Answer-to-Question-_1_

IHT

Daniel was born in the UK with a UK domicle of origin from his mother, rather than his father as she was a single parent. He will have gained an AUstralian domicile of dependence when emigrating to Australia with his mother. ALthough he does not intend to remain in the UK, so will not have a domicile of choice in the UK, as he was born in the UK wiht a UK DoO, he will be a FDR from the start of the tax year after he returns, so from 6 April 2024.

Non domiciled people are only subject to UK IHT for their UK situs assets, but domiciled people are subject to UK IHT for their worldwide assets.

When the trust was established, Daniel was non-dom, and the assets were non-UK, so the trust was an excluded property trust outside the scope of UK IHT. However, as he will be deemed dom via being a FDR (rather than the 15/20 long term resident rule) the protection of the EPT is lost for the time during which he is deemed dom. So from 6 April 2024 until 6 April 2031 (after his first full year of non-residence if he sticks to his plan) the trust will not be treated as foreign asset, and will be subject to UK IHT. THis means that any distribution from the trust will be subject to exit charges and there will also be principal charges. The first principal charge would be 30 April 2024, although the x/40 fraction would be reduced for the period before the trust was brought into the scope of UK IHT. The exit charges would occur if any distribution is made from the trust to a beneficiary. The distribution of £142k to his daughter would therefore be subject to an exit charge, but again, there would be a reduction for the months during which the trust had not yet fallen into the scope of UK IHT. He would therefore be advised (as the trustee) to make this distribution before his FDR status

kicks in (before 6 APril 2024).

Once he returns to AUstralia and the FDR status is lost (by 6 April 2031), the trust will again become and EPT and will be back outside UK IHT with no exit or principal charges.

IT/CGT

The residence status of the trust is determined by the residence of the trustees, which has been non-UK until emigration. When Daniel becomes UK resident on 1 July 2023, the trust becomes UK resident. There are no split year rules for trusts, so it becomes UK resident for the full of the 23/24 tax year. This means it will be subject to UK income tax and capital gains tax for all its worldwide income and gains.

Income is taxed in a discretionary trust at the rates of 45/45/39.35%, except for the first £1000 which is charged at basic rate 20/20/8.75%. ANy distributions to UK beneficiaries is paid with a tax credit of 45%. Tax paid and credited is tallied up in a tax pool, and any balance of tax credit not covered by tax paid is added to the tax due by the trust. As none of the beneficiaries are UK tax resident, they will not benefit from the tax credit.

Income of £36,750 dividends would be taxed as:

	£		
1000 @ 8.75%	875		
35,750 @ 39.35%	14,068		
	14,943		

This would be due on 31 Jan following the end of the relevant tax year.

From the start of the tax year following Daniel's return to Australia, 6 April 2030, the residence of the trust will cease to be UK and from then forwards only UK situs income will be subject to UK IT for the trustees.

THere are rules which can tax the settlor or the beneficiaries of an overseas trust, so after UK residence is lost, these should be considered. As the trust is not settlor interested for IT and Daniel will cease to be UK resident, he would not be taxed as a settlor. As none of the benficiaries are UK resident, they would also not be taxed.

Any gains from 23/24 forward until tax year 30/31 will be subject to UK CGT. This will include the gain in 31 May 2023. It would be taxed as follows:

	£		
gain	25,500		
AEA	(6,150)		
	19,350		
CGT @ 20%	3,870		

This would be due 31 January 2025 alongside the self assessment tax return of the trust.

When he resumes Australian residence, the trust will resume its Australian residence. This will trigger an emigration charge which is a CGT charge from a deemed disposal and immediate reacquisition of all assets in the trust. At present there are unrealised gains of £11,333, but presumably in 2029 this may be significantly more. This is charged as the assets are moving outside the scope of UK CGT.

Once the trust is Australian resident, it would only be taxed on UK gains for heritable property or companies owning UK residential property.

Similar rules apply as to IT for taxing settlor or beneficiaries. However, for CGT purposes, the trust is settlor intersted while it is an overseas trust (settlor, spouse, issue and their spouses). However, at that point, Daniel will be non-resident, and therefore not caught by these rules.

In order to avoid UK residence of the trust, Daniel could appoint other Australian (or other non UK) trustees and remove himself as

a trustee, before coming to reside in the UK. The trust would then retain its non-UK residence and avoid being subject to UK IT and CGT.

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

1)

It is possible for Missie to settle the home and savings into a disabled persons trust for her own benefit given her likely incapacity in the near future.

A disabled persons trust is a QIIP for IHT purposes, and it would therefore be deemed to form part of Missie's estate upon her death. The transfer of assets into such a trust is usually a PET, but as it is for her own benefit and it is a QIIP, it would be no loss to donor, and therefore not an event for IHT. Although it is a discretionary trust in essence, it would not be subject to exit or principal charges for any distribution from the trust. An annual amount of up to £3,000 can be distributed to other than the beneficiary without incurring any tax, which is to cover general costs of managing the beneficiary's affairs.

Elections can be made so that any income or gains in the trust can be treated as the income and gains of the beneficiary of a disabled person's trust (deemed a vulnerable person). As Missie's income of £14,000 leaves almost all of the basic rate band available, this would reduce the IT burden on the trust. Such an election is made for IT by the 31 January after the tax year which it is to take effect, and will continue until HMRC is notified that the status no longer qualifies. For CGT purposes, the election must be made annually for each tax year it is to apply. If the elections are not made, the trust rates of 45/45/39.35% will apply, and there is no personal allowances and only 50% AEA. Once the election is made, the trustees are able to benefit from the beneficiaries' personal allowances (including savings allowance) and full AEA.

Any income distributions made to the beneficiary would come with a 45% tax credit, usually resulting in a repayment to the individual.

If Missie later recovers from her illness, the benefits of a disabled person's trust would cease, and HMRC should be notified. As it is a QIIP, and so already in her estate for IHT, the transfer of assets from it back to her personally would not be an

event for IHT. It would, however, be an event for CGT and any gain would be chargeable.

2)

A deed of variation can be entered into to in effect amend the will of a deceased person within 2 year of death, so could be entered into in relation to Missie's husband's estate until 21 Jan 2024. Such a deed requires to be in writing and signed by the person giving up the right, as well as the executors if increased IHT would result.

If the deed includes a s.142 statement, it will be deemed to have taken place at the time of death directly from the deceased. WIthout the statment, it would be a PET from the MIssie (as beneficiary under her husband's will). In this case, if they used the deed of variation to pass the property to Georgiana, it would be covered by her husband's unused NRB and no IHT would be due, as the probate value of £300k would be used.

If the deed includes a s.62 statement, it is deemed to transfer the asset at the probate value, which avoids any CGT charge. Without the statement, it is a deemed disposal at MV and a gain may accrue. In this case, the property has increased by £100,000, so it would seem worthwhile making the s.62 statment - although it would leave a lower base cost in the trust for her daughter for any future gains.

For the cash element, if this was included in the DoV for the amount of £25,000 together with the s.142 statement, it would use up the remainder of husband's NRB and incur no IHT. It would be best not to include more than that, as it would bring the estate into immediate IHT charge.

The remaining £75,000 could be gifted by Missie to her daughter or into a trust for her daughter, which would be a PET. If Missie survived 7 years, this PET would be free of IHT. If she dies 3-7 years after the gift, tapered IHT would apply, if she dies within 3 years, full IHT would apply. However, Missie still has her full NRB, so it would be covered by that.

As the trust would be created on the death of a parent and the beneficiary is under 18 and would get all income and capital at 18, it would qualify as a bereaved minor's trust. Similar to the disabled person's trust, any distributions to the daughter from the trust up to 18 are free from exit charges and there are no principal charges. Up to £3k per year can be distributed to a non-

beneficiary without charge, which tends to cover general costs assocaited with the trust.

The same elections for income and gains can be made as outlined above for the trust, so that any income (such as the property income of £19,200 per annum) would be deemed to be taxed as if it accrued to Geargiana using her allowances, so very little tax.

If the £75,000 was included in the DoV from the father, it would be taxed for IHT in his estate and then form part of the BMT. If it was gifted by the mother before death, it would not form part of the BMT, but could be a separate trust. If they included it within her mother's will into a trust for her, it could also be treated as a bereaved minor's trust.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

1)

As the residue includes property qualifying to APR/BPR and there are speficic legacies not subject to APR/BPR, s.39A spreading is required.

	before APR/BPR	APR/BPR	after APR/BPR
house and contents	600,000		600,000
bank	300,000		300,000
spanish villa	300,000		300,000
Ag land	200,000	200,000	0
shares	450,000	450,000	0
total	1,850,000	650,000	1,200,000

APR - as the land is used for agriculture, as been owned for over 7 years during which it has been let to another, it qualifies for 100% APR. Not 50%, as the licence is annual, so is not a long lease and can be terminated wihtin 2 years.

BPR - shares in an unquoted trading company owned for more than 2yrs qualify for 100£ BPR.

Appropriate fraction is therefore 1,200,000/1,850,000

house and contents 600,000 x fraction = 389,189

spanish villa 300,000 x fraction = 194,595

charity donation 100,000 x fraction = 64,865

	£		
estate value	1,830,000		
exempt donation	(64,865)		

	1,765,135		
NRB	(325,000)		
	1,440,135		
IHT @ 40%	576,054		

estate rate 576,054/1,730,000 = 33.30%

2)

distributed as follows

	£		
HMRC	576,054		
charity	100,000		
niece re villa300,000 - (194,000 x estate rate)	235,398		
niece home	600,000		
residue to nephew 830,000 - remaining tax	318,548		
	1,830,000		

Tax due 31 Oct 2023 by executors or earlier if IHT return made earlier

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--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_4_

1)

All kinds of land will qualify for instalment payment of IHT, so the Farmland will qualify (regardless of its APR status). When it is sold, all instalments will fall due to be paid.

Only certain shares will qualify for instalments (s.228 IHT 1984).

- (a) any company (quoted or unquoted, trading or non) which is controlled by the trustees. This will apply to the 55% shareholding in Aimer's Holidays Ltd, but not the others.

- (d) the shares are unquoted, value is in excess of £20,000 and holding is 10%+. This will apply to Starlings Ltd, but not the others.

- (c) applies to unquoted shares, but only transfers on death (which this is not).

- (b) this applies if the shares are unquoted and undue hardship would be caused by the payment of the tax on the due date. We are not made aware of any circumstances which would allow this to apply

Therefore, the tax on the land, the Aimer's shares and the Starling's shares would be allowed for instalments.

total tax to be paid on principal charge 83,880

	£		tax due on 30/4/24
cash	100,000	100,000/1298,000 x tax	6,462
Fred's shares	18,000	18,000/1298,000 x tax	1,163
Aimer's shares	680,000	10% x 680,000/1298,000 x tax	4,394

farmland	100,000 chargeable	10% x 100,000/1298,000 x tax	646
Starling's shares	400,000	10% x 400,000/1298,000 x tax	2,585
			15,250

		due on 30/4/25	due on 30/4/26
starling's share		2,585	2,585
aimer shares		4,394	4,394
farmland	remaining tax not yet paid due to sale	5,816	-
		12,795	6,979

2)

Instalments are free of interest for items subject to APR and shares which are not holdings in investments, property, securities. s.234 IHTA 1984

Therefore instalments for the farmland (APR) and the Starlings shares (trading company) are interest free.

However, the instalemnts for the Aimer shares will be interest bearing, as they are for a company which holds land. companies with FHLs are not deemed to be trading unless they are significantly more than land holding - i.e. the non-land holiding element outweighs the land holding part. This does not seem to be the case here, so interest will applyu.

Interest is at 2%

- no interest for first instalment, as it is on due date.

- interest at time of 2025 instalment will be total amount due on the Aimer shares less amount paid at 2%: (43,924-4,394)x2%=791

- interest at time of 2026 instalment (39,530-4,394)x2%=703

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

1)

Each cash gift will be a PET for IHT purposes, which will fall to be charged IHT on the recipients should Lady Hannah die withing 7 years.

Victoria

As the funds gifted were used to buy a painting which LadyHannah then enjoyed, a POAT charge will be triggered. The funds have been used within 7 years to buy a chattel, which Lady Hannah then hangs in her house. She has agreed to but not paid anything for the use of this item. A POAT charge is an income tax charge on the donor, so Lady Hannah would be deemed to have income of the interest rate applied to the value of the asset (not the rental value). That would be £250,000x2%=5,000 per annum. If any payments were made to compensate for use, they would be deducted from this £5,000 before tax is charged.

Lucinda

AGain we have a POAT charge. It would only be due in relation to 25% of the value of the property, as only 25% was funded by Lady Hannah. Her occupation is enough to trigger the POAT, which would be calculated on the rental value of the property, so 25% x 100,000 = 25,000. Less the £3,000 paid, so £23,000 per annum would be subject to income tax for Lady Hannah.

There is a de minimis exclusion if the income deemed under POATs is less than £5,000, but it is aggregated across all POATs, so does not come into play here.

Lady Hannah could elect to be treated as having the items as GWROB instead. This would mean that it would be part of her estate at death and cahrged to IHT instead (double charges calculations for the PET). Depending on her age, this might be worth considering.

2)

The sale of the sculpture will incur a CGT charge on the gain of 420,000-300,000=120,000. As she has already used her AEA and is an additional rate tax payer, this will suffer 20% rate on the whole gain, so £24,000.

As it was under conditional exemption, the sale of the painting to an unconnected person will result in a recapture charge. This means that her aunt's estate will be recalculated with the scultpure in it (with the value of the sale proceeds), and the tax recalculated and the increase charged on Lady Hannah triggered at the date of her disposal. The 36% rate will not be available for this recapture charge, so it will be suffered at 40%. It would likely be £420,000x40%=£168,000, subject any unused NRB of her aunt.

--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

1)

Post mortem relief is available for the aggregate loss for drop in value of sold properties in the three years after death. Losses in the fourth year are also included, but not gains. A claim must be made within 4 years of the end of the three year period.

No selling costs are taken into account.

	cost	proceeds	gain/loss
24 Darl	380,000	295,000	(85,000)
18 Crad	249,000	248,500	- (N1)
40 Ess	425,000	380,000	(45,000)
42 FUl	350,000	375,000	25,000
1 ALd	245,000	350,000	- (N2)
5 Bils	635,000	545,000	(90,000)(N3)
			(195,000)

Note 1 - less than £1,000 or 5% losses are ignored

Note 2 - beyond 3 years and a gain, so not included

Note 3 - in fourth year, but a loss so can be included

THerefore the property post mortem relief would be £195,000x40%=78,000 (as the estate is so large as to not need to recalculate for NRB impact). A claim must be made within 4 years of the end of the three year period.

No RNRB would be due as estate is too large.

As the deed of variation redirected £2m of shares to his spouse (despite being estranged), and the DoV was just within 2 years and presumably signed and in writing by Lynda, the £2m would be an exempt transfer, and £2mx40%=£800,000 of IHT can be recalimed.

Total refund of £878,000.

2)

No gain in relation to the DoV as a s.62 statement was made.

22/23	£		
stock market gain	15,800		
loss c/f	(5,000)		
AEA	-	more than 2yrs since death	
	10,800		
CGT @ 20%	2,160	due by 31 Jan 2024 with SA return by executors	
23/24			
clock gain	32,000		
1 Ald		100,108	see working below
5 Bils		(95,516)	see working below
car	-		exempt s.263 TCGA 1992
AEA	-		more than 2yrs since death
	32,000	4,592	
CGT @ 20/28%	6,400	1,286	
	due by 31 Jan 2025 with self assessment return by executors	due within 60 days of completion of sale together with appropriate residential property CGT return	

Over £5m is 0.16% for probate costs

	1 ALd	5 Bils	
proceeds	350,000	545,000	
cost	(245,000)	(635,000)	
sell costs	(4,500)	(4,500)	
probate costs 245,000 x 0.16% and 635,000 x 0.16%	(392)	(1,016)	
	100,108	(95,516)	