|  |  |
| --- | --- |
| **Section A – Individuals** | 1. Income Tax and NICs (1)  2. Employee Remuneration (1)  3. Inheritance Tax (2)  4. Taxation of Trusts (2)  5. Personal Tax – International Aspects (1) |
| **Section B – Businesses** | 1. Unincorporated Business (3)  2. Capital Gains Tax (2)  3. Capital Gains Tax – Reliefs (2) |
| **Section C – Corporations** | 1. Corporation Tax for a Single Company (5)  2. Corporation Tax Losses (5)  3. Group Relief and Consortia (6)  4. Chargeable Gains Group (6)  5. International Expansion (6)  6. Companies Special Situation (6) |
| **Section D – Transformations and Comparisons** | 1. Choice of Business Structure (7)  2. Transformation of Owner-Managed Businesses (4)  3. Corporate Reorganisations (7) |
| **Section E – General** | 1. Ethics (8)  2. Anti-Avoidance for Owner-Managed Business (4)  3. Raising Finance (5)  4. Corporate Anti Avoidance (6)  5. VAT (3)  6. Stamp Taxes (3) |

Contents

[Section A - Individuals 7](#_Toc80959887)

[A1 Personal Tax 7](#_Toc80959888)

[A1.1 Income Tax 7](#_Toc80959889)

[A1.1a Personal Allowance 7](#_Toc80959890)

[A1.1b Exempt Income 7](#_Toc80959891)

[A1.2 National Insurance Contributions 7](#_Toc80959892)

[A1.2a ISA 7](#_Toc80959893)

[A2 Employee Remuneration 7](#_Toc80959894)

[A2.1 Employment Benefits 7](#_Toc80959895)

[A2.1a Exempt Benefits (pg. 379) 7](#_Toc80959896)

[A2.1b Benefits assessable on all employees (Pg. 379) 7](#_Toc80959897)

[A2.1c Benefits assessed on directors and higher paid employees (Pg. 379) 8](#_Toc80959898)

[A2.2 Termination Payment (Pg. 17) 8](#_Toc80959899)

[A2.3 Share Schemes (Pg. 19) 8](#_Toc80959900)

[A2.3a Share Option Schemes 8](#_Toc80959901)

[A2.3b Employers Tax Liabilities (Share Option Schemes) 9](#_Toc80959902)

[A2.3c Share Incentives Plans (SIP) (Pg. 20) 9](#_Toc80959903)

[A2.3d Employees Tax Liabilities (SIP) (Pg. 19) 9](#_Toc80959904)

[A2.4 Pension Schemes (Pg. 24) 9](#_Toc80959905)

[A2.4.1a While contributions being made (Pg. 381) 9](#_Toc80959906)

[A2.4.1b On retirement (Pg. 382) 9](#_Toc80959907)

[A2.4.1c Lifetime allowance (Pg. 382) 9](#_Toc80959908)

[A2.4.2 Types of Pension Schemes (Pg. 26) 10](#_Toc80959909)

[A2.4.2a Small Self-Administered Schemes (SSAS) 10](#_Toc80959910)

[A2.4.2b Self Invested Pension Plan (SIPP) 10](#_Toc80959911)

[A2.4.2c Common use of SSAS or SIPP: 10](#_Toc80959912)

[A3 Inheritance Tax 10](#_Toc80959913)

[A3.1 Types of lifetime transfers: 10](#_Toc80959914)

[A3.2 IHT Reliefs (Pg. 76) 10](#_Toc80959915)

[A3.2.1 BPR 10](#_Toc80959916)

[A3.2.2 APR 10](#_Toc80959917)

[A3.3 Diminution in Value/Fall in Value Relief 11](#_Toc80959918)

[A3.4 Nil Rate Band 11](#_Toc80959919)

[A3.5 IHT Rates 11](#_Toc80959920)

[A3.5a QSR 11](#_Toc80959921)

[A3.6 Payment of IHT 11](#_Toc80959922)

[A3.9 Gifts with a reservation of benefit (GWROB) (Pg. 78) 12](#_Toc80959923)

[A3.10 Variations (Pg. 80) 12](#_Toc80959924)

[A3.11 Interaction between CGT and IHT 12](#_Toc80959925)

[A4 Trusts 12](#_Toc80959926)

[A4.1 Types of Trusts (Pg. 85) 12](#_Toc80959927)

[A4.1a Interest in Possession Trust 12](#_Toc80959928)

[A4.1b Discretionary Trust 12](#_Toc80959929)

[A4.2 IHT for Relevant Property Trusts (RPT) (=non qual IIP & discretionary) 13](#_Toc80959930)

[A4.3 IHT for Qualifying IIP 13](#_Toc80959931)

[A4.4 Capital Gain Tax for Trust 13](#_Toc80959932)

[A4.4a Assets disposed by Trustee 13](#_Toc80959933)

[A4.4b CGT for trusts 13](#_Toc80959934)

[A4.4c CGT on assets leaving qualifying (old) IIP trusts 13](#_Toc80959935)

[A4.4d Anti-avoidance legislation for trusts 13](#_Toc80959936)

[A5 Personal Tax: International Implications (Pg. 28) 14](#_Toc80959937)

[A5.1 Definitions 14](#_Toc80959938)

[A5.1a Domicile 14](#_Toc80959939)

[A5.1b Residence 14](#_Toc80959940)

[A5.2 Split Year Treatment (Pg. 36) 14](#_Toc80959941)

[A5.2a Leaving the UK 14](#_Toc80959942)

[A5.2b Working Overseas 14](#_Toc80959943)

[A5.2c Arriving in the UK 15](#_Toc80959944)

[A5.3 Overseas aspects of Income Tax (Pg. 30) 15](#_Toc80959945)

[A5.3a Employment Income 15](#_Toc80959946)

[A5.3b Other Income 15](#_Toc80959947)

[A5.3c Personal Allowance 15](#_Toc80959948)

[A5.4 Remittance Basis (RB) 15](#_Toc80959949)

[A5.4a Remittance for Investment Purposes (Exemption) (Pg. 34) 15](#_Toc80959950)

[A5.4b Remittance for CGT Losses (Pg. 34) 15](#_Toc80959951)

[A5.5 Double Tax Relief 16](#_Toc80959952)

[A5.5a Unilateral Relief 16](#_Toc80959953)

[A5.5b Tax liabilities of non-UK residents 16](#_Toc80959954)

[A5.6 Overseas aspect of Capital Gains Tax (Pg. 30) 16](#_Toc80959955)

[A5.6a Non-UK resident individuals 16](#_Toc80959956)

[A5.6b Temporary non residence 16](#_Toc80959957)

[A5.7 Overseas aspect of Inheritance Tax 16](#_Toc80959958)

[A5.8 VCT/EIS/SEIS (Pg. 9) 17](#_Toc80959959)

[14. VCT [Venture Capital Trust] 17](#_Toc80959960)

[15. EIS [Enterprise Investment Scheme] 17](#_Toc80959961)

[16. SEIS [Seed Enterprise Investment Scheme] 17](#_Toc80959962)

[Section B - Businesses 18](#_Toc80959963)

[B1 Unincorporated Business 18](#_Toc80959964)

[B1.1 Adjustment to Profit (Pg. 386) 18](#_Toc80959965)

[B1.1.1 Proforma Adjustments 18](#_Toc80959966)

[B1.1.1a Disallowable Expenditures (add back) 18](#_Toc80959967)

[B1.1.1b Taxable Trading Income not credited in accounts 18](#_Toc80959968)

[B1.1.1c Income incl. in accounts not taxable trading income 18](#_Toc80959969)

[B1.1.1d Expenditure not charged to account but allowable deduct 18](#_Toc80959970)

[B1.1.2 Cash Basis 18](#_Toc80959971)

[B1.2 Capital Allowance 18](#_Toc80959972)

[B1.2.1 100% FYA 18](#_Toc80959973)

[B1.2.2 AIA 18](#_Toc80959974)

[B1.2.3 18% WDA 18](#_Toc80959975)

[B1.2.4 6% WDA 18](#_Toc80959976)

[B1.3 Sales of Business to Third Party/Connected Party (Pg. 144) 18](#_Toc80959977)

[B1.3.1 Sole Trader Sells/Transfer Business 18](#_Toc80959978)

[B1.3.2 Sell/Transfer to Connected Party 18](#_Toc80959979)

[B1.3.2a Connected Party 18](#_Toc80959980)

[B1.4 Basis Periods (Pg. 390) 19](#_Toc80959981)

[B1.4a Opening Year Rules 19](#_Toc80959982)

[B1.4b Closing Year Rules (Cessation to Trade) 19](#_Toc80959983)

[B1.5 Trading Loss Reliefs (Pg. 109) 19](#_Toc80959984)

[B1.5a Loss Planning (Pg. 111) 19](#_Toc80959985)

[B1.6 Restriction on income tax reliefs against total income 19](#_Toc80959986)

[B2 Chargeable gains 20](#_Toc80959987)

[B2.1 CGT 20](#_Toc80959988)

[B2.1.1 CGT Calculation (Pg. 382) 20](#_Toc80959989)

[B2.1.2 Part Disposal (Pg. 382) 20](#_Toc80959990)

[B2.2 Capital Losses 20](#_Toc80959991)

[B2.3 Transfer between Married Couple/Connected Person (Pg. 383) 20](#_Toc80959992)

[B2.3.1 Married Couple 20](#_Toc80959993)

[B2.3.2 Connected Person (excl Spouses) 20](#_Toc80959994)

[B2.3.3 Deferred consideration (Pg. 55) 20](#_Toc80959995)

[B2.3 Rollover Relief (Pg. 63) 20](#_Toc80959996)

[B2.3.1 Operation of relief 20](#_Toc80959997)

[B2.3.2 Conditions 20](#_Toc80959998)

[B2.3.3 Partial Reinvestment of Proceeds 20](#_Toc80959999)

[B2.3.4 Non-business Use 20](#_Toc80960000)

[B2.3.5 Depreciating Assets 20](#_Toc80960001)

[B2.4 Business Asset Disposal Relief (BADR) (Pg. 58) 21](#_Toc80960002)

[B2.4.1 Qualifying disposals 21](#_Toc80960003)

[B2.4.2 Operation of relief 21](#_Toc80960004)

[B2.4.3 Associated Disposals 21](#_Toc80960005)

[B2.5 Gift Relief 21](#_Toc80960006)

[B2.5.1 Qualifying gifts 21](#_Toc80960007)

[B2.5.2 Operation of relief 21](#_Toc80960008)

[B2.5.3 Sale at undervalue 21](#_Toc80960009)

[B2.5.4 Shares in Personal Company 21](#_Toc80960010)

[B2.5.5 Interaction with BADR 21](#_Toc80960011)

[B2.6 Investors relief (Pg. 62) 21](#_Toc80960012)

[B2.7 Takeovers and reconstructions (Pg. 68) 21](#_Toc80960013)

[B2.7.1 Mixed Consideration 21](#_Toc80960014)

[B2.7.2 Share for Share Relief (Paper 4 Paper) 22](#_Toc80960015)

[B2.7.3 Disapplication of share for share exchange relief 22](#_Toc80960016)

[B2.7.4 Takeovers involving QCBs and interaction with BADR 22](#_Toc80960017)

[B2.8 Incorporation Relief (Pg. 146) 22](#_Toc80960018)

[B2.8.1 Conditions of relief 22](#_Toc80960019)

[B2.8.2 Operation of relief 22](#_Toc80960020)

[Section C - Corporates 23](#_Toc80960021)

[C1 Corporation Tax 23](#_Toc80960022)

[C1.1 Definition & Proforma 23](#_Toc80960023)

[C1.1.1 Dividends (Pg. 171) 23](#_Toc80960024)

[C1.1.2 Corporation tax rates 23](#_Toc80960025)

[C1.1.3 Adjustment to Profits – Capital Allowances 23](#_Toc80960026)

[C1.1.4 NTLR – Loan Relationship Rules (Pg. 203) 23](#_Toc80960027)

[C1.2 R&D (Pg. 172) 23](#_Toc80960028)

[C1.2.1 Extra Reduction 23](#_Toc80960029)

[C1.2.2 R&D Tax Credit for SME (Pg. 172) 23](#_Toc80960030)

[C1.2.3 Above the line credit for Large Co. 23](#_Toc80960031)

[C1.3 Intangibles (Pg. 177) 24](#_Toc80960032)

[C1.3.1 Intangibles & ROR 24](#_Toc80960033)

[C1.4 Patent Box (Pg. 182) 24](#_Toc80960034)

[C1.4.1 Patent box calculation 24](#_Toc80960035)

[C1.4.1 Patent box relief post-BEPS 24](#_Toc80960036)

[C1.5 Investment Companies (Pg. 184) 24](#_Toc80960037)

[C1.6 Company Loss Relief 25](#_Toc80960038)

[C1.6.1 Trading Losses (TTP-CA<0) 25](#_Toc80960039)

[C1.6.2 NTLR Deficits (incl Non-trading IFA losses) 25](#_Toc80960040)

[C1.6.3 Property Losses 25](#_Toc80960041)

[C1.6.4 Capital Losses 25](#_Toc80960042)

[C1.6.5 Restriction on c/f losses (Pg. 194) 25](#_Toc80960043)

[C1.6.6 Change in ownership (s673) (Pg. 198) 25](#_Toc80960044)

[C1.7 SSE (Pg. 186) 25](#_Toc80960045)

[C1.8 CT Administration 25](#_Toc80960046)

[C1.9 Group CT Payments Arrangement 25](#_Toc80960047)

[C2 Group Relief and Consortia 26](#_Toc80960048)

[C2.1 Loss Groups (Pg. 239) 26](#_Toc80960049)

[C2.1.1 Qualifying Loss of non-resident 75% subsidiary 26](#_Toc80960050)

[C2.1.2 Operation of Loss Relief – Proforma 26](#_Toc80960051)

[C2.1.3 Corresponding Accounting Period 26](#_Toc80960052)

[C2.1.4 Joining/Leaving Losses Groups (see C3.2 for co joining group) 26](#_Toc80960053)

[C2.1.5. Tax Planning for Group Losses 26](#_Toc80960054)

[C2.1.6 Maximise group relief for loss co 26](#_Toc80960055)

[C2.2 Consortiums 26](#_Toc80960056)

[C2.2.1 Losses in Consortium Company 26](#_Toc80960057)

[C2.2.2 Losses in Consortium Members 26](#_Toc80960058)

[C2.2.3 Losses in Group/Consortium Companies 26](#_Toc80960059)

[C2.2.4 Link Companies 26](#_Toc80960060)

[C3 Chargeable Gains Groups 27](#_Toc80960061)

[C3.1 Tax Implications of a gains group – 8 Rules (Pg. 242) 27](#_Toc80960062)

[C3.1.1 NG/NL Transfers 27](#_Toc80960063)

[C3.1.2 Reallocation of gains/losses to other group companies 27](#_Toc80960064)

[C3.1.3 Group Rollover Relief 27](#_Toc80960065)

[C3.1.4 Company leaving group with asset received via NGNL (Degrouping charge) 27](#_Toc80960066)

[C3.1.5 Pre-Entry Capital Losses (PECL) (Pg. 246) 27](#_Toc80960067)

[C3.1.6 SSE for Groups 27](#_Toc80960068)

[C3.1.7 Transfer of other assets 27](#_Toc80960069)

[C3.1.8 Transfer of Intangible Assets 27](#_Toc80960070)

[C3.2 Company joining the gains group (Pg. 242) 27](#_Toc80960071)

[C4 International Expansion 28](#_Toc80960072)

[C4.1 Company Residence 28](#_Toc80960073)

[C4.1.1 Residence Definitions 28](#_Toc80960074)

[C4.1.2 Residence Implications 28](#_Toc80960075)

[C4.1.3 Permanent Establishment 28](#_Toc80960076)

[C4.1.4 Residence & E-commerce 28](#_Toc80960077)

[C4.2 Migration of trade (Pg. 267) 28](#_Toc80960078)

[C4.2.1 Tax Implications 28](#_Toc80960079)

[C4.2.2 Deferring the gains on migration 28](#_Toc80960080)

[C4.2.3 Crystallising the deferred gain 28](#_Toc80960081)

[C4.3 Establishing an overseas business (Pg. 263) 28](#_Toc80960082)

[C4.4 Incorporating an overseas PE (Pg. 265) 28](#_Toc80960083)

[C4.4.1 Implications of Incorporation 29](#_Toc80960084)

[C4.4.2 Incorporation Relief (into O/s co) 29](#_Toc80960085)

[C4.4.3 Crystallising the deferred gain 29](#_Toc80960086)

[C4.5 Double Tax Relief (Pg. 270) 29](#_Toc80960087)

[C4.5.1 Treaty Relief 29](#_Toc80960088)

[C4.5.2 Unilateral Double Tax Relief 29](#_Toc80960089)

[C4.5.4 Expense Relief 29](#_Toc80960090)

[C4.5.5 Which DTR to choose? 29](#_Toc80960091)

[C4.5.6 DTR on taxable foreign dividends 29](#_Toc80960092)

[C5 Companies – Special Situations 30](#_Toc80960093)

[C5.1 Company purchase of own shares (Pg. 210) 30](#_Toc80960094)

[C5.1.1 Tax treatment – corporate shareholder i.e. company 30](#_Toc80960095)

[C5.1.2 Tax Treatment – individual shareholder 30](#_Toc80960096)

[C5.1.3 Capital Route Conditions 30](#_Toc80960097)

[C5.2 Tax Implications of Administration and Liquidation (Pg. 214) 30](#_Toc80960098)

[C5.2.1 Administration 30](#_Toc80960099)

[C5.2.2 Liquidation 30](#_Toc80960100)

[C5.2.3 Cessation of trade 30](#_Toc80960101)

[C5.3 Tax planning when winding up the company (Pg. 216) 31](#_Toc80960102)

[C5.3.1 Maximise use of losses 31](#_Toc80960103)

[C5.3.2 Make distributions to shareholders in most tax efficient way (Pg. 216) 31](#_Toc80960104)

[C5.4 Striking Off 31](#_Toc80960105)

[Section D – T&Cs 32](#_Toc80960106)

[D1 Choice of Business Structure 32](#_Toc80960107)

[D1.1 Business vs Company (Pg. 305) 32](#_Toc80960108)

[D1.2 Property Business (Pg. 306) 32](#_Toc80960109)

[D2.2.1 Residential property development (buy, refurbish, sell) 33](#_Toc80960110)

[D2.2.2 Ownership by a company (including property development) 33](#_Toc80960111)

[D2.2.3 Investing in commercial property 33](#_Toc80960112)

[D1.3 Single vs Group Companies 33](#_Toc80960113)

[D1.4 Extraction of profits from the business (Pg. 313) 33](#_Toc80960114)

[D1.4.1 Unincorporated business (individual shareholder/director): 33](#_Toc80960115)

[D1.4.2 Company: 33](#_Toc80960116)

[D1.5 Corporate Structures 34](#_Toc80960117)

[D2 Transformation of the owner managed business 34](#_Toc80960118)

[D2.1 Tax implications of incorporation (Pg. 144) 34](#_Toc80960119)

[D2.1.1 Income Tax/NIC Implications 34](#_Toc80960120)

[D2.1.2 VAT Implications 34](#_Toc80960121)

[D2.1.3 Capital Gains Tax 34](#_Toc80960122)

[D2.1.4 Stock 34](#_Toc80960123)

[D2.1.5 Corporation Tax 34](#_Toc80960124)

[D2.1.6 SDLT 34](#_Toc80960125)

[D2.1.7 Intangibles (goodwill) impact on the company 34](#_Toc80960126)

[D2.1.8 Inheritance tax on gift of business 34](#_Toc80960127)

[D2.1.9 Structures and Buildings Allowances (SBAs) 34](#_Toc80960128)

[D2.2 Reliefs on incorporation 34](#_Toc80960129)

[D2.2.1 Incorporation Relief (Pg. 146) 34](#_Toc80960130)

[D2.2.2 Gift Relief 35](#_Toc80960131)

[D2.3 Disincorporation (Pg. 319) 35](#_Toc80960132)

[D2.3.1 Tax implications 35](#_Toc80960133)

[D3 Corporate Reorganisations 35](#_Toc80960134)

[D3.1 Corporate Disposal Routes 35](#_Toc80960135)

[D3.2 Sale of shares by an individual 36](#_Toc80960136)

[D3.2 Purchase of shares by an individual 36](#_Toc80960137)

[D3.4 Sale of shares by a company 36](#_Toc80960138)

[D3.4.1 Issues for **seller** 36](#_Toc80960139)

[D3.4.2 Issues for **co being sold** 36](#_Toc80960140)

[D3.5 Purchase of shares by a company 36](#_Toc80960141)

[D3.6 Sale of trade and assets by a company 36](#_Toc80960142)

[D3.7 Purchase of trade and assets by a company 37](#_Toc80960143)

[D3.8 Sale of trade and assets within a 75% Group 37](#_Toc80960144)

[D3.6.1 Issues for seller 37](#_Toc80960145)

[D3.6.2 Issues for buyer 37](#_Toc80960146)

[D3.9 Hive Downs (Pg. 334) 37](#_Toc80960147)

[D3.10 Management Buy Outs (Pg. 335) 38](#_Toc80960148)

[D3.11 Sale of Shares – Special Situations 38](#_Toc80960149)

[D3.11.1 Dividend Stripping (Pg. 325) 38](#_Toc80960150)

[D3.11.2 Deferred Consideration (Pg. 55) 38](#_Toc80960151)

[Section E - General 39](#_Toc80960152)

[E1 Ethics 39](#_Toc80960153)

[E1.1 Client and Engagement Acceptance 39](#_Toc80960154)

[E1.2 Accountability of Senior Accounting Officers 39](#_Toc80960155)

[E1.3 Irregularities 39](#_Toc80960156)

[E1.4 Money Laundering 39](#_Toc80960157)

[E1.5 Tax planning, avoidance & evasion 39](#_Toc80960158)

[E1.6 Large businesses - requirements 39](#_Toc80960159)

[E1.7 Penalties for offshore tax evasion 39](#_Toc80960160)

[E1.8 PCRT outline of roles of a tax adviser 40](#_Toc80960161)

[E1.9 General Anti-abuse Rule (GAAR) 40](#_Toc80960162)

[E1.10 Disclosure of tax avoidance schemes 40](#_Toc80960163)

[E1.10.1 Notifiable Arrangement 40](#_Toc80960164)

[E1.10.2 HMRC Information Powers 40](#_Toc80960165)

[E1.10.3 Penalties 40](#_Toc80960166)

[E1.10.4 Further Powers 40](#_Toc80960167)

[E1.10.5 Making tax digital (MTD) 40](#_Toc80960168)

[E1.11 Anti Avoidance – Owner manager business (Pg. 137) 40](#_Toc80960169)

[E1.11.1 IR35 Legislation (Pg. 138) 41](#_Toc80960170)

[E1.12 Managed Service Companies (Pg. 142) 41](#_Toc80960171)

[E2 Raising Finance 41](#_Toc80960172)

[E2.1 Debt V Equity (Pg. 203) 41](#_Toc80960173)

[E2.1.1 Loan relationship rules 41](#_Toc80960174)

[E2.1.1 Paying/Issuing Company 41](#_Toc80960175)

[E2.1.2 Individual Investor 41](#_Toc80960176)

[E2.1.3 Corporate Investor 41](#_Toc80960177)

[E2.2 Foreign Exchange 42](#_Toc80960178)

[E2.2.1 Trading Transactions (i.e sale/purchase goods overseas) 42](#_Toc80960179)

[E2.2.2 Monetary Items (Bank/loans/receivables) 42](#_Toc80960180)

[E2.2.3 Non Monetary (Investments/Capital assets) 42](#_Toc80960181)

[E2.2.4 Overseas Branch 42](#_Toc80960182)

[E2.3 Leasing of P&M (incl. Long funding lease) 42](#_Toc80960183)

[E2.3.1 Tax treatment of finance and operating leases 42](#_Toc80960184)

[E2.3.2 Sale and Leaseback 42](#_Toc80960185)

[E2.3.3 Disposal of lease 42](#_Toc80960186)

[E3 Corporate Anti-Avoidance 42](#_Toc80960187)

[E3.1 Close Companies (Pg. 154) 42](#_Toc80960188)

[E3.1.1 Implications of close company 42](#_Toc80960189)

[E3.2 Controlled foreign companies (CFC) (Pg. 277) 42](#_Toc80960190)

[E3.2.1 Definition: 43](#_Toc80960191)

[E3.2.2 Consequences of being a CFC 43](#_Toc80960192)

[E3.2.3 CFC Exemptions 43](#_Toc80960193)

[E3.2.4 Chargeable Profits – ‘CFC Charge Gateway’ 43](#_Toc80960194)

[E3.3 Transfer Pricing (Pg. 273) 43](#_Toc80960195)

[E3.3.1 Who rules apply to 43](#_Toc80960196)

[E3.3.2 Goods and Services 43](#_Toc80960197)

[E3.3.3 Thin Capitalisation (Pg. 273) 43](#_Toc80960198)

[E3.3.3a Provision of Loan Finance 43](#_Toc80960199)

[E3.3.3b Guaranteed Loans 43](#_Toc80960200)

[E3.3.4 Diverted Profits Tax (Pg. 283) 44](#_Toc80960201)

[E3.3.5 Hybrid Mismatch (Pg. 287) 44](#_Toc80960202)

[E3.3.6 Corporate Interest Restriction (CIR) (Pg. 274) 44](#_Toc80960203)

[E3.3.7 Value shifting 44](#_Toc80960204)

[E4 VAT 44](#_Toc80960205)

[E4.1 VAT Rates 44](#_Toc80960206)

[E4.2 Partial Exemption 44](#_Toc80960207)

[E4.2.1 Simplified Tests 44](#_Toc80960208)

[E4.2.2 Standard Test 44](#_Toc80960209)

[E4.3 VAT Groups 45](#_Toc80960210)

[E4.3.1 Consequences 45](#_Toc80960211)

[E4.3.2 Choice of companies in VAT group 45](#_Toc80960212)

[E4.4 VAT on Property Transactions 45](#_Toc80960213)

[E4.4.1 Option to tax 45](#_Toc80960214)

[E4.4.2 Transfer of a going concern (TOGC) (Pg. 119) 45](#_Toc80960215)

[E4.5 Capital Goods Scheme (Pg. 394) 45](#_Toc80960216)

[E4.5.1 Initial Recovery 45](#_Toc80960217)

[E4.5.2 Adjustments for use 45](#_Toc80960218)

[E4.5.3 Adjustments for sale 46](#_Toc80960219)

[E4.5.4 Capital Goods Scheme & Interaction with TOGC rules 46](#_Toc80960220)

[E4.6 Overseas aspect of VAT (Pg. 397) 46](#_Toc80960221)

[E4.6.1 Supply of Goods 46](#_Toc80960222)

[E4.6.2 Supply of Services 46](#_Toc80960223)

[E5 Stamp Taxes 46](#_Toc80960224)

[E5.1 Stamp Duty Tax 46](#_Toc80960225)

[E5.1.1 Charge to Stamp Duty 46](#_Toc80960226)

[E5.1.2 Purchase of own shares 46](#_Toc80960227)

[E5.1.3 Transfers between group companies 46](#_Toc80960228)

[E5.1.4 Share for share relief 46](#_Toc80960229)

[E5.1.5 Administration 46](#_Toc80960230)

[E5.2 Stamp Duty Reserve Tax 46](#_Toc80960231)

[E5.2.1 Charges to stamp duty reserve tax 46](#_Toc80960232)

[E5.2.2 Exemptions 46](#_Toc80960233)

[E5.2.3 Administration 46](#_Toc80960234)

[E5.5 Stamp Duty Land Tax 46](#_Toc80960235)

[E5.5.1 Charge to Stamp Duty Land Tax 46](#_Toc80960236)

[E5.5.2 Additional residential property 46](#_Toc80960237)

[E5.5.3 SDLT payable on rent payments 47](#_Toc80960238)

[E5.5.4 Exemptions from SDLT 47](#_Toc80960239)

[E5.5.5 Higher rate for transfers to companies 47](#_Toc80960240)

[E5.5.6 Administration 47](#_Toc80960241)

[E5.6 Stamp duty on incorporation or liquidation (Pg. 126) 47](#_Toc80960242)

[E5.6.1 SD on incorporation (sole trader asset -> co) 47](#_Toc80960243)

[E5.6.2 SD on liquidation 47](#_Toc80960244)

[E5.6.3 SD on Purchase of Own Shares 47](#_Toc80960245)

[E5.7 High Value Properties 47](#_Toc80960246)

[E5.7.1 Annual tax on enveloped dwellings (ATED) 47](#_Toc80960247)

[E5.7.2 CGT Charge of high value properties 47](#_Toc80960248)

Section A - Individuals

# A1 Personal Tax

## A1.1 Income Tax



/qualifying interest (loans to acq business assets

**NSI @ 20%/40%/45%**

**SI @ 0%/20%/40%/45%**

**DI @ 0%/7.5%/32.5%/38.1%**

Band adj for Gift Aid/Pension Contribution

Add: I.T. retained on patent royalties paid net of BR I.T

**Note:**

- 0% starting rate is available for savings income, only if non-savings taxable income is <£5,000.

- The basic rate band ends at £37,500

- The higher rate band ends at £150,000

* Then deduct tax reducers (VCT relief, EIS relief, MCA), less DTR = IT liab. Less tax credits/tax deducted at source (DI, PAYE, SI REIT) = IT payable
* Savings allowance if taxable income <£150k, BR £1,000, HR £500, AR £0 0%. Uses up BRB/HRB
* First £2k DI taxed @ 0% but uses up BRB/HRB
* £1,250 of PA can be transferred to spouse and is tax reducer at 20%

### A1.1a Personal Allowance

- Full PA of £12,500 is not available for individuals with ‘adjusted net income’ of > £125,000

- Adjusted Net Income = Net Income – Grossed up gift aid donations and pension contributions

- PA reduced by £1 for every £2 that the individual’s adjusted net income exceeds £100,000

### A1.1b Exempt Income

* Interest on NSC, ISAs (max £20,000), Prizes, dividends from VCT shares, Statutory redundancy pay £30k, scholarships, IT repayment supplements, first £7,500 of gross annual rents from letting under the rent a room relief scheme.

## A1.2 National Insurance Contributions

|  |  |  |
| --- | --- | --- |
|  | Class 1 Primary | Class 1 Secondary |
| Who pays | Employees (16 to retirement) | Employers (for Employees 16+) |
| On what | Cash earnings before deductions | Cash earnings before deductions |
| Rates | PT 9.5k– UEL 50k 12%  > UEL 2% | >ST 8.788. 13.8%  Eer’s claim allowance to reduce by £4k per annum |

|  |  |  |
| --- | --- | --- |
|  | Class 1A | Class 1B |
| Who pays | Ers (for EEs) | Ers (for EEs) |
| On what | Taxable benefits non cash earnings | Gross up earnings in PAYE settlement agreement |
| Rates | 13.8% (due 6 July) | 13.8% (due 19 Oct) |

|  |  |  |
| --- | --- | --- |
|  | Class 2 | Class 4 |
| Who pays | Self employed | Self employed |
| On what | Unadjusted accounting profit (unless below small earnings limit £6,475) | Taxable trading profit, less loss b/f |
| Rates | £3.05 per week | LPL 9.5k - UPL 50k 9%  >UPL 2% |

### A1.2a ISA

* All income from ISA (interest, dividends) is exempt from IT. Disposals of investments within an ISA are exempt from CGT.
* Maximum £20,000 in cash, stocks, shares, insurance products.
* Only 1 per person per tax year.
* 16-17 yrs can invest up to £20k in cash ISA not stocks and shares.
* From 06/04/17, <40 yrs can contribute up to £4k pa into lifetime ISA and receive 25% from Gov - Help to buy ISA.

# A2 Employee Remuneration

## A2.1 Employment Benefits

### A2.1a Exempt Benefits (pg. 379)

* Job related accommodation
* Subsidised canteen for all staff (only if not provided by salary sacrifice)
* Car parking near work
* Workplace nursery
* Approved childcare payments or vouchers available to all staff up to (£55/£28/£25 p.w. depending on BR/HR/AR tax payer)
* Employers pension contributions
* Removal and relocation costs (£8k max)
* Staff entertaining (not more than £150 per head)
* Mobile phones
* Personal expenses paid by Er where Ee is on company business (£5 per night in UK, £10 per night non-UK)
* Up to £6/wk to cover cost of additional household exps if working from home

### A2.1b Benefits assessable on all employees (Pg. 379)

Living accommodation & expenses

* Benefit annual value/rateable value + extra charge
* Extra charge = (Cost-£75k) x Interest rate
* Cost = Original value when purchased unless >6yrs in which case take MV.

### A2.1c Benefits assessed on directors and higher paid employees (Pg. 379)

* Use of assets **= 20% x MV** when first available as benefit
* Car benefit = list price x CO2%
* Fuel benefit = £22,100 x CO2% (cannot partially contribute to this)
* Vans = £3,490 (£2,792 for zero emissions)
* Fuel for vans = £666
* Ancillary services in living accommodation:
* Furniture = 20% x MV
* Cleaning/electricity = cost to Er
* If accommodation is job related then restrict to 10% of net earnings
* Beneficial loans >£10k
* Benefit is on the benefit element of the cheap interest rate.
* Use strict method (interest on a monthly basis)
* Or Average basis (at beg and end / 2 x interest)

## A2.2 Termination Payment (Pg. 17)

-**Statutory redundancy pay is fully exempt but reduces £30k exemption**

-Taxable termination payment treated as top slice of income and taxed at highest rate.

-If payment attracts £30k exemption, also exempt from NIC

**Benefits received after termination of employment**

-taxed in same way as ‘surprised’ termination payments

-use norm rules to calculate value of benefit

-retraining, counselling or outplacement services = exempt

**Compensation for loss of office**

-PENP (basic pay earned in period is fully taxable – excess)

-Bal is partly exempt (30k exemption)

Answer structure:

1. Total termination package value
2. For each benefit: state exempt/fully taxable/partially exempt (define)
3. Statutory redundancy reduces £30k exemption
4. Taxable as earnings: class 1 NIC, partly exempt then class 1A by co
5. Partially exempt: calculate amount actually taxable (including PENP)
6. Loss of office compensation: excess over PENP (tax), bal (part exempt)
7. Calculate all amounts actually taxable and to which taxes

## A2.3 Share Schemes (Pg. 19)

- Points: available schemes, suitability, benefits, tax consequences, BADR (EMI)

- Way of rewarding and incentivising employees without paying cash

- two categories: tax advantaged vs not tax advantaged

- Non tax advantaged schemes have no conditions and fewer tax benefits

|  |  |  |  |
| --- | --- | --- | --- |
|  | Grant | Exercise | Sale |
| **Non tax advantaged** | No tax | BIK in employment income. If exercise price is £1, and MV is £3, then £2 is taxed like a bonus.  **MV @ exercise less cost of option or shares = Employment income**  We pay IT and NICs on this. | Capital gain on any increase in value:  Proceeds  Less: MV at exercise  Less: charged to IT at exercise  = gain |
| **Tax advantaged** | No tax | Not normally taxable | Gain: Proceeds less cost of option or shares = gain  Capital Gain tax usually better than income tax. |

- 4 types of 7 tax advantaged schemes (anything else is unapproved):

* **Company share options plan (CSOP)**
* **Enterprise management incentives (EMI)**
* **Save as you earn (SAYE)**
* **Share incentive plans (SIP)**

**Tax advantaged approved schemes:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | CSOP | EMI | SAYE |
| **Description** | Share options awarded to key EEs | Share options awarded to key EEs | EEs save some of net income over 3-5yrs which can be used to purchase shares in the company or taken as tax free bonus (interest) |
| **Restriction on joiners** | Employees must own ≤ 30% each | Must work for substantial amount of time and own ≤30% | No max holding. Scheme open to all employees |
| **Max total value at grant per EE** | £30,000 | £250,000  Total options in issue by company = up to £3m | EE saves £10-£500 per month from net income (after PAYE deduction) |
| **Conditions** | Exercise 3-10 years of grant  No discount at grant (MV) | Must exercise within 10 years of grant and may issue at discount | Maximum 20% discount |
| **Restrictions on issuing company** | N/A | Gross assets ≤ £30m, trading, may be quoted or unquoted  Company group < 250 EEs at grant | N/A |
| **Restrictions on Exercise price** | Option price must be ≥ MV at date of grant | May issue at discount, but the discount element is employment income | Must be ≥ 80% of MV at date of grant. Even if issue at a discount, there are no tax consequences on exercise. |
| **Tax treatment of disposal** | Normal gains based on proceeds less exercise price | Gain = proceeds less exercise price less amount taxable at exercise = taxable gain. | Normal gains based on proceeds less exercise price |

- If scheme satisfies conditions then treat as tax advantaged scheme for tax purposes, otherwise non tax advantaged scheme.

### A2.3a Share Option Schemes

Offer employee a right to purchase shares at a future date at predetermined fixed price set a time offer is made.

**Advantages of approved schemes:**

* No NICs on CG (lower rate than I.T.) + Annual Exemption
* Entrepreneur Relief – ownership runs from date of exercise. Employee must own at least 5% of shares, **except for EMI shares**, which have relaxed rules: no min % holding and ownership period runs from date of grant (rather than exercise)
* Cash flow perspective i.e. no tax on exercise

### A2.3b Employers Tax Liabilities (Share Option Schemes)

- Costs of setting up tax advantaged share schemes are allowable for CT purposes

- Employer can **deduct difference between MV at exercise date and the actual exercise price paid by the employee = allowable deduction from trading profits in period option is exercised**, regardless of whether unapproved or approved (provided that the co is not controlled by another co).

### A2.3c Share Incentives Plans (SIP) (Pg. 20)

Enables the issue of free shares and/or the purchase of shares by employees out of gross pay. These are held in a trust for EEs rather than personally.

There are four ways that employer can issue shares:

**1. Free shares** = gift up to £3.6k worth each year

**2. Partnership shares** = buy these out of pre tax remuneration. Max allowed to buy is lower of £1.8k or 10% annual salary

**3. Matching shares** = i.e up to 2 free shares for each partnership share

**4. Dividend shares** = dividends paid on EEs shares held under the plan can be reinvested tax free in further shares.

**Conditions for approved SIP:**

* Must be **available to all EEs**

**Time period:**

* Relevant period = time period that the shares are in trust (plan). At end of this period shares are given to EE, and then EE can sell whenever.

**Process:**

1. **‘Allocate’ shares to employees**

* They receive dividends but cannot sell as they don’t own yet

1. **‘Later’ these shares come ‘out of plan’**

* Can now sell shares

1. **‘Later’, employee sells shares**

* Gain: increase in MV since shares left plan

### A2.3d Employees Tax Liabilities (SIP) (Pg. 19)

* **Income Tax:**
  + Relevant period < 3 years = IT and NIC payable based on MV of shares at withdrawal (for dividend shares the original dividend is taxable instead)
  + Relevant period 3-5 years = IT and NIC payable on lower of:-
    - Market value at withdrawal
    - Market value at grant (div shares may be removed from plan after 3yrs with no I.T or NIC payable afterwards)
  + Relevant period > 5 years – no taxable benefit (advice: Leave in for 5yrs)
* **Capital gains tax:**
  + Base cost equal to market value when shares leave the plan

## A2.4 Pension Schemes (Pg. 24)

- Tax efficient way to save for future

- Funds put in a registered pension scheme grow tax free (registered pension schemes do not have to pay income and capital taxes)

- Calculations:

* + 1. Calculate total pension fund contributions for tax year
  + 2. High-income: threshold income > 200k, adjusted income > 240k then abate annual allowance of 40k for excess over 240k
  + 3. Bring forward unused annual allowance from 3 previous tax years
  + 4. Threshold income = net income (salary less ‘ee cont) less gross personal
  + 5. Adj income = net income (salary less ‘ee cont) plus ee/er cont
  + 6. Annual allowance (AA) charge = contribution in excess of AA

### A2.4.1a While contributions being made (Pg. 381)

|  |  |
| --- | --- |
| Personal Pension Scheme | Occupational Pension Scheme |
| Available to all individuals | Available to those in employment where Er has approved scheme |
| Employee contributions paid net of 20% tax (like gift aid) | Employee contributions paid gross. Deducted from salary before PAYE |
| **Employee contributions:**   * of gross contributions made by individual, maximum amount which will attract relief is higher of:   + ***£3,600 or 100% of UK relevant earnings (trading income net of losses, employment income, qualifying furnished holiday accommodation)***   You can put as much as want but limit on amount you can get relief on. | |
| **Employee and employer contributions:**   * Subject to annual allowance 2020/2021 = £40,000 * Contributions in excess of annual allowance suffer an annual allowance charge. Excess contributions that fit into unused BRB are taxed at 20%, then HR at 40%, then ARB at 45% (added to tax liability) * Restriction of annual allowance for high income individuals who have:   + - * + Threshold income >£200k (net income less ee gross PPC); and         + Adjusted income >£240k (net inc + ee OPS contrib + all er contrib)         + AA restricted by £1 for every £2 the adjusted inc >£240k         + Min allowance is £4k (restriction capped) * Unused annual allowance c/f 3 years on FIFO basis * You can put as much in your scheme as you want, but the limit is for amount which gets tax relief. * The excess payment of pension is top slice of income and taxed last. * Employer contributions takes EE over annual allowance not treated as earnings for NIC - maybe advantageous for ER to make contribution to pension scheme rather than pay additional salary | |
| **IT relief:** 20% tax relief given at source  HR and AR relief given by extending BR and HR band by gross amount of contributions | **IT relief:** given through payroll at source i.e. deduct gross contributions from gross pay |
| Employers contributions are: exempt BIK and allowable deduction against employer’s trading profits on a paid basis, given tax free | |

### A2.4.1b On retirement (Pg. 382)

* All of part of pension can be taken to provide pension at any time between minimum age 55 and 75.
* By age of 75 you must have fully vested to provide pension benefits
* Fund can be withdrawn as follows:
  + **25% of fund (max lifetime allowance)** = tax free lump sum (max £268,275)
  + **Rest used to buy pension income or subject to annual drawdowns**, and is taxed under income tax when received.

### A2.4.1c Lifetime allowance (Pg. 382)

* Test value of fund when it vests
* 2020/21 = £1,073,100
* If the fund exceeds this limit then there are further tax charges
  + If taken as a **lump sum= taxed at 55%**
  + If taken as **pension income = taxed at 25%**

## A2.4.2 Types of Pension Schemes (Pg. 26)

### A2.4.2a Small Self-Administered Schemes (SSAS)

* + Occupational pension scheme aimed at small companies (i.e. owner managed)
  + Idea is to **use pension fund to set up business**
  + Advantage of SSAS is that they can borrow up to 50% of fund value (using pension fund as collateral)
  + SSAS may also **lend up to 50% of fund** value to its own company and invest ≤5% of pension fund value in own shares
  + Scheme is not able to invest in residential property (unless in a REIT) and tangible moveable prop
  + Benefits are like occupational pension scheme
  + Tax advantage: no CGT on disposal, rent paid to SSAS not taxable, property protected from creditors

### A2.4.2b Self Invested Pension Plan (SIPP)

* + Type of personal pension scheme. SIPP can also borrow up to 50% of value of fund, but not allowed to lend money
  + Scheme cannot invest in residential property unless it is a REIT or tangible moveable property
  + May purchase any amount of shares in any company

### A2.4.2c Common use of SSAS or SIPP:

* Hold commercial property, which will be leased and used in the business of the SSAS’s company or for SIPP in the pension investor’s business
* Tax advantages:
  + Business will pay rent for use of the property which is tax deductible (as well as any relevant % of premium)
  + Pension fund does not pay income tax/capital gains tax on rental income/lease premium
  + On the eventual disposal of the property the pension fund will **not be liable to pay any CGT.**

# A3 Inheritance Tax

To be in scope of IHT there must be **transfer of value** of **chargeable property** by **chargeable person.**

* Transfer of value i.e. gift, diminution in value, transfer during lifetime/death
* Chargeable property i.e. everything unless exempt
* Chargeable person i.e. UK Dom – worldwide assets, non UK Dom – UK assets

**Deemed domicile**

1- if UK resident for 15 of last 20 years ending immediately before the current yr

2- if they meet the rules for a formerly domiciled resident. These apply if the taxpayer:

a) Was born in the UK

b) Has a UK domicile of origin

c) Is UK resident in the current year

d) Was resident in one of the last 2 years, ending immediately before the current one

- if transfer made by UK dom person to non-dom spouse, first £325k is exempt.

- Non-dom spouse can make irrevocable election to be treated as UK dom for IHT only, then limit of £325k above does not apply

- If assets in estate are overseas, additional expenses incurred (max 5% of value of property) can be deducted from the value.

**Locations of asset**

L&B/tangible prop – phys loc

Debt – where debtor resides

Shares- where reg

Interest in partnership – where business carried on

Goodwill – where business is carry on

**Exemptions:**

* Lifetime & death: transfer to spouse, charity, qualify political parties
* Lifetime only: small gifts (≤£250), gifts in consideration of marriage (£5k parent, £2.5k g.parent, £1k anyone else), normal expenditure out of income, AE £3k (CY and PY)

## A3.1 Types of lifetime transfers:

* **Exempt**
* **PETs** – no lifetime tax, death tax if donor dies within 7 years
  + - E.g. all other lifetime transfers (apart from CLTs)
* **CLTs** – lifetime tax, additional death tax if donor dies within 7 years
  + - Transfer to discretionary trust, transfers to non-qualifying interest in possession trust (> 22/3/2006).

## A3.2 IHT Reliefs (Pg. 76)

### A3.2.1 BPR

-Given first even before AE except APR. Applies to both lifetime transfers and transfers on death. Rate of relief (50% or 100%)

-Available if: relevant business property held, with ownership of at least 2 years.

-No contract for sale in place at gift/death

-Reduction of relief for excepted assets

**Rate of relief**

**100% for**

- unincorp business (sole trader or share in partnership but not individual asset)

- unquoted shares (incl AIM)

**50% for**

- quoted shares if from controlling holding >50%

**Ownership Period**

- owned for two years before transfer

- deemed ownership period

- transfer of replacement business prop where total ownership period (incl orig prop) = 2 out of last 5 years

- prop transfer on death of spouse, incl ownership period of spouse

- successive transfer of same prop, one on death + first transfer qualify for BPR

**Excepted Assets (no BPR)**

- not used wholly/mainly for business purposes for two yrs prior to transfer, nor

required for future use of business

e.g. large cash balances, investments in land/shares

**Lifetime transfers (additional conditions)**

-if transferor dies within 7 years of a lifetime transfer, transferee must still own business prop at transferor death to qualify for BPR

- prop must be relevant business prop at date of transferor death

- treat ownership of replacement prop (revinvestment prop within 3 years) as orig. prop

-where BPR given on CLT but not available on death,

-Add back BPR to calc additional death tax due

-But use lifetime tax value (incl BPR) for NRB purposes

### A3.2.2 APR

* + Given before all exemptions, incl BPR
  + Applies to both lifetime and death transfers. 50% or 100%, usually 100%.
  + Available on: farms, and farm buildings, agricultural land in UK, Channel Islands, IoM and EEA
  + Relief only given on agricultural value (BPR for development value)

**Rate of relief**

**100% for**

- vacant possession of prop (or right to vacant possession in next 24mth)

- prop let out on/after 1/9/1995

**50% for**

- prop let out before 1/9/1995 which has >24mth to run

**Conditions:**

- property must be occupied by transferor and used for agric purpose for 2 years before transfer; or

- owned by transferor for 7 years before transfer and used by someone else for agric purposes

**Lifetime transfers (additional conditions)**

-if transferor dies within 7 years of a lifetime transfer, transferee must still own agric prop at transferor death to qualify for APR

- prop must be relevant agric prop at date of transferor death

- treat ownership of replacement prop(revinvestment prop within 3 years) as orig. prop

-where APR given on CLT but not available on death,

-Add back APR to calc additional death tax due

-But use lifetime tax value (incl APR) for NRB purposes

## A3.3 Diminution in Value/Fall in Value Relief

Diminution in value:

- Value before less after gift is CLT/PET

- AE 3k

- BPR

Fall in value relief:

- Used when calculating death tax on a gifted asset

- MV at date of gift less MV at death/proceeds = fall in value relief

- Original transfer value is to be used in NRB cumulation

## A3.4 Nil Rate Band

**Lifetime Tax Calculation**

- Use nil band in tax year of transfer

- Reduce by gross chargeable transfer (chargeable amt + tax paid if paid by donor) of CLT’s within 7 years prior to date of transfer

**Death Tax Calculation**

- Use of nil band in tax year of death

- Reduce by GCT of CLT’s & PET’s within 7 years prior to date of transfer

- Any nil rate band remaining on a person’s death transfers on a proportionate basis to their surviving spouse (if surviving spouse dies on or after 9 October 2007)

**Residence NRB: (deducted before NRB)**

- If leave a home they lived in at some point to direct descendent, additional NRB is available (doesn’t have to be main or only home, no min occupation period)

- £175,000 in 20/21 but increase by £25,000 each year after

- Restricted if estate > £2million, restriction = 50% (value of estate – £2mill)

-Can transfer % left over to surviving spouse if do not use it (if spouse died before 6/4/17, 100% deemed to be transferred as this relief only came into use then)

- Available if downsize or gave away residence if:

- downsized after 8 July 2015

- former home would have qualified for RNRB

- at least some inherited by deceased direct descendent (DD).

- downsizing allowance=RNRB lost at disposal but restricted to amount left to DD.

## A3.5 IHT Rates

**Lifetime IHT**

**-** IHT @ 20% if recipient pays tax

- IHT @ 25% if donor pays tax

**Death IHT**

- Death tax due @ 40%

- Reduced rate of IHT available if left ≥ 10% net chargeable estate on death to charity

- Reduced rate of 36% applied automatically

- Net Chargeable Estate = total value of estate after deducting all reliefs and exemptions but **before** deducting the value of the charitable gift & residence NRB







### A3.5a QSR

- Reduces IHT Payable on Death estates

- where property acq by deceased in 5yrs before death, and

- charge to IHT on initial transfer

*- still applies where asset is no longer held at date of death by deceased*

Net transfer = amount received after IHT

Gross transfer = amount chargeable to IHT

Relevant %: ≤1yr–100; 1-2yr–80; 2-3yr–60; 3-4yr–40; 4-5yr-20

## A3.6 Payment of IHT

|  |  |  |
| --- | --- | --- |
| Lifetime CLT | Transferor | Later of:  - 6mth after end of mth of CLT  - 30 apr following tax yr of CLT |
| Death tax on PET/CLT | Transferee | 6mth after end of mth of death |
| Death Estate | PRs | Delivery of IHT acc |

**Payment of Interest**

-Lifetime transfer: Interest runs from due date to day before payment

-Death Estate: Interest run from 6 months after end of month of death to day before IHT is paid

**Payment by instalment**

Can elect to pay 10 annual instalments for:

-lifetime IHT on CLT where transferee pay IHT due on date whole amount would be paid.

-Death IHT on CLT and PET where transferee still owns prop at transferor’s death. Due end of 6 months following death.

- IHT on death estate

If instalment property is sold, full amount becomes immediately payable

**Interest free instalment**

-prop qualify for BPR/APR (others are interest-bearing), all others are interest bearing

## A3.9 Gifts with a reservation of benefit (GWROB) (Pg. 78)

- Individual makes a gift of an asset but continues to gain the benefit from the gifted asset.

- Examples:

* Gift of house but continue to live in house rent free
* Gift of painting but continue to retain possession and pay no commission
* Transfer of shares but continue to receive income from shares
* Transfer of asset to a trust by a beneficiary of that trust

- Exclusions from GWR rules:

* If donor pays full consideration for benefit e.g. paying market rent of gifted house
* Virtual exclusion – minor benefits are disregarded
* Changes in circumstances of transferor
  + Unforeseen changes (e.g. get ill and go back to be looked after)
  + Benefit represents care/maintenance of transferor as elderly or infirm relative
* IHT treatment: 2 calculations

1. Treat as PET/CLT at the time of the gift and calculate tax accordingly
2. Date ceased/death – calculate tax on just gift as part of death estate

IHT due = **HIGHER** charge of 1 & 2

*Note: the 36% rate of IHT if > 10% estate is left to charity does not apply to property subject to GWROB rules.*

## A3.10 Variations (Pg. 80)

* For IHT and CGT: if conditions met treat as passing direct to beneficiary at probate value, statement saying effective for IHT/CGT
* If beneficiary of will wishes his share of the estate to pass to someone else they can achieve this via a variation of a will
* Variation of wills can be made by: Beneficiary, within 2 years of death, in writing & contain a statement that variation is to have effect for IHT purposes.
* Notify HMRC within 6 months if additional IHT payable
* Unless specifically stated, deeds of variation are not effective for CGT purposes & original beneficiary is still treated as making a disposal for CGT purposes. *This can be advantageous if AE is available to cover any increase in value from the original probate value*
* **Calculations – no deed of variation vs deed of variation (pg. 81)**

## A3.11 Interaction between CGT and IHT

|  |  |  |
| --- | --- | --- |
|  | **CGT** | **IHT** |
| **Gift of Asset** | Chargeable disp. At time of gift unless exempt | No tax due unless donor dies in 7yrs unless CLT |
| **Value** | MV | Fall in value of donor’s estate.  Related Prop rules apply |
| **Relief Available** | -Gift Relief on qualifying business asset or any assets which are CLTs for IHT  -BADR | -BPR  -Taper Relief (reduces tax payable on PET if donor dies within 3-7yrs of making gift) |
| **Rate** | 10%/20%/18%/28% | PET – no lifetime, if donor dies then 40%  CLT – 20% donee/25% doner |
| **Exemptions** | £12,300 | £3k+£3k PY; marriage 5k/small gifts, QSR |
| **Planning** | Spouse transfer NGNL  -use both AE  -use both NRB  -use losses  -give away assets at loss | Spouse exempt transfer  -unused proportion of first spouse NRB transfer  -AE 3k (CY & PY) |

# A4 Trusts

## A4.1 Types of Trusts (Pg. 85)

1. Interest in possession trust
2. Discretionary Trust

### A4.1a Interest in Possession Trust

-One or more beneficiaries (life tenants) = entitled to all the trust income as it is earned (arising basis).

- Trustee must pay out of the trust income – life tenant entitled to it

-On death of life tenant, capital passed to remainderman (said to have a reversionary interest in the trust)

-Taxed at BR (NSI=20%, SI=20%, DI=7.5%). No PSA nor Dividend allowance.

- Expenses relating to each separate source of income deductible, but **managing trust expense not deductible**

- Once tax paid and expenses settle by trust, life tenant then entitled to trust income (beneficiary taxed in year it arises but comes with 20% tax credit for tax already paid for by trust)

- Trust management expenses deemed paid from DI, then SI, then NSI

### A4.1b Discretionary Trust

-No beneficiary has the absolute right to the trust income, this is at the discretion of the trustees to pay out **(receipts basis**)

- Payment of income out of trust is at discretion of trustees .: higher tax than IIP

- Taxed at 45%/45%/38.1% - rates do not apply to first £1k of gross income which is taxed at relevant basic rate “basic rate band” (NSI>SI>DI). £1k is shared between the no. of trusts set up by the settlor

- Trust management expenses deductible (against DI>SI>NSI) but need to gross up at appropriate basic rate (i.e. Dividend – x100/92.5), then tax at 7.5% when calculating tax liability

- Beneficiary treated as received income net of 45% credit (treated as NSI, **gross up in tax comp (x 100/55)** then calculate tax credit as 45% grossed up value and take off tax laibility), **tax deducted at source**

- Tax pool maintained to make sure tax reclaimed by beneficiaries does not exceed tax originally paid by trustees

- Not all tax paid by trustee treated as credit in tax pool

Basic rate band: 20%/7.5%

NSI: 45%

SI: 45%

DI: 38.1%

***Tax paid on income used to pay the expenses is not included***

## A4.2 IHT for Relevant Property Trusts (RPT) (=non qual IIP & discretionary)

- Non-qualifying IIP (set up after 22/3/06) & Discretionary Trusts = RPTs

- Three charges:

- Trust set up, **immediate** charge to IHT as CLT

- Property passes to beneficiary – **‘exit charge’**

- each 10yr anniversary – **10 year/principal charge**

**Exit Charge** *(only need awareness for exam, won’t be asked to calculate)*

- Prevents individuals avoiding the principal charge by removing assets from the trust before each 10 year anniversary

- Applies each time an asset leaves the trust and is based on the value of the assets leaving the trust

- when prop cease to be relevant (usually on distribution)

**Principal/10yr charge** *(only need awareness for exam, won’t be asked to calculate)*

- Based on value of trust assets at 10th Anniversary

- Applied to recoup lost IHT (now that the assets are held in a trust they will not be taxable in the deceased’s death estate)

- If individual has any NRB available, this will reduce the effective ‘current lifetime tax rate’ thereby reducing the rate at which the principle charge is levied. Maximum 6%.

## A4.3 IHT for Qualifying IIP

- Qualifying IIP is one set up during lifetime before 22/03/06, or **on death** (only QIIPs set up on death are examinable)

- IHT consequences for setting up QIIP and when assets leave QIIP are the same as if the transfers involved an individual rather than a trust.

For IIPs set up on death, full value of prop transferred is inclu in the value of the death estate

- IHT treatment depend on beneficiary of the trust:

- settlor’s spouse = life tenant: spouse exemption (no IHT charge)

- anyone else = chargeable in full (can use NRB & other reliefs)

- If QIIP ends during life tenant’s lifetime, life tenant treated as making transfer himself hence IHT treatment depends on identity of remainderman:

- life tenant: no transfer of value since transfer to himself

- anyone else: PET (unless spouse exemption applies)

- QIIP ends on death of life tenant, value of settled prop forms part of death estate of life tenant and charged normal way but the tax on the settled property is paid by the trustees, not the representatives of the estate therefore must apportion for this.

## A4.4 Capital Gain Tax for Trust

### A4.4a Assets disposed by Trustee

- Gains calc same way as for ind.

- Trustee get AE (half of ind. = £6,150) divided by the number of trust set up by settlor, minimum £1,230 i.e. 1/10th)

- CGT = 20% or 28% for residential property where **PPR** is not available.

**PPR** relief available if:

1. It disposes of a resi property
2. One of trust beneficiaries lives in it for at least part of trust’s ownership
3. Exemptions claimed for actual and deemed occupation periods (same as for individuals)
4. Calculated as: Trust Gain\*(period of beneficiary occupation/period of trust ownership)

**Revision of PPR:**

* A house which has at some point during ownership been the individual’s only/main private residence
* Individual’s and spouses can only have 1 PPR, if own >1 property, must elect which one is PPR or HMRC will do for you
* Exempt from CGT subject to restrictions below:
* PPR occupied:

1. Throughout entire period of ownership = fully exempt
2. For part of ownership:

*Step 1:* Calculate gain

*Step 2:* Calculate total period of ownership (months)

*Step 3:* Calculate periods of actual and deemed occupation\*

*Step 4:* Calculate PPR exemption as gain\*(Period of occupation/total period of occupation

* \*Deemed occupation

1. Last 18m of ownership is always “deemed ownership as long as property at some point was the only/main residence
2. For up to 3yr absence for any reason, any period spent working abroad, up to 4yr absence whilst working in the UK if the following conditions are met:

*Condition 1:* Period of actual occupation must occur before & after

*Condition 2:* Must not have another PPR

*Condition 3:* Property can be let during absence

* No PPR for parts of property which have been used exclusively for business & no final period if this part has always been used for business.

### A4.4b CGT for trusts

|  |  |  |
| --- | --- | --- |
|  | **Asset in** | **Asset out** |
| **Relevant property trust (discretionary trust and non-qual (i.e. new) IIPs)** | * Donor makes a gain (proceeds=MV) * Gift relief available (even if non-business asset) as lifetime IHT due on GCT at same time. | * Trust makes a gain (proceeds = MV) * Gift relief available as asset also subject to exit charge for IHT purposes. |
| **Qualifying IIPs** | * Disposal on death of settlor is exempt from CGT | * During lifetime of life tenant: * Disposal at MV * Gift relief for business assets only * On death = exempt |

### A4.4c CGT on assets leaving qualifying (old) IIP trusts

See above table

### A4.4d Anti-avoidance legislation for trusts

1. **Trusts for minor children** - If individual puts money or property for their child under 18 into a trust then the parent (not the child) is taxed on:

* Payments of income made to the child by the trust
* Payments of capital made to the child under the trust
* Amounts paid by the trust for the benefit of the child
* Amounts to which the child is entitled even if they are not paid over
* Does not apply if total amount taxable on parent ≤ £100.

1. **Settlor interested trusts** – Trust in which property can be paid to or applied for the benefit of the settlor and/or their spouse or civil partner.

* Income arising in the trust is taxed on the settlor, even if the settlor does not receive it.
* If the trustees have already paid tax on the income the settlor can claim a tax credit.

1. **Capital sums paid to the settlor** – When a trust lends money, or repays a loan to the settlor or their spouse/civil partner, (or on behalf of the settlor) the settlor is taxed on the lower of:

* The capital sum paid by the trustees
* The available income of the trust

*See over page for offshore trusts*

1. **Offshore trusts**

* If trust is not resident in UK the general rule is that the trustees will only pay UK IT on any UK source income
* Where settlor is UK resident and/or UK domiciled and has an interest in an offshore trust the income will be taxable on the settlor:
  + If settlor UK dom: all income taxable on settlor
  + If settlor UK res but not UK dom: Pay IT on all UK income, but only overseas income if remitted into UK.
* Gains of trust are taxable on settlor where:
  + The settlor has an interest in the trust
  + The settlor is UK res and domiciled in the tax year; and
  + The trust is not UK resident

# A5 Personal Tax: International Implications (Pg. 28)

- Way in which individual is taxed depends on tax status

- Two concepts: ***Domicile & Residence***

- Individual **is not UK resident** if he satisfies any of the **“automatic overseas tests”**

- An individual **is UK resident** if he does not satisfy any of the **“automatic overseas tests”** and he

* Satisfies at least one of the “automatic UK tests”or
* Satisfies the “sufficient ties” test

## A5.1 Definitions

### A5.1a Domicile

- Individual’s domicile is usually the country in which they have their ‘permanent home’. Three types:

**1. Domicile of origin** (follows the father)

**2. Domicile of dependency** (up until age of 16)

**3. Domicile of choice** (provided links with the former domicile are severed as much as possible)

### A5.1b Residence

- From 6/4/13 a stat test of residence applies. To determine if an individual is UK resident for a particular year, the following questions need to be addressed each fiscal year:



**- For the purpose of the ties test, following are relevant ties:**

* UK resident spouse/civil partner or child < 18 years old
* Accommodation available in the UK ≥ 91 days in the tax year and spends ≥ 1 night in the year there
* Working in the UK for > 3 hours per day for at least 40 days
* Spend > 90 days in the UK in either or both of the two preceding tax years
* Additionally, for an individual who has been resident in the UK in any of the 3 previous years, the “country tie” which applies if he had been present in the UK for more than in any other country in the current tax year

**Satisfaction of the sufficient ties test will depend on three factors:**

1. Was the individual resident in the UK in any of the 3 previous tax years?

2. Number of days spent in UK in current tax year

3. Number of ties present

|  |  |  |
| --- | --- | --- |
| **Days spent in UK in tax year** | **UK Res in any of 3 preceding years –ties needed to be UK resident for this year** | **Not UK res in any of 3 preceding years–ties needed to be UK res this year** |
| **< 16** | N/a – auto o/seas test met | N/a – auto o/seas test met |
| **16-45** | At least 4 | N/a – auto o/seas test met |
| **46-90** | At least 3 | All 4 |
| **91-120** | At least 2 | At least 3 |
| **121-182** | At least 1 | At least 2 |
| **≥ 183** | N/A auto UK test met | N/A auto UK test met |

## A5.2 Split Year Treatment (Pg. 36)

- Use after automatic overseas/UK residence tests

- Residence normally applied for full tax year, there are occasion when the year may be split between resident and non-resident status e.g. secondment:

UK resident = worldwide income taxable

Non-UK resident(from date starts work overseas) = only taxed on UK income

- This is an “extra-statutory concession” (not an election)

- **Don’t restrict personal allowance**

### A5.2a Leaving the UK

If the individual was resident last year and is leaving the UK during this tax year the tax year can be split in the following situations (pro-rata limits for whole months prior to leaving):

1. Leaving UK to take up full time work abroad:

* Individual is non-resident in following tax year as he meets the full time work overseas test; and
* 30 UK work days and 91 days in UK limits pro-rated for complete months in tax year before first work day

When the tax year is split on this basis the taxpayer is classed as non-resident from the **first day on which he works** 3hrs overseas.

1. Live with partner who has taken up full time work overseas. Classed as non-resident from later of:

* The date their partner starts overseas work
* The date they join their partner

1. Ceasing to have any UK home and will not be UK resident in the following year. The individual is classed as non-resident from the date they cease to have their UK home.

### A5.2b Working Overseas

- Consider each tax year whilst on secondment

- If leaving UK to work o/seas, try to ensure individual satisfies the full-time work o/seas criteria for a full tax year. Generally the individual will then obtain the benefit of a split year treatment for year of departure and year of return.

***Conditions to qualify as full-time work overseas for entire tax year:***

*Working o/seas for an average of 35hrs per week*

*No breaks from o/seas work of > 30 days*

*No more than 30 days working in UK*

*No more than 90 days in the UK*

When working overseas, the following are considered to be tax free benefits if provided by the employer:

- Cost of overseas accommodation

- Any number of return trips home

- Up to two return trips per tax year for spouse/minor children to visit the employee, provided employee is overseas for ≥ 60 days

O/s service impacts on extent to which termination payments are taxable (complete or proportional exemption)

### A5.2c Arriving in the UK

If the individual was non-resident in previous year the tax year can be split if:

1. The individual arrives to take up fulltime work:

* Work must be for ≥ 365 days starting in this tax year; and
* Must not have sufficient ties for period before he starts work in UK
  + To decide number of ties required: (Number of days present in UK before taking up full time work) x n/12, where n=number of days in tax year before his arrival.
* Individual is classed as resident from date he takes up UK work.

1. The individual ceases full time work abroad and returns to UK:

* Must be in UK in at least 1 of the 4 tax years immediately before this year; and
* He must meet the full time work o/seas test for part of current year, if reduced proportionately for the number of complete months after the last overseas day. Individual is classed as being UK res from the day after the day he ceases overseas work.

1. If the individual returns with a partner who has returned from full time work overseas.
2. In certain cases where an individual acquires a UK home partway through the year.

## A5.3 Overseas aspects of Income Tax (Pg. 30)

### A5.3a Employment Income

- Employment income is taxable as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Duties performed wholly or partly in the UK** | | **Duties performed wholly outside UK** |
|  | **In the UK** | **Outside UK** |  |
| **UK resident and UK domiciled** | Arising | Arising | Arising |
| **UK resident but not UK domiciled** | Arising | Arising\* | Possible remittance or arising |
| **Non UK resident** | Arising | Not taxable | Not taxable |

\*A non-UK domicile can apply the remittance basis within the first 3 years of UK residence, subject to further conditions

### A5.3b Other Income

- Income other than employment income is taxable on the following basis:

|  |  |  |
| --- | --- | --- |
|  | **UK Income** | **Overseas Income** |
| **UK Resident and UK domiciled** | Arising | Arising |
| **UK resident but not UK domiciled** | Arising | Possible Remittance |
| **Non UK resident** | Not taxable\* | Not taxable |

***Note:***

- A non-res individual will pay income tax on profits of a trade of dealing in or developing UK land for disposals from 5th July 2016.

- If claiming remittance basis, foreign savings and dividend income both taxed as NSI. PA can be used against UK income but not remitted foreign income.

### A5.3c Personal Allowance

- Can be claimed in full by all UK resident individuals (subject to remittance basis rules)

## A5.4 Remittance Basis (RB)

- Potentially available to individuals who are UK resident but not UK domiciled

- If entitled to claim the RB, you need to consider whether the loss of personal allowance and capital gains AEA and the RBC outweigh the potential savings by not taking the unremitted income.

- An individual should consider if they want to take the RB on a year by year basis

- If RB does apply, consider separating funds to be able to identify which funds are actually being remitted (e.g. capital vs earnings).

- **Calculations for claiming remittance basis vs not claiming remittance (pg. 35**)



RBC = £60k

***Tax Planning – if the loss of personal allowance/AE and the cost of the RBC outweigh the tax saved on unremitted foreign income, the election for the RB should not be made. Election made for fiscal year and joint election must be made for I.T & CGT***

### A5.4a Remittance for Investment Purposes (Exemption) (Pg. 34)

- New rules allowing remittance basis taxpayers to bring funds into the UK without triggering tax charges. Following conditions must be met:

- 1. Remitted funds are used to make a loan to, or acquire shares in an unquoted trading company (incl. companies listed on AIM) which is either UK resident or trades in the UK through a UK permanent establishment

* Funds must be invested within 45 days of being bought in the UK
* Once investment sold, proceeds must be removed from UK or reinvested in another qualifying investment within 45 days
* If conditions for relief are no longer satisfied, the investment must be sold and proceeds either removed from the UK or reinvested in another qualifying investment **within 90 days**
* Election must be made

- 2. No tax charges for a remittance basis tax payer who brings assets into the UK for sale in the UK provided:

* Funds are all received by first anniversary of 5 Jan following tax year of disposal
* Proceeds taken offshore within 45 days of receipt

### A5.4b Remittance for CGT Losses (Pg. 34)

- First year ind uses remittance basis, can only obtain relief for o/s losses if irrevocable election is made

- All UK and o/s losses used in following order:

i) Against remitted o/s gains (lose some DTR)

ii) Against unremitted o/s gains (not charged anyway)

iii) Against UK gains

- if election is not made in first year, relief can never be obtained for o/s losses

## A5.5 Double Tax Relief

- If overseas income is taxed both in UK and o/seas, double tax relief (DTR) will be available to reduce the UK tax liability

- DTR is given in one of two ways:

* Under a DTR treaty agreement
* Unilateral relief

### A5.5a Unilateral Relief

• Include the overseas income gross of o/s tax deducted in the UK IT computation

• Tax under UK IT rates as normal

• Then give a tax credit for the lower of:

1. UK tax on overseas income

2. Foreign tax suffered on overseas income

(1) When there is more than one source of overseas income suffering different rates of overseas tax, then the DTR calculation is more complicated.

• Approach:

**1.** Calculate UK IT liability (before DTR) including all sources of income

**2.** Exclude the overseas source of income suffering the highest rate of overseas tax

**3.** Recompute the UK IT liability – the difference between this IT calculation and the first one is the UK tax on the overseas source of income that has been excluded.

**4.** Exclude the next source of overseas income with the highest rate of tax

Repeat step (3) now excluding both sources – the difference is the UK IT on this second source of overseas income

### A5.5b Tax liabilities of non-UK residents

- Contributions cannot be made to ISA’s when non-resident but existing ISA accounts can still be maintained

- Non UK residents can apply to received interest income gross

- Tax liability for non-UK residents on interest and dividends is limited to the tax, if any deducted at source. Other UK income (trading, employment and property) is taxable as normal (no PA or DTR)

- Alternatively, if entitled to PA despite being non-resi, may prefer to claim PA and tax entire UK income

## A5.6 Overseas aspect of Capital Gains Tax (Pg. 30)

- Residence and domicile status of an individual is important in determining the gains on which they are assessed:

|  |  |  |
| --- | --- | --- |
|  | **UK Gains & Losses** | **Overseas Gains & Losses** |
| **UK Resident & UK Domiciled** | Arising | Arising\* |
| **UK Resident & no UK Domiciled** | Arising | Possible remittance |
| **Not UK Resident** | Not taxable | Not taxable |

\*Previously RB users but now deemed domicile, use MV of assets on 6/4/17 as base cost for disposals

### A5.6a Non-UK resident individuals

- From 06/04/15 UK CGT is due on the disposal of UK residential property by non-UK resident individuals, trusts and close companies.

- Only the gain post 05/04/15 is taxable (use MV at that date as deemed cost). Alternatively, calculate total gain and time apportion (election required)

### A5.6b Temporary non residence

- Anti-avoidance rules to stop people taking adv of non res status by delaying disposals or income receipts until after they become non resi. If rules apply, the income/gains are taxed in the year of return & apply when:

* An individual ceases to be UK resident AND
* Has previously been UK res for at least 4 out of the last 7 tax years AND
* Non-resident for a period of less than 5 years

- Rules apply to:

* Capital assets acq at a time when the individual was UK resident but disposed of when non-resident (res prop – tax at disposal, com prop – tax on return to UK)
* Certain div recvd from close companies and paid out of retained earnings at the time the individual creased to be UK resi
* Income relating to the write off of loans from close companies
* Income taxed on a remittance basis which accrued during a period of UK residence but was remitted during the period of non UK residence

\*tax planning\* there is still a cashflow advantage of remitting income when left the UK but not a tax advantage anymore as tax is charged on the year of return.

## A5.7 Overseas aspect of Inheritance Tax

• For an individual’s liability to Income Tax and Capital Gains Tax we consider their residence and domicile, for inheritance tax we only look at an individual’s domicile.

• If UK domiciled or deemed domiciled – pay UK IHT on worldwide property.

• If non-domiciled – pay UK IHT on UK property only.

**• Deemed domiciled:**

- If UK resident for 17 out of last 20 years, or

- For 36 months after losing UK domicile status

• Transfers between spouses are exempt, however if a transfer is made by a UK domiciled individual to a non-domiciled spouse, only the first £325,000 of the transfer is exempt.

• From 06/04/13: A non-dom spouse/CP can elect to be treated as UK domiciled (for IHT purposes only) so that the maximum cumulative limit of £325k exempt transfers does not apply. This election is irrevocable but ceases to have an effect once the non-UK dom individual has been non-UK res for 4 successive tax years.

• Where assets are included in death estate but situated overseas, additional expenses incurred of up to 5% of value of property may be deducted from value of overseas property.

**• Location of assets:**

- Land and buildings – physical location

- Debt – where debtor resides

- Shares – where company registered

- Life policies – where the proceeds are payable

- Bearer securities – where certificate of title is located at time of transfer

- Interest in a partnership – where partnership business is carried on

- Goodwill – where business to which it relates is carried on

- Cash at bank – branch location

• Where assets are subject to DTR, relief against the UK IHT liability is available.

## A5.8 VCT/EIS/SEIS (Pg. 9)

* **Three main schemes to encourage investment by individual investors**
* **Knowledge intensive cos = creates IP that is used for its main business activity/employs >20% of skilled e’ees who are engaged in R&D**

|  |  |  |  |
| --- | --- | --- | --- |
|  | 14. VCT [Venture Capital Trust] | 15. EIS [Enterprise Investment Scheme] | 16. SEIS [Seed Enterprise Investment Scheme] |
| **Overview** | **Quoted** co’s; approved by HMRC, use funds to make and manage investments.  Rather than an individual investing in unquoted shares; they can do this via the VCT’s. | Intended to encourage individuals to invest in small unquoted companies.  Reliefs available to ‘qualifying individuals’ who make ‘qualifying investment’ in the form of new ordinary shares issued for commercial reasons. | Similar to “EIS” aimed at small start-up companies  Note: this is for new unquoted companies in start-up phases. |
| **Qualifying Company** | - VCT Quoted on UK Stock Exchange  - Income is derived from shares in **unquoted trading** companies  - Company in which the VCT invests must have **fewer than 250 full-time employees + not raised >£5m under EIS and VCT in previous 12mths (£10m for knowledge intensive cos), gross assets <£15 million** | - **UK unquoted trading company** (high risk, lose investment)  **- Gross assets before issue < £15m**, after issue < £16m  - **<250 full time employees** at date of issue (<500 knowledge intensive co’s) & not raised >£5m in last 12 months (£10m knowledge intensive) and in total >12mil (£20m knowledge intensive) under EIS/VCT in previous 12mths  - Does not control any other company (except 90% subs) and is not under the control of another company  - Not in financial difficulty  - First funds raised under EIS/VCT must have been within 7yrs of first commercial sale (10yrs knowledge intensive) | - **UK unquoted trading company** (high risk)  - Cos trade must be **new** (less than 2 years old)  - **Gross assets before issue <£200k**  - **< 25 full time employees**  - Must not previously raised funds via EIS/VCT scheme and no more than £150k through SEIS  🡨 Same control requirements as EIS |
| **Qualifying Investor** | - Individual is at least 18 and subscribe for newly issued shares (not bought from a previous shareholder) | - Individual unconnected to company (not employee /director - together with associates, nor do they own 30% of the issued share capital)  - Investor need not be UK resident | 🡨 Same as EIS conditions |
| **Income Tax Relief** | **- 30% X amount invested (max relief: £200k per year)**  - Deducted from IT Liability (restricted to liability – i.e. can’t be in a repayment position)  - Relief in year of purchase  - No option to carry back | **- 30% X amount invested (max investment: £1m or £2m for knowledge intensive co.) (Relief in tax year or c/b 1 year)**  - Deducted in arriving at IT liability (restricted to liability – i.e. can’t be in a repayment position)  - No minimum qualifying investment  - Can elect to treat the investment as if it were made in the previous tax year and c/fwd leftover relief to the year in which the actual investment was made. | **- 50% X amount invested (max investment: £100k per yr) Relief in tax year shares are purchased.**  - Deducted in arriving at IT liability (restricted to liability – i.e. can’t be in a repayment position)  - No minimum qualifying investment  - Can claim to carry back part of the relief (up to £100,000) to previous tax year.  - no relief until co spend ≥70% of funds invested |
| **Withdrawal of IT Relief** | - Shares **sold within 5 years** then full relief removed (still have cashflow adv). Therefore keep for 5yrs then sell | - Shares sold within 3 years:  + if sold at a gain; full investment relief withdrawn  + if sold at a loss; investment relief withdrawn based on [*Proceeds x Effective rate of relief given (usually 30%)*]  - Relief withdrawn by bringing it back into charge in tax year of disposal. | - Shares sold within 3 years:  + if sold at a gain; full investment relief withdrawn  + if sold at a loss; investment relief withdrawn based on [*Proceeds x Effective rate of relief given*]  **- bring relief into charge in tax year relief was originally taken (Different from EIS)** |
| **Dividends Received** | - Tax free; regardless of length of ownership | - Dividends are fully taxable | -Dividends are fully taxable |
| **Capital Gains/Losses** | - Gains are exempt and losses are not allowed (regardless of period of ownership) | - Gains on shares after 3 year holding = exempt  - Capital losses allowed (offset against general income CY/PY)  - In calculating gain/loss - the ‘cost’ of shares is reduced by amount of EIS Investment Relief not claimed back by HMRC. E.g. allowable cost = cost – amt of IT relief claimed and not withdrawn (see withdrawal rules above) | - Gains on shares after 3 year holding = exempt  - Capital losses allowed (offset gen income CY/PY)  - In calculating gain/loss the ‘cost’ of shares is reduced by amount of SEIS Investment Relief not clawed back |
| **Deferral/ Reinvestment Relief (EIS is deferral/SEIS reduces)** |  | - ANY asset is sold and gain reinvested in EIS then defer gain:  1) Investor must be UK resident  2) Reinvestment must be 12m before and 3yrs after disposal  3) Max EIS deferral relief is lower of:  gain on old asset &  ii) subscription cost of new EIS shares.  4) Can claim a lower amount to utilise AEA  5) Deferred gain becomes chargeable at earlier of (3 points):  i) sale of EIS shares; ii) cease UK res <3 years; iii) shares no longer eligible/co no longer qualifies <3 years  6) ER relief only available on the deferred gain if original disposal is on/after 3rd Dec 2014. | - if any chargeable asset is sold and proceeds are reinvested **in the same year** the gain is EXEMPT  1) **Maximum exemption is 50% of the lower of**  a) amount of gain or b) subscription cost of new SEIS shares  2) EIS deferral and SEIS exemption can’t be claimed on same expenditure  3) Election made to treat SEIS investment as made in PY, reinvest relief also treat as same year  4) If SEIS shares sold within 3yrs – reinvestment relief will be withdrawn & adjustment made to original CGT comp. |

Section B - Businesses

# B1 Unincorporated Business

## B1.1 Adjustment to Profit (Pg. 386)

### B1.1.1 Proforma Adjustments

|  |  |  |
| --- | --- | --- |
|  | £ | £ |
| Net profit per accounts |  | X |
| Add: Disallowable expenditure | X |  |
| Taxable Trading Income not credited in accounts  *(taking goods for own use)* | X | X |
|  |  | X |
| Less: Income incl. in accounts not taxable trading income | X |  |
| Expenditure not charged to account but allowable | X |  |
| Capital Allowances | X | (X) |
| Adjusted profit/(loss) for accounting period |  | X |

### B1.1.1a Disallowable Expenditures (add back)

- Expenditure on Capital Assets (e.g. **depreciation**/ Loss on sales of Fixed assets)

- **Appropriation from profit** (business owner salary/drawings, private element of expenditure, unreasonable payment to family)

- Movement in **General Provision** (movement in specific provisions allowed)

- Write off **non-trade debt**

- Expenditure for **client entertainment** (entertain staff allowed)

- Gift of small trade samples allowed

- **Gifts to customers** (allowable if <£50/recipient/yr, not food/drink/tobacco/ vouchers, carries conspicuous ad of business)

- Disallow **donations** to national charity (allow for small local charities)

- **Subscription** and donation to political parties

- **Fines** unless parking fines incurred by employee (not business owners)

- **Legal fees** relating to acq of capital assets (allow for fees for long term debt finance, cost of reg patents/copyrights, expense of renewing short lease but not on initial grant)

- **Leased motor cars**: CO2 >110g/km, disallow 15%XHire Charge

- **Interest on late tax payment**

- **Lease premium on grant of short lease**

- **Employment** payments and pensions (generally allow except for cessation of trade, allowable amt restricted to 3Xstatutory redundancy pay)

- **Pre-trading expenditure** allowable (provided if deductible if trading & incurred 7yrs prior to trade commencing)

### B1.1.1b Taxable Trading Income not credited in accounts

- Sole trader removes goods from business for own use

i) if correctly treated in accounts – add back profit element

ii) if still included in purchases (no adj made to acc), add back selling price

### B1.1.1c Income incl. in accounts not taxable trading income

- Income shown elsewhere on I.T. computation (eg Rental Income and Savings Income)

- Income exempt from Tax

### B1.1.1d Expenditure not charged to account but allowable deduct

- Capital Allowances

- Business expenses borne personally by owner

### B1.1.2 Cash Basis

- Traders with turnover less than £150k can choose to be taxed on cash basis

- Interest in excess of £500 not deductible

- Expenditure on Capital Assets qualifying for P&M (excluding cars) deducted on cash basis.

## B1.2 Capital Allowance

### B1.2.1 100% FYA

- New low emission cars (≤50g/km Co2)

- New zero emission goods vehicles

- Designated energy saving and water technologies

- Research and development CAPEX

- Expenditure by co on new P&M after 1/4/12 in designated enterprise zone

### B1.2.2 AIA

On all expenditure except cars

- 1/1/19 to 31/12/20: £1,000,000

- From 1/1/21: £200,000

\* For straddling acting periods, calc on pro-rata basis (only max £200,000 for expenditure incurred after 1/1/21)

### B1.2.3 18% WDA

Main pool

- P&M, F&F

- All vehicles except cars with CO2 >130g/km (160g/km btwn 6/4/09 – 5/4/13)

- Second hand low emission cars

- Cars emissions ≤130g/km

### B1.2.4 6% WDA

Special Rate Pool (8% prior to 6/4/19 – pro-rata for straddling periods)

- long life assets > 25 yrs

- Solar Panels

- Integral Features

- Cars acq with CO2 > 110g/km (130g/km before 5/4/18)

- Thermal Insulation

\* Election can be made for assets (other than cars) that would ordinarily go into Main Pool to be “depooled”. If sold within 8 yrs of the end of period account of purchase, bal adj will arise

## B1.3 Sales of Business to Third Party/Connected Party (Pg. 144)

-Normally if a sole trader sells or transfers their P&M, it is deemed sold at MV so balancing adjustment arises. If to a connected party, a joint election may be made to transfer at TWDV (succession election).

### B1.3.1 Sole Trader Sells/Transfer Business

- Cessation of trade (use closing year rules)

* Loss relief: terminal loss relief, CY or PY vs total income

- Bal Adj arise on market value

- Add SBAs claimed to date to proceeds in gains calculations

- Stock: dispose at market value = trading income

- CGT: disposal for each asset (AEA, BADR, rollover relief, EIS/SEIS)

- SDLT on L&B

- Gift business: IHT (BPR 100%)

- VAT: TOGC treatment likely (outside scope of VAT), VAT for property (OTT)

### B1.3.2 Sell/Transfer to Connected Party

- Cessation of trade (use closing year rules)

- Assets deemed sold at MV

- Bal Adj arises OR jointly elect to transfer at TWDV

* No bal adj
* No WDAs, AIAs ,FYAs in final period of acc for sole trader
* Elect within 2yrs of succession date
* Often used on incorp and transfer business to close relative

### B1.3.2a Connected Party

- Spouse/civil partners, Relatives (bro, sis, ancestors, lineal descendants) and Spouses of Relatives, Relatives of Spouses

- One is partnership and other has right to share in partnership

- One is co and other has control over

- Both are partnership and another person has right to share in both partnership

- Both are co (or one co, one partnership) and another person has control over them

## B1.4 Basis Periods (Pg. 390)

### B1.4a Opening Year Rules

*First Tax Year*:

- Actual Basis – Start of trade to following 5 Apr

*Second Tax Year:*

Is there a Period of Account?

- ***Yes*** - length of POA:

• 12mth – CYB (12 month set of accounts in tax year)

• <12mth – Tax first 12 months of trading (from date of commencement)

• >12mth – tax last 12mth

- ***No***, tax ACTUAL TAX YEAR (6/4 – 5/4)

*Third Year:*

- CYB

### B1.4b Closing Year Rules (Cessation to Trade)

- Last tax year= year cease to trade

- Tax all profits not yet assessed in PY, less Overlap profit from commencement

## B1.5 Trading Loss Reliefs (Pg. 109)

|  |  |
| --- | --- |
| S83 c/f (Default)  - C/f against first available future trading profits of same trade,  - as much as possible, as soon as possible  - automatic  - c/f is indefinite (until utilised)  - Must agree amount of loss within 4yrs of end of tax year of loss | S64 – c/y & p/y (Any order)  - against total income in current year and/or prior year (in any order),  - all or nothing claim over the 2 years (cannot restrict to use PA)  - election must be made (within 12mth from 31 Jan following end of tax year of loss)  -Income restricted to higher of £50k or 25% of ATI (see B1.6) |
| **S72 loss relief on commencement of trade against total income**  *-* Helps new businesses survive the initial years of trading – a special loss relief available for losses that arise in first 4 tax years of trade.  - Elect to carry back loss to 3 previous tax years on FIFO basis against general income (can be carried back before trade starts against other e.g. employment inc)  - Optional but ‘all or nothing’  - Claim applies to all 3 years  - Cannot restrict to use PA  - Elect within 12mths from 31 Jan following end of tax year of loss  - Available in addition to s64 & s83  - Income restricted to higher of 50k or 25% of ATI (see B1.6) | **S89 terminal loss relief (cease)**  - relief for loss in last 12m of trade  - available in addition to s64 relief  - can set against trading income of previous 3 tax years (LIFO)  - optional but ‘all or nothing’  - elect within 4 years of end of last tax year of trading   |  |  |  | | --- | --- | --- | | Trading loss from 6/4 till date of cessation (last tax yr) | X |  | | Add: overlap profits not year relief | X |  | |  |  | X | | Trading loss from 12mth before cessation to following 5 Apr (pre-ultimate yr) if this is a net profit, ignore. | x |  | |  |  | x | | Terminal loss |  | x | |
| **S86 loss on incorporation**  - s83 loss relief isn’t available when a sole trader incorporates business and hence accumulated trading losses are lost.  - However, s86 relief may be available to offset trading losses b/f from sole trader trade against income derived from the company (salary/divis rec’d from the co by the old sole trader)  - Firstly against earned income (e.g. salart) and then DI for each tax year.  - Conditions: sole trader must receive 80% of consideration on incorporation in the form of shares  - Claim within 4 years of end of tax year to which claim relates to | **S261B – relief for trading losses against chargeable gains**  - This is extension to s64 claim - must do s64 first  - offset trading losses against gains in current year and or prior year  - Must make election of offset loss against: i) Both year  ii) Either year  iii) in any order  - Election made within 12mth from 31 Jan following end of tax year  - **All or nothing claim (hence need to work out if wasted Annual Exemption) – use first before b/f capital losses as they can be restricted to preserve AEA.**   |  |  | | --- | --- | | Trading loss that can be offset against capital gain, Lower of: |  | | 1. Trading loss after S64 |  | | 1. Max amount |  | | Total Capital Gain | X | | Less: total Cap loss for yr | (X) | | Less: total Cap loss b/f (must offset in full when calculating this amt even if only a partial claim is made in reality) | (X) | |

**Anti-avoidance Provision**

- if a trader spends <10h/wk running business, loss relief under s64/s72 restricted to max £25k. Any remaining c/f under s83

-partners in LLP may only claim s64 and s72 up to a max of their capital contributions into partnership, excess loss c/f under s83

### B1.5a Loss Planning (Pg. 111)

1. Show income with no losses (except any b/f at start of year which must be offset)
2. Discuss all options available & tax savings with each one

* CY/PY saves tax now (c/f have to wait)
* Future profits uncertain
* Avoid wasting PA (reduce NSI to level of PA, reduce SI to level of SRB & PSA, reduce DI to level of DNRB)

1. Decide which option is best and why, usually best to claim s64 as immediate repayment esp if higher rate tax payer or cash flow problems
2. Depending on question do tax calc with your choice of loss relief

## B1.6 Restriction on income tax reliefs against total income

- There is a restriction on amount by which loss relief and certain other deduction can reduce taxable income. This only applies to total income. There is no restriction for trading losses used vs trading losses.

- Limit is the greater of:

* £50k and
* 25% of adjusted total income of the year in which deductions are offset (adjusted total income = total income plus payroll giving donations less grossed up personal pension contributions)

- Restriction applies to losses relieved under S64 and S72 ITA 2007 relief for losses on unquoted shares, property losses and interest on loans taken out to invest in a close co.

# B2 Chargeable gains

## B2.1 CGT

|  |  |
| --- | --- |
| Chargeable Disposal | Sale or gift of all or part of an asset  Excludes gifts to Charities, on death, between spouses |
| Chargeable Asset | All assets unless EXEMPT  - Exempt (Cash, Car, Gilt-edged (Govt/Treasury) securities and Qualifying Corp Bonds (denominated in Sterling, Non-convertible, normal commercial loan paying interest not excessive/contingent on performance), National Saving Certificates, Premium Bonds, Prizes and Betting Winnings, Assets held in ISA, Wasting Chattels (predictable life <50yr), non-wasting chattel bought and sold <£6k) |
| Chargeable Person | Any individual (resi in UK), business partners and trustee |

### B2.1.1 CGT Calculation (Pg. 382)

|  |  |
| --- | --- |
| Proceeds (MV if gift/sales @ undervalue) | X |
| Less: Incidental cost of disposal (auctioneers fee, estate agent fee, legal costs) | (X) |
| Less: Cost of Acquisition (Purchase px, MV, Probate Value) | (X) |
| Less: Incidental Cost on Acquisition (legal fee, surveyors fee) | (X) |
| Less: Enhancement expenditure (new extensions, architect fees) | (X) |
| Gain | **X** |
| Reliefs: |  |
| Rollover relief | - |
| Incorporation relief | - |
| Gift Relief | - |
| SEIS reinvestment Relief | - |
| EIS reinvestment relief | - |
| **Chargeable gain** | **X** |
| Annual exemption | (12,300) |
| **Taxable Gain** | **X** |

- Gains falling in basic rate band (if any remaining after taxing the individual’s income are taxed @ 10%/18%

- Gains falling in the higher rate band tax @ 20%/28%

- BADR may be available to reduce to 10%

- CGT for all trusts = 20%/28%

- Pay CGT by 31 Jan after tax year and 30 days after completion of res property

\* all assets owned before March 1982 should use March 1982 value as costs in subsequent disposals(rebasing)

### B2.1.2 Part Disposal (Pg. 382)

## B2.2 Capital Losses

- Deduct CY capital losses from CY capital gain (can’t use against other income)

- Offset as much as possible (can’t preserve AE)

- Any excess is c/f

Capital losses b/f:

Set against first available future capital gains

But loss must be restricted to preserve AE (i.e. net gain made equal to AE)

- Otherwise can use S261B relief against trading losses (see loss relief above)

## B2.3 Transfer between Married Couple/Connected Person (Pg. 383)

### B2.3.1 Married Couple

- Husband and wife taxed separately -> use two AEA + both BRB + Use unrelieved capital losses

- transferred at NGNL (deemed to dispose at acquisition cost and becomes base cost to transferee)

- Any actual proceeds are ignored

- Spouse are living together (not separated at beginning of tax year)

### B2.3.2 Connected Person (excl Spouses)

Connected parties + settlor of trust is connected with trustees of trust

- Proceeds = MV @ date of disposal (regardless of consideration)

- Where capital loss is made on disposals to connected person, can only be **relieved** against disposals to **same connected person**

### B2.3.3 Deferred consideration (Pg. 55)

If some consideration is dependent on a future event, how it is taxed depends on whether the future consideration is known at the time of original sale.

-If **no consideration** and the payment is to be made in **instalments**, there is a single gains calc where total proceeds are included

- **Future payments contingent but known**: if a fixed amount to be paid, there is a single gains calculation where total proceeds receivable included. If contingency not met, computation is amended.

- **Future payments contingent and unknown**: 2 disposals:

1) disposal of asset: proceeds + PV of ‘chose in action’ (estimate of what we think we’ll get) – cost = gain.

2) disposal of chose in action: Proceeds – cost (PV chose in action) = gain

-If capital loss arises on chose in action, it can be carried back against the original gain for individuals.

- BADR never available on second gain (disposal of chose in action).

## B2.3 Rollover Relief (Pg. 63)

- replacement of business assets relief

- available for sole traders/partners and companies

### B2.3.1 Operation of relief

- Deduct gain arising on disposal of the old asset from the acquisition cost of the new asset = rolling over the gain

- If **proceeds are fully reinvested** -> all gains deferred and no tax is payable at time of disposal

- If **partial reinvestment**, gain equal to net proceeds not reinvested (tax now)

- Deferred gain arises on disposal of new asset by effectively increasing the gain arising on the disposal as its base cost has been reduced by rollover relief

- Relief is not automatic, **must be claimed**

### B2.3.2 Conditions

- Qualifying business asset sold at gain, proceeds reinvested within qualifying time period

Qualifying Business Assets – goodwill (not for co); L&B; Fixed P&M

*Both old and replacement assets must be QBA and used in a trade*

Qualifying Time Period – 1 year before; 3 years after sale of old asset

### B2.3.3 Partial Reinvestment of Proceeds

- Partial gain is chargeable at the time of the disposal, lower of:

- amount of proceeds not reinvested

- the full gain

### B2.3.4 Non-business Use

- If asset used for business and non-business, only gain relating to business proportion is eligible for ROR

- if replacement asset is used partly for business and partly non-business, relevant replacement cost is the business proportion.

### B2.3.5 Depreciating Assets

- Depreciating asset = expected life of ≤60yrs

- Gain crystallises on earliest of:

- disposal of dep asset

- ten years from acq of dep assets

- date depreciating asset ceases to be used in trade

- deferred gain not deductible from cost of assets acq

- Fixed P&M always treated as dep asset

- deferred gain held over against dep asset can rollover to non-dep assets if non-dep asset acq before gain become chargeable

## B2.4 Business Asset Disposal Relief (BADR) (Pg. 58)

### B2.4.1 Qualifying disposals

- Available on disposals by individuals (not companies):

* Sale on all/part of trading business by individual
* Sale of assets used in sole trader/partnership (sell within 3 yrs of cessation)
* Sale of shares by individual: 5% ownership, trading co, held for 2 years, working for the company (if not working – investors relief)
* Associated disposals, see B2.4.3 below
* Shares issued under an Enterprise Management Incentives (EMI) option scheme

- All of above must have been **owned for at least 2 years** (for EMI shares the one year runs from date of grant and not acquisition)

### B2.4.2 Operation of relief

- BADR claimed by:

* Netting off gains and losses in respect of the business disposal e.g. a no. of assets may be disposed of in conjunction with a business
* Taxing the gain at 10% (after deduction of losses and the annual exempt amount)
* A claim must be made – **not automatic!**
* **Losses and the annual exemption** should, where possible, be **set against other gains (at higher tax rate) before gains qualifying for BADR**
* BADR gains use remaining BRB (extend for gift aid/personal pension contributions) before other gains
* Time limit for claim is 12mth from 31 Jan following tax year which qualifying disposal was made
* Applies to first qualifying new gains up to lifetime limit of £1m. Gains in excess of the lifetime limit will be charged to CGT as normal.

### B2.4.3 Associated Disposals

* Individual eligible to claim BADR relating to:
  + Dispose of whole/part of interest in partnership (> 5%)
    - Treat as material disposal if < 5% but dispose of entire holding previously > 5%
  + Disposal part of the withdrawal from the business
  + Assets being sold have been owned for 3 years prior to disposal
  + Assets used for the purpose of the business for 2 years prior to disposal
  + assets owned personally and rent/given to company to use.
* But property will not be eligible to BADR if it is let to business at full market rent. Partial relief applies if it let at a reduced rent and full relief if let rent free.

## B2.5 Gift Relief

### B2.5.1 Qualifying gifts

* Assets used in trade of donor (where he is a sole trader) or donor’s personal company (owns at least 5%)
* Unquoted shares/securities in trading company
* Full relief available for gain on any asset with immediate charge to IHT (CLT)
* Joint claim made within 4 years following end of tax year in which gift was made
* Deferred gain reduces base cost for donee

|  |  |
| --- | --- |
| **Donor** | **Donee** |
| Gain calc using MV as proceeds | Acq cost deemed to be MV |
| Gain not chargeable but deducted from acq cost for donee | Gain accruing to the donor is deducted from the acq cost |

### B2.5.2 Operation of relief

* If gift: calculate gain using MV at date of gift
* Defer whole gain using gift relief.
* Asset deemed to be acquired at MV at date of gift
* Base cost is reduced by this GR claimed.

### B2.5.3 Sale at undervalue

- Gain chargeable to CGT is excess of actual proceeds received over cost (profit)

- Gift Relief is balancing figure.

- Still use MV as disposal proceeds

### B2.5.4 Shares in Personal Company

- Gift of shares in which donor owns > 5%

- Gain eligible for gift relief is restricted:

- CBA: buildings + P&M > 6k

- CA: CBA + shares (investment)

### B2.5.5 Interaction with BADR

* Do GR then BADR. If gain left is covered by AEA, do not claim BADR as no tax will be saved but it will go towards lifetime limit.
* If asked to work out how much to charge at undervalue, work out using simple formula, leaving AEA left as a gain so it is covered.

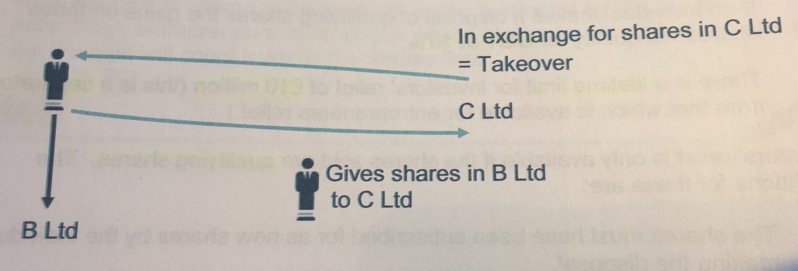
## B2.6 Investors relief (Pg. 62)

* If individual makes disposal of qualifying shares CGT charged at 10%.

Qualifying shares:

* + Must have been subscribed for as new shares by individual making disposal
  + Must be an unlisted trading company
  + Issued on/after 17/3/16 and held for 3 years from 6/4/16
  + Continually held for period of 3 years before disposal
* Lifetime limit = £10m (separate to BADR lifetime limit, higher limit)
* BADR difference: No minimum shareholding and no requirement for taxpayer to be employee or officer of company.

## B2.7 Takeovers and reconstructions (Pg. 68)



4 possible different considerations:

- Paper for paper: Individual gives shares in B Ltd in exchange for shares in C Ltd

- Exchange for different class of share capital

- Receipt of shares and cash

- Receipt of loan stock

- Individual ‘sold’ shares ∴ gain arises. No cash proceeds so gain is deferred.

- Old gain only realised when new shares are sold

- Applies to individuals and cos.

### B2.7.1 Mixed Consideration

If mixed consideration is received (cash & shares) original cost of old shares needs to be apportioned between different forms of consideration. Calculate the cost of initial shares that relates to each type of consideration. ((Apportioned cost = consideration received of that type/total consideration received (all types) \*original total cost))

1. Receive new shares:

* New shares take on apportioned original cost & acq date of old shares
* No gain arises until new shares are sold

1. Receive cash

* If cash ≤ 5% of value of total consideration, or ≤ £3,000 then no gain is charged & cash received is deducted from base cost of shares
* Otherwise, a gain will arise based on apportioned part of original cost

1. Receive QCB’s

* A gain will arise based on apportioned part of original cost
* Gain is deferred until the QCBs are disposed of
* Disposal of the loan stock itself is exempt from CGT

1. Receive non-qualifying corporate bonds

* Treated same way as shares

E.g. 5,000 shares in company A bought 6 months ago for £30,000. Company B takes over co. A and offers me the following consideration:

10,000 shares valued @ £10 each, £30,000, £50,000 QCBs

Tax consequences:

Receives Market Value Split cost/base cost

10,000 shares £100,000 30,000x100k/180k = £16,667

£30,000 cash £30,000 30,000x30k/180k = £5,000

£50,000 QCB £50,000 30,000x50k/180k = £8,333

£180,000

Treatment: Shares – no gain now, new shares take base cost of £16,667

Cash – Gain now of £25,000

QCBs – Gain now as £41,667 but deferred until loan stock sold

Note: In exam don’t usually specify whether the corporate bond is qualifying or non-qualifying. ∴ make an assumption *‘Assuming that this is a QCB, this would happen… but would need to confirm with the client whether they are qualifying’*

### B2.7.2 Share for Share Relief (Paper 4 Paper)

- New shares stand in shoes of the old (no gain chargeable at disposal)

- Treat as purchased for original price on the original date

- Disposal of shares: BADR for new shares, maybe non-BADR for old shares

- Directors shares transfer: look to be director/employee in new co for BADR, if not then disapply P4P

### B2.7.3 Disapplication of share for share exchange relief

- It is possible to disapply share for share exchange relief

- May be beneficial if the individual’s old shares would have qualified for BADR but any future disposal of the new shares will not.

- Can realise gain now rather than in the future. May be beneficial to do this if they got BADR or AEA to use up

### B2.7.4 Takeovers involving QCBs and interaction with BADR

- If QCBs are received under a takeover the normal rule is to calculate the gain in respect of the disposal of the shares and defer the gain until the QCBs are disposed of.

- If disposal of original shares qualifies for BADR then this will be available on the takeover if the following condition is met:

* An election must be made not to defer the gain on the shares
* The gain is chargeable at the time of the takeover and ER claimed.

- Disposal of debentures: chargeable gain, NTLR profit (sales proceeds vs MV at takeover)

## B2.8 Incorporation Relief (Pg. 146)

### B2.8.1 Conditions of relief

- **Automatically** applies provided the following **conditions are met:**

* Business transferred as a **going concern**
* **All assets** are transferred (except cash) to the company
* **Consideration** received is wholly/party in **shares**

### B2.8.2 Operation of relief

-Transfer business to a company in exchange for shares so chargeable gains arising can be deferred by **reducing base cost of shares**

- Consideration is wholly shares: full relief given i.e. all gains deferred

- Consideration partly shares:

- Cash consideration can be manipulated to leave gain covered by capital loss/AEA

Section C - Corporates

# C1 Corporation Tax

## C1.1 Definition & Proforma

CT payable by UK resident companies on worldwide TTP. If acc period is > 12 months, split into first 12 months + remaining balance

**TTP & CT Proforma**

|  |  |
| --- | --- |
| **Trading Income**  *(adjusted trading profit less CA)* | X |
| *Less: S45 c/f loss relief* | (x) |
| **Property Income**  *(UK & Overseas property income)* | X |
| **NTLR**  *(non trade interest received and paid)* | X |
| **Co Distributions**  *(div – usually EXEMPT apart from CFC)* | X |
| **Net CG**  *(chargeable gain less capital losses)* | X |
| **Total Profits** | X |
| *Less: S37 CY or c/b loss relief* | (x) |
| **Less: Qualifying charitable donations** | (X) |
|  |  |
| **TTP** | **X** |

### C1.1.1 Dividends (Pg. 171)

* Majority of div from UK & o/s co. exempt from CT
* Recvd by **small co**. – exempt if from UK co. or co. in country with double tax treaty or paid out of chargeable profits under CFC rules AND the dividend is not paid as part of a scheme that has a main purpose of obtaining UK tax advantage.
* Dividends received by **companies which are not small** are exempt if they meet one of:
* Received from a company that is controlled by the recipient (subsidiary)
* Relate to non-redeemable ordinary shares
* Received from a portfolio holding (i.e.<10% holding)
* Relate to a transaction not designed to reduce UK tax
* Relate to shares accounted for as liabilities (redeemable preference shares)

Exempt dividends: include as ‘exempt ABGH distributions’ for augmented profits

Augmented profits = TTP + Dividends **(no relief for withholding tax suffered)**

**Small co:** <50 Employees and either:

* Annual turnover ≤ €10m (£8.5m) or
* Balance Sheet (total asset) ≤ €10m (£8.5m)

### C1.1.2 Corporation tax rates

- FY 2017 to FY 2020: 19%

- FY 2016: 20%

### C1.1.3 Adjustment to Profits – Capital Allowances

* **FYA**: 100% energy saving tech. & low emission cars (FY20:50g/km)
* **AIA**: £200k (from 1/1/21), £1m (to 31/12/20) – pro-rate if straddles period (max £200k if expenditure incurred after 1/121)

*(tax planning = allocate against those with lowest WDA)*

*-***WDA’s** reducing balance

- 6% 🡪 long life assets (>25 years), integral features & insulation in the ‘special rate pool’

- 18% 🡪 all other assets

### C1.1.4 NTLR – Loan Relationship Rules (Pg. 203)

|  |  |  |
| --- | --- | --- |
|  | **Trade** | **Non-trade** |
| Interest paid | -Overdrafts  -Debentures  -Loans for P&M | -Rental property loans  -Loans to buy shares  -Overdue/ unpaid CT |
| Interest received | \*Interest on late paying debtors | -Bank interest  -Debentures |

Interest rec. > interest pay. = NTLR income

Interest pay. > interest rec. = NTLR 0 (C/F loss)

- Capital gain/(loss) on NTLR item (e.g. debentures) = NTLR income

- Incidental costs of loan (set up/FX loss), deduct from NTLR

## C1.2 R&D (Pg. 172)

### C1.2.1 Extra Reduction

SME: < 500 employees and either:

* Turnover < €100 million (approx. £87 million)
* Annual balance sheet < €86 million (approx.. £75 million)

SME = Additional trading deduction of **130%** (total 230%)

Externally provided workers:

* Subcontracts to unconnected co: 65% qualifies (i.e. paid x 65% x 130%)
* Subcontract to connected co: lower of provider exp & payment to provider

Large = Claim tax credit of **13%** of qualifying expenditure (12% prior to 1/4/20)

Conditions: Must be new for industry not just co.

* Must be for revenue exp i.e. staff, external staff, consumables, s/ware, utilities
* Cap exp. Qualifies for 100% FYA so excluded e.g. microscopes, lab, hardware

### C1.2.2 R&D Tax Credit for SME (Pg. 172)

If the company is entitled to the extra deduction for R&D but makes a loss so can’t use it (i.e. sell loss to HMRC for cash payment).

* Must be **SME,** and entitled to **extra R&D in year,** and **after extra deduction there was a trading loss**
* Step1: Calculate **surrenderable loss** which is lower of:

|  |  |
| --- | --- |
| **Surrenderable loss:** | **£** |
| Trading loss | X |
| *Possible* s37 CY loss claim (deemed) | (X) |
| *Actual* group relief claim | (X) |
| *Actual* other loss relief claim *(e.g. C/B)* | (X) |
|  | X |

***Or: Restricted to 230% x revenue R&D expense***

- Trade loss is c/f then reduced by loss surrendered to obtain the tax credit

**Tax credit = 14.5% x surrenderable loss**

- Not a taxable receipt

### C1.2.3 Above the line credit for Large Co.

- Above the line tax credit is the only relief available for large companies for R&D expenditure (also eligible for capital allowances on qualifying P&M)

*Under this scheme:*

* Credit is given at rate of 13% of the qualifying R&D spend
* Credit treated as taxable income in TTP computation (increase liability)
* Credit is used to pay CY CT liability (decrease liability)

Liability is less than the credit (excess is remaining credit):

* 1. Offset current year CT as far as possible
* 2. Remaining credit is capped at CY credit less notional CT liability (81% x CY credit)
* 3. Remaining credit is further capped at amount of PAYE & NICs paid by company in respect of R&D workers
* 4. Treat as paying any outstanding CT of other periods
* 5. Balance used to offset other amounts due to HMRC
* 6. Subject to above caps – remaining credit paid to the company

## C1.3 Intangibles (Pg. 177)

When a co. acquires (when operation started/not bought) IFA:

* **Pre 1/4/02 – Capital = Chargeable asset**
  + Ownership – amortisation and profit on disposal not deductible (disallow)
  + On disposal – chargeable gain arises
* **Post 1/4/02 – Revenue – Trading asset**
  + Ownership - trading income deduction for amortisation and profit on disposal Or, 4% SL WDA if election made
  + On disposal – trading P/L arises. (Proceeds- Carrying value)

Note: Goodwill treated differently to other IFAs:

* If incorporates after 03/12/14 deduction for amortisation/WDA not available on internally generated goodwill
* From 08/07/15 this treatment has been extended to include purchased goodwill
* If these assets are sold at a loss, this will create a NTLR deficit, not a trading loss

**Intangibles treated as trading assets:**

4% SL Claimed:

Proceeds X

TWDV (X)

Profit/Loss X/(X)

Accounting treatment followed i.e. amortisation/impairment:

Proceeds X

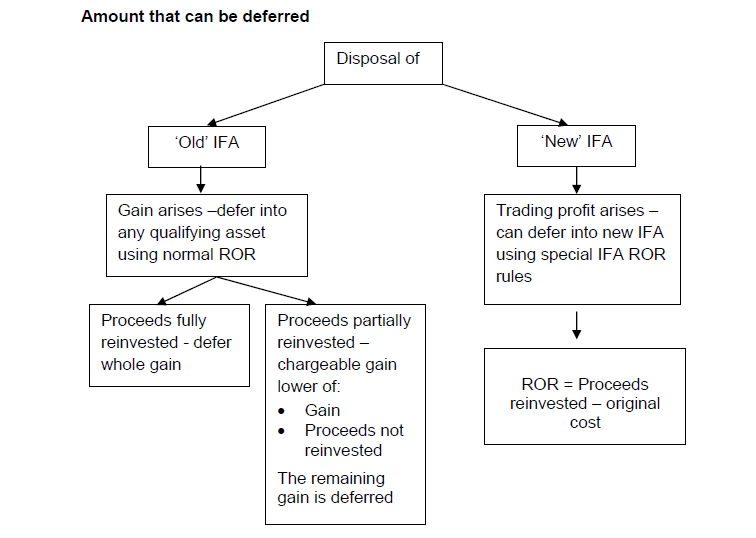
Carrying Amount (X)

Profit/Loss X/(X)

Trading profit or loss on disposal of an intangible acquired on/after 1 April 2002

### C1.3.1 Intangibles & ROR

- Gain on realisation of IFA and reinvest in new IFA – claim for rollover relief



**New IFA rules: - Post 1/4/02:**

1. If full reinvestment of the proceeds is made, the amount eligible for relief is the excess of proceeds on realisation over original cost
2. If partial reinvestment of the proceeds is made, the amount eligible for relief is the excess of the cost of the replacement over the cost of the original asset

Cost of new IFA £ 200 : Proceeds £250 : TWDV £160

|  |  |  |
| --- | --- | --- |
| Reinvest | £300 – FULL (1) | £220 – PARTIAL (2) |
| Proceeds | 250 | 250 |
| TWDV | (160) | (160) |
| Profit | 90 | 90 |
| RoR β | (50) – Proceeds less original cost (250 – 200) | (20) - New cost less old cost (220 – 200) |
| Charge Now | 40 | 70 |

* Relief operates as a deduction from the gain on the old asset & the cost of the replacement asset
* Gains on disposals of IFA’s can be rolled into both the direct purchase of new IFA and/or purchase of shares in a company which holds an IFA

**Reinvestment in shares:**

- If the reinvestment is in shares of a co. that itself owns intangibles, amount reinvested is the lower of:

- The cost of the shares acquired

- The TWDV of the acquiree’s intangibles

*(Tax planning – best to defer against IFA written off over greater number of years – smaller reduction in annual amortisation)*

## C1.4 Patent Box (Pg. 182)

- Patent is an IFA and amortised in SPL, tax relief follows accounting treatment

### C1.4.1 Patent box calculation

- From 01/04/13, co.’s owning patents held for trade **can elect for profits to arise in patent box** relating to patents to be **taxed @ lower rate of CT**.

- co must carry on qualifying development in relation to the patent (developing patent or incorporating patent into products)

**Proforma:**

1. Determine the net profits attributable to each patent
2. Calculate patent box deduction:

**= RP x ( ( MR-IRP ) / MR )**

**RP**: Relevant profits (Below calc x R&D fraction % for each patent)

Profit from patent X

Less: 10% notional cost (10% x costs) (X)

Less: notional marketing royalty (given in qn) (X)

**MR:** Main rate of CT (19%)

**IRP:** Reduced CT of 10%

1. Deduct this amount from total taxable profits (TTP) of the company
2. Tax the remaining profits as normal

### C1.4.1 Patent box relief post-BEPS

- New approach applies to new patent created on/after 1 July 2016 or a company making an election into the patent box treatment on/after 1 July 2016.

**Sub-stream approach (patent-by-patent basis):**

* Company must deal with assets on patent-by-patent basis where there is a link between R&D and the patent developed as a result of R&D expenses. Will require a higher level of record keeping than before for income/exps.
* Profits of each sub-stream x R&D fraction (often given – if not see below). This is **done for each sub-stream and added together**. Total is taxed at 10%.
* R&D fraction = proportion of R&D expenditure that is sub-contracted rather than being carried on in house.
* **R&D fraction:** determine how much is taxed at 10% rather than 19%. Lower of 1 and (D+S1) x 1.2/(D+S1+A+S2)

D: in-house direct expenditure on R&D

S1: R&D expenditure subcontracted to third parties

A: Expenditure on purchase of intellectual property (IP)

S2: R&D expenditure subcontracted to related parties.

## C1.5 Investment Companies (Pg. 184)

- Co. which doesn’t trade so no trading income (only invests) – other sources of income: property, NTLR, Chargeable gains

- **Tax implications –** management expenses automatically deducted from:

* Prop income – if relate to property management
* NTLR if relate to interest income
* Less mgmt. expenses on CT comp: CY & b/f (prior to 1/4/17 atuomatic, after 1/4/17 claim needed)
* Excess GM exp.(losses) c/f & o/set future income/gains or group relief

## C1.6 Company Loss Relief

See proforma on pg. 192

### C1.6.1 Trading Losses (TTP-CA<0)

**- S37 – C/Y then C/B** – against total profit before QCD’s in CY then C/B (or just CY), as much as poss. If short AP preceding period of loss, loss apportioned to c/b for a full 12 mth LIFO. Claim must be made within 2yrs of end of AP of loss.

**- S45 – C/Fwd:**

*Pre 1 April 2017:* Automatically c/f against future trading profit of same trade. Make claim to use none or only part of the loss against future trading profits, within 2 years of the end of the AP in which the restriction is required.

*Post 1 April 2017:* Offset vs total profits. Make claim for relief (can use as much or little as you wish) within 2 years of end of AP in which the loss is relieved.

*(If a AP straddles this date, time apportion & use new and old rules accordingly)*

**- S39 – Terminal ceasing to trade** – Look at last 12 months of trading. C/B 36 months LIFO against total profits (start from beginning of period when loss made & use up all CY profits first, then apply TLR)

**- S39 – Terminal loss relief on c/f losses** (for periods beginning on/after 1 April 2017) – C/f losses to the period of cessation but not relieved can be carried back 3 years from the end of the period of cessation and can be offset against:

* Trading profits if loss arose pre 1 April 2017
* Total profits if loss arose post April 2017

*Loss Planning:*

*- Timing*

* CY/PY saves tax now. C/b generates tax repayments - helps cash flow
* C/F have to wait to offset + falling CT rates
* Future profits uncertain

*- Amount*

* Avoid wasting QCD’s as they cannot be c/f against future profits
* Certain loss relief claims lead to QCDs being wasted
* Use profits to bring augmented profits below £1.5m to avoid paying in instalments so tax is due at a later date.

### C1.6.2 NTLR Deficits (incl Non-trading IFA losses)

*NTLR shown as nil in CT comp and loss relief is given as follows:*

*PRE 1 APRIL 2017:*

**- S459(1a) – CY –** elect to offset losses against total profits but partial claim can be made. Steps:

1. B/F trade loss relief claimed first (s45) and then perform

2. CY NTLR: against total profits (before gift aid) partial claim allowed; given after C/F but before CY/CB

**- S459(1b) – PY –** Set against NTLR profits PY (12m). Relief given is lower of:

* CY deficit (reduced by any CY claim or group relief claim)
* NTLR profit in previous 12m after deducting CY & b/f deficits, any s37 CY/PY relief claimed and any QCDs.
* Partial claim allowed

**- C/F** – Any deficit not utilised in CY, PY, or group relieved is c/f against NON-TRADING PROFITS (incl. chargeable gains) in next year, automatic.

*POST 1 APRIL 2017:*

**- CY –** Same as pre 1 April 2017.

**- PY –** Same as pre 1 April 2017.

**- C/F –** Deficit not utilised in CY/PY/group relieved is c/f against TOTAL PROFITS

*Claims must be made within 2 years of loss making CAP.*

### C1.6.3 Property Losses

* **S62 – CY –** Offset against total profits in CY
* **C/F –** PRE 1 APRIL 2017: automatically c/f against total profits of future periods. No partial claims allowed
  + - * + **C/F –** POST 1 APRIL 2017: c/f excess, make a claim to offset against future total profits. Partial claims allowed
* **No carry back allowed!**

### C1.6.4 Capital Losses

**- CY –** Offset against gains in current AP

- **C/F** – PRE 1 APRIL 2017: automatically c/f against gains in future periods

- **C/F –** POST 1 APRIL 2017: automatically c/f against gains in future period

- **No carry back allowed!**

**- Can elect to transfer gain/loss to another group company (work through each to say why can/cannot use loss – only offset group co gains)**

### C1.6.5 Restriction on c/f losses (Pg. 194)

- Does not impact co’s with b/f losses ≤ £5mil

- Max amount of profits relieved per year is:

* Deductions allowance + (50% \* profits > deductions allowance)
* Deductions allowance max is £5 million per year

- Do not reduce excess profits for:

* c/fwd losses
* c/back losses
* post 1 April 2017 c/f group relief losses

### C1.6.6 Change in ownership (s673) (Pg. 198)

***Major change in nature or conduct of trade (MCINOCOT)***

**-** If both occur within same three year period, co. cannot c/b or c/f a trading loss, property loss past the date of change in ownership

**Nature =** Product, who it is sold to & location

**Conduct =** Method of selling

* Where above applies, cannot carry losses back past date of change in ownership. Also applies to business property losses b/f

## C1.7 SSE (Pg. 186)

- If a company disposes of shares in another company, the gain/loss on disposal is **automatically exempt if** (conditions failed then QII may apply pg. 188):

*PRE 1 APRIL 2017:*

1. The selling company has held ≥10% of the shares in company being disposed of for a continuous 12month period during last 2 years; AND

2. Both companies were trading companies (or, for the investing company, a member of a trading group)

*POST 1 APRIL 2017:*

1. The selling co has **held ≥ 10% of the shares** in the company being disposed of for a **continuous 12 month period** during last 6 years; AND
2. The investee company only is a trading company (or member of a trading group)

- For share for share exchanges: SSE takes priority over the paper 4 paper rules. However, if company making disposal and the acquiring company are within the same capital gains group, transaction would be NGNL. SSE not applicable & paper 4 paper relief applies instead.

- If company is leaving the group, **degrouping charge also applies** (C3.1.4)

**Qualifying Institutional Investors (QIIs):**

- If shares in investing co are held by QII

- Fails SSE because: investee is not trading, < 10% but shares cost > £20 million

- 25% - 80% - Chargeable gain reduced by QII shareholding

- 80% + - Full exemption

- See example on pg. 188

## C1.8 CT Administration

* Large (augmented profits > £1.5 mil): instalments on 14th day of 7th, 10th, 13th, and 16th month after start of 12m accounting period
* Very large (augmented profits > £20 mil): even earlier than large
* Other companies (smaller than large): 9m and 1 day after end of AP
* Augmented profits: TTP + dividend received and o/seas < 50% sub
* *(Tax Planning - Would rather have losses now, and hence give losses to large co, as they pay tax earlier compared to other companies)*

## C1.9 Group CT Payments Arrangement

* If more than one company in group pay CT in instalment, group can elect to form a group for CT purposes
* Eligible companies are parent, and their 51% subs and so on
* Can include companies who don’t pay in instalments

Nominated company pays all instalments for group.

# C2 Group Relief and Consortia

## C2.1 Loss Groups (Pg. 239)

- One co. owns > 75% of another or two co. under common >75% control of third company

* ***Direct and indirect holding >75%***
* Co. can be in >1 loss group
* Non-residents = include in group but losses not surrendered (unless exceptions pg. 250: non-res has a UK PE so claim group relief against its chargeable profits/surrender losses from UK chargeable activities)

### C2.1.1 Qualifying Loss of non-resident 75% subsidiary

- loss available for group relief when all current & future relief exhausted overseas

- For relief, o/seas loss recomputed using UK tax rules

***- Non-UK resident sub must be in EEA***

### C2.1.2 Operation of Loss Relief – Proforma

Max Group Relief is lower of:

1. Maximum loss available to give away by **surrendering company** is the **available loss.** Can give away any amount up to the maximum (flexible)

2. Maximum profits available in **claimant company** are the **available profits.** Offset loss against TTP after gift aid:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Max available loss** | |  | **Max Available Profits** | |
| CY Trading Losses | X |  | TTP | X |
| CY NTLR Deficit | X |  | B/F Trading Loss | (X) |
| CY Excess Property Losses | X |  | CY Trading Loss (whether claimed or not) | (X) |
| CY Excess QCDs | X |  | BF NTLR Deficit | (X) |
| CY Excess Mgt Charges | X |  | CY NTLR deficit (whether or not claim made) | (X) |
| **Available Loss** | **X** |  | **Available Profits** | **X** |

- Claimant to pay for group relief (when minority interests involved) – up to max. £1 for every £1 of loss surrendered – ignored for tax

- Deductions allowance – one for each group (allowance + (50% x allowance)

**- Offset b/f capital loss (unless pre-entry) against gains in current year first**

### C2.1.3 Corresponding Accounting Period

- Losses can only be surrendered for corresponding acc. periods

- If sub and parent have ***diff. Year ends:***

1. Time app. Available loss

2. Time app. Available profits

### C2.1.4 Joining/Leaving Losses Groups (see C3.2 for co joining group)

- If A owns B, then sells B to C

- A & B can swap losses until ***“arrangements to sell”***

- B & C swap losses from ***“date of purchase”***

### C2.1.5. Tax Planning for Group Losses

- In FY20 all companies pay tax at 19%. The following issues should be considered instead:

* Loss relief in one company may stop payment of CT by instalments
* If companies in group have non-coterminous year ends relief to a company in an earlier period may aid cash flow
* If group has o/seas income it is important not to waste DTR so sufficient losses should be left in group to ensure full DTR is available
* Company can choose to disclaim capital allowances – May be preferable where not all the loss can be used and would otherwise be c/f (and create a loss in future period which can be offset against total profits of that period rather than just trading profits)

### C2.1.6 Maximise group relief for loss co

- Excess over deductions allowance cannot be group relieved (pg. 241)

- Surrender c/f losses to the group (for losses arising after 1 April 2017)

- Set off loss of surrendering co against total profits of claimant

- Relevant maximum (total for trading profits and non-trade profits)

* + Deduction allowance = allowance + (profits – allowance) x 50%
  + No allowance = profits x 50%
  + Total is the relevant maximum to group relieve in 12 month period
  + Non-trading profits allowance then deduct chargeable gain if already offset

- Relieve to own profits first as far as possible (calculate offset and deduct remaining relevant maximum)

- Calculate remaining losses for group relief

## C2.2 Consortiums

- Consortium exists where ***20 or fewer*** UK oro/seas companies (Consortium members) each ***own at least 5% and jointly own at least 75%*** of a UK company (Consortium Company)

- No group member can own ≥75% of shares otherwise it’s a loss group

- Losses can be ***surrendered in either direction*** between a consortium member and consortium co.

- Losses cannot be surrendered between the consortium members

Consortium members = A, B, C, D

Consortium company = E

### C2.2.1 Losses in Consortium Company

- Consortium can surrender losses to consortium members but it ***is assumed to make CY claim first*** (whether made or not) *(less flexible than group relief)*

- Amount that can be surrendered is **lower of:**

* + Member’s % of consortium company’s loss
  + Available TTP of Member

### C2.2.2 Losses in Consortium Members

- Consortium member can surrender all losses to Consortium company. Company can accept lower of:

1. All of member’s loss

2. Member’s % of the Consortium co.’s TTP

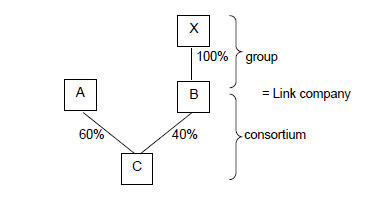
### C2.2.3 Losses in Group/Consortium Companies

- Consortium company with 75% subs is also a member of a losses group

- ***Group relief takes precedence over consortium relief***

- ***Assume max group relief claimed*** (whether claimed or not) before calculating the loss available for consortium relief

### C2.2.4 Link Companies



- *Losses can be passed through link company* i.e. if link doesn’t have enough TTP to take its share of consortium loss another group company can use the consortium loss

- Group losses can all be passed to consortium co.’s

- Member of group and consortium member, remaining loss of consortium relieved to any co in their loss group

# C3 Chargeable Gains Groups

- Chargeable gains group = one company owns ≥ 75% of another co. or two co. under the common ≥ 75% control of a third co.

* Direct holding ≥ 75% but effective holding only > 50%
* Subs can’t be member of more than one gains group
* Non-residents = links but can’t participate in gains group
* Chargeable gains and losses transferred within gains group to offset

## C3.1 Tax Implications of a gains group – 8 Rules (Pg. 242)

### C3.1.1 NG/NL Transfers

- Chargeable assets transferred between group co. @ NGNL (nil gain nil loss)

- Proceeds received are ignored and deemed proceeds ***= cost***

**- Gain chargeable when either:**

1. Recipient co. sells asset outside group

2. Recipient co. leaves group within 6 years still owning asset received by NGNL

### C3.1.2 Reallocation of gains/losses to other group companies

- **Election** can be made to **reallocate** all or part of a CY gain or capital loss made by one group co. to another group co. for actual & deemed disposals (e.g. DGC)

**-** Allows **gains & losses to be matched in same co**. and allows gains to be transferred to companies with capital losses b/f (reduce groups CT on gains)

### C3.1.3 Group Rollover Relief

* Same as ROR but for gains group
* **Qualifying asset, qualifying time period same – reinvests 12 months before or 36 months after**
* A can rollover the gain against the base cost of B’s new asset

### C3.1.4 Company leaving group with asset received via NGNL (Degrouping charge)

- Gain that should have arisen @ date of NGNL arises when recipient co. leaves group owning asset (no longer a 75% sub)

- This is called a **“degrouping charge”** & arises when:

* A co. leaves a gains group within 6 years of NGNL transfer
* Still owns asset received via NGNL from another co. in that gains group

|  |  |
| --- | --- |
| Proceeds (MV @ date of NGNL transfer) | X |
| Cost to transferor | (X) |
| IA (from date of purchase by A to NGNL transfer) | (X) |
| **DGC** | **X** |

- For future disposal of asset, departing co. treated as having a base cost equiv. to MV on date of original transfer.

- Assuming the DGC has arisen due to disposal of shares of the departing co (e.g. qual. Share disp.). it will be taxed as follows:

* **Degrouping gain** is **added to sale proceeds** received on disposal of the shares
* **Degrouping loss** is **added to allowable cost** on the disposal of shares

- Effect is that if ***disposal of shares qualifies for SSE*** then DGC exempt too but if SSE doesn’t apply, ***DGC may be surrendered in group in same way as any other gain or capital loss*** but cannot be subject to rollover relief claim

- *If co. leaves group for another reason than a qual. Share disposal* (e.g. issue of new shares to another company which means old capital gains grouping no longer exists) then *degrouping charge arises within company which is* ***leaving*** *the group*

**Exemptions from DGC**

- Demergers/Mergers

- Group company ceases to exist

- Transferor and transferee co leave group at same time

### C3.1.5 Pre-Entry Capital Losses (PECL) (Pg. 246)

- Legislation exists to prevent pre-entry cap losses being utilised within a group where the co. with the cap. losses did not always belong to that group

- Pre-entry capital loss can only be **used against gains made by that company** itself on assets which it held when it joined the group or subsequently acquired on arms’ length terms.

### C3.1.6 SSE for Groups

- Investing co owns substantial holding for > 12 months out of last 6 years

- Investee co must be trading (< 20% of turnover, profit etc relates to investing)

- NGNL transfer of shares: SSE does not apply (treat as NGNL transfer of asset)

- Substantial holding: Interest of groups companies (> 51% sub) can be aggregated

- Share for share relief: SSE does not apply, exchange for shares then NGNL rules cannot apply so paper 4 paper treatment used

- Consideration is shares: paper 4 paper takes priority over NGNL

### C3.1.7 Transfer of other assets

- It is possible that two group companies will use assets in different ways – one as a capital asset and one as stock

**Transfer of Capital Asset to Trading Stock**

* A Ltd Transfers a NCA to B Ltd, with B treating as stock.
* Tax treatment for ***A Ltd: NGNL Transfer***
* Tax treatment ***for B Ltd: deemed to have received a NCA at indexed cost*** and immediately put it into trading stock at market value
  + This gives rise to a **capital** **gain in B** calculated as **Proceeds (MV @ NGNL transfer) less Indexed Cost = Gain.**
  + If ***B then sells the stock*** this will generate **trading income** (**Sales price less Cost (MV @ NGNL transfer) = trading income or loss**
  + B can make an election to turn the gain into trading income *(s161).* Would be beneficial if have trading losses b/f

**Transfer Trading Stock into Capital Asset**

* A Ltd ***transfers stock to B Ltd***, B Ltd with ***treatment as NCA***
* *Reclassify as capital first (treat like disposal) hence trading income arises*, then transfer capital item at **NGNL**
* Tax Treatment for A Ltd: before transfer (**Proceeds (MV) less cost to A = trading income or loss)**

B Ltd = receives at NGNL (***base cost is MV at date of transfer).***

### C3.1.8 Transfer of Intangible Assets

- Intangibles acquired pre 01/04/02 are classed as **chargeable assets** and therefore ***transferred @ NGNL***

- Intangibles acquired on/after 01/04/02 are classed as **trading assets** and treated as follows:

* *Transfer = tax neutral* i.e. transferee co. takes asset @ carrying amount (sales proceeds = NBV instead of costs)
* Transferee takes over the transferor’s cost and amortisation and impairments already accounted for
* **Neutrality cancelled** if transferee *leaves group within 6 years (DGC)*
* Groupwide **rollover relief** is available
* Might be possible to exempt the gain on the disposal of shares if SSE applies however ***not possible to exempt DGC*** *as trading asset since this is trading profit not CGT.*

## C3.2 Company joining the gains group (Pg. 242)

- Impact instalment payments if it becomes ‘large’ co

- Accounting periods: loss/profits pro-rated, only losses matching AP of receiving co can be group relieved

- Join loss relief group: b/f losses after 1 April 2017 from previous years cannot be used by the group, b/f losses when change in ownership (pg. 242), **post-acq losses (pro-rated) can be relieved by the group**

**-** Resident overseas: only taxed in UK if remitted, dividends exempt, consider anti-avoidance i.e. CFC

# C4 International Expansion

## C4.1 Company Residence

### C4.1.1 Residence Definitions

***UK Residence***

Company is UK resident if it is:

* Incorporated in UK
* Centrally managed & controlled (CM&C) in UK

### C4.1.2 Residence Implications

***If UK resident:***

* **UK resident must pay UK CT on worldwide income and gains** (including profits from overseas permanent establishment i.e. branch – see below)
* **Double tax relief** will usually be available.

***If not UK resident:***

* Non-UK resident company will **only pay UK CT if carrying on UK trade and from profits of a UK permanent establishment** and capital gains arising from disposal of assets used in a UK PE (i.e. physical presence).
* Profits from dealing in/developing land in the UK (even if not through a PE in UK) it will also pay UK CT on chargeable gains
* Other UK income of non-res company is subject to basic rate income tax

### C4.1.3 Permanent Establishment

* to identify if a PE/branch exists, look at where fixed place of “business” is carried on i.e. place of management, branch, office, factory
  + i.e. **physical taxable presence**, and hence CT is due on any profits arising.
* **\*Tax Planning\*** Company can make **irrevocable election** for all foreign PE’s to be exempt from UK CT (but then no relief available for losses too).
  + Elect = Effective from start of AP after the one in which election made

### C4.1.4 Residence & E-commerce

* UK tax legislation = profits arising from PE should be taxed in country in which PE is based. Physical presence is for OECD.
* Therefore,
  + UK view: Website is not a PE & a server is not PE.
  + OECD (International Org) say that website is not a PE, but server **could be** PE (performs activities such as taking orders and payments)

*In exam just discuss both and say cannot conclude – UK & OECD trying to reconcile*

## C4.2 Migration of trade (Pg. 267)

- A co. resident in the UK due to CM&C being located in the UK, becomes non-resident by virtue of **moving the location of its CM&C overseas**.

- **UK incorporated**: management relocates then still UK res unless double tax treaty so overseas re company are non-UK res so possible residence changes

- **Management relocate**: no decisions taken in UK, overseas directors need knowledge and expertise to run business and make decisions, self-assess res status to confirm management overseas, all assets deemed sold and re-acquired at MV (tax 19%, cost to migrate), profits taxed overseas (should be more favourable rate to compensate cost)

- **Carry on trade in UK**: profits taxed in UK as will be PE in UK

- **To avoid UK tax**: trade needs to move offshore, gains at deemed disposal of all assets, tax gains at 19%

### C4.2.**1 Tax Implications**

- Similar to that of a co. ceasing trade:

1. End of a chargeable accounting period

2. Balancing adjustments on P&M attracting cap. allow.

3. Utilisation of Trading Losses (Normal loss + terminal loss relief)

4. Change in basis of assessment: UK res (worldwide), non-res (UK only)

5. Leave UK group – cease group relief benefit

6. Company will be deemed to have disposed and reacquired all worldwide chargeable assets at MV at date of migration (gain on o/s assets taxed) ***except*** assets still used in a UK branch of the migrated co. – this is also known as an ***“exit charge”***

7. Disposed of stock at market value

### C4.2.2 Deferring the gains on migration

- The **gains on migration can be deferred** provided:

1. The co. is a 75% sub of a UK resi company (parent pays gain)

2. Both co. make a written election <2 years of migration date

### C4.2.3 Crystallising the deferred gain

- The deferred gain will crystallise in UK parent company if:

1. The sub ceases to be a 75% sub of the UK co or

2. The parent co. ceases to be UK resident

3. The assets which gave rise to the charge are sold within 6 years:

- Gains crystallise (become taxable) on UK parent not subsidiary

***Net def. Gain = all gains and losses which were def***

***Gain at migration of the asset which is now sold (could be MV less cost)***

***Gross Gains = gains (excluding losses)***

## C4.3 Establishing an overseas business (Pg. 263)

- A UK resident wants to trade overseas and has choice of whether to set up as PE or overseas subsidiary incorporated overseas (tax depends on where registered)

- \*Elect to exempt all PEs from UK CT (apply to all foreign PE, irrevocable, no relief)

- Election considerations: profit projections, PE losses, beneficial for low tax in PE

|  |  |  |
| --- | --- | --- |
|  | Overseas PE | Overseas Sub |
| **Legal Status** | Part of UK Company like a division (single entity) | Separate legal entity incorp. overseas |
| **Profits taxed overseas?** | Yes (DTR available) | Yes (DTR available if UK div taxable) |
| **Profits taxed in UK?** | Trading profits\* but DTR available unless irrevocable election made | Only if deal in UK land or trade through UK PE (dividends remitted to the UK are NOT taxable) |
| **UK Capital Allowances?** | Full (unless irrevocable exemption made for UK CT) | None |
| **Transfer of Assets** | - NGNL transfers  - No balancing adj in capital allowances pool | Gain/loss on transfer  *Balancing adjustments arise* |
| **Use of overseas losses** | - Unrelieved losses offset against UK trading profits if UK controlled | - Losses cannot be surrendered to UK company |
|  | **Best if loss making** | **Best if profitable** |

## C4.4 Incorporating an overseas PE (Pg. 265)

- O/seas PE is part of UK co. and its profits/losses are automatically included in the CT comp

- O/seas sub is separate to the UK co. and profits/losses are not included in UK co’s tax comp.

- Where a loss is expected in the early years of trade, may be worthwhile to start trading as a PE and then incorporate the business into a subsid. o/seas when it becomes profit making

- Incorporation: the trade and assets of the PE are transferred to the newly incorporated overseas company in exchange for shares.

### **C4.4.1 Implications of Incorporation**

- The PE ceases to trade

- Balancing adjustments on P&M (proceeds are MV) trabsfer to non-UK co

- Capital assets treated as disposed of and reacquired at MV

Chargeable gains/losses arise (can postpone gains)

### C4.4.2 Incorporation Relief (into O/s co)

- The chargeable gains on incrop. can be deferred through incorp. relief provided the following conditions are met:

1. All assets (ex. Cash) of that foreign PE are transferred to the non-UK res co.

2. The consideration is wholly or partly in the form of shares

3. UK co. owns at least 25% of ord. Share cap of the non-UK co.

4. A claim for incorp. relief is made

- Where the consideration is party shares and partly cash, full incorp. relief is not available – only a proportion of the net gain relating to the share consideration received can be deferred

- **Amount to defer re shares = net gain x MV of shares/MV of total consideration)**

### C4.4.3 Crystallising the deferred gain

Gains def. on incorp. will become chargeable on a proportional basis in any of the following situations:

1. UK co. disposes of some of the shares (no time limit). This gain is simply e.g. 50% of share sold therefore 50% of net gain left is chargeable. SSE may cover this though.

2. An asset transferred on incorporation is disposed of within 6 years of incorporation. The gain on this asset is:

When sold:

- SSE, proceeds less cost (apportion for % shares)

- Tax deferred gain for % of shares sold

- Disposal of assets within 6 years: tax remaining deferred gain

## C4.5 Double Tax Relief (Pg. 270)

* UK company will pay CT on worldwide income from overseas **and** also will be likely to pay overseas tax = taxed twice!

**DTR available in 3 ways:**

1. **Treaty relief**, in exam they print extract from treaty and you just read it and follow it. **You must follow it!!!**

2. **Unilateral** or credit relief (all other circumstances)

3. **Expense** relief (if trade losses incurred)

### C4.5.1 Treaty Relief

- Detailed guidelines on how the income will be taxed, if subject to tax rule of more than one country

- Most treaties follow same principles set out in OECD model i.e. agree only one country will tax the income

### C4.5.2 Unilateral Double Tax Relief

**Step 1: Calculating amount to be included in CT comp**

- Overseas income should be included in the top half of the CT comp gross of WHT

- The profits are then subject to UK tax as normal

**Step 2: Calculating DTR**

**-** For all sources of foreign income basic DTR should be calculated on a source by source basis

- DTR is lower of:

1. Overseas tax suffered

2. UK CT attributable to the overseas income

**Interaction of deductions with DTR**

**-** Deductions = e.g. QCDs, losses, management expenses

- Where there are deductions available against total profits on the face of the comp, these deductions can be set off in most beneficial manner:

1. First against UK income

2. Then against overseas income

- If there is more than one source of o/seas income the deductions should be offset against the source suffering the **lowest rate of o/seas tax first**

### C4.5.4 Expense Relief

- Use in loss making situation

- The foreign income is included in the UK CT comp. Net of o/seas tax suffered and taxed at the applicable UK rate

- No relief is deducted from the UK CT liability

- Method of DTR can be useful to maximise the use of losses *\*tax planning\**

### C4.5.5 Which DTR to choose?

- Treaty (give first if treaty exists),

- Expense relief (if losses will reduce IT CT liab to nil),

- Unilateral relief in all other situations

### C4.5.6 DTR on taxable foreign dividends

- Majority of foreign dividends received by a UK co. are exempt from CT

- If a foreign div is taxable, DTR is available in respect of:

* Withholding taxes, and,
* Provided the UK co. controls >10% of the o/seas co, underlying taxes

# C5 Companies – Special Situations

## C5.1 Company purchase of own shares (Pg. 210)

* Repurchase reduces the nominal share capital or may be held in treasury
* Way to provide exit route for someone i.e. buy them out, or way to give distribution to investors without paying dividends, because dividends raise expectations.
* Company must have sufficient cash available (distributable profits/reserves). If the **capital reserves are too low, plc will not be able to do a share buyback.**
* Need the ability to make the “**permissible capital payment (PCP)”**.
* **Permissible capital payment (pg. 213) = cost of purchase less distributable profits**
* Number of shares to repurchase: may need updated SOFP before sale
* On a buy back, **stamp duty is payable** by the company on the consideration

### C5.1.1 Tax treatment – corporate shareholder i.e. company

* Gain calculated but SSE may apply
* If **connected party**: use MV on disposal, if not controlling then could argue a lower price

### C5.1.2 Tax Treatment – individual shareholder

* **Capital route** = normal gains calculation (mandatory **if conditions met**)
* **Income route = *sale proceeds split into two parts:***
  + - **Income part =** the proceeds are treated and taxed as dividend.

(Sales proceeds – subscription price (assume £1 if not told))

* + - **Capital part = if cost of shares does not equal subscription price (from income part)** thenthe **original subscription price of the shares** is treated as proceeds in a gains calculation
  + **Think about dividend implications and gains implications i.e. rates and reliefs (may be BADR, but dividends are lower rates, AEA, dividend NRB). \*Tax Planning\***
  + E.g. If the shares were issued at £1, but individual bought for £10 and received £80 when sold, then for **capital route** alone would be **80 less 10 cost and then that’s the gain**, but the income route would be 2 parts: proceeds (subscription price) £1 less cost £10 giving a loss of 9, and then **net distribution part is 79k** **left (80-1)** and this is **taxed as a dividend.**
* The individual **does not get choice**: if capital route rules met, then capital route followed otherwise do income route
* **\*Tax Planning\* But shareholder can plan to ensure conditions are met/not met, depending on which is favourable.**

### C5.1.3 Capital Route Conditions

***Capital route compulsory if:***

* The repurchase is in order to raise cash to pay IHT which couldn’t otherwise be paid and payment made within 2 years of death, or
* The **repurchase is for the benefit of the trade** (most common). If the repurchase is for the benefit of the trade then must meet the following:

1. Company must be an **unquoted trading co**

2. Be able to demonstrate that repurchase is for **benefit of trade** and isn’t to avoid tax, e.g. buying out retiring directors, buying out dissident shareholders, shareholder has died and beneficiaries don’t want shares

3. Individual must be resident/ordinarily resident in UK

4. Have owned the shares for 5 years prior to repurchase (3 years if inherited – include ownership of deceased)

5. **Reduce** their shareholding substantially after buyback – the shareholder must end up with:

* + ≤30% of the shares in the company after repurchase **and**
  + ≤75% of the previous holding after repurchase

*e.g. Mr Rat owns 42k of 100k shares in X limited. What is minimum no. Of shares that must be repurchased to meet the conditions of capital route?*

***Answer****: work out lower of the two above percentages, i.e. 30% or 75% x 42% = 31.5%, therefore, 30% will meet criteria. Therefore, 58,000 shares left should be 70% of the total and hence Mr Rat must hold £24,857 meaning he must dispose of 40k less this amount.*

## C5.2 Tax Implications of Administration and Liquidation (Pg. 214)

### C5.2.1 Administration

- Will attempt to save company, and if not possible then company enters into liquidation (commence winding up)

**1. New accounting period beings** on the date the administrator is appointed

**2. Future periods end** on normal year end date and when company ceases to be in administration

### C5.2.2 Liquidation

Voluntary liquidation: control date of cessation and time liquidator appointed

1. Liquidator responsible for tax obligations for company (owner of assets)

2. New accounting period begins on date liquidator appointed

This will end earlier of:

* + - 12 months later, or
    - End of winding up process

3. **Corporation tax on profits** during wind up company i.e. sell stock/P&M, chargeable gains on disposals

4. **Final distributions** to shareholders will be have **income tax, capital gains tax and CT implications**

### C5.2.3 Cessation of trade

1. End of a AP, unless liquidator already appointed

2. Balancing adjustment on P&M (proceeds less TWDV – BC decreases loss/increase profits, BA is opposite)

3. Trading losses

* + S45 not option as cannot carry forward
  + S37 can do CY and then PY claims
  + Group relief (if current year losses)
  + Terminal loss relief
    - * This is loss made by company in final 12 months of trade
      * Carried back 36 months against total income and gains on LIFO basis
      * Only do terminal loss after CY claim made
      * When counting 36 months, start from beginning of the accounting period in which the relevant bit of loss was made
      * If 12m straddles 2 AP’s, pro-rate and **use the earliest loss first**

4. Gains/capital losses arise on chargeable assets (dispose after cessation then cannot offset against trading losses)

5. Deregisters for VAT

6. Interest by individuals on loans to purchase shares no longer qualify for income tax relief (no tax relief after cessation)

7. If was a close company, becomes close investment holding company.

Choosing cessation date (pg. 215):

- If additional trading loss on later date then choose later date to offset gains (reduce tax liability)

## C5.3 Tax planning when winding up the company (Pg. 216)

If company enters into member’s voluntary liquidation can do some tax planning:

### C5.3.1 Maximise use of losses

* + - Claim loss relief steps:

1. Adjust profits i.e. for capital allowances (BA/BC)
2. Group/consortium relief: no group relief <75%, consortium
3. C/f: no c/f (use CY and CB claims)
4. Current year claim and extended carry back loss relief claim
5. Strict order of relief: **losses of earlier years dealt with first**
6. Terminal loss: calculate loss of last 12 months, carry back 3 years from start of AP
7. Remaining loss: **not eligible for TLR dealt with first (CY/CB**), **remainder of loss dealt with under TLR**
8. Calculation of tax relief
9. Calculate refunds: CT @ 19%
   * + If you have trade losses, sell asset before you appoint liquidator/cease trading because losses b/f can’t be set against gains after liquidator or if trade has stopped.
     + Trading loss cannot be c/f
     + CY trading profits offset against total profits including gains
     + Balancing adjustments arise
     + Redundancy costs increase current year losses
     + Terminal loss relief available
     + Only losses to date of commencement can be group relieved

### C5.3.2 Make distributions to shareholders in most tax efficient way (Pg. 216)

* + If distribution **made pre-appointment of liquidator (sale prior to liquidation)**:
    - * Cash available = total assets less total liabilities plus tax repayments
      * Cash received = dividend less tax due plus net cash on final dist. (after-tax)
      * Treat as ***dividend***
      * May be covered by DNRB (if not taxed at normal dividend rates)
      * No CT: dividends are exempt

|  |  |  |
| --- | --- | --- |
|  | Vendor (Seller) | Purchaser |
| CGT (indiv) or CT (co) | Chargeable gain – offset by unrelieved trading losses (save tax), continue to trade then deduct loan interest/lease costs | Can deduct the cost of acquisition at sale |
| VAT | None – old commercial building |  |
| Income Distributions (in their %) | Individual – div, tax as income (IT)  Co – not taxable, divs are exempt |  |

* + If distribution made **post appointment of liquidator:** 
    - Cash available = total assets less total liabilities plus tax repay less tax on disposal
    - Cash received = final distribution less CGT (for co – final dist. No tax)
    - Treated as ***capital distribution (CGT)***, and calculate gain where proceeds = distribution. (Taxed at 10%BADR /20% & get AEA)
    - BADR: disposal within 3 years of cessation and held 2 years prior
    - CT: gain chargeable unless SSE applies

|  |  |  |
| --- | --- | --- |
|  | Vendor (Seller) | Purchaser |
| Corp Tax (CT) | Chargeable gain – can’t c/f trading loss to offset, gain taxed at 19%, reduce distribution |  |
| Capital Distributions (deduct cost)  (in their %) | Individual – CGT, tax as income (BADR), c/f loss against future gains, UK res (AEA), non-res (no AEA or claims RB?)  Co – taxable unless SSE applies |  |

* + **Shareholders preferences**
    - **Individual = dividend** (prefer if BRTP or covered by DNRB), **capital** (prefer if have capital losses, BADR, AEA, CGT @ 10/20%)
    - **Corporate = dividend** (tax free), **capital** (if SSE then exempt)

## C5.4 Striking Off

- Liquidation can be formal and expensive, so shareholders can apply for company to be struck off.

- This cannot be done until 3 months after the cessation of trade.

- No liquidator hence no opportunity for distributions to be taxed as capital.

- However, where amount paid out to s/holders is < £25k, the s/holders can elect to treat the amount received as capital rather than income.

- Note that distributions of the distributable reserves i.e. SC and SP, are not permitted unless company is going through formal liq.

* ***Exam tip if have £20k in SC and £20k in profit; under a formal liq you could pay £40k out as dividends. If the SC amount is large then advice to do formal liquidation as the £4k costs of a liquidation is small compared to £20k that can be paid out.***

Section D – T&Cs

D1 Choice of Business Structure

## D1.1 Business vs Company (Pg. 305)

Answer structure:

* Also consider non-tax considerations of appropriate business structure
* Choice of sole trader and limited company
* Main difference: how profits are taxed (divs are appropriations)
* Losses in opening years: more flexible for sole trader
* Discuss specific person/scenario and which is more appropriate
  + State which seems more appropriate and why
    - R&D/patent – relief for limited co
    - Losses in opening years – sole trader (calculate tax refund)
  + Pre-tading exp: capital allowances from 1st day of trading (rate of allowance from actual date of expenditure)
* Prepare a revised TTP calculation
* Provide recommendation: sole trader or limited co, why, concerns/queries, state could change to limited co later from sole trader

|  |  |  |
| --- | --- | --- |
|  | Unincorporated Business | Company |
| Status | Sole Trader / Partnership | Corporate body usually a close company (loans/benefits) |
| Taxation of profits | IT @ 20/40/45% and Class 2 and 4 NICs | 1. CT @ 19% (div not dedn)  2. Extracted profits subject to IT and Class 1 (ee) 12/2% (er) 13.8% |
| Relief for losses | - S64 – set against net income of CY **and/or** PY  - S83 – c/f against profits of same trade  - S72 – loss in first 4 tax years, set against net income of 3 preceding years FIFO (refund good for cash flow) | - S37 – set against other income and gains CY and then can carry back to PY  - S45 – C/f vs total profits  n.b. no company equivalent of s72 |
| Disposal of business | - Disposal as a going concern  - Disposal of separate assets and cease to trade  - CGT implications  - BADR | - Disposal of assets: CT  - Sell shares back to 3rd party/back to company  - CGT on shares sold  - BADR on shares sold  - Liquidation (solvent / insolvent) |
| IHT | 100% BPR | 100%/50% BPR |
| Pensions | Personal pension scheme | -Occupational pension scheme  - Personal pension scheme |
| Payment of tax | Payments on account of IT 31 Jan during tax year, 31 July following end of tax year,balancing payment 31 Jan following end of tax yr | -PAYE on employment income on monthly basis  -CT payable 9 months and 1 day after end of accounting period |

* **Unincorporated** business = admin is easier, and more loss relief options and all profits and gains taxed on trader personally (NICs cheaper).
* **Company** = required adherence to company law and means shareholders are taxable on income extracted from the company which has already been subject to CT. Easier to sell co by shares (More NICs to pay).

## D1.2 Property Business (Pg. 306)

* When considering investing in property, should consider:
  + Residential or commercial?
  + How to use the property
  + Whether to invest directly or through a company
* On incorporation:
  + IT/NIC: partnership ceases, tax income before incorporation, finance costs give tax relief, tax on IT on salary/divs in future plus NIC for salary
  + CGT: gain at trf (use MV), use AEA, incorp relief (>20 hours working, all assets trf, reduces base cost of shares, large gain at disposal)
  + CT: 19%, finance cost relieved as NTLR debit, salary reduces TTP by gross salary and employers NIC, divs give no reduction (appropriations)
  + VAT: residential property exempt with no OTT, no VAT implications
  + SDLT: no consideration (no SDLT) but if transferred to co and individuals are connected they must pay, transfer many properties i.e. 15 ish then linked transactions so SDLT at up to 15% but >6 so can be treated as non-res and suffer SDLT at up to 5%
  + Ongoing liabilities: salary vs dividend calcs, property income likely to increase each year so consider impact of additional properties purchased and changes to level of income drawn, combination of salary and dividends may produce lowest overall tax cost

Purchase/sale/letting implications:

|  |  |  |
| --- | --- | --- |
|  | **Owned by individual** | **Owned by company** |
| **SDLT** | -Residential property rates will be payable (VAT incl. price used)  -Additional 3% added to applicable rates (assuming own property already) | -Residential property rates will be payable  -No additional 3% charge  -15% rate applies if single dwelling costing > £500,000 |
| **ATED** | N/A for individuals | -Payable if dwelling worth > £500,000 (relief if let properties) |
| **VAT** | - Zero-rated if purchase/ sale of new residential property  -Exempt if purchase/sale of existing residential property  - Exempt if lease of res property  - New comm property incl. VAT  - No OTT on residential property  -Letting (exempt), VAT not recover unless OTT (charge to tenants, increase cost)  - VAT on maintenance costs  - Consider OTT | As for individuals |
| **Tax on income (IT/CT)** | -When calculating profit allowable deduction for replacement of domestic items  -Restriction on deduction for finance costs (see below)  -If property is also owner’s home rent-a-room relief of up to £7,500 available  -Subject to income tax at 20%/40%/45% | -When calculating profit allowable deduction for replacement of domestic items  -Finance costs treated as NTLR debits (full deduction)  -Profits subject to corporation tax at 19%  -Further tax when profits extracted for shareholders |
| **Losses** | -Property profits and losses in a tax year are netted off  -If overall loss carry forward against future property profits | -Property profits and losses in a AP are netted off  -If overall loss offset against total profits in the same period, then carry forward against future total profits |
| **Tax on gains** | Subject to CGT at 18%/28% | -Usually subject to CT at 19% |
| **IHT** | -Included in death estate  -No RNRB unless it was the owner’s residence  -BPR not available | -Included in death estate  -RNRB not available  -BPR not available (unless building co, hold property) |

**Finance costs for residential properties:**

* From 20/21, no finance costs are deductible against property income
* Costs get tax relief at 20% as tax reducer (reduces overall tax liability)
* Tax relief lower of: i) interest paid plus unrelieved from PY, ii) property profits net of b/f losses or iii) ATI (income from all sources less SI/DI/PA)
* Restriction does not apply to letting commercial property, furnished holiday accommodation, business dealing in developing properties, companies letting property.

\*tax planning\* landlords should consider: selling one property to reduce loans on other, if business is buy to let and development business, restructure loans for solely development aspect, letting property as FHA, incorporate their business, sell residential prop and invest in commercial prop or development business.

### D2.2.1 Residential property development (buy, refurbish, sell)

**Tax implications:**

* **Finance costs:** no restriction on amount to deduct
* **CGT/IT:** when sell property- 18/28%.
  + If principal private residence- PPR available for deemed and actual ownership.
  + Fully exempt if develop property whilst living in it or move out, develop it and sell within 18 months.
  + If second option taken, must elect for new home to be PPR within 2 years of purchase.
  + If repeatedly flip properties, then HMRC likely deem not capital transactions so profits are trade (NSI), finance costs allowable
  + IT of up to 45% can be charged on any profits made
* **IHT:** BPR not available for investment business unless business carrying genuine building and construction trade and properties= inventory, separate operations to achieve wholly building/construction business
* **SDLT:** 3% added if buy second prop. If been PPR, 3% wont be charged if 2nd purchased on same day as 1st sold. 3% refunded if 2nd prop is to be primary residence and 1st prop sold within 3 years of purchase of 2nd home.

### D2.2.2 Ownership by a company (including property development)

More advantageous because:

* No restricted deduction of fin. Costs
* Additional 3% not charged
* **Only charged 19%** rather than IT or CGT tax
* For IHT, BPR available on shares in company in same way as individual
* If a co, further tax due when shareholders take profits from the co

### D2.2.3 Investing in commercial property

**SDLT:** charged on purchase of property at non-res rates.

**VAT:** construction/sale of new (<3 yrs) commercial building= standard.

* Sale of old building – exempt
* From exempt supplies, can OTT.

|  |  |  |
| --- | --- | --- |
|  | Owned by an individual | Owned through a company |
| IT/CT | Profits taxed as NSI at 20%/40%/45% | - Profits subject to corporation tax at 19%  -Further charge to tax when profits extracted (shareholder) |
| Losses | -Property profits and losses in a tax year are netted off  -If overall loss carry forward against future property profits | -Property profits and losses in a CAP are netted off  -If overall loss offset against total profits in the same period, then carry forward against future total profits |
| Tax on gains on disposal | Subject to CGT at 10%/20% | Usually subject to CT at 19% |
| IHT | -Include in death estate  -BPR may be available if business relates wholly/mainly to property development | -Include in death estate  -BPR may be available on shares if business relates wholly/mainly to property development |

## D1.3 Single vs Group Companies

|  |  |  |
| --- | --- | --- |
|  | **Single** | **Group** |
| **Tax on Profits** | - Single comp  - Automatic set off of all results of different divisions in same period.  - Funds and assets move around between divisions with no tax consequences. | - Separate comp  - Losses transferred by way of group relief but limited to TTP/accounting period rules  - intra group div ignored  - other attempts to move funds subject to transfer pricing |
| **Tax on Chargeable Gains** | -Assets move between div tax neutral  -auto offset gains and losses  -ROR can be made on qualifying assets (irrespective of division)  - sale of div = sales of individual assets (ind. Chargeable gains and profit on intangible assets) | -Assets transfer at NGNL  - Election made to transfer gains and losses to other group co  - ROR made on group wide basis  -sale of sub – gain likely exempt by SSE |
| **Admin** | -Single return  -single payment | -Multiple returns  -Group payment arrangement possible  - more admin to monitor potential claims for offsets |
| **VAT** | -Single VAT return and intra-division supplies ignored  - if exempt supplies made, restriction of input tax | - group can reg as single entity for single VAT return and intra group supplies ignored  - flexibility to exclude exempt suppliers from group (may bring adv or disadv) |

## D1.4 Extraction of profits from the business (Pg. 313)

**Calculate total cost of sole trader vs company for tax purposes:**

### D1.4.1 Unincorporated business (individual shareholder/director):

* All trading profits assessed on individual under IT regardless of drawings, therefore no choice how to extract profits in most tax efficient way

### D1.4.2 Company:

* **Salary/Bonus** 
  + Employment income for individual @ 20/40/45%
  + Class 1 primary NICs and Class 1 secondary for company
  + Salary and Employer NICs are allowable deductions for company
  + Can discriminate who gets it
* **Dividend**
  + Dividend income for individual taxed at 0%, 7.5%, 32.5%, 38.1%
  + No NICs
  + Dividends not allowable deduction (cost to co is dividend paid)
  + Cannot discriminate who gets it
* **Pension**
  + Employers contributions tax free BIK (no NICs)
  + Deductible from trading profits on a paid basis (cost is cont. less CT relief)
  + Don’t receive cash until later (when old)
  + **Loan**
  + Company likely to be close ∴s455 tax will apply unless loan falls within exemptions
  + Tax consequences if the loan is made at a beneficial rate of interest
  + If loan is subsequently written off, futher tax consequences will arise

## D1.5 Corporate Structures

|  |  |  |  |
| --- | --- | --- | --- |
| Type | Description | Adv | Disadv |
| Group | Parent and subsidiaries, companies can be UK resident or overseas | >50% VAT group, =>75% group loss relief, NGNL transfers, transfer gains/losses | 51% related cos  Group financial statements |
| Consortium | UK co, at least 75% owned by other companies each of which own =>5% | Members can claim their share of consortium co loss  Dividends not ABGH distributions | Could trap loss of consortium co, if not correctly structured |
| Corporate Partnership | Partners are companies/mix of companies and individuals  Profit computed as if company | Losses can be set against other profits  Flexible  Confidential | Separate entity for VAT  Joint and several liability |
| LLP | Legally a company but taxed as a partnership | Limited liability protection | Anti avoidance legislation if not trading |
| JV (no such thing as JV for tax) | Consortium  Corporate partnership  Contractual – account for transactions in own records | As above  As above  Flexible  No joint and several liability  No restriction on use of losses  Not required to register for VAT | As above  As above  Difficult to control activities of others in JV |

# D2 Transformation of the owner managed business

* Incorporation = any situation where an unincorporated business (sole trader) is transferred to a company
* Transfer assets to new company, in return for shares/cash.

## D2.1 Tax implications of incorporation (Pg. 144)

### D2.1.1 Income Tax/NIC Implications

* Cessation of trade for sole trader – closing year rules to establish final trading income assessment (deduct overlap profits)
* Profit extraction as salary, dividend, pensions
* Balancing adjustments on P&M at market value (if unconnected)
  + Can make a **succession election** to transfer at TWDV (if connected)
* Utilise trading losses
  + **CY and PY relief** – s64 total income then capital gains in CY and/or PY
  + **Terminal loss relief** – s89 carry back 3 years against trading profits on LIFO basis
  + **C/F relief** – s86 carry unrelieved losses forward and set against income from the company (salary then dividends)
* Calculate trading profit/loss and split between partners
  + For each partner: use of losses, avoid wasting PA, high income in future so relief more effective c/f

### D2.1.2 VAT Implications

* If meet ‘Transfer Of Going Concern’ conditions (no break in trade, no change in trade, transfer business as a GC, buyer company is VAT registered), then outside scope of VAT.
* Must consider tax status of L&B – look at separately
* VAT on property in capital goods scheme (CGS)

### D2.1.3 Capital Gains Tax

* Where individual transfers their business to a company, individual assets of business are deemed to have been disposed at MV for CGT purposes
* Will arise **on chargeable assets** transferred, usually L&B and Goodwill
* None on stock and debtors as these are trading assets
* P&M is usually a chargeable asset, but usually assume exempt on grounds of cheap chattel unless proceeds and cost >£6,000.
* **Incorporation relief** defers gain - automatic if conditions met
* **BADR** but not for goodwill unless <5% owned
* **Gift relief** available if some assets retained
* Calculate for each partner: determine if they qualify for BADR or IR individually
* Dispose non-partnership asset: no IR available, **BADR** as associated disposal

### D2.1.4 Stock

* Will pass at MV, giving sole trader a trading profit
* By election can pass at higher of cost and actual proceeds to shift where profit occurs

### D2.1.5 Corporation Tax

* All profits now will be subject to CT (new co commences, notify HMRC)
* Consider if company is a close company

### D2.1.6 SDLT

* Payable by company on deemed transfer of land at MV even if no consideration
* Retain property to save SDLT (but then incorporation relief cant be claimed)

### D2.1.7 Intangibles (goodwill) impact on the company

* Where trader started pre April 2002, this transfers as an old IFA (chargeable)
* Where trader commenced post April 2002, this transfers as a new IFA (amortisation not an allowable expense for incorporation)

### D2.1.8 Inheritance tax on gift of business

* Unincorporated business gets BPR at 100%
* Shares get BPR at 100%

### D2.1.9 Structures and Buildings Allowances (SBAs)

* Shares No balancing adjustments on disposal
* No adjustment to gains calculation for SBAs claimed by sole trader
* Continue for company at same rate as for sole trader/partnership

## D2.2 Reliefs on incorporation

### D2.2.1 Incorporation Relief (Pg. 146)

* Form of r/o relief to allow the gains arising on incorporation to be deferred until shares in new company are disposed of.
* If conditions met, relief given **automatically**:
* **Conditions:**
  + Business transferred by individual/partnership as a going concern to co
  + **All assets (except cash) transferred** (liabilities need not be transferred)
  + Consideration received by transferor includes shares in the transferee
* **Relief:**
  + Amount deferred relates to proportion of share consideration received (if wholly shares the full gain is rolled over)
  + **Gain deferred = Net gains on incorporation x (MV of shares/MV of total consideration)**
  + Deferred against base cost of shares received, any gain not deferred is chargeable now
  + *MV of shares = total considerations less cash considerations*
* **Pro-Forma:**
  + 1. For each asset transferred: Gain = proceeds less cost
  + 2. Net gains = Add together total gains for all assets
  + 3. Chargeable now = net gains less incorporation relief
  + 4. Base cost of shares = MV of share consideration at incorporation less IR
* **Disapplying incorporation relief (indiv can elect to disapply)**
  + Transfer could be eligible for BADR – IR must be taken in priority to BADR.
  + If BADR will not be available for the eventual disposal (sell share of new co within 1 year) of the shares, then it may be more beneficial to disapply IR.
  + Claim to disapply needs to be made by 31 Jan 2024

### D2.2.2 Gift Relief

* Relevant if the individual does not want to transfer all the asset into the company, e.g. wants to keep a property personally.
* As **all assets aren’t being transferred**, incorporation relief not available.



* **Advantages of GR** 
  + If L&B retained: no SDLT, avoid double tax charge on sale of property, profit extraction in the form of rent
* **Disadvantages of GR**
  + Base cost of asset transferred is lower than under IR as it doesn’t contain value of L&B
  + Shares have a low base cost so larger future gain
  + As we have kept a building for example, there will be no disposal hence no gain, no SDLT, no double charge to tax, but will be IT payable if rented out and when sold in future a large gain arises

## D2.3 Disincorporation (Pg. 319)

* e.g. from company to sole trader

### D2.3.1 Tax implications

* On disincorporation the company:

1. Transfers all assets to owner and generates gains/trading profit subject to CT (see below)

2. Owner sells shares generating gain on disposal and realising any gains deferred in the past (i.e. IR) (see below)

**1. Company Transfers all assets to individual**

*Impact of the company:*

* **Corporation tax** – cessation of trade (end of AP), CT due in 9 months and 1 day
* **Capital allowances** – no WDA (final period), balancing adjustment (TWDV less proceeds, BC inc profit/BA inc loss) on transfer of assets at MV – can make a succession election to transfer at TWDV if connected
* **Trading losses** – trade ceases, normal loss relief, terminal loss relief (carry back 3 years against total profits), cannot be c/f (calculate tax repay)
* **Intangible fixed assets** – disposal at MV = trading income, can elect to transfer at higher of cost and actual sales proceeds
* **Stock** – deemed disposal at MV but can elect to transfer at cost if sold to connected person
* **VAT** – transfer of going concern (if conditions met) so outside scope of VAT, may need to register for VAT (can transfer VAT reg no but also transfers history), no TOGC then assets may be taxable supply
  + **Chargeable gains** – assets deemed sold @ MV, Gain on g/will (pre-2002) could be big if gift relief claimed on incorporation, subject to CT

***Impact on the individual:***

* Commencement of trade for IT & NIC purposes (notify HMRC)
* Choice of accounting date
* G/will transferred is a chargeable asset so amortisation is not allowable
* SDLT will arise depending on assets transferred and receipt of consideration

**2. Individual Sells Shares**

- Gain on disposal of shares chargeable to CGT

- Gains may be substantial if incorporation relief previously claimed

i) **Proceeds = MV of assets transferred less tax suffered by co on disincorp. (CT on gain on asset)**

**ii) Proceeds less cost of shares (may be reduced if IR was claimed) = gain**

- No stamp duty if shares cancelled

**What do we do with the company?**

- Allow the company to become dormant

- Liquidation

- Striking off

**Disincorporation Calculations (Set order)**

1. Calculate co gains on assets disposed of

2. Calc any additional CT due

3. Reduce the market value of assets at disincorporation by CT due

4. Use this value as the disposal proceeds for shares

5. Calculate cost of shares (may be lower due to IR)

6. Calculate amount available for distribution = MV of assets at disposal plus/less tax on final period (example pg. 321 but also pg. 214 for dist. before/after sale)

# D3 Corporate Reorganisations

## D3.1 Corporate Disposal Routes

|  |  |
| --- | --- |
| **1. Sale of shares (A sells shares in B to C for cash)**   * 1. ***Sale of shares will have:***      1. Issues for seller (A) and its group      2. Issues for company (B) being sold   2. ***Purchase of shares will have***      1. Issues for buyer (C) | **2. Sale of trade and assets (B sells its trade and assets to C)**   1. ***Sale of trade and assets will have***    * 1. Issues for seller (B) 2. ***Purchase of trade and assets will have***     * 1. Issues for buyer (C) |

|  |  |  |
| --- | --- | --- |
|  | **Sale of Shares** | **Sale of trade & assets** |
| **Gains** | - Disposal of shares will be exempt if SSE satisfied | - Capital gains/losses arise on assets sold & cap. allowance balancing adj. |
| **Group** | Implications:  - Loss of group relief  - Degrouping charges | No effect on group aspects. |
| **Losses** | Transfer with the co. (MCINOCOT rules) | Do not transfer with trade and assets |
| **VAT** | Exempt from VAT | If TOGC conditions fulfilled, outside scope of VAT |
| **Contingent Liabilities** | Transfer with the company | Do not transfer with the trade and assets |
| **Complexity** | Easier | Complex |

## D3.2 Sale of shares by an individual

* + Consider use of a pre-sale dividend to convert some of gain into income (or could purchase own shares to achieve same objective).
  + However, usually preferable to leave as capital since CGT rates are lower than IT rates.
  + Timing of disposals may be delayed to take advantage of more than one AEA
  + Share4share exchange rules used to defer gain arising at point of takeover
  + EIS and SEIS reinvestment reliefs may be available to reduce/exempt immediate capital gains.
  + **CGT**: straightforward capital gain (deduct b/f capital losses)
  + **BADR**: up to £1m for lifetime
  + **To connected party**: use MV
  + **Gift relief (p**g. 63): for paying undervalue of shares (joint election)
  + **IHT**: undervalue of shares (PET), taper relief, BPR 100%, NRB, GWROB, fall in value relief for PET
  + **Need income**: keep shares so pass on death
  + **After-tax consideration** = G – (1m x 10% BADR) – 20%(G – cost) - £1m BADR

## D3.2 Purchase of shares by an individual

* + **Gift relief:** lower base cost, increase gain on disposal
  + **Stamp duty:** payable at 0.5%
  + **VAT:** no implications
  + **Loan to purchase:** if close co (qualifying loan, claim deduction for income tax)

## D3.4 Sale of shares by a company

|  |  |
| --- | --- |
| D3.4.1 Issues for **seller** | D3.4.2 Issues for **co being sold** |
| 1. **Sale of shares to 3rd party** – will give gain on disposal unless SSE    1. If not SSE, then consider sheltering gain with pre sale dividend strip, capital losses, trading losses in A (CY vs gains) or group relief from B 2. **Group** **implications**     1. ABGH dist - If seller retains some shares (<50%) then any exempt dividends received will be ABGH distributions.    2. VAT group – must notify that company left VAT group    3. Group relief – A and B cease GR when arrangements come into place    4. Gains group- degrouping charges could arise. If occurs of part of qualifying share disposal it is added to sales proceeds for shares (and exempt if SSE) 3. **VAT** – no VAT on sale of shares (but may be VAT on sale of assets) | These impact buyers too as co is joining buyer group   1. **Trading losses**    1. Can be c/f and used within the company itself    2. If MCINOCOT, then change in ownership rules may apply i.e. if there has not been MCINOCOT then can c/f losses    3. Note for trade and assets you lose trading losses, as the loss is in the original company, and here you are buying shares for the whole company 2. **Degrouping charges**    1. Added to sales proceeds on sale of shares and hence selling co’s responsibility if qualifying share disposal – otherwise taxed on the company being sold. 3. **CA** – assets remain at their TWDV and B continues to receive allowances as normal. |

## D3.5 Purchase of shares by a company

|  |
| --- |
| 1. **Stamp duty** – buyer paid 0.5% on MV of shares 2. **Dividends** – Dividends received unlikely to be taxed (exempt) 3. **Group relief** – starts from acquisition date 4. **PECL rules** – Pre-entry capital losses not allowed to use against gains in new group. Only post entry CL can be relieved vs gains in new group. Capital losses arising in B Ltd after it joins the C group can be fully relieved. 5. **PECG rules** – Pre-entry capital gains = gain realised prior to acquisition but in same AP. May only be relieved against capital losses arising in same company: 6. Before it joined the group; or 7. On assets held at time it joined the group but disposed of subsequently |
| 1. **Buy non-UK res** – no UK CT, dividends exempt, losses cannot be surrendered to group |
| 1. **VAT** – sale of shares exempt |

## D3.6 Sale of trade and assets by a company

* Gains/losses on assets (consider availability of r/o or ER reliefs)
* EIS/SEIS may be available to defer/exempt any capital gains
* Balancing allow/charges on assets qualifying for CA
* Cessation rules apply & terminal loss relief may be available
* Sale between connected parties: use MV (may be eligible for gift relief)

|  |
| --- |
| **For Company Selling** |
| 1. **L&B** – gain/loss 2. **P&M** – gain unless exempt under small chattel exemption. No cap losses on assets qualifying for any allowance. Balancing adjustments will arise too. 3. **‘Old’ Goodwill** = chargeable asset hence gain/loss (bal of consideration after net current assets + P&E + property less CGT paid) 4. **‘New’ Goodwill** = trading asset hence trading profit/loss. 5. **Investments** – gain/loss unless exempt (SSE) 6. **Stock/debtors** = trading profit/loss 7. **VAT** – TOGC and hence outside scope of VAT if conditions met. Only exception is L&B with option to tax over it, or new commercial building <3yrs old, where VAT must be charged unless buyer takes on option to tax. CGS (change in use, repay/recover input VAT, purchaser takes over remaining years). Sold with tenants in situ (likely TOGC (pg. 121)). 8. **Cessation of trade** – end of accounting period, Balancing adj on P&M, relief for trading losses:    1. Against profits of CY and then PY 12m, terminal loss relief i.e. C/b 3 years vs profits on a LIFO basis    2. Will then lapse, as these cannot be transferred to purchaser.    3. B will continue to be associate until dormant. ***Tax planning: advice co to become liquidated***. |

To calculate consideration paid for sale/purchase of trade and assets:

1. Cease to trade so extract cash through liquidation and a payment made to shareholders post liquidation
2. Payment taxed as capital gain (BADR etc.)
3. Proceeds received on liquidation to receive after-tax proceeds

G – (£1m x 10% - 20% ((G - £2m) - £1m) = after-tax consideration

1. Cash in company being sold = net assets less tax at 19% on gains etc.
2. Balance of proceeds received relates to goodwill which is taxable at 19% (if chargeable)
3. Goodwill = (proceeds received – net assets after tax)/0.81
4. Calculate total consideration payable i.e. consideration less tax at 19% for all assets on the balance sheet

## D3.7 Purchase of trade and assets by a company

|  |
| --- |
| For company buying |
| 1. **Buying individual assets (loads of ROR opportunities)** – allocate total consideration to MV of individual assets. If pay >MV of assets excess is treated as goodwill. Price paid become base cost for any future disposal. ***Advantage of buying assets: uplift the base cost to MV and assuming prices go up it is good***    1. Other L&B – QBA for ROR    2. P&M – fixed P&M QBA for ROR, and C.A.’s    3. Goodwill (new IFA) – Qualifying assets for deferral of profits on sale of other intangible. No WDA/amortisation available for purchases after 08/07/2015 (or from connected person on/after 03/12/14) 2. **SDLT** – Paid on L&B (on VAT inclusive price) at max 5% 3. **VAT** – likely TOGC so no VAT, but will be charged on new buildings or old buildings with option to tax so purchaser should opt to tax otherwise VAT chargeable at 20%, recover input VAT 4. **Commencement of trade** – if new company, start of new AP, assets included in CA at MV on purchase 5. **Trading loss** – would not transfer 6. **Goodwill** – included in purchase price, CT relief 6.5% on SL basis, depends on other qualifying intellectual property bought 7. **IT relief** – purchase shares via finance then loan interest gives tax relief (hold > 5%, full-time employee, own some shares) 8. **Contingent liabilities** – past actions remain with vendor (not trf) |

Ongoing taxation:

* + **If overseas**: PE in country, claim DTR, only use losses against its own future trade profits (separate overseas trade), elect to exempt overseas profits from CT (irrevocable, apply to future PEs, losses not relieved by UK co)
  + Tax at 19% on worldwide income (inc. PE)
  + 3% deduction from trading profits for SBAs
  + Capital allowances: AIA, FYA, WDA 18%/6%

## D3.8 Sale of trade and assets within a 75% Group

- There are some tax advantages of a share sale whilst avoiding some of the disadvantages, if sold within 75% group

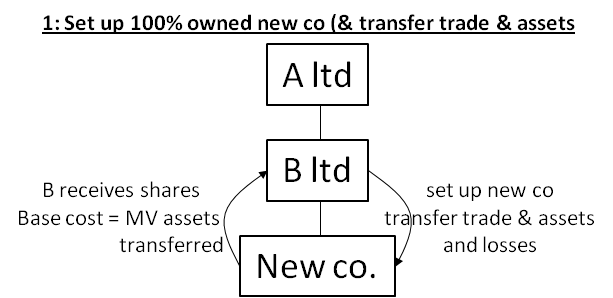
|  |  |
| --- | --- |
| D3.6.1 Issues for seller | D3.6.2 Issues for buyer |
| 1. Transfers assets at NGNL 2. TOGC for VAT provided conditions met (or within same VAT group) 3. **S944** applies (provided no change in 75% ownership):    1. P&M transferred at TWDV, hence no Bal adj    2. Trading losses transferred with the trade and assets (with certain restrictions – below)       1. Amount of losses that can be transferred – if transferor has a negative balance sheet directly following the transfer then you must leave trading loss equal to deficit behind, and transfer the remainder.       2. Losses are ringfenced – only use against profits generated by the assets transferred, e.g. can’t take a loss relating to clothes and use against loss from food. | 1. No SDLT within group unless    1. C Ltd leaves group within 3 years, or arrangements already exist for C to leave group. 2. DGC may arise in future |

## D3.9 Hive Downs (Pg. 334)

* Combination of selling shares and trade and assets, to get advantages of both.
* I.e. buyer gets trading losses and no contingent liabilities in a clean NewCo
* But more complex (not for small co’s), may mean more tax (2x Stamp duty i.e. on assets and shares) & degrouping charge. Only consider if trading losses are high. **If agreement to sell new company is already in place then transfer of losses will be denied.**
* Implications for **seller**:
  + SSE (exempt shares, used 12 months before trf and assets used in trade of NewCo at time of trf so treat as being held for 12 months)
* Implications for **co being transferred:**
  + NG/NL basis if in gains group
  + Pass on trading loss is common 75% ownership before and after trf
* Implications for **purchaser:**
  + Stamp duty 0.5%
* CT: in the same 75% group so trf at TWDV, CA and CT periods continue on sale, trading losses trf (change in trade restriction), change in ownership so b/f losses not available for group loss relief for 5 years after period of change
* VAT: exempt, VAT reg continues on purchase, transfer of trade/assets outside scope as TOGC
* Stamp taxes: SD 0.5% on shares, leave 75% group within 3 years so SDLT on L&B, degrouping charge (pg. 243) if sold outside 75% group within 6 years of NG/NL trf but exempt if SSE applies
* Contingent liabilities: new, ‘clean’ co so not responsible for past actions

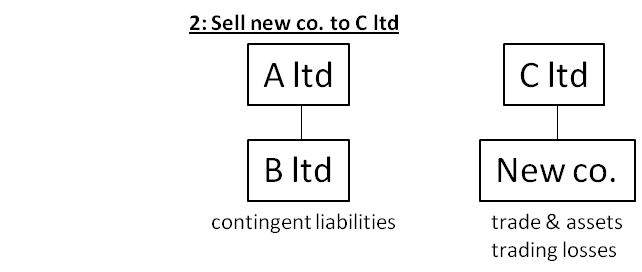
**Worked Example: C is a new company**

**Step 1:**

****

* The advantage of step 1 is that the trading losses transfer to NewCo
* **Advantage:** No gains (NGNL), no VAT, P&M at TWDV (no Bal Adj), contingent liab not transferred.
* **Disadvantage:** complicated and expensive, 2 lots of stamp duty (T&A and shares), SDLT is payable on L&B as arrangements exist for new co to leave group, capital losses not transferred
* Now as we have sold NewCo to C, they get the trading losses as these are within NewCo, but do not get the contingent liabilities as these did not get transferred with the T&A transfer from B to new co.

**Step 2:**

****

* C Ltd: no VAT on shares.
* NewCo can use unrelieved trading losses subject to change in ownership rules.
* Stamp duty at 0.5% (second lot).
* Shares qualify for SSE if assets transferred were held and use for 12 months before transfer and use in trade of NewCo at time of share sale

## D3.10 Management Buy Outs (Pg. 335)

* Where managers of a company buy the business
* Normally follows the hive down route.
* **Tax implications:**
  + **Employment income consequences** – if managers paid less than MV for shares, then assessable employment income arises equal to diff between MV and price paid
  + **Partly paid shares** – outstanding amount taxed as beneficial loan until outstanding amount paid
  + **Close company status for new company** – tax relief on money borrowed to fund the MBO, loans/benefits to participators
  + **Financed via external sources (i.e. venture capital, bank)**

Managers: loan interest relief against income if loan taken out providing: hold > 5% of share capital or full-time working or employee

Company: finance interest is allowable trading expense or NTLR debit

## D3.11 Sale of Shares – Special Situations

### D3.11.1 Dividend Stripping (Pg. 325)

* When selingl a company you will get a capital gain but you could just pay a big dividend just before you sell.
* This will lower net assets prior to sale, less proceeds, sell for less, lower gain.
* This is **allowable** as long as dividends are paid out of normal taxed profits (distributable reserves) - otherwise HMRC attack as form of Value Shifting.

**Individual Shareholder**

- Only if do not qualify for BADR.

- Taxed on dividends at effective rates (0%,7.5%/32.5%/38.1%) but may not want dividend as the gain may be covered by losses, AEA, CGT 10%/20%

**Corporate Shareholder**

* Pre-sale div tax free (most of time), and shares will be sold for lower price and smaller gain.
* You would only do this dividend stripping if shares did not qualify for SSE.

### D3.11.2 Deferred Consideration (Pg. 55)

* Where some consideration for sale of shares/assets is dependent on future event – how is this taxed?

|  |  |  |
| --- | --- | --- |
| Payments by instalments | Future payments contingent but known | Future payments contingent and unknown |
| If not contingencies, then do 1 gains calc with total proceeds | If contingency results in a fixed amount being paid then there is 1 gains calculation where total proceeds receivable are included. If not met then computation will be amended later. | 2 disposals: one when the shares sold and second when future consideration received. See Calc 1 and Calc 2 below |

|  |
| --- |
| **Calc 1. At the time of the sale of the shares** |
| Proceeds | X |
| PV of ‘Choice in action’ | X |
| *(estimate by HMRC of how much you will receive in future)* | **X** |
| Cost | (X) |
| Gain | **X** |
|  |
| **Calc 2. At time future consideration received** |
| Proceeds | X | |
| PV of ‘Choice in action’ (deduct figure already taxed) | (X) | |
| Gain | **X** | |

***- For individuals if a capital loss arises in calc 2 it can be c/b against original gain***

***- ER relief never available on 2nd gain even if it was available on 1st cdisposal***

**Note: See B2.7 for Takeovers & reconstructions**

Section E - General

# E1 Ethics

* **Fundamental** principles: Integrity, Objectivity, Competence and due care, confidentiality, professional behaviour
* **Threats**: Self-interest, self-review, intimidation, advocacy, familiarity + safeguards- regulations, training, professional standards, disciplinary, review.
* **PCRT standards** for tax planning: practical advice about ethical and legal issues. 5 standards when advising on tax planning:
  + i) client specific
  + ii) lawful
  + iii) disclosure and transparency (all facts disclosed)
  + iv) tax planning arrangements (not encourage or promote tax planning contrary to Parliament or highly contrived)
  + v) professional judgment and appropriate documentation.
* **Ethical conflict resolution**, consider 6 factors: Relevant facts, relevant parties, ethical issues, fundamental principles, internal procedures, alternative courses of action.
  + Unresolved then consult other appropriate persons/orgs for help
  + Document issue and details of discussions
  + Obtain advice from professional body/legal advisors
  + Not resolved, refuse to remain associated with matter
* Disclosure of info:
  + **May disclose**: permitted by law + authorised by client
  + **Required disclosure**: legal proceedings, money laundering
  + **Professional duty/right to disclose**: compliance with quality review of professional body, protect accountant in legal proceedings, respond to inquiry or investigation by member/regulatory body, comply with technical standards/ethics requirement
  + **Considerations** – harm to interested parties, all relevant info known?, type of communication expected and to whom addressed, if info is privileged, legal and regulatory obligations and all facts confirmed/recorded
  + **Conflicts of interest**: notify all, consent from all, separate engagement teams, procedures to keep info separate, confidentiality agreements, reviewing safeguards regularly, clear staff guidelines regarding confidentiality.

## E1.1 Client and Engagement Acceptance

* **Acceptance** = threats to compliance with fundamental principle?
* Firm competent to provide services requested?
* **Engagement Letter** should make clear in what capacity you are acting
  + ***Agent (performs tax calc):*** 
    - Acting on client’s behalf
    - Client retains responsibility for accuracy hence this is low risk E.g. submission of self-returns
    - Consider confidentiality i.e. only disclose if authorised or overridden if: ML, court order, HMRC exercise statutory powers
  + ***Principal (gives advice):***
    - Provision of tax advice
    - Take full responsibility for advice and may be liable to taxpayer
    - We may be liable to taxpayer if advice is incorrect or inappropriate so this high risk
    - **Responsibility for tax returns:** Client retains responsibility & accountant should draw their attention to this & obtain written evidence of client approval. Accountant may recommend fuller disclosure in tax return but this can only be made if client approves it.
    - **Professional Indemnity Insurance (PII)**

i) minimum £1.5m unless firm’s gross fee income<£600k (min 2.5x gross fee income, min £100k)

ii) hold cover for at least 2 years after cease practice (preferably 6)

* **Data protection** – Organisations which process personal info must notify information commissioner’s office (if not = criminal offence unless exempt). Ensure compliance with data protection act.

## E1.2 Accountability of Senior Accounting Officers

Qualifying co (Turnover > £200m or B/S total >£2bn) must appoint SAO to certify that accounting systems are adequate for tax reporting purposes. SAO required to certify annually the adequacy of acc systems & specify nature of any inadequacies. Penalties of £5k for non-compliance.

## E1.3 Irregularities

Irregularities: errors by client/member/HMRC/other relating to client’s tax affairs

* Lead to tax overpayment: client informed ASAP, client advised of repay claim
* Lead to tax underpayment: claim for mistakes made by HMRC, bare in mind money laundering legislation and need to notify the firm’s PII

## E1.4 Money Laundering

* Possessing the proceeds of tax evasion (or other crime)
* Defence: no knowledge of offence, privilege reporting exemption, reasonable excuse (extreme situations only), not unlawful in country of occurrence
* No tipping off (can be offence)
* Register with appropriate supervisory authority
* Appoint MLRO and have internal reporting procedures in place
* Train staff so they know legislation and know how to recognise and deal with issues, how to report suspicions and how to identify clients
* Carry out due diligence on new clients and monitor existing clients so client is known and risky areas known (identification for new clients)
* Report to NCA using Suspicious Activity Report.

## E1.5 Tax planning, avoidance & evasion

**Planning:**

* Government offers tax-saving schemes – Tax planning is legal and taxpayers are entitled to enter into transactions that reduce tax.
* HMRC may challenge interpretations of the law - only courts decide if legal
* PCRT: can’t promote tax avoidance schemes

**Avoidance:**

* Organise tax affairs to minimise tax bill, legal, e.g. efficient use of losses, investment in ISA, spouse exemption for IHT. Schemes must be disclosed to HMRC.
* HMRC states tax payers must avoid schemes that are aggressive or abusive e.g. tax benefits out of proportion to any real economic activity
* ‘Tax-saving schemes’: report to HMRC under DOTAS, it is lawful, is there full disclosure to HMRC of all facts, do they exploit loopholes or are they achieving results not intended by Parliament
* Warning signs: too good to be true, secrecy/confidentiality agreement, arrangement has a scheme number under DOTAS

**Evasion:**

* **Suppressing information to which HMRC are entitled** to i.e. failing to notify HMRC of tax liability, understating income/gains, omitting to disclose relevant fact, or **providing HMRC with deliberate false information**, i.e. deducting expenses not incurred, claiming capital allowances on plant not purchased.
* **Illegal**
* Example: pay employees through overseas co (intent to hide information, potential money laundering or aggressive tax avoidance)

## E1.6 Large businesses - requirements

* Large co’s must publish on the internet their strategies in relation to UK tax
* Failure to do so leads to initial penalty of £7,500 & further for continued non-compliance
* Company is large is turnover>£200m and/or B/S total>£2bn

## E1.7 Penalties for offshore tax evasion

* Higher of:
  + 100% x potential lost revenue
  + £3,000
* HMRC have power to publish info if:
  + Potential lost revenue > £25k, or
  + There has been at least 5 penalties in a 5 year period

## E1.8 PCRT outline of roles of a tax adviser

* **Advising on a planning arrangement:** risks and implications of scheme.
* **Introducing another adviser’s planning arrangement:** If paid a commission to do this, should be disclosed to client. Accountant appraise the scheme and consider effectiveness and risks.
* **Providing a second opinion:** If asked to provide second opinion on third party’s planning arrangements, not accept commission. Only do it if sufficient expertise. Consider whether it is subject to monitoring under POTAS.
* **Compliance services:** If client receives advice elsewhere on planning arrangements which adviser has to enter on tac return, this is compliance services. Accountant not responsible for advising on implications but should not include arrangements they don’t believe are sustainable.

## E1.9 General Anti-abuse Rule (GAAR)

– Apply to arrangements entered on/after 17/07/13

- Designed to counter tax advantages sought from complex planning schemes or deliberately contrived arrangements

- Applies for I.T., C.T., CGT, IHT, and SDLT. Different provisions apply to NICs

- **Double reasonableness test**: 1) was the main purpose to **obtain tax advantage and 2) are arrangements abusive** (profit/gain>economic gains or losses exceeds economic loss)

- when GAAR applies, just and reasonable adjustments made to counter the tax advantages obtained

- In addition to GAAR, planning schemes can also be attacked by Ramsay doctrine (transactions with no commercial purpose/effects may be ignored)

**Advice to clients in light of GAAR:**

* Tax planning will be ineffective
* Accountancy practices may put measures in place (pg.24 kaplan)
* **GAAR Penalty:** 60% of counteracted tax applies where: return/claim was submitted to HMRC on the basis of tax advantage arising where all/part of the tax advantage is counteracted by GAAR & arrangements were entered into on/after Royal Assent to FA2016

## E1.10 Disclosure of tax avoidance schemes

Disclosure of Tax Avoidance Schemes (DOTAS) rules give HMRC early warning of aggressive tax planning schemes.

- Scheme promoter devises a tax avoidance scheme and sell scheme to client

- Scheme promoter require to disclose full details of scheme to HMRC within 5 days of making scheme available

- HMRC provided promoter a scheme reference number (SRN)

- Promoter passes the SRN to each client using scheme + provide HMRC list of clients on a quarterly basis

- client include SRN on their tax return for period they use tax avoidance scheme

**Promoter**

-Responsible for design of proposed arrangement

-Makes a firm approach to others to make proposal available for implementation

-Makes a notifiable proposal available for implementation by others

### E1.10.1 Notifiable Arrangement

Only disclose if it is expected to enable tax advantage

- tax advantage is main benefit of the arrangement

- tax arrangement falls within one of the specified descriptions (hallmarks):

i) *Confidentiality* – promoter wants to keep it private from other promoter/HMRC

ii) *Premium fee* – fee charge depend on success of scheme

iii) *Standardisation* – product being sold can be adapted to client without significant modification

iv) *Losses* – scheme involves manufacturing trading losses to offset against other tax liabilities

v) *Leasing arrangement* involved with cost of ≥£10m for ≥2yrs

### E1.10.2 HMRC Information Powers

- Require introducer to identify the person who provided them with info about scheme & persons whom they have made marketing contact re the scheme

- enquire why promoter has not disclosed a scheme

- resolve disputes and enforce disclosures

- request more info if disclosure incomplete

- require promoter to provide information to identify a client if HMRC suspects reported parties are not only parties in scheme

- request further info about notifiable proposals to be provided within 10 days

### E1.10.3 Penalties

- Failure to comply with disclosure requirement - £600 max/day

- £5000 max/day where disclosure notice has been issued but not complied with in 10 days

- failure to provide info – initial £5k, then up to £600 per day

- User penalties – scheme user fail to report SRN: £5,000 to £10,000 per scheme depending on # of successive failures

### E1.10.4 Further Powers

* **Follower Notices** – HMRC may issue notice to taxpayer with open enquiry or appeal if tax arrangements have been shown in relevant judicial ruling not to give asserted tax advantage
* **Accelerated payment notice** – require tax payer to pay tax which is disputed in 3 cases:

- Issue of follower notice

- tax arrangement disclosable under DOTAS

- HMRC is taking counter action under GAAR

* **High risk promoters** – can be issued with conduct notices for period of up to 2yrs, breaches of conduct notices can lead to penalties of up to £1m and provide HMRC with certain disclosure rights about promoter.

### E1.10.5 Making tax digital (MTD)

* Only initially for VAT purposes for businesses TO>£85k.
* Available for other businesses and other taxes on voluntary basis.
* Eventually, used by taxpayers to provide HMRC 1/4ly updates and will be used for finalising accounts and replace VAT returns.

## E1.11 Anti Avoidance – Owner manager business (Pg. 137)

Difference between employed and self-employed:

|  |  |  |
| --- | --- | --- |
|  | **Contract of service (employed)** | **Contract for service (self-employed)** |
| Degree of control by ‘employer’ | High | Low |
| Mutuality of obligations | High | Low |
| Costs of correction of work borne by worker? | Unlikely | Likely |
| Financial risk by worker? | No | Yes |
| Provision of own equipment | Unlikely | Likely |
| Payment | Fixed pay | Pay for work done |
| Legal protection | High level | Low level |
| Disciplinary rules | Subject to co. rules | Not subject to co. rules |
| Client portfolio & exclusivity | Does all work for 1 party | Has number of clients |

|  |  |  |
| --- | --- | --- |
|  | **Employed** | **Self-employed** |
| **Income and basis of assessment** | Employment inc including private use benefits – assess on receipts basis | Trading Inc with no deduction for private exp. – assessed on CY basis but amended in opening and closing year |
| **Allowable expenses** | Wholly, exclusively and necessarily for purpose of employment | Wholly and exclusively for purpose of trade |
| **NIC** | Class 1 Pri, 1 Sec, 1A, 1B | Class 2, 4 |
| **Payment of tax and NIC** | Deduct under PAYE | I.T and Class 2 & 4 – 2 P.O.A and one balancing payment through self-assessment (pay later) |

* Generally cheaper from tax point of view to be self-employed than employee as NICs lower
* Common for individual to set up an unincorporated business to provide services to a company, rather than be employed by that company directly
* Individual paid less tax and company saves NICs (class 1 secondary)
* As a result HMRC apply “employment status” tests and if it is deemed that the individual is essentially an employee of the company, any unpaid taxes are due.
* To get around this, personal services company were created by individuals to provide services via an intermediary company and remunerate themselves via a dividend rather than salary.

### E1.11.1 IR35 Legislation (Pg. 138)

* Applies to “relevant engagements” i.e. where:
  + An individual works for a company via an intermediary business (personal co) and
  + Individual would be deemed to be an employee but for existence of the intermediary
* If intermediary is a company, the individual must control > 5%.
* If individual is in substance an employee then all amounts received from large co by personal co are treated as employment income for the individual:

Deemed employment payment proforma:

|  |  |
| --- | --- |
| Total amount invoiced to Co. X by Personal Co. | X |
| Less: 5% deduction | (X) |
| Less: Gross Salary and employers NIC paid to individual in the year by Personal Co. | (X) |
| Total deemed salary including employers NIC | G |
| Less: Er’s NIC on total above (G x 13.8/113.8) | (X) |
| Total deemed employment income | X |

Based on the above amount, the following are due to HMRC:

* Employer’s NIC
* Employee’s NIC
* Income tax

And will be payable as if the deemed salary was paid on 5 April.

-From 06/04/17, when a worker provides services via intermediary to a **PUBLIC AUTHORITY**, the responsibility for operating the IR35 rules lie with public authority:

- the public authority must inform worker is within IR35 rules

- When calculating deemed employment income payment here, 5% deduction cannot be made.

## E1.12 Managed Service Companies (Pg. 142)

* This is a company which supplies the services of individual workers to third parties.
* The worker receives majority of the payments received by the managed service company from the client in relation to the worker’s services
* The worker receives payments which are more than they would have been if they have been treated as employment income paid after deduction of IT and NICs via PAYE
* A managed service company provider is involved with the company
* Extension of IR35 rules where workers have grouped together.
* Tax treatment broadly as for personal service companies although payments are chargeable when made (unlike personal service company when they are taxed at end of year).
* Less deduction when calculating deemed employment income

# E2 RAISING FINANCE

## E2.1 Debt V Equity (Pg. 203)

### E2.1.1 Loan relationship rules

* Impairment of a loan: debit under loan relationship rules. Incidental costs of loan (bringing loan into existence, disposal/acq of rights = debit.
* NTLR income:
* If interest rec> int payable – net credit.
* If int rec < int payable – net debit = NTLR deficit.
* NTLR = nil, loss relief available.
* Connected party loans (one co under the control of the other)
* If borrower w/off loan to connected company, no deduction for lender, no taxable income for borrower.
* Company purchases debt from third party, but debt owed by a comp connected to it, debtor company (i.e. the co which initially took out the loan) is taxed on DEEMED release of debt and the lender is allowed the same deduction.
* DEEMED not imposed if debt collection company only connected because of a restructuring arrangement in corporate rescue situation.
* 'Corporate rescue’ tax relief
* Two unconnected companies then tax treatment of loan provisions, impairments and w/off is same as acc treatment. If debt formally written off by lender, lender takes tax deduction for write off and borrower is taxed on credit.
* Borrower exempt from tax on credit if: w/off is part of insolvency arrangement. Or debt w/off is part of debt for equity swap.

### E2.1.1 Paying/Issuing Company

**Debt:**

* ***Trade purposes*** e.g. acquire P&M: issue costs and interest are allowable trading income expenses
* ***Non-trade purposes*** e.g. acquire investment: interest is allowable NTLR expense

**Equity:**

* Dividend = not tax deductible & exempt
* Share issue costs are not deductible as considered to be capital

*(Tax Planning – debt more tax friendly – reduces taxable profit as interest is allowable expense)*

### E2.1.2 Individual Investor

**Debt:**

***QCD – form of investment***

* Non-convertible & on normal commercial terms denominated in sterling
* Interest received is savings in IT come (Tax @ 20/40/45%)
* On disposal, gain is exempt from CGT

***Non-qualifying corporate bond***

* Interest taxed in same way as above
* On disposal – chargeable to CGT

**Equity:**

* Div income taxed @ eff. Rate of IT (0/7.5%/32.5/38.1%)
* On disposal – gives rise to CGT

### E2.1.3 Corporate Investor

**Debt**

* Interest received is NTLR income therefore deductible (trading income if investor is a financial institution)
* On disposal gives rise to NTLR profit/loss (trading if financial institution)

**Equity:**

* Div normally exempt but may count as an exempt ABHG if shareholding < 51%
* Gain on disposal subject to CGT if no SSE

## E2.2 Foreign Exchange

### E2.2.1 Trading Transactions (i.e sale/purchase goods overseas)

- Record using ex rate @ time of trans i.e buy/sell good

- On settlement = ex gain/loss taken to P&L = taxable Trading Profit exp/income

### E2.2.2 Monetary Items (Bank/loans/receivables)

- Retranslated at y/e & gain/loss arises & taken to P&L

- Allowable trading/NTLR income/expense

### E2.2.3 Non Monetary (Investments/Capital assets)

- When purchased, translated @ spot rate – never retranslated so no Gain/loss

- On disposal, proceeds @ spot -> **FX treated as part of CGT**

### E2.2.4 Overseas Branch

- On retranslation of accounts at closing rate (fx arises on restatement brought into reserves acc, not p&l)

- No tax impact

## E2.3 Leasing of P&M (incl. Long funding lease)

### E2.3.1 Tax treatment of finance and operating leases

|  |  |  |
| --- | --- | --- |
|  | Finance leases | Operating Leases |
| **Lessor (less in exam)** | Taxed on rental income  Capital allowances allowable | Taxed on rental income  Capital allowances allowable |
| **Lessee** | Finance costs (interest element) and depreciation allowable as economically equivalent to rent  (no tax adjustments needed) | Rental charges allowed against trading income on accruals basis (no tax adjustments needed – don’t add back depreciation) |

### E2.3.2 Sale and Leaseback

- Lease premium (deemed rent dedn p/year)

= (premium x (50 – yrs left)/50)/yrs on lease

- Disposal: give rise to accounting profit, remove from balance sheet, lease is ROU asset, equivalent recognised as liability, interest and depn deductible (P&L)

- Interest and depn for inclusion of lease premium and transaction costs for ROU asset are disallowable

- Accounting profit from disposal of stores not taxable, decrease profit/inc. loss

- SDLT: pay on lease premium (normal) and total of lease rentals

* + Lease rentals: res (to 125k 0%, above 1%), non-res (150k 0%, 5m 1% or 2%)

- VAT: no OTT then no VAT on sale if commercial building > 3 years old

### E2.3.3 Disposal of lease

Assignment of short lease:

- Original cost adjusted for deductions of deemed rent over ownership

- Cost subject to wastage: actual cost less deemed rent dedn over ownership

- Wasted cost = cost subject to wastage (above) x years left/total years (tax table rates)

# E3 Corporate Anti-Avoidance

## E3.1 Close Companies (Pg. 154)

Company under **control** of:

* 5 or fewer participators, or any number of participators who are directors. Participator is shareholder and their associates.
* Directors: person occupying position of director, shadow director, managers who own ≥ 20% of share capital of co. (include associates)
* Associates: participators relatives, business partner, anything to do with trustees. Relatives = spouse, parents, grandparents, children, grandchildren, siblings
* You must **TRY** to make it a close company!
* Not close if it's quoted with ≥ 35% held by public or is controlled by one or more co that's not close.
* **Report transactions with participators to HMRC**
* Loans to buy shares: > 5% (tax relief for interest on loan, deduct in IT comp – higher of 50k and 25% of adj total income)

### E3.1.1 Implications of close company

**Loans to participators (or associates) (s455) (Pg. 156)**

* The company pays notional tax to HMRC of 32.5% (25% prior 06/04/16) of loan when loan is made.
  + Payable 9m and 1 days for small or medium, or instalments if large *(same day as CT is due)*
* The loan will either then be:
  + Repaid = HMRC repay s455 tax (or liability is discharged if not paid yet)
  + Written off = HMRC repays s455 tax and any part of loan written off is **disallowable expense** (as not commercial loan), add back loan to TTP, deduct class 1A from TTP on loan write off & class 1 secondary

Participator is treated as having received a **net dividend (distribution)** equal to loan written off:

* + - * + 0%/7.5%/32.5%/38.1% (dividend rates) further tax to pay **and** if participator is EE then class 1 NICs
  + Repayments are due 9m and 1 days after end of accounting period in which repayment/waiver of loan made
  + If participator is EE, then benefit in kind (class 1A 13.8%) will be assessed if loan is favourable terms (**cheap loan interest**)
  + Interest received: treat as NTLR income (in TTP)
  + S455 tax not applicable for:
* Loans made in ordinary course of business
* Loans to directors/employees if: ≤ 15k, full time worker and own ≤5%

**Benefits to participators who are not employees:**

* Cannot be taxed through employment income rules, instead benefit taxed as **net distribution (i.e. a dividend)**
* Value calculated using normal benefit rules
* Cost to company is not tax deductible (disallowed)

**Benefits to participators who are employees:**

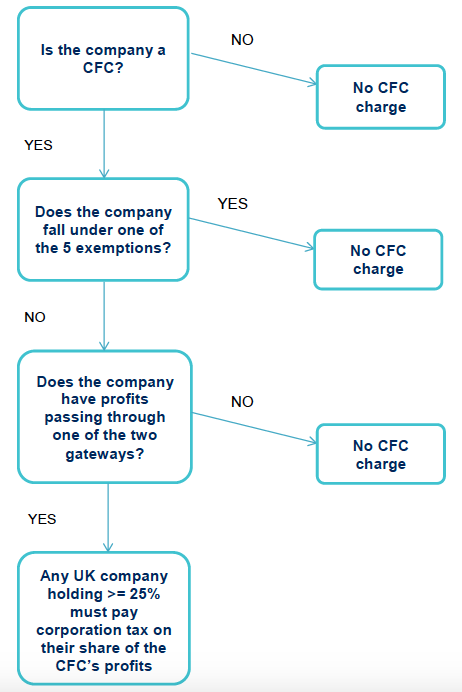
* Fall under normal employment income benefits (tax to IT and class 1A)

**Qualifying Interest:**

* Relevant to participator who **owns at least 5%** of close company or is a full time member of management
* If they **take out loan from bank** in order to lend money to or buy shares in close company (as long as they do not qualify for EIS relief), any interest paid can obtain tax relief

### E3.2 Controlled foreign companies (CFC) (Pg. 277)

***To identify CFC, look out for company where tax rate is significantly low. We are looking for where there is a proper commercial reason for setting up in country X, i.e. purely to avoid tax is not commercial reason. This may be measured if the business abroad is autonomous.***

* If UK company is considering setting up overseas subsidiary, it will be attracted to company with low rates of tax (tax havens).
* Anti avoidance legislation in place to prevent UK companies diverting profits out of UK to these type of countries (CFCs)
* ****These rules are also relevant to the profits of overseas PEs if an election made to exempt them from UK CT tax.

### E3.2.1 Definition:

* **Resident outside UK** and either:
  + Under **UK control** (>50% or de facto (exist in reality but not by law)); or
  + At least 40% controlled by a UK resident and at least 40% but no more than 55% controlled by a non UK resident.

### E3.2.2 Consequences of being a CFC

* CFC charge will arise if:

1. A UK company holds at least 25% interest in the CFC **and**

2. No CFC exemptions apply (see below) **and**

3. The CFC has chargeable profits falling within the ‘gateway’

* The CFC charge means that all 25% or greater UK corporate shareholders **pay tax at the full rate of CT** on their share of the CFC’s profits - this is known as the **apportioned profit rule.**
* CFC charge is at the unified rate of CT (19%). UK co’s can’t offset UK losses and surplus expenses against a CFC charge.
* Credit can be taken for their share of any foreign tax actually paid – **creditable tax (like DTR).**

### E3.2.3 CFC Exemptions

The apportioned profit rule is not applied if **any one of the following tests is met**:

* **Exempt period** – the first **12 months** of the company coming under the control of UK residents, i.e. if you **restructure** your group, you have 12 months to restructure. This is intended to provide a period of time for companies to restructure to avoid the charge applying & applies for companies which have been purchased – not newly incorporated.
* **Excluded territories** – HMRC provides a list of approved territories where rates of tax are sufficiently high to avoid a CFC charge arising.
* **Low profits** – the foreign company’s profits are no more than £500k (of which no more than £50k comprises non-trading profits ) = i.e. not bothered about small amounts
* **Low profit margin –** the foreign company’s accounting profits are no more than 10% of relevant operating expenditure. Operating expenditure for these purposes excludes amounts paid to related parties and cost of goods sold, unless those sold are used locally.
* **Tax exemption –** the tax ***paid*** in the overseas country is at least 75% of the UK CT which would be due if it were a UK resident company **(don’t compare the rates, work out the actual tax for both countries and then compare)**

### E3.2.4 Chargeable Profits – ‘CFC Charge Gateway’

* Charge only applied to trading profits that pass through the ‘gateway’. Purpose is to attack those profits of the CFC which have been diverted from the UK.
* For the test, we must first determine whether the test applies and then secondly determine which profits have passed through the gateway (and are therefore subject to the apportioned profit rule).

**Gateway 1 – Trading Profits attributable to UK activities**

* Unless a company meets one or more of the following entry conditions, the **profits** of the CFC will pass through the ‘charge gateway’ and become chargeable.
  + **CFC has not been party to arrangements with primary purpose of reducing/eliminating a charge to tax in UK (no tax planning schemes), *or***
  + **None of the CFC’s assets or risks are managed from the UK, *or***
  + **The CFC has ability to manage its own business if any UK management of assets or risks were to stop, *or***
* *Note that ‘profits’ = trading profits and non-trading IFA profits*
* The CFC must **analyse its significant people functions,** which are relevant to those assets and risks (individuals involved in active decision making around a particular asset). If the relevant people functions are carried out in UK, profits pass through the gateway and become chargeable in UK.

## E3.3 Transfer Pricing (Pg. 273)

* Transactions can take place between connected companies **at a price other than arm’s length so one company gains tax advantage**
* Shift profits from co. paying tax at a higher rate to a co paying tax at a lower rate
* Transfer pricing legislation applied where either profits subject to UK CT are reduced or losses increased as a result of TP

### E3.3.1 Who rules apply to

* + Between 2 UK co’s or UK and non-UK co.

**Rules apply to:**

* + Connected companies
    - Connected =
      * One company directly/indirectly participates in management, control, or capital of other company; or
      * A third party directly/indirectly participates in management, control, or capital of both companies
  + **Large companies (make sure aren’t small/medium co’s)** 
    - Large = at least 250 EE’s **or** revenue ≥ €50m (£44m) and total assets ≥€43m (£38m)
  + If a company is a member of group, then look at group in total to decide if large.

*TP could be applicable to groups/consortium who are inter group trading.*

### E3.3.2 Goods and Services

* **Rule = transactions should be charged on an arm’s length basis.**
* If not arm’s length, an **adjustment** is required in tax computation of company which has **gained the tax advantage**, to reflect the profit that would have been achieved if the transaction was carried out at arm’s length.
* If transaction is between 2 UK companies then equal and opposite adjustment in other company’s comp
* A co. can enter into an Advance Pricing Agreement (APA) with HMRC, detailing how certain transactions should be dealt with

## E3.3.3 Thin Capitalisation (Pg. 273)

Also consider CIR (unless net interest <£2 million, confirm other loans for interest)

### E3.3.3a Provision of Loan Finance

* Apply for bank loan guaranteed by connected co
* Consider borrowing capacity of borrower
* Rules apply to: amount of loan &rate of interest charged
* **Thin capitalisation** = amount of loan provided to connected co, exceeds the amount a third party would be willing to provide (excess is disallowed)
* HMRC use gearing and interest cover ratios to help them assess whether company is thinly capitalised.

**Tax Implications:**

* Excess interest charged on amount of loan that exceeds an amount a third party would lend is disallowable
* Further disallowance if level of interest charged on the loan is not arm’s length.
* Will probably be loan to UK Company from foreign parent.

### E3.3.3b Guaranteed Loans

- Thin capitalisation rules apply to third party loans which are supported with a guarantee from a group member. Therefore, interest on ‘real’ bank loans may be disallowed in the same way interest on intra-group loans can be disallowed

- Interest with guarantee vs without guarantee: excess is disallowed in borrower

* + Disallow years where not given loan without guarantee
  + Excess can be claimed by guarantor: if they borrowed on the same term

## E3.3.4 Diverted Profits Tax (Pg. 283)

- Intends to target large multinationals who have avoided tax (Google, Amazon)

- If DPT applies, it is charged at **25%** on ‘taxable diverted profits’

- Further info on type of asset and MV (possible **transfer pricing adjustment** also)

- Not self-assessed, notify HMRC within 1 year

- Applies **if either scenario arises**:

(note: does not apply if both parties involved are SMEs, large > 249 employees)

***First rule for DPT to apply (i.e. arrangements exist to avoid having a UK PE):***

* A **non-resident co** is carrying out a trade
* A UK resident person (‘the avoided PE’) is **carrying out activities in the UK** in connection with the supplies to UK customers
* **Reasonable to assume** the arrangements are set up to ensure that the foreign company is **not carrying on trade** through a UK PE
* The “mismatch” (the reduction in one parties liab > the increase in the other party’s liab. Does not apply when increase/decrease ≥ 80% of the other) or “tax avoidance” (when main purpose of arrangement is to reduce CT charge) condition is met
  + **“Effective tax mismatch outcome”:** int/depn is deductible for trading profit so reduces CT by \_, this reduction exceeds resulting increase in overseas tax liability, **increase is less than 80% of the decrease in UK CT**

EXCEPTION: if total sales rev from all supplies of goods and services to UK customers ≤ £10mil, **or** total expenses relating to the UK activity ≤ £1mil.

***Second rule for DPT to apply (i.e. transactions lacking economic substance):***

* There are arrangements between a UK company/PE and a connected company (non-UK res); and
* The arrangement causes an **“effective tax mismatch outcome”** (above) between the two parties (divert profits from UK to overseas with lower tax rate)

Process: (Pg.285)

1. Charge of 25% on notional PE profits
2. Notify HMRC < 3 months end of accounting period
3. HMRC estimates the DPT liability
4. Company has 30 days to reply
5. HMRC issue charging notice payable < 30 days.

## E3.3.5 Hybrid Mismatch (Pg. 287)

These aim to counteract arrangements aiming to either achieve a double deduction or deduction by one entity with no corresponding income in the other.

* Hybrid mismatches often arise in cross-border transactions by exploiting the differences in tax treatment between different countries

## E3.3.6 Corporate Interest Restriction (CIR) (Pg. 274)

* From 1 April 2017, limit to interest costs deductible in the UK for co’s in a larger group
* Applies where worldwide group has net tax-interest expense > £2mil
* Net-tax interest expense: taxable interest income less expense
* Subject to interest allowance restriction (can c/fwd unused allowance 5 years)
* Calculate interest capacity using either:

1. Fixed ratio method (default)

Allowance lower of:

* 30% of group’s aggregate EBITDA (given)
* Fixed ratio debt cap (net interest of the worldwide group adjusted for tax) (given)

1. Group ratio method (by election if gives higher allowance)

Allowance lower of:

* Group ratio % (given in exam) of the aggregate tax EBITDA of the group
* The group ratio debt cap (group net interest expense) (given)
* Loss restriction rules for c/fwd losses apply after the CIR
* Admin – Group should appoint a reporting company, restriction return filed if there is a restriction, completed 12m from end of period of account.

### E3.3.7 Value shifting

* This is **paying dividends out of profits where no CT has been paid**.
* The reason that a dividend received by company is exempt from CT is that it is received out of profits already subject to CT
* Where pre-sale dividends are paid out of distributable reserves (earned profits) it will reduce the value of the company and hence its gain on disposal
* However, where co. pays dividend out of untaxed profits it may be attempting to avoid tax by reducing value of company and converting a taxable gain into tax free dividend income
* The consideration on the subsequent sale of shares (after the value shifting dividend) is therefore adjusted by a ‘just and reasonable amount’. A value shifting adjustment can therefore augment a capital gain
* If subsequent disposal covered by SSE, no value shifting adjustments apply since there is no tax advantage to be gained.

**Depreciatory Transactions (attack capital losses)**

**-** only apply to co in same capital gains group

-Rules limit any loss arising on disposal of shares if there has been dep trans (which reduce value of shareholding – eg movement of assets at less than MV/cancellation of intra-group debt)

- only to restrict cap losses, not increase cap gain

- e.g. Where there has been a movement of assets around a group at < MV. Could also apply to cancellation of intra-group debt, excessive payments for group relief, or payments for group services/products on non-arm’s length terms

# E4 VAT

## E4.1 VAT Rates

- Use correct rate depending on when the transaction took place: (HM p.261)

|  |  |
| --- | --- |
| 1 April 1991 to 30 November 2008 | 17.5% |
| 1 December 2008 to 31 December 2009 | 15% |
| 1 January 2010 to 3 January 2011 | 17.5% |
| From 4 January 2011 | 20% |

## E4.2 Partial Exemption

* If business makes taxable supplies and exempt supplies, input VAT relating to taxable supplies is recoverable and input VAT relating to exempt supplies is irrecoverable.
* Input VAT not directly attributable to either, is apportioned.
* If one of the simplified partial exemption tests or the standard test is satisfied, then the business can consider itself de minimis and provisionally claim all input VAT.

### E4.2.1 Simplified Tests

**1. Test 1:** Total input tax ≤ £625 per month on average **and** exempt supplies ≤ 50% of all supplies.

**2. Test 2:** If test 1 failed, total input tax less input tax attributable to taxable supplies ≤ £625 per month on average **and** exempt supplies ≤ 50% of all supplies

### E4.2.2 Standard Test

* + - Split input VAT into that relating to taxable and exempt. Any not directly attributable needs to be apportioned as follows:
      * Total taxable supplies / Total supplies = % x non attributable VAT = VAT recoverable
      * Round up % to whole percentage
    - Now it is split, do this test. **VAT relating to exempt supplies** can be reclaimed if:
      * ≤£625 per month on average **and** ≤50% of all input VAT
      * This is standard de minimis test.

## E4.3 VAT Groups

### E4.3.1 Consequences

* Two or more companies can form VAT group if:
  + - One company controls > 50% of the other or the companies are under common control of a third company/individual/partnership
* VAT group appoints representative member which is responsible for accounting for all input and output VAT for whole group and submits single VAT return covering all group members
* **Advantages:**
  + No VAT needs to be charged on intra group transactions as these are outside scope of VAT
  + Partial exemption = apply to group = can be beneficial or worse.
  + Only one VAT return required
* **Disadvantages:**
  + All members jointly and severally liable for VAT payable by group.
  + One return may cause admin difficulties to collect info
  + An exempt/partially exempt entity may restrict recovery of input tax

### E4.3.2 Choice of companies in VAT group

* Flexible = not all companies have to be included. Therefore, you should never be worse off, as you can choose to leave out following company from the group registration:
  + - **Zero rated companies** who would be in a net repayments position. This is so we can retain cash flow advantage of submitting monthly returns.
    - **Companies making wholly exempt supplies** can be included in the group, however exempt companies included will affect the partial exemption status of the VAT group and may restrict the recovery of input VAT.

## E4.4 VAT on Property Transactions

|  |  |  |
| --- | --- | --- |
| Exempt | Zero Rated | Standard Rates |
| - Sale/lease of bare land | - Construction and sale of new residential buildings | - Construction of commercial building |
| **- Lease** of any building | - Sale of new (<3yrs) commercial building |
| - Sale of old (≥3years) commercial buildings |  | - Work on existing residential or commercial buildings |
| - Sales of existing residential building |  |  |

### E4.4.1 Option to tax

* The owner of **commercial land and buildings** can opt to waive the exemption from VAT, making exempt supply a taxable supply = OTT & applies to whole building
* Means that standard rated VAT must be charged on any subsequent lease of the building (on both rent and lease premiums) and sale of building within 20 years of the OTT. But it also means **that any input tax relating to the initial purchase and future supply can be recovered.**
* Election made on individual buildings, by an individual party and is non-transferable, and is irrevocable for 20 years after a 6 month cooling off period.
* In deciding whether to opt on a rental property, will need to consider the tenants VAT status. Tenants who are fully taxable traders will be able to reclaim VAT charged to them on their rent. If tenants are exempt/partially exempt traders, then they may not be able to recover all the VAT.

### E4.4.2 Transfer of a going concern (TOGC) (Pg. 119)

* Normally on transfer of a VAT registered business output VAT would have to be charged on standard rated assets
* Transfer to group co:
* Same VAT group: transfer disregarded, OTT continues to apply
* Not same VAT group: transfer charged to VAT, OTT not transferred
* Dispose outside group:
* Taxable supply: both co part of VAT group or opted to tax prior to disposal, recovery could affect price negotiations
* Exempt supply: older than 3 years, claim input VAT under CGS if original cost > 250k, purchaser takes over CGS input period
* Transfer with tenants in situ: could be TOGC, new owners OTT then no VAT
* The transfer can be treated as TOGC if **ALL** conditions are met:
* Transfer whole business (or part capable of separate operation) as a going concern
* No change in trade
* No significant break in trade
* Transferee is or becomes VAT registered immediately after transfer

*Land and buildings within a TOGC*

* Land and buildings may be taxable before the transfer i.e. if they are new commercial buildings, or buildings with a OTT
* These will still be taxable even though part of a TOGC, unless the transferee opts to tax such buildings.

## E4.5 Capital Goods Scheme (Pg. 394)

* Tries to look at how much VAT you can recover on a building (and computer).
* Applies to businesses that spend large sums on land and buildings and computer equipment that will be used over a period of time to make both taxable and exempt supplies.
* Where the scheme applies, the **initial recovery of input VAT is made in the ordinary way and then reviewed over a set adjustment period.**
* *Scheme to stop businesses manipulating their proportion of taxable and exempt supplies in the period of purchase in order to recover more input VAT.*
* Assets covered by scheme (below figures net of VAT):
  + Land and buildings costing ≥£250k
  + Aircrafts, ships, boats ≥£50k (bought after 31/12/10)
  + Computers and computer equipment costing ≥£50k

### E4.5.1 Initial Recovery

- This is input VAT recoverable when the asset is purchased

- Initial proportion of input VAT recoverable will be based on the initial use of the asset at end of the first interval (end of VAT year):

* **Wholly taxable use –** can recover ***all*** input VAT
* **Wholly exempt use – *cannot*** recover input VAT
* **Partly taxable use –** can recover ***proportion*** of input VAT based on proportion of taxable use in quarter of purchase

### E4.5.2 Adjustments for use

* If taxable supplies change after acquisition, then each year end until end of adjustment period, an adjustment for use is required.
* Adjustment periods
  + Land and Buildings – 10 years
  + Aircraft, boats, ships & Computers – 5 years
* First interval runs from date of acquisition to end of that VAT return year and then subsequent intervals coincide with VAT year.
* **Adjustments for use is calculated as follows:**

* If taxable use has decreased then some of input VAT is to be repaid by us and likewise if taxable use increased more input VAT is recoverable.

### E4.5.3 Adjustments for sale

* If asset is sold under CGS within adjustment period:
  + Annual adjustment is made as normal in the year of disposal **as if the asset had been used for the full year**
  + A **further adjustment must be made** to cover the remaining intervals which is the adjustment for sale
    - If the **disposal was taxable then we assume 100% taxable use**
    - If the disposal was **exempt we assume 0% taxable use.**
    - *Use same formula above but the “% now” would be 100% or 0%, but make sure you multiply the result by for example 6 years (if 6 years remaining).*
    - If opted to tax then the percentage is 100% to use in the calc

### E4.5.4 Capital Goods Scheme & Interaction with TOGC rules

- If the sale of business includes taxable property under CGS then:

* **Can only be transferred as a TOGC if the buyer opts to tax and**
* **New owner then takes on remaining period of CGS adjustments and seller has no adjustments for sale**

**If sale of business..**

|  |  |
| --- | --- |
| **Includes taxable property under CGS & buyer doesn’t OTT** | **Includes exempt property under CGS** |
| Not a TOGC | Property falls under TOGC rules |
| Seller has adjustment on sale & buyer starts CGS adjustments from beginning | New owner takes on remaining period of CGS adjustments and seller has no adjustments for sale |

## E4.6 Overseas aspect of VAT (Pg. 397)

### E4.6.1 Supply of Goods

Supplying goods – **transactions within EU:**

* If customer is VAT registered:
  + - **Exporter** = transaction is zero rated
    - **Importer** = accounts for VAT at local rate (reverse charge system) and may be able to reclaim this back
* If customer is not VAT registered: charged VAT as normal at exporter’s local rate

Supplying goods – **transactions outside EU:**

* + **Exporter** = zero rated
  + **Imports** = importer account for VAT at local rate as they bring goods into the country

### E4.6.2 Supply of Services

* **If customer is non-business**
  + Place of supply of services = where supplier’s business is situated, therefore a UK supplier will account for UK output VAT regardless of where customer is situated
* **If customer is in business (irrespective of whether reg for VAT)**
  + Place of supply of services = where customer’s business is situated = treated as if supplied in the UK. Therefore UK customer will account for UK output VAT under reverse charge system. This amount will also be the company’s input tax for the supply. Effect is tax neutral if the purchasing co does not make exempt supplies.

# E5 Stamp Taxes

## E5.1 Stamp Duty Tax

* SD and SDRT apply to transfer of existing shares and securities
* SDLT applies to transfer of land and buildings
* Other assets are not subject to SD

### E5.1.1 Charge to Stamp Duty

* Transfers by a **‘stock transfer form’** (paper form), then SD is payable at **0.5% x consideration**. This is paid by person acquiring shares
* Amount is rounded to nearest £5.
* Stamp duty is **only for existing shares** and **not a new issue.**
* No charge if **consideration** is ≤ £1k
* ***Note for paperless trans. apply Stamp Duty Reserve Tax***

### E5.1.2 Purchase of own shares

SD is still due at 0.5% unless:

* + Redemption of shares is in accordance with terms of issue, or
  + It is part of Court scheme of arrangement, or
  + They are immediately cancelled.

### E5.1.3 Transfers between group companies

- No SD on intra-group transfers of shares

- A group for these purposes is a 75% group (per Group relief rules)

### E5.1.4 Share for share relief

- No SD charged where shareholders swap shares in one company for newly issued shares in another which is inserted above the original company as part of a corporate reconstruction.

- For this to apply shareholders in acquiring company after exchange must be the same as those in the original company.

- From 29 June 16 this treatment does not apply if at the time of the exchange there are arrangements for a change of control of the acquiring company.

### E5.1.5 Administration

* Present stock transfer form within 30 days to HMRC and pay SD then too
* If paid late, interest runs from end of 30 day period to day before duty is paid and rounded down to nearest multiple of £5 and is not charged if amount is less than £25.
* If transfer is presented late there are penalties.

### E5.2 Stamp Duty Reserve Tax

### E5.2.1 Charges to stamp duty reserve tax

* For paperless transfer of shares/securities via CREST system (instead of SD)
* Payable at 0.5% of consideration (no rounding)

### E5.2.2 Exemptions

- No consideration = NO SDRT

- Group transfers qualifying for SD relief also exempt from SDRT

### E5.2.3 Administration

- Collected automatically by stock brokers

- If via CREST then payable 14 days after trade. If not via CREST then payable by 7th day of month following month agreement was made (became unconditional)

## E5.5 Stamp Duty Land Tax

### E5.5.1 Charge to Stamp Duty Land Tax

* Chargeable on land transactions i.e. sale of land, assignment or grant of lease, payment of rent
* **Calculated on VAT inclusive price** and paid by purchaser.
* ***Applicable rate x consideration***

|  |  |  |
| --- | --- | --- |
| **%** | **Residential** | **Non-residential** |
| **0** | Up to £125,000 | Up to £150,000 |
| **2** | £125,001 - £250,000 | £150,001 - £250,000 |
| **5** | £250,001 - £925,000 | £250,001 or more |
| **10** | £925,001 - £1,500,000 | N/A |
| **12** | £1,500,001 or more | N/A |

### E5.5.2 Additional residential property

- 3% added to rate of SDLT on the purchase of additional residential properties

- Intended to affect those buying a second home or buy-to-let property

- Does **not apply** if transaction is < £40k or the purchase is of a lease <21yrs

### E5.5.3 SDLT payable on rent payments

- Payable on NPV of rent payable over the term of lease (total rent payable discounted by 3.5%). **For exam: NPV = total rent payable (ignoring discounting)**

|  |  |  |
| --- | --- | --- |
| **%** | **Residential** | **Non-Residential** |
| **0** | Up to £125,000 | Up to £150,000 |
| **1** | Excess over £125,000 | £150,000 - £5m |
| **2** |  | Excess over £5m |

### E5.5.4 Exemptions from SDLT

* Gifts (i.e. no consideration)
* Transfers on divorce
* Variation of a will
* Between 75% group members (direct and indirect 75%), but relief denied if at time of transfer arrangements exist for both co’s to cease to be members of same group, or if the transfer is not for bona fide commercial reasons. Also, SDLT will be charged retrospectively if **transferee leaves group within 3 years of transfer**, still holding the asset transferred.

### E5.5.5 Higher rate for transfers to companies

- A higher rate of SDLT at 15% applies where interest in a single residential property is sold to:

* Company, or partnership where at least one partner is company, or collective investment scheme

- Rule only applies if interest is sold for consideration >£500k (prior to 20/3/14: £2m)

- Charge not applicable if acquiring co is property developer and property is acq purely for development and resale (Annual tax on enveloped dwellings likely to apply here)

### E5.5.6 Administration

* Land tax form submitted by purchaser within 30 days and SDLT paid same date
* Interest charged if paid late (from end of 30 day period to day before payment)
* If form is submitted late, then penalties are found on **page 254 of tax tables.**

## E5.6 Stamp duty on incorporation or liquidation (Pg. 126)

### E5.6.1 SD on incorporation (sole trader asset -> co)

* SDLT will be charged on the company on transfer of any L&B at market value on incorporation.
* Percentage used is based on **total** value of any land transferred, i.e. add up multiple building values and pick percentage on this figure
* If the transfer is a TOGC then SDLT will be charged on **actual value of L&B** and not the VAT inclusive price (as normal SDLT)
* Assuming shares received on incorporation are a new issue, then no SD payable on these shares received.

### E5.6.2 SD on liquidation

* No SDLT payable by shareholders who receive L&B on liquidation unless consideration paid
* Also, as the shares are cancelled, no stamp duty paid on these too.

### E5.6.3 SD on Purchase of Own Shares

* Stamp duty charged on repurchase price unless redemption of redeemable shares or capital reduction or court scheme of arrangement

## E5.7 High Value Properties

- Anti-avoidance provisions to deter residential properties being transferred into companies to save SDLT.

- Rate of 15% of SDLT applies to future transfers where an interest in a single residential property is sold to a company, partnership where at least one partner is a company, a collective investment scheme.

- rule only applies if interest is sold for >£500k.

-charge doesn’t apply where acquiring company is property developer or acquired for development and resale.

Many residential properties had already been transferred into companies before this higher rate of SDLT was introduced. 2 charges apply;

### E5.7.1 Annual tax on enveloped dwellings (ATED)

- From 2018/19, the ATED charge is based on market value on the later of 1 April 2017 or the acquisition date

- Revaluations to be made every 5 years

- The annual charge is based on the property value as follows:

|  |  |
| --- | --- |
| **Value** | **Charge** |
| Up to £500k | N/A |
| £500,001 - £1,000,000 | £3,700 |
| £1,000,001 - £2,000,000 | £7,500 |
| £2,000,001 - £5,000,000 | £25,200 |
| £5,000,000 - £10,000,000 | £58,850 |
| £10,000,000 - £20,000,000 | £118,050 |
| £20,000,000 or more | £236,250 |

- Payable annually, pro-rate if property is transferred mid year

- Properties subject to ATED charge, CGT may be charged on disposal (see below)

- Certain exemptions apply in particular to property development and investment businesses

- Subject to certain exceptions, the ATED needs to be paid within 30 days of the beginning of the tax chargeable year

### E5.7.2 CGT Charge of high value properties

**-** Applies when owner of property is subject to ATED & disposal occurs on or after 6/4/2013 for proceeds >£500,000

- Applies **even if owner is a non-resident company**

- Gain is calculated as proceeds less allowable cost

- Allowable cost is MV on 6/4/2013 or actual cost if acq. Post 6/4/2013

- **CGT @ 28% with no indexation allowance or AE**

- The gain is capped at 5/3\*(Proceeds - £500,000)

- Election can be made for gain not to be based on 6/4/13 MV but based on full period of o/ship and then time apportioned accordingly

- Gains relating to periods when the owner was not within the ATED rules are charged as normal (incl IA)

- Capital losses on enveloped dwellings can only be offset against gains on enveloped dwellings of same or future acc periods and capital losses on other assets cannot be offset against gains on enveloped dwellings.