option 1: Gift of office building to Albert and subsequent sale of the building by Albert

Capital gains tax computation

	€	€
Sales proceeds (market value)		250,000
Cost (March 1989)	80,000	
Indexation factor 1988/89	1·553	
	(124,240)	
Enhancement expenditure June 2005	(55,000)	(179,240)
Chargeable gain		70,760
CGT at 33%		23,351

CAT (gift tax) computation

	€
Market value	250,000
Less: Liabilities, costs and expenses	
Capital gains tax	(23,351)
Stamp duty	(15,000)
	211,649
Less: Small gifts exemption	(3,000)
	208,649
Class 2 threshold	(32,500)
	176,149
Gift tax at 33%	58,129

Stamp duty computation

€		€
250,000	6%	15,000

Summary of taxes payable under option 1

	€
CGT	23,351
Gift tax	58,129
Stamp duty	15,000
Total taxes payable	**96,480**

Cash available €250,000 – €96,480 = €153,520

Option 2: Sale of office building by Sheila and gift of net proceeds to Albert

	€
CGT (as above)	23,351

CAT (gift tax) computation

	€
Sales proceeds	250,000
Less: Liabilities, costs and expenses	
CGT payable	(23,351)
Net proceeds, i.e. cash gift	226,649
Less: Small gifts exemption	(3,000)
	223,649
Class 2 threshold	(32,500)
	191,149
Gift tax at 33%	63,079

Summary of taxes payable under option 2

	€
CGT	23,351
Gift tax	63,079
Stamp duty (payable by third party purchaser)	0
Total taxes payable	**86,430**

Cash available €250,000 – €86,430 = €163,570

Option 3: Albert inherits the office building

CAT (inheritance tax) computation

	€
Market value	250,000
Group threshold	(32,500)
	217,500
Inheritance tax at 33%	71,775
Total tax payable	**71,775**

Cash available €250,000 – €71,775 = €178,225

2 (a) Residence and domicile status 2019 to 2022

2019–2021: Lou will be resident for each of these three years as he will have been in Ireland for more than 183 days in each year. He will not yet be ordinarily resident and will not be domiciled in Ireland.

2022: Lou will be resident in Ireland. He will also be ordinarily resident in Ireland, because he will have been resident for the previous three years. He will remain not domiciled in Ireland.

For all years, the general rule is that Lou will be taxable on Irish sourced income and any foreign income remitted into Ireland.

(b) (i) Reliefs for individuals moving to Ireland for employment

(1) Special Assignee Relief Programme (SARP)

The SARP provides relief where a person is moving to Ireland to take up employment duties. The main conditions of the relief are as follows:

(i) To obtain relief, the employee in question must have a basic salary excluding benefits (relevant income) of at least €75,000 per annum.

(ii) A formula is used to calculate the 'specified amount' of earnings which are relieved from income tax. The specified amount is calculated as an amount of 30% of the difference between €75,000 and the lower of either:

– €1,000,000 or

– All income from the employment, including benefits in kind, share-based remuneration, etc (i.e. all taxable emoluments).

Where the period for which the claim is made is less than an entire year, the upper and lower thresholds and the amount of relevant income are reduced proportionately.

(iii) The employee must have already worked for the same employer or connected company such as a parent company for at least six months before moving to Ireland.

(iv) This employer must have been resident in a country with which Ireland has a double tax agreement or alternatively has an agreement with Ireland in relation to exchanging taxation information.

(v) The employee must first arrive in Ireland to work in any of the tax years 2012 to 2020 and must carry out the employment duties in Ireland for a minimum of 12 months.

(vi) The employee must be resident in Ireland in the year of the claim and cannot have been resident here in any of the five years prior to their secondment to Ireland.

(vii) The claim must be made in the first year of residence in Ireland.

(viii) The employer should send a form SARP1A for each employee to the Revenue within 90 days of the employee arriving in Ireland to take up duties.

(ix) The relief is available in the first five years of employment in Ireland.

(2) Split year relief

Where an individual, who is not resident in the State for the tax year prior to arrival, arrives in the State with the intention that they will be resident in the State in the following tax year, then they will be treated as being resident in Ireland only from the date of arrival. In effect, this means that the individual will not be liable to Irish income tax in respect of any foreign employment income arising prior to the date of arrival.

Split year relief applies only to income from employment (excluding directors) and does not affect the liability of the taxpayer in respect of their other sources of income.

(ii) Based on the scenario outlined, it is expected that:

– Lou will meet the criteria set out above and will be able to claim the SARP relief from 1 May 2019 to 31 December 2022 inclusive, and if he avails of the additional year to 2023, it would also qualify for the relief, as the secondment period would be less than the maximum permitted five years (see (viii) above).

– Lou will also qualify for split-year relief in his year of arrival, which means that his US salary from January 2019 to April 2019 will not be subject to Irish tax.

– Charlie's basic salary is less than €75,000 and therefore he would be unable to claim the SARP relief as he would not satisfy condition (i) outlined above.

– Split year relief will also not apply to Charlie, as his employment commenced on the first day of the tax year.

(c) Lou Chang

Taxable income: 2019

	Note	€	€
Schedule D Case III			
Interest on government securities			8,000
Schedule E			
Salary		600,000	
Bonus		60,000	
Benefit in kind (car)	1	10,400	
Total taxable emoluments		670,400	
Less: SARP relief	2	(186,120)	484,280
Schedule F			
Dividends			5,000
Taxable income for income tax			497,280

PRSI and USC

	€
SARP does not relieve PRSI or USC	
(€670,400 + €8,000 + €5,000)	
Taxable income for PRSI and USC	683,400

Notes

1 Car: Benefit in kind (BIK)

Kilometres for 8 months	18,000
Annualised kilometres	27,000
Applicable %	24%
Original market value	€65,000
Taxable BIK per annum	€15,600
Taxable BIK for 8 months	10,400

2 SARP relief

	€
(Taxable emoluments – €75,000) x 30%	
(€670,400 – (€75,000 x 8/12)) x 30%	186,120

Tutorial notes

(1) *Government securities: Where an individual is Irish resident, interest receivable on Irish government securities is subject to Irish income tax.*

(2) *Dividends from Irish companies are Irish source income, which will be subject to Irish income tax.*

(3) *US investment income: As Lou does not plan to remit any of the US investment income in 2019, it is not subject to Irish tax.*

(d) Health insurance premium

As Lou will subject to Irish income tax on all foreign income which is remitted to Ireland, it is not advisable for him to use the US source income to pay his Irish health insurance premium, as this would constitute a remittance and would be taxable income in Ireland for the purposes of income tax, PRSI and USC.

Tax relief at a rate of 20% is granted at source on the first €1,000 of a medical insurance premium resulting in a maximum credit of €200.

(e) Gift to Katy

(i) Tax payable without planning

(1) The gift of the Irish shares represents a disposal for capital gains tax (CGT) purposes. Lou would be liable to CGT on any Irish gains. CGT will be payable at a rate of 33% on any increase in value of the share portfolio while in his ownership. However, it would be possible to offset the CGT as a credit against any capital acquisitions tax (CAT) payable by Katy on the gift as both tax charges would arise on the same event.

(2) Irish CAT will be payable by Katy on the gift of Irish shares at the rate of 33%, as the property in question is Irish. Katy will be able to deduct the class 3 threshold of €16,250 from the value of the gift.

(3) Stamp duty at a rate of 1% of the value of the shares will be payable by the recipient (Katy).

(ii) Tax planning advice

Note: Two possible options are outlined below.

Option 1
Lou could gift Irish government securities (instead of Irish shares) to Katy in November 2021.

Certain Irish government securities are exempt from CAT when taken by a non-Irish domiciled, not ordinarily resident individual. Where the disponer is either Irish domiciled or ordinarily Irish resident, the disponer must have owned the securities for 15 years prior to the gift or inheritance. However, there is no minimum holding period where the disponer is neither Irish domiciled nor ordinarily resident. As Lou would not be Irish domiciled or ordinarily resident in November 2021, a gift of government securities would not be subject to Irish CAT.

Other taxes:
– Gains on government securities are exempt from CGT.
– The transfer of Irish government securities is exempt from stamp duty.

Option 2
Lou could gift some of his US shares to Katy in November 2021.

CAT
The property would not be Irish and Katy, the recipient, would not be resident or ordinarily resident in Ireland. With regards to Lou, the disponer, the legislation provides that:

'Where a person is non-Irish domiciled, he/she will not be considered Irish resident or ordinarily resident for the purposes of CAT, unless they have been resident in the state for the five consecutive years of assessment preceding the date of the benefit and either resident or ordinarily resident on that particular date.'

In November 2021, Lou would satisfy the above criteria, such that a gift by him at that date would not be subject to CAT.

Other taxes:

– Lou would not be liable to Irish CGT on the disposal of his US shares, as he would not be Irish domiciled and no remittance to Ireland would take place.

– The transfer of the US shares to Katy would not be subject to Irish stamp duty, provided the relevant share transfer document is executed outside Ireland.

3 (a) (i) A capital gains tax group comprises a principal company and its effective 75% subsidiaries as well as their effective 75% subsidiaries. The indirect interest of Classic Ltd in Kenilworth Ltd is 64% (80% x 80%). However, Kenilworth Ltd is still part of the capital gains group because it is an effective 75% subsidiary of Paradise Ltd (which is an effective 75% subsidiary of Classic Ltd).

Accordingly, in this case, all companies, i.e. Classic Ltd, Paradise Ltd, Kenilworth Ltd and Deluxe Ltd, are members of the same capital gains tax group.

(ii) (1) **Paradise Ltd – disposal of building on 1 March 2019**

	€
Sales proceeds	1,250,000
Cost price – 91/92 (€380,000 x 1·406)	(534,280)
Gain	715,720
Grossed up gain (€715,720 x 33%/12·5%)	1,889,501
CT at 12·5%	236,188

This tax will be payable by Paradise Ltd.

(2) **Acquisition of building by Kenilworth Ltd from Deluxe Ltd on 1 October 2019**

This transaction does not give rise to a chargeable gain as both Kenilworth Ltd and Deluxe Ltd were members of the same group at the time of transfer, therefore there is no tax to pay on the sale by Deluxe Ltd.

(3) **Transfer of building by Paradise Ltd to Deluxe Ltd on 20 November 2019**

This transaction does not initially give rise to a chargeable gain as both Paradise Ltd and Deluxe Ltd were members of the same group at the date of transfer, therefore there is no tax to pay on the transfer.

(4) **Disposal of shares in Deluxe Ltd on 31 December 2019**

	€
Sales proceeds	500,000
Cost (1990/91)	(950,000)
Loss	(450,000)

Kenilworth Ltd will have an allowable loss of €450,000 which may be used to shelter future gains of that company.

Deluxe Ltd will have a chargeable gain as it left the group within ten years of receiving a capital asset from Paradise Ltd. The tax liability is calculated as follows:

	€
Sales proceeds	540,000
Cost (2005)	(390,000)
Gain	150,000
Grossed up gain (€150,000 x 33%/12·5%)	396,000
CT at 12·5%	49,500

Tutorial notes:

1. *It is most likely that the holding company exemption will not apply as Deluxe Ltd is a property rental company and the greater part of the value of its shares would be represented by Irish land and buildings.*
2. *When a company leaves a group, a chargeable gain (de-grouping charge) may arise in relation to assets previously* ***received*** *from other group companies. No chargeable gain arises in relation to assets previously transferred or sold to other group companies.*

(b) Group transfer of a non-current asset in transferor to trading inventory in the transferee

The transfer of a non-current asset will be regarded as a qualifying group transfer, i.e. giving rise to a no gain/no loss position for capital gains tax purposes. Consequently, no chargeable gain or loss will accrue to the transferor company.

The transferee company is then deemed to immediately appropriate the asset to its trading inventory for a consideration equal to its current market value, thus giving rise to a chargeable gain or allowable loss. The asset will be included in the transferee company's cost of sales at market value for the purposes of computing its profit under Schedule D Case I.

Alternatively, the transferee company may elect that the chargeable gain be disregarded and instead deduct the amount of the gain from its cost of sales for Schedule D Case I purposes. It is not possible to make such an election where the deemed appropriation to trading inventory gives rise to an allowable loss.

Tutorial note: *The election to deduct the amount of the gain from cost of sales can be beneficial where the corporation tax rate (currently 12·5%) is less than the CGT rate (currently 33%).*

(c) Nighthawks Ltd

The carry forward of losses can be denied where there is a change of ownership of a company and where:

– Over a period of three years, there is a major change in the nature or conduct of the trade. In this case, it appears that no such change in Automat Ltd's trade has taken place or is anticipated.

– At the date of sale, the scale of activities has become small or negligible. This is not the case with Automat Ltd which, despite sustaining losses, has continued trading and maintained its employee numbers.

– There is a considerable revival in trade only after the change of ownership. Again, this does not appear applicable in this case.

Conclusion
The brought forward losses of Automat Ltd should be allowable against the future profits of that company, but will not be allowable against the profits of Nighthawks Ltd.

However, if a 75% group is formed, future losses may be relieved between the group members in the year in which they arise.

(d) Ruby

(i) Registration

Ruby will be obliged to register for VAT from the start because she is supplying a service and the registration threshold is a turnover of €37,500 in any 12-month period.

She will also be obliged to register for income tax as a sole trader.

(ii) Taxes payable

The profits arising from the sole trade will be subject to income tax, PRSI and the universal social charge (USC).

In relation to income tax, there are commencement rules in relation to the early years of a business, which will result in the following profits being assessed to tax:

Year of commencement (2020)	
Profits from the date of commencement to 31 December (€60,000 x 4/12)	€20,000
Second year (2021)	
Profits for the first year of trading	€60,000

(iii) The suggestion that Ruby will have no income tax liability for the first two years is not correct because:

– Sole traders are assessed to income tax based on their net profits (adjusted for income tax purposes) and not on their drawings.

– GML is a company and a separate entity from Ruby, so its trading losses are not allowable against income earned from her proposed sole trade.

(iv) Start-up company relief

The plan to avail of start-up company relief from 2023 onwards will not work because the relief does not apply to a trade operated previously and transferred into a company.

4 (a) Tax implications of the purchase and conversion of the shop premises

Stamp duty
Stamp duty of €36,000 (€600,000 x 6%) will be payable by Maxine on the purchase of the premises.

Value added tax (VAT)
The restoration of a derelict building to a state capable of use does constitute development, even if the use to which the building is put is the same or similar to that prior to it becoming derelict.

As the development occurred in July 2017, which is within five years of the date of sale to Maxine (the first sale since the development), the building is deemed to be new. Consequently, VAT of €81,000 (€600,000 x 13·5%) will be payable. It is intended that 70% of the building area will be used for a taxable activity (the retail trade) and therefore €56,700 (€81,000 x 70%) may be reclaimed. The remaining 30% of the area will be used for a non-taxable purpose, resulting in non-reclaimable VAT of €24,300.

The capital goods scheme will apply for the VAT life of the building which is 20 years. If there is any reduction in the taxable use of the building during that time, then a proportionate clawback of the original VAT reclaimed will occur.

VAT is not reclaimable on the apartment conversion costs of €80,000 (including VAT).

(b) **Calculation of tax underpayment on cash wages**

	€
Net wages paid (€300 x 52)	15,600
Lester's marginal tax rate (40% + 4% + 4·5%)	48·5%
Grossed up wages (x 100/51·5)	30,291

Tax underpayment on cash wages

Employee payroll taxes (€30,291 x 48·5%)	14,691
Employers PRSI (€30,291 x 10·95%)	3,317
Total payroll taxes underpaid	18,008

Calculation of tax underpaid on under-declared sales

The following is a calculation of under-declared sales using the two common methods:

1 **Review of gross margin percentage**

Correct gross margin	30%
Cost of goods sold as a % of sales	70%
	€
Cost of goods sold	250,000
Correct sales figure €250,000/70%	357,143
Under-declaration of sales (€357,143 – €310,000)	47,143
VAT inclusive sales understated (x 1·23)	57,986

2 **Comparison of declared drawings to lifestyle expenditure**

	€
Declared drawings	26,000
Personal expenditure (€5,700 x 12)	68,400
Shortfall in funding of personal expenditure	42,400
Add: Cash paid to employee (€300 x 52)	15,600
Gross sales understated	58,000

Maxine is up to date in relation to the payment of her bills and has not increased her borrowings during the year, so the obvious conclusion is that she has withdrawn additional amounts from the business.

Conclusion
Since there is only a minor difference (€14) between the above two calculations, it is reasonable to assume that both calculations of under-declared sales are materially correct.

Tax underpaid re undeclared sales

Undeclared cash sales (method 1)	€47,143
VAT underpayment (€47,143 x 23%)	€10,843

Income tax, PRSI and USC understatement (Maxine)

	€
Adjustments	
Sales under-declared	47,143
Less: Additional wages (total cost) (€30,291 + €3,317)	(33,608)
Total under-declaration of profit	13,535
Maxine's marginal tax rate (20% + 4% + 4·5%)	28·5%
Income tax, PRSI and USC	3,857

Summary of the taxes and penalties payable

	Tax underpaid €	Penalty	Penalty Amount €	Total €
Income tax, PRSI and USC (payroll)	18,008	10%	1,801	
VAT	10,843	10%	1,084	
Income tax, PRSI and USC (Maxine)	3,857	10%	386	
	32,708		3,271	35,979

The under-declaration of sales for VAT and income tax and the payment of cash wages without the deduction of payroll taxes are clearly in the deliberate behaviour category. Where the taxpayer makes an unprompted qualifying disclosure, the reduced rate of penalty is 10%.

Action required
A calculation of the tax and interest (but not the penalties) due in relation to the above issues should be submitted to the Revenue, together with a payment for that amount.

Tutorial note: *The Revenue will respond with their calculation of the penalties due and the penalties will then be payable.*

(c) The place of supply of the legal services is Ireland and Maxine is the taxable person. VAT of €1,380 (23% x €6,000) should be accounted for on the reverse-charge basis. The VAT of €1,380 should be included in the company's output (sales) VAT and it is also entitled to reclaim the same total amount of input VAT, as the legal services relate exclusively to the taxable activity. This results in a neutral cash flow position for Maxine.

(d) Professional services withholding tax (PSWT) only applies to professional services and so will not apply to the software package supplied by Maxine, which is a supply of goods.

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.

			Available	*Maximum*
1	**(a)**	Calculation of potential CGT on disposal of Irish quoted shares	1·0	
		Identification of €75,000 latent loss on KDL	1·0	
		Recommendation re negligible value claim	1·0	
		Explanation of requirements of negligible value claim	2·0	
		Calculation of loss on holiday home	0·5	
		Recommendation to sell holiday home in 2020	1·0	
		Calculation of CGT payable after loss relief	1·0	
			7·5	7·0
	(b)	**Option 1**		
		Disposal is not subject to VAT with reasons	2·0	
		CGT calculation on gift	1·0	
		No additional CGT liability when Albert sells the property	0·5	
		Stating that retirement relief does not apply, with reason	1·0	
		Consideration of entrepreneur relief	1·0	
		Stamp duty calculation	0·5	
		CAT Favoured nephew relief not available	1·0	
		Deductions for CGT and stamp duty	1·0	
		No credit for CGT on same event	1·0	
		CAT calculation	0·5	
		Summary of total taxes payable under option 1	0·5	
		Option 2		
		VAT and CGT implications are the same	1·0	
		No stamp duty payable	1·0	
		Gift tax calculation	1·0	
		Summary of total taxes payable under option 2	0·5	
		Option 3		
		No CGT or stamp duty cost	1·0	
		Inheritance tax calculation	1·0	
		Recommendation		
		Selection of option 2	1·0	
		Rationale, non-tax issues	1·5	
			18·0	15·0
	(c)	Calculation of remaining borrowings	1·5	
		Comments	0·5	2·0
	(d)	**The tax implications of a debt write-off**		
		Year of sale: explanation	2·0	
		Year after sale: explanation	1·0	3·0
	(e)	Holiday home exempt from LPT because of pyrite damage		1·0
	(f)	Identification of dwelling house relief	0·5	
		Conditions of dwelling house relief	3·0	
			3·5	3·0
	Professional marks			
	Format and presentation of the letter		1·0	
	Effectiveness of written communication		1·0	
	Appropriate use of support schedules/appendix		1·0	
	Logical flow of calculations		1·0	4·0
				35

				Available	Maximum
2	**(a)**		Status with explanation	2·0	
			General rule: Irish sourced income and foreign income remitted	1·0	3·0
	(b)	**(i)**	SARP	4·0	
			Split-year relief	1·5	
				5·5	5·0
		(ii)	Explanation of Lou's eligibility for both reliefs	1·0	
			Explanation of Charlie's non-eligibility for SARP	0·5	
			Explanation of Charlie's non-eligibility for split-year relief	0·5	2·0
	(c)		Inclusion of government securities	0·5	
			Exclusion of US income (January to April)	0·5	
			Salary and bonus	0·5	
			Benefit in kind	1·0	
			Inclusion of Irish dividends	0·5	
			SARP calculation	2·0	
			SARP not applicable when calculating PRSI and USC	1·0	6·0
	(d)		Advice not to use US income to pay medical insurance premium	1·5	
			Tax credit position	0·5	2·0
	(e)	**(i)**	**Gift to Katy**		
			Explanation of CGT exposure	1·0	
			Offset of CGT as a credit against CAT	0·5	
			Explanation of CAT exposure	1·5	
			Explanation of stamp duty exposure	0·5	
				3·5	3·0
		(ii)	**Alternative structure (based on option 1)**		
			Recommendation of government securities instead of Irish shares	0·5	
			Evaluation of CAT issues	2·0	
			Government securities CGT exempt	1·0	
			Government securities exempt from stamp duty	1·0	
			A maximum of 5 marks is also available for option 2	4·5	4·0
					25

				Available	Maximum
3	(a)	(i)	**Definition of capital gains group**		
			List of members of Classic capital gains group		3·0
		(ii)	Paradise Ltd premises disposal; CT computation	2·0	
			Acquisition of premises by Kenilworth Ltd; no chargeable gain	1·0	
			Transfer of premises from Paradise Ltd to Deluxe Ltd:		
			No chargeable gain	1·0	
			Disposal of shares in Deluxe Ltd		
			Computation showing €450,000 loss on disposal	1·0	
			Identification of degrouping charge with explanation	1·0	
			Calculation of tax payable by Deluxe Ltd	1·0	
				7·0	6·0
	(b)		**Group transfer of a non-current asset in transferor to trading inventory in transferee**		
			No gain/no loss for CGT in transferor	1·0	
			Appropriation to current value in transferee and subsequent trading profit	1·5	
			Option to deduct gain from cost of sales, but not to add the loss	1·5	4·0
	(c)		**Carry forward of losses on change of ownership**		
			Conditions	1·5	
			Application to Automat Ltd	1·5	
			Conclusion	0·5	
				3·5	3·0
	(d)		**Tax issues on commencement of sole trade**		
			Registration for VAT and income tax	1·0	
			Tax applies to profits and not drawings	0·5	
			Losses from GML are not allowable	0·5	
			Application of commencement rules	1·0	
			Applicability of PRSI and USC	1·0	
			Start-up company relief will not apply (with reason)	1·0	
				5·0	4·0
					20

			Available	*Maximum*
4	**(a)**	**Purchase and conversion of shop premises**		
		Calculation of stamp duty	1·0	
		Value added tax (VAT)		
		Conversion from derelict to actual use post March 2017 does constitute development	1·0	
		As within five years, the building is deemed to be new	0·5	
		Calculation of VAT payable	0·5	
		70% reclaimable, with reason	1·0	
		Calculation of non-reclaimable 25%	0·5	
		Capital goods scheme explanation	1·0	
		VAT not reclaimable on the conversion costs	0·5	6·0
	(b)	Calculation of underpaid IT, PRSI, USC re Lester	2·0	
		Calculation of under-declared sales using margin percentage	1·5	
		Calculation of under-declared sales based on shortfall in funding of personal expenditure	1·5	
		Comparison and conclusion	1·0	
		Calculation of underpaid VAT on sales	1·0	
		Note: *The mark will also be awarded where candidates base their VAT underpayment on an alternative calculation*		
		Calculation of underpaid IT, PRSI, USC re Maxine	2·5	
		Explanation of the categories of default, calculation of penalties and action required	3·0	
			12·5	11·0
	(c)	Applicability of reverse charge	1·0	
		Calculation of VAT and explanation of output and input VAT	1·0	2·0
	(d)	Non-applicability of PSWT		1·0
				20