Advanced Taxation Exam Solutions May 2013

Solution 1

a)
Income Tax
Cessation

Final year 2012
Taxed on tax adjusted profits €94,000

Penultimate Year 2011
Original assessment €88,000

Actual assessment 1 Jan 2011 to 31 Dec 2011
(€88,000 x 10/12) + (€94,000 x 2/12) = €89,000
Revenue will revise to actual. **4 marks**

VAT
No VAT charged if both VAT registered and business transferred as a going concern. **3 marks**

Capital gains tax

Gain on goodwill		€200,000
Gain on premises		
Sales proceeds	650,000	
Cost	(120,000)	
Gain		€530,000
Total gains		€730,000 **2 marks**

Value of assets transferred – Value of liabilities taken over – Cash = Value of shares.

€900,000 – €44,000 - €10,000 = €846,000

Gain Deferred

$$€730{,}000 \times \frac{€846{,}000}{€900{,}000} = €686{,}200$$ **3 marks**

Taxable Gain €730,000 - €686,200 =	€43,800
Less: Annual exemption	(€1,270)
Taxable gain	42,530

CGT €42,530 x 30% = €12,759 **3 marks**

Base cost of shares for future disposal

€846,000 - €686,200 = €159,800**2 marks**

b)
Lower tax rates 12.5%
Can avail of research and development credits, EIIS in future.
Time period as sole trader and company can be aggregated if S600 TCA 1997 relief claimed for purposes of retirement relief. **Any 3 relevant points, 1 mark each, total 3 marks.**

Solution 2

a)
Presents Ltd

2012
No CT use €12,000 case 1 loss to wipe out €6,000 Case V income.

2011

Case I	€200,000
Loss back	(€200,000)
Case I	0
Case V	€5,000
Ct €5,000 x 25%	€1,250
Less: Loss value basis	
€1,250/.125 = €10,000 x .125	(€1,250)
Ct	0 **3 marks**

Loss	€350,000
Used 2012 Value	(€12,000)
Used Case I 2011	(€200,000)
Used Case I 2012	(€10,000)
Left to group	€128,000 **2 marks**

2012

	Balloons	Toys
Case I	€200,000	€40,000
Loss from Presents	(€128,000)	0
Case I	€72,000	€50,000
Case V	€10,000	
Total	€82,000	
Ct		
€72,000 x .125 =	€9,000	
€40,000 x .125 =		€5,000
€10,000 x .25 =	€2,500	
Total Ct	€5,250	€5,000 **3 marks**

2011

	Balloons	Toys
Case I	€150,000	€50,000
Case v	€10,000	
Total	€160,000	
Ct		
€150,000 x 12.5%	€18,750	
€50,000 x 12.5%		€6,250
€10,000 x 25%	€2,500	
	€21,250	€6,250 **2 marks**

b)
If Hurrah sells Presents Ltd Hurrah will have no CGT on the sale of its shares due to S626B TCA 1997 participation exemption. **5 marks.**

Presents will be leaving the group within 10 years of having acquired a premises from Balloons Ltd. Presents will have to pay the tax Balloons avoided on the transfer. **2 marks**

Deemed sales proceeds	€70,000
€55,000 x 1.193	(€65,615)
Gain	€4,385

Chargeable gain€4,385 x 30%/12.56% = €10,524
Ct €10,524 x 12.5% = €1,316 **3 marks**

Solution 3

Loans to participats

- Loan to an individual who is a participator (shareholder), or associate of a shareholder
- Other than in ordinary course of business
- Company is deemed to have made a *net annual payment* – must account for Income Tax e.g. if make loan of €8,000, must pay €8,000 x 20/80 = €2,000 to Revenue at same time as CT payment (if still outstanding at that time)
- Exception:
  - Loan does not exceed €19,050
  - Borrower works full-time for company, and
  - Borrower does not have a material interest (<=5%) in company or associated company
- While the loan is outstanding, the participator is not taxable on the loan, as it has to be repaid
- If the loan carries a preferential interest rate, the individual is liable to Income Tax on the benefit of the lower rate.

If the loan is for a main residence, rate is 5%. If for any other purpose rate is 12.5%

- When the loan is repaid, the Revenue repay the Income Tax paid
- If part of the loan is repaid, then a corresponding proportion of the Income Tax is repaid

Write off of loans to participators

- Where a loan is written off or released in whole or in part, the individual who received the loan is treated as having received income equal to the amount written off or released, grossed back up at the standard rate with a credit available for the tax paid by the company.
- The Income Tax paid to Revenue at the time of making the loan is not refunded.
- The participator is liable under Case IV on the cash received plus Income Tax paid and given a credit for the Income Tax paid

Benefits to participators or associates

- The payment of **private expenses** of shareholders (who are not directors/employees)
  - are deemed to be a **dividend (distribution).**
    - *amount of the expense not reimbursed*
    - **Company ADJUSTMENT –**
    - Add back: Dividend element
    - Pay DWT on dividend element
- Individual: Taxable as receipt of Sch F income

Interest paid to certain directors

- There is a restriction on interest paid to **directors**
    - who hold ***> 5%*** of S.C of a company.
- The **maximum interest allowable** for a CT deduction (to directors owing > 5% of Share):
  - Capital is the **lesser** of the following amounts :
    1) 13% of Average all loans by such directors
    2) 13% of the opening S. Cap + S. Premium.
- **Company ADJUSTMENT –**
    - Add back: Excess treated as Dividend
    - Pay DWT on dividend element
- Individual: Sch F income & interest income

3 marks per disadvantage.

b)

Calculate E&I Income	
Case III, IV , V	26,000
Add FII	23,000
	49,000**1 mark**
Distributable E & I Income	
Deduct: CT €26,000 x 25%	(6,500)
After Tax	42,500 **1 mark**
Less:Trading 7.5%	(3,188) **1 mark**
	39,312
Less:Distributions	(0)
Surchargeable	39,312 **1 mark**
Surcharge on 20%	7,862**1 mark**
Professional Income	
Case II	72,000
Distributable Income	
Deduct: CT	(9,000)
After Tax	63,000 **1 mark**
Less: 50%	(31,500) **1 mark**
Less:Distributions	(nil)
Surchargeable	31,500**1 mark**
Surcharge on 15%	4,725 **1 mark**

Total surcharge €7,862 + €4,725 = €12,587 **2 marks**

Solution 4

a)

Pay husband and children. Husband can be paid up to €23,800 at 20% and this would save you tax of 41% if you were to pay yourself. **2 marks**

Also if you pay children up to €32,800 each this will save you paying them out of your after tax income. **2 marks**

b)

Get company to contribute to pension on your behalf. You also contribute up to 35% and maximum earnings cap €115,000. **4 marks**

Termination payment in the future and by topping up wages not could increase future SCSB calculation. **4 marks**

Retirement relief on sale, save CGT. **4 marks**

Dividends out of after tax income of company, no deduction. **4 marks**

Solution 5

a) VAT Group

Submit group VAT return, transaction between each member do not have to charge VAT. **5 marks**

b) Self supplies

Take something from business from own use, must pay back VAT. **5 marks**

c) Cash receipts basis

If turnover under €1m or 90% of sales to unregistered traders, can apply for cash receipts basis. You pay Revenue when you get paid. Eases cash flow. **5 marks**

b) Multiple supplies – 2 items sold together, both equal value. Charge VAT on each item desperately, depends on VAT rate. **3 marks**

Composite supply – one item incidental, VAT rate on whole package VTA rate that supplies to main item. **2 marks**

Solution 6

ABC & Co.,
Chartered Accountants

Mr Sam Smith
Main Street,
Cork

Dear Sam,

Following our recent contact, I set out below the details requested by you in relation to residence, domicile and Capital Acquisitions Tax.

(a) Residence and Domicile

Domicile is a concept of common law. It defines the jurisdiction that an individual regards as his/her permanent home and the place to which he ultimately intends to return.

Everybody has a domicile of origin. A child's domicile of origin is generally his/her father's domicile. This domicile of origin is retained unless an individual takes steps to acquire a domicile of choice.

A person over the age of 18 may acquire a domicile of choice. This involves taking up residence in a different jurisdiction with the intention of

establishing a permanent home there as well as other indications of a change of citizenship.

The Taxes Consolidation Act 1997 sets out the rules governing the residence of individuals. For a full tax year an individual is resident in the State in a tax year if he spends:

(a) 183 days in the State in that year, or
(b) 280 days in aggregate in that tax year and the preceding tax year.
Under (b) above an individual who is present in the State for 30 days or less in a tax year will not be treated as resident for that tax year unless he elects to be resident.

A person is regarded as present in the State for a day if they are present at midnight. **Any 5 points, 1 mark each**

(b) Your Domicile
Even though your parents moved to England in the 1940s they would seem to have retained their Irish domicile, as it was always their intention to return to Ireland. You would therefore have, at birth, acquired a domicile of origin in Ireland. **4 marks**

There is no indication that you have taken any steps to change your domicile of origin. Over the years you also maintained your strong links with Ireland. **1 mark**

(c) Residence under Irish/UK Double Tax Treaty
The UK/Irish Tax Treaty starts from the position that a person is regarded as resident in the State in which he is regarded as resident under the rules of the domestic laws of that State.

However differences in the laws of the two States could result in a person being resident in both jurisdictions for tax purposes for a tax year. The Double Tax Treaty contains provisions aimed at settling such conflicts

It requires the application of the following four rules in the order given:
1. A person is deemed to be resident in the State in which he has a permanent home available to him. If he has a permanent home in both States he is deemed to be resident in the State with which his personal and economic relations are closer (centre of vital interest)

2. If the State where he has his centre of vital interest cannot be determined he shall be deemed to be resident in the State in which he has an habitual abode.

3. If he has an habitual abode in both States or in neither State, he shall be deemed to be a resident of the State of which he is a

National.

4. If he is a national of both States or of neither State, the Authorities of both States shall settle the question by mutual agreement.
Any 5 points, 1 mark each

(d) Capital Acquisition Tax
Regardless of whether your are resident in the State, clearly your inheritance is liable to Capital Acquisitions Tax because your uncle was resident in Ireland and the property is situated in Ireland. **2 marks**

Your liability is €49,950 computed as follows:

	€
Value of inheritance	2,000,000
Less:	
Business Relief (Note 1)	1,800,000 **1 mark**
	200,000

Capital Acquisitions Tax payable:

	€
33,500 @ nil	-
166,500@ 30%	49,950 **2 marks**

Note 1
Business relief should be available to you provided that Agricultural Relief does not apply.

Agricultural relief would apply if you satisfied the definition of a farmer. Since you appear to be domiciled in the State you would satisfy the definition if, after the taking of the inheritance, 80% of your gross property in possession was represented by agricultural property, livestock, bloodstock and agricultural machinery and provided that you are resident for the following 3 tax years.

If you have any queries in relation to the above please do not hesitate to contact me.

Yours sincerely,

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ABC & Co.
Chartered Accountants