Answers

Note: ACCA does not require candidates to quote section numbers or other statutory or case references as part of their answers. Where such references are shown below [in square brackets] they are given for information purposes only.

1 Report

To: Joseph Matala
From: ACCA Candidate
Date: 3 December 2019
Subject: Taxation queries

Taxation queries received

With reference to our previous correspondence and discussions, I have drafted this report to address each of your queries with respect to the varied issues and their taxation implications. For ease of reference, my answers are stratified into sub-headings.

(a) Issue 1 – Early retirement

(i) Pension fund transactions
You indicated that you had intended to extract the maximum tax-free lump sum from the pension fund. To verify the maximum amount which you should have taken as a tax-free lump sum, detailed calculations are included below.

As at 30 June 2018, the point of your retirement, the accumulation account (being R15,000,000) would normally accrue to you subject to any actions taken. However, before the tax-free lump sum can be determined, other factors influencing the result must first be calculated.

At the point of your retirement, you had contributed R120,000 (R3,600,000 x 10% x 4/12) to the MCorp pension fund in the 2019 year of assessment. The deduction which would have been taken into account for employees tax purposes would, however, have been limited. As the annual contribution of R360,000 (R3,600,000 x 10%) would be limited to R350,000, R10,000 per annum would, in normal circumstances, accumulate and be added to the amount previously disallowed. At the point of retirement (30 June 2018), R3,333 (R10,000 x 4/12) would have been disallowed. This disallowance would have been added to the R210,000 previously disallowed (as reported by the South African Revenue Service (SARS)), increasing the deductions not previously allowed to R213,333. This is relevant in determining the amount of the fund transferred to another fund and the lump sum amount to be received tax free by you.

As you have chosen not to draw an annuity, but rather to transfer the balance of the accumulation account not taken as a lump sum, the only amount to determine would be the extent of the lump sum. Calculated in reverse, the maximum tax-free lump sum would be R713,333 being the standard tax-free lump sum (technically, the amount of lump sum taxed at nil) of R500,000 plus the previously disallowed contributions of R213,333. The amount which should have been transferred to your retirement annuity fund is R14,286,667.

For tax purposes the figures would be set out like this:

	R
Total amount available in the MCorp pension fund	15,000,000
Amount transferred to a retirement annuity fund (R15,000,000 – R713,333)	(14,286,667)
	713,333
Less deductions not previously allowed and so not now taxable	(213,333)
Taxable lump sum	500,000

(ii) **The maximum contribution to a retirement annuity scheme for the 2019 year of assessment**
The amount transferred from your MCorp pension to another retirement annuity fund is not considered a current year contribution to a retirement fund. This means that it remains possible for you to contribute a further R233,333 to your retirement annuity fund in the 2019 year of assessment which will qualify for deduction. This amount is determined by reducing the maximum annual limit of R350,000 by the limited amount taken into account for employees tax purposes (R350,000 x 4/12). The excess retirement contributions so far in the 2019 tax year of R3,333 were taken into account in the determination of the lump sum and so should not affect the amount to be taken into account for the current year contributions.

(iii) Share scheme transactions
The sale of the shares which you were obliged to sell back to the MCorp share scheme at their original cost to you does not generate any tax consequence. As you were not permitted to freely dispose of the shares, despite being sold back to the share scheme at less than open market value, no loss arises.

For the shares which vested in you on 30 June 2018, when all restrictions over the shares were lifted, a gain arose at that date which has to be included (in full as it relates to services rendered to your employer) in your taxable income for the 2019 year of assessment. As such gains are also taken into account for employees tax purposes, the tax owing is likely to have already been withheld by MCorp from your salary. The gain would have been R250,000 (R650,000 market value on restrictions lifting less R400,000 paid for the shares). This would have generated an employees tax withholding of R112,500 (R250,000 x 45%) as you are already taxed at the maximum marginal rate based on your salary.

The subsequent sale is for your personal account and generates a capital gains tax liability. The capital gain would be R80,000 (R730,000 sale proceeds – R650,000 (value on restrictions over the shares being lifted)). You will note that you are only taxed on the excess gain after the shares vested in you on 30 June 2018. This gain would generate a tax liability (assuming no other capital gains or capital losses) of R7,200 ((R80,000 gain less R40,000 annual exclusion) x 40% inclusion rate = R16,000 added to taxable income and taxed at 45%). If SARS considered you to not hold the shares for capital gain purposes, but as a speculative investment, then the gain would be included in your taxable income in full generating tax of R36,000 (R80,000 x 45% tax rate).

(b) Issue 2 – CEO4U transactions

(i) Withholding or advance payment

It would appear that employees tax should have been withheld by MCorp for at least the contractual period 1 July 2018 to 31 October 2018. For that period, the information provided by you indicates that your company operated as a personal service provider.

CEO4U is a personal service provider as you, being a connected person of the company as sole director and shareholder, personally rendered the company's service to a client (MCorp) and more than 80% of the company revenue (in this case 100%) was earned from one client (MCorp).

From 1 November 2018, less than 80% of monthly company revenue is earned from a single client (R295,000 (60%) from MCorp and R192,700 (FAR500,000 x 0·3854) (40%) from the Farland company), however, CEO4U may remain a personal service provider if either:

– you would be regarded as an employee if the service rendered by you on behalf of CEO4U was rendered directly to the client; or

– the duties are such that they are performed mainly at the client premises and are subject to the control and supervision of the client as to the manner in which they are performed.

In your case, the former could be more likely than the latter. However, as you have multiple clients, it may weaken the argument that you are an employee rather than a freelance contractor. Should this classification remain accurate, a difficulty may arise for the Farland clients, who would have to appoint a representative taxpayer responsible for withholding the relevant employees tax.

Apart from any employees tax which may be withheld, you are required to be registered as a provisional taxpayer. Such registration would require provisional tax payments to be made six-monthly. For the 2019 year of assessment, these payments should have been made on 31 August 2018 and 28 February 2019. The employees tax withheld, if any, would have been deductible against the income tax liability calculated to determine the provisional tax payments.

(ii) Registration for other taxes

Based on the contractual amounts, CEO4U would have become liable to register for value added tax (VAT) from 1 July 2018 as at that date the company's contractual obligations to MCorp would generate taxable supplies of greater than R1 million within a 12-month period (the retainer for five months alone is greater than R1,000,000). You would therefore have had to apply (on behalf of CEO4U) for registration as a VAT vendor within 21 business days of 1 July 2018.

Should CEO4U pay you any form of remuneration, CEO4U would itself have to register as an employer for employees tax.

(iii) Preferential tax regimes

CEO4U is excluded from both the micro business regime and the small business corporation regime. For the micro business, the turnover exceeds the maximum threshold of R1,000,000 (the retainer for the five months alone is sufficient at R295,000 x 5 months = R1,475,000) and, for the small business regime, while within the threshold, all of the service offered is considered a personal service, which it may not be for either regime to apply.

(iv) Farland contracts

Apart from the employees tax issue identified above, the Farland contracts are denominated in foreign currency. As a result, foreign exchange gains and losses may arise on the revenue which accrues to CEO4U. As no amounts have been remitted, the foreign exchange gain/loss which arises at the end of the 2019 year of assessment would be determined as follows:

November receipt: FAR500,000 x (0·3854 – 0·3970) = R5,800 gain
December receipt: FAR500,000 x (0·4065 – 0·3970) = R4,750 loss
January receipts: FAR520,000 x (0·3765 – 0·3970) = R10,660 gain
February receipts: No gain or loss as translated at year end rate

On any subsequent remittance in the 2020 year of assessment, the gain or loss would be determined using the ending 2019 translation rate as the base.

A further consideration is whether the business of CEO4U as conducted in Farland results in a permanent establishment in Farland which would give Farland the right to tax the business profits arising in Farland. South Africa would then have to grant a credit for the foreign taxes paid against the South African tax liability.

(c) Issue 3 – Change of residence

(i) Change of corporate residence of CEO4U
As CEO4U was incorporated in South Africa, it remains a resident initially under South African domestic law. However, if the treaty between South Africa and Farland deems CEO4U to be resident in Farland, such classification would override South African domestic law. In your case, it is doubtful that the treaty would recognise the corporate residence as being in Farland, as the place of effective management is likely to follow you as the sole director and shareholder. This is despite the treaty residence requirement for corporate entities being settled by the competent authorities by mutual agreement.

(ii) Change of residence – Both CEO4U and Joseph Matala
Should you move your tax residence to Farland, it would seem more likely that the corporate tax residence of CEO4U would follow.

A variety of tax implications arise:

For CEO4U, as the only two remaining South African contracts each generate only R10,000 per month, the annual South African turnover falls below the VAT threshold, implying that CEO4U could consider deregistration for VAT. The Farland contracts would no longer be considered relevant for South African VAT purposes (even though they were previously zero rated as exported services).

Both CEO4U and you would have years of assessment ending on the date of the change of residence. The day before that change, both parties would have to settle exit taxes on the global assets. Immovable property situated in South Africa would be excluded from such exit taxes. However, it would have to be determined whether the South African contract would result in a permanent establishment in South Africa for CEO4U at the client's premises. Further information is required to be able to determine this.

The above documents the key tax implications of the information as supplied. Should there be any further queries, I will be happy to assist.

ACCA Candidate

2 Expert Group (the Group)

(a) Qualifying criteria for the special rules

For all the planned actions to restructure the Group, various corporate rules need to be considered, namely:

- Asset-for-share transactions
- Substitutive share-for-share transactions
- Amalgamation transactions
- Intra-group transactions
- Unbundling transactions
- Liquidation distributions

Each of these restructuring transactions (the so-called corporate rules) have special qualifying requirements before the rule may be utilised. The rules would generally apply automatically unless the companies opt out of the rules by application in writing.

Asset-for-share transactions
For this special rule to apply, a resident company must receive an asset in exchange for shares from a person who, after the transaction, will have a qualifying interest in the receiving company. Certain asset types are excluded and the asset acquired must be held with the same intent as the disposing person (i.e. a capital asset remains a capital asset). A qualifying interest (relevant to the corporate structure under consideration) is an equity share held in a company forming part of the same group of companies (essentially where 70% of a resident company is held by another company or companies within the group directly or indirectly).

Substitutive share-for-share transactions
This rule is in respect of a person disposing of an equity share in the form of a linked unit for an equity share other than a linked unit.

Amalgamation transactions
A resident company disposes of all of its assets to another resident company in exchange for equity shares in the acquiring company after which the disposing company will be terminated (i.e. the newly acquired shares will be distributed to the disposing company's shareholders).

Intra-group transactions
An asset is disposed of by one company to another resident company after which the companies must be or become part of the same group of companies at the end of the transaction.

Unbundling transactions
This rule essentially converts a vertical corporate structure into a more horizontal structure. While the rule could be applied to get the shareholdings in Property Co and Invest Co into Expert Group Ltd, this would still leave Expert Holdings (Pty) Ltd in existence and therefore is less appropriate than the liquidation distribution corporate rule below.

Liquidation distributions

For this special rule, all the assets of the liquidating resident company are disposed of to its holding company (forming part of the same group of companies) after which the liquidating company is terminated. While similar to amalgamation, the restriction is that the disposal of assets is to its holding company.

(b) Application of special corporate rules to the directors' planned restructuring steps

(i) Transfer of the offshore property from Building Co to Property Co and the subsequent liquidation of Building Co

While it would seem logical that the liquidation transaction may be invoked for this action, the qualifying characteristics are not present. This transaction requires that the asset be distributed to the company's shareholders before the company is liquidated. Invoking this transaction would not only result in the building being received by Manufacture Co, but the anti-avoidance rules within this rule would prevent Manufacture Co from subsequently transferring the building to Property Co.

To ensure that Property Co receives the underlying asset in Building Co, the better special rule to invoke would be the amalgamation rule. As Property Co's business is rental to third party and group companies, the acquisition of the property held by Building Co would continue as a capital asset (i.e. for rental). This is relevant as the manner of holding in the liquidating company must match the holding in the receiving company. The asset will be disposed of from Building Co to Property Co at base cost for shares in Property Co.

On termination of Building Co, the shares it then holds in Property Co will transfer to Manufacture Co as the sole shareholder in exchange for the disposal of its shares in Building Co. On this event (still within this rule), the shares held by Manufacture Co in Building Co are effectively replaced by the shares in Property Co. The disposal of the shares in Property Co held by Building Co are ignored for the purpose of the determination of its taxable income. This disposal is further not seen as a dividend from Building Co to Manufacture Co or a return of capital in Manufacture Co's hands.

It should be noted further that the underlying property transfer from Building Co to Property Co will not attract value added tax (VAT) or transfer duty (as the case may be) due to exemption provisions in those Acts linked to this rule.

While a restriction will exist for 18 months over Property Co on the disposal of the property acquired from Building Co, it would seem that Manufacture Co may dispose of the share it will subsequently hold in Property Co. For the purposes of the future actions (steps (ii) and (iii)), it is suggested that the shares held by Manufacture Co in Property Co are distributed as a dividend *in specie* to Expert Holdings (Pty) Ltd. The dividend *in specie* will not attract dividends tax.

(ii) Manufacture Co to be consolidated into Origin Co

Again, liquidation seems impractical as Origin Co is not the holding company of Manufacture Co. It would seem that, for the same reasons as above, the appropriate special rule to invoke would be the amalgamation rule. Application of this rule facilitates first the disposal of all the assets of Manufacture Co to Origin Co for shares in Origin Co. Manufacture Co then distributes the shares it now holds in Origin Co to Expert Holdings (Pty) Ltd as its shareholder.

(iii) The Expert Holdings (Pty) Ltd shareholdings in Property Co and Invest Co to be transferred to the Expert Group Ltd and Expert Holdings (Pty) Ltd to be liquidated

In this instance, the more applicable special rule would appear to be the liquidation rule. At this third stage, the only assets held by Expert Holdings (Pty) Ltd would be the shares in Property Co, Invest Co and now Origin Co along with the loans made by Expert Holdings (Pty) Ltd to Invest Co. All of these assets would appear to be capital assets.

(c) Use of assessed loss in Origin Co against profits of Manufacture Co

It is entirely possible that the assessed loss in Origin Co may be ring-fenced from the profits introduced from the trade of Manufacture Co once consolidated into Origin Co. An anti-avoidance provision [s.103(2)] provides that where any agreement has been entered into impacting the company (Origin Co) and such agreement has resulted in income being received or accrued for that company (Origin Co) and the agreement was entered into for the sole or main purpose of utilising the assessed loss, then the loss will be ring-fenced and only allowable against the original trade of the company (Origin Co).

In this case, however, this consolidation was part of a larger commercial restructuring of the group. It may be possible to demonstrate that the sole or main purpose was not to make use of the assessed loss in Origin Co, but rather that Origin Co was the logical vehicle into which Manufacture Co should be consolidated to achieve the desired group structure.

3 Value added tax (VAT) queries

(a) PropDev Ltd

Despite the issue of the invoice on 1 March 2018 (when the rate was 14%), the time of supply rule specifies that for fixed property, the supply is considered to take place when the property is registered in the Deeds Office or the earlier of payment of consideration to the seller.

The payment of the deposit in this scenario is to the transferring attorneys and held in trust on behalf of Build Ltd until the transaction is concluded. As a result, it is not consideration paid to the seller, PropDev Ltd, and therefore does not trigger the time of supply rule on 1 March 2018. It is only when the property is registered in the Deeds Office on 15 May 2018 that the time of supply was triggered with the effect that VAT at 15% should be charged and not 14%.

Assuming the invoice charged VAT of 14%, the additional amount due in terms of the rate change should be claimed from Build Ltd. In the event that no agreement can be reached with Build Ltd, PropDev Ltd will have to absorb the cost as a business cost. If the invoice issued in March was declared on PropDev Ltd's VAT return, a correction will have to be processed in the return following the supply.

For the residential property sales, the VAT Act provides that the contract date (in the event of an increase or decrease in VAT rate) is definitive. This means that the rate of 14% will be honoured and no increase in price will occur.

(b) Selling Ltd

While a supplier may increase the contract price with the increase caused by the VAT rate change to recover the additional VAT on supplies made after 1 April 2018, this is inapplicable where the supplier (in this case Selling Ltd) has agreed with its customer that the contract amount is all inclusive (as appears to be the case here). In such circumstances, the VAT increase must still be accounted for and therefore becomes a business cost for Selling Ltd.

(c) Consult Ltd

Where the rate changes, the VAT Act specifies that a special time of supply rule is invoked which dictates that the rate will be based on when the services were rendered. This means that for the services rendered in March, but billed in April, the VAT rate is 14%. The VAT Act provides that VAT must be charged at 14% even though the invoices are raised after the rate change to 15%.

As regards Client A which is on a two-month billing cycle, the services rendered in March should have been invoiced as including VAT at 14% (even though after 1 April 2018). If the services could not be clearly determined, then a reasonable apportionment should have been made. The services rendered on or after 1 April 2018 should have included VAT at 15%.

(d) Growth Ltd

(i) Registration of Johannesburg operation as separate branch for VAT
To qualify for branch registration, first, the branch must be separately identifiable by location or activity – this condition is met as one branch is in Cape Town (where the head office is based) and the other is in Johannesburg and so the two are separately identifiable by location. Second, the branch must maintain an 'independent system of accounting'. This is an undefined phrase, however, it is suggested that this may imply that the branch keeps sufficient records so that, if required, it could draft separate financial statements. This would appear to be the case as the administrative functions have been decentralised.

Growth Ltd may apply to the Commissioner of the South African Revenue Service (SARS) in writing to request that the branches become separate vendors. The company, as the primary vendor (original vendor), must remain registered even if no taxable supplies are made. Further, any default in the responsibilities of the branch will fall to Growth Ltd.

(ii) VAT implications for future transfers of inventory and capital assets to the new Johannesburg branch
No guidance is specifically provided with respect to the VAT implications on registering a branch separately other than that future transfers between branches will carry VAT. However, it is submitted that in the first instance, nothing particularly turns on the holding by the Johannesburg branch of goods for which inputs were originally claimed under the single VAT registration number of Growth Ltd. Alternatively, the transfer of the necessary assets and inventory to the branch could be seen as the partial disposal of a going concern and therefore zero rated. All subsequent sales by the Johannesburg branch of such goods would carry VAT at the standard rate. The input VAT on acquisition would therefore have been claimed by Growth Ltd under its own VAT number and the output recorded by the Johannesburg branch on subsequent sale.

Should Growth Ltd supply goods (be they capital assets or inventory) to the Johannesburg branch after separate registration, then Growth Ltd would have to account for VAT at the standard rate and the branch would have to claim the input VAT on the invoice from Growth Ltd.

An alternative approach would be to first gain the separate branch registration (i.e. that the branch is registered as a vendor) and thereafter sell the inventory and other assets required/currently held by the branch as a 'going concern'. Such a transfer would carry VAT at the zero rate, provided the requirements for a going concern transfer are met. This would have the effect that all goods are correctly accounted under each vendor.

(iii) VAT implications of supplies to and subsequent sales made by the Zambian branch
Supplies to the Zambian branch by any of the South African branches or by Growth Ltd directly will be zero rated as an export on transfer of those goods. The subsequent sale by the Zambian branch will have no South African VAT consequences. It should be noted, however, that separately registered branches are considered connected persons to the main vendor and each other. This implies that transfers to the Zambian branch should be at market value. The transfers to local branches do not carry this burden as the output charged by, for example, Growth Ltd on supplies to the Johannesburg branch will match the input claimed by the Johannesburg branch. On supply by that branch to external customers, the VAT will be levied on a market value price.

4 Jason and Eva Lang

(a) Tax implications for Jason, Eva and his estate on Jason's death

Jason is not resident in South Africa for tax purposes. Eva's residence does not impact the residence of Jason. As a result, only those assets which are of a South African source will be considered for South African estate duty purposes. The position is potentially complicated by the marriage in community of property. Due to the marriage in community of property, all assets of the marriage are considered jointly owned. However, it is submitted that only Jason's portion will be included in his South African estate.

For this purpose, it will mean that the following assets are included in Jason's estate for estate duty purposes:

(i) 50% of the value of the Durban house – R5,000,000 x 50% = R2,500,000. However, half of the mortgage (as a debt due in South Africa) will be permitted as a deduction against this inclusion in the estate. The allowable deduction will be R1,000,000 (R2,000,000 x 50%).

(ii) While the annuity from the trust is property which Jason is competent to dispose of, it is a foreign asset and so will not fall within the deemed property classifications.

(iii) Jason's motor car will be included as a South African asset.

(iv) The South African life insurance policy (as a policy over the life of the deceased) is deemed property for the South African estate.

Irrespective of the net assets to be included in Jason's South African estate, the entire estate has been left to Eva and so will result in a deduction in the estate to the value of the net assets. This has the further implication that the R3,500,000 abatement for the estate becomes available to Eva on her death, increasing her abatement to R7,000,000.

Jason's death will also result in capital gains tax. However, being non-resident, the only assets to be considered for South African tax purposes are immoveable property in South Africa and assets of a permanent establishment in South Africa. For Jason, only immoveable property in South Africa will be considered.

The only asset to be considered for capital gains tax purposes is the house in Durban. However, as the house is being left to Eva, Jason's share will be considered to be sold at base value. Eva is deemed to have acquired Jason's share at the same time as Jason and used it for the same purpose. This means that the capital gains tax implications in South Africa will be nil.

No transfer duty will arise on the transfer of Jason's portion of the Durban home to Eva as there is an exemption on such transfers on death.

None of the other receipts Jason has until death arise from a South African source.

(b) South African tax implications of Jason and Eva's acquisition of the new home in Durban

The acquisition of the home in South Africa will have resulted in a transfer duty liability. In this case, at a purchase price of R5,000,000, the liability would be R383,000 ((R5,000,000 – R2,250,000) x 11% + R80,500). This amount of transfer duty will be added to the base cost of the house for subsequent disposal.

(c) South African tax implications for Eva for the 2019 year of assessment

Eva has earned a salary from which employees tax should have been withheld. Further, the salary will be accumulated with her other taxable sums to determine her taxable income.

The annuity from the Mauritian trust must be included in full and no relief in the form of the foreign dividend exemption is available to such receipts.

The lump sum from the directors is fortuitous and in cash. As a result, no income tax consequences arise as the amount does not arise from services she has rendered to the foreign company, but rather her late husband's services.

As the Austrian house was part of a foreign estate and Eva relinquished her right to receive Jason's share of this asset from the estate, Jason's share of the Austrian house will move directly from the foreign estate into the foreign trust. The sale by Eva of her portion of the house will generate a capital gain or loss for a resident on a foreign asset. She will be entitled to a foreign tax credit for any foreign taxes incurred on the disposal. However, only that portion of the gain arising since Eva became resident is considered, namely 50% of €50,000 (being €1,250,000 – €1,200,000) as the base cost would have been set (for Eva) at the market value on the date on which she became a South African tax resident. As the acquisition and disposal are in the same foreign currency, her portion of the capital gain will be translated at the average exchange rate for the 2019 year of assessment.

The foreign trust's sale of foreign shares has resulted in a gain which would have been considered a capital gain in South Africa, had the trust been resident. As the cause of the gain was the loan of capital from Jason (now deceased) and Eva on an interest-free basis, the loan is considered to have had a gratuitous element to it. The result is that the capital gain may be attributable to Eva, as the resident (South African) who made the loan. Jason and Eva made the loan jointly. As only Eva was resident for the entire year in which the capital gain arose, only that portion of the capital gain (50%) as may be attributed to her portion of the loan may be attributed directly to her, irrespective of its distribution.

While Eva received the loan asset from Jason's estate, Jason held the loan for part of the year and was non-resident. This means that the capital gain attributable to that portion of the loan is not attributable to Eva in the current year of assessment.

(d) Better structuring of the income received from the Mauritian trust for Eva from an income tax perspective

The foreign dividends from the trust are in the form of an annuity. This has prevented any of the foreign dividend exemptions from applying to such income. While the credit for foreign taxes incurred by the trust will be available as foreign tax credits (on a proportional basis), exemption (even partial exemption) from income tax would provide greater relief.

Eva should request that the trustees consider changing the annuity payment into a discretionary payment. This would permit the general foreign dividend exemption to become applicable, exempting 25/45ths of the gross dividend. The foreign taxes paid remain available as foreign tax credits, increasing the relief available.

			Available	*Maximum*
1	Joseph Matala and CEO4U			
(a)	**Early retirement**			
	(i)	Identification of accrual of accumulation account on retirement	1	
		Explanation of current year pension contribution limitation	1	
		Supporting calculations for current year pension contribution limit	1	
		Explanation as to the value of the utilised pension contributions to maximise the tax-free lump sum to be taken	1	
		Supporting calculations for the tax-free lump sum	2	
	(ii)	Identification that transfer is not a current contribution	1	
		Explanation as to the limit of any contribution to any retirement annuity fund	1	
		Supporting calculations in the determination of the limit	2	
	(iii)	Explanation as to the lack of tax consequences for resale back to the company share scheme trust	1	
		Explanation and supporting calculations as to the gain to be recognised for the shares vesting on 30 June 2018	2	
		Explanation and calculation of the capital gain on subsequent sale	2	
		Identification of possible revenue gain on disposal of the shares	1	
			16	14
(b)	**CEO4U transactions**			
	(i)	Identification of the company as a personal service provider	1	
		Explanation as to the first period as a personal service provider	1	
		Explanation as to why the company may remain a personal service provider	2	
		Identification of 'representative taxpayer' problem for Farland contracts	1	
		Identification of provisional tax requirements	1	
	(ii)	Identification of requirement to register for value added tax	1	
		Identification of requirement to register as an employer for employees tax	1	
	(iii)	Explanation as to why the company is excluded from the two corporate preferential regimes	2	
	(iv)	Identification of foreign exchange issues	1	
		Supporting foreign exchange calculations	2	
		Identification of possible Farland permanent establishment and possible South African tax consequences	2	
			15	12
(c)	**Change of residence**			
	Identification corporate residence condition		1	
	Explanation of the treaty tie-breaker for corporate residence and the resolution of dual residence		2	
	Identification that change of residence of both parties may result in the move of the corporate residence		1	
	Identification of the end of the tax year on date residence changes		1	
	Identification of the exit tax for capital gains		1	
	Consideration of possible South African permanent establishment		1	
			7	5
	Professional marks			
	Format and presentation of the memorandum		1	
	Effectiveness of communication		3	
			4	4
				35

2 Expert Group

	Available	Maximum
(a) Qualifying criteria for the special corporate rules		
Explanation of relevant rules and qualifying criteria (2 marks per rule)	12	
	12	11
(b) Application of special corporate rules to directors' planned restructuring steps		
Step (i):		
Exclusion of the liquidation rule	2	
Identification of the amalgamation rule as the most applicable	1	
Explanation of the transfer of the property held by Building Co	1	
Explanation of the treatment of the issue of shares in Property Co	1	
Identification of exemption from value added tax (VAT) and transfer duty	1	
Identification of restriction over disposal of the property by Property Co	1	
Consideration of disposal of Property Co share in Manufacture Co to its holding company by dividend *in specie* and implications	2	
Step (ii):		
Application of the amalgamation rule	1	
Step (iii):		
Identification of liquidation rule as the most applicable	1	
	11	10
(c) Use of assessed loss in Origin Co against profits of Manufacture Co		
Identification of possible anti-avoidance rule	1	
Explanation of the anti-avoidance rule	2	
Explanation of the possible argument against the application of the anti-avoidance rule	2	
	5	4
		25

				Available	Maximum
3	(a)		**PropDev Ltd**		
			Identification of special time of supply rule	1	
			Identification of when the consideration is considered paid to the buyer	1	
			Identification of when and at what rate the VAT should have been levied on the commercial property	1	
			Identification of the risk to PropDev Ltd on the commercial property	1	
			Identification of the special time of supply rule for residential property	2	
				6	5
	(b)		**Selling Ltd**		
			Identification that increasing contract price is permitted	1	
			Note exclusion where contract price agreed to include taxes	1	
			Business cost to Selling Ltd	1	
				3	3
	(c)		**Consult Ltd**		
			Identification of special time of supply rule linked to when service was delivered	1	
			Identification of appropriate VAT rate	1	
			Identification of the need to split services rendered over the VAT rate change	1	
				3	3
	(d)	(i)	**Growth Ltd**		
			Registration of Johannesburg operation as separate branch for VAT		
			Identification of the two requirements for branch registration and application to scenario	2	
			Identification that application should be made to SARS and that main vendor to remain registered	1	
			Any default of the branch will fall to Growth Ltd	1	
				4	4
		(ii)	**VAT implications for future transfers of inventory and capital assets to the newly registered branch**		
			Identification that no specific need to levy VAT on goods held by branch on registration	1	
			Identification of the implications for subsequent sales	1	
			Consider alternative to transfer goods to the branch on registration	1	
				3	2
		(iii)	**Supplies to and subsequent sales made by Zambian branch**		
			Identification of consequences of supplies to Zambian branch	1	
			Identification of consequences of subsequent sales by Zambian branch	1	
			Identification of connected person relationship and application to scenario	2	
				4	3
					20

			Available	Maximum
4	Jason and Eva Lang			
	(a)	**Tax implications for Jason, Eva and his estate as a result of Jason's death**		
		Identification of residence issue for estate duty	1	
		Identification of portion of assets to be included in the estate for South African tax purposes	½	
		Identification of assets for inclusion in the South African estate	2	
		Identification of deduction for assets left to a surviving spouse	½	
		Identification of implications for the abatement	½	
		Identification of risk of capital gains tax, but reason for nil effect	1	
		Identification that no transfer duty arises on transfer of the South African home portion to Eva	1	
			6½	5
	(b)	**South African tax implications of Jason and Eva's acquisition of the new home in Durban**		
		Identification of transfer duty liability and calculation	1½	
		Identification of implication for capital gains tax	½	
			2	2
	(c)	**South African tax implications for Eva for the 2019 year of assessment**		
		Identification that salary included in income but employees tax also withheld	1	
		Identification of inclusion of annuity and no foreign dividend exemption relief	1	
		Lump sum from the foreign company directors does not result in a taxable receipt	1	
		Identification of the capital gain arising from the sale of the Austrian home and the rate for translation of the gain	2	
		Explanation as to the inclusion of the capital gain of the trust in Eva's taxable income despite no vesting	2	
		Explanation as to why Jason's portion will not be attributed to Eva	2	
		Identification that the transfer of Jason's portion will not result in income tax effects for Eva	1	
			10	9
	(d)	**Better structuring of income received from the Mauritian trust for Eva from an income tax perspective**		
		Identify the loss of the foreign dividend exemption	1	
		Explaination of the implications of the loss of the exemption but the retention of the foreign tax credit	2	
		Explaination of the advantage of converting to a discretionary payment and retention of the foreign tax credit despite the availability of the partial foreign dividend exemption	2	
			5	4
				20