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Course **APS Taxation of Individuals**

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Section 1	<b>3848</b>	<b>17776</b>	<b>21523</b>
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Answer-to-Question-\_\_1\_\_

Chartered Tax Advisers LLP

Address

30th October 2025

Jo Ferguson

Address

Dear Joe,

**Divorce Transactions and New Employment Tax Advice**

I hope you are well. Thank you for your email dated 28th October 2025 regarding your divorce and new employment opportunity.

In this letter I will provide you with detailed advice and recommendations on the matters that you have raised and answer any specific questions you have asked.

This letter and the information contained within it , is solely for use by you. Chartered Tax Advisers LLP do not accept any responsibility for any reliance placed on the contents of this letter by any other party.

**Summary of Key Points**

- Dashiell Consulting Limited must have the power within its company articles to buy

back your shares

- The company must ensure any contract for the buyback of your shares is made available at the company's registered address for at least 15 days and the subsequent return sent to Companies House within 28 days
  
- Dashiell consulting must pay the distribution out of distributable reserves of which it has sufficient amount of
  
- Any buyback of your shares as a result of your divorce will meet the condition for treatment via the capital method so the distribution will be taxed via Capital Gains tax (CGT).
  
- You will be able to claim Business Asset Disposal relief on the gain realised by the buyback as you meet all the conditions. This will allow you to pay CGT at 10% on the whole gain.
  
- A buyback at the current market value would give rise to a CGT liability of £44,210
  
- I recommend completing the buyback in full in cash rather than through the transfer of the commercial property.
  
- Any gift of Unit 1 to your children is a disposal with proceeds deemed to be at Market value as your children are connected persons.
  
- Gift relief is available as the asset has been used in your personal company. Gift relief is a joint election made by both the donor and donee.

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- Unit 1 must be gifted before the disposal of your shares in Dashiell Consulting Limited otherwise gift relief cannot be claimed
  
  - If no gift relief is claimed the transfer of unit 1 crystallises a gain and creates a CGT liability of £27,000.
  
  - I advise completing an outright gift of Unit 1 to your children and claiming gift relief. This will ensure there is no CGT for you on the transfer and your children will not be exposed to Stamp Duty Land Tax (SDLT).
  
  - The gift will be a potentially exempt transfer for Inheritance Tax and become chargeable if you die within 7 years
  
  - Any transfer of assets to Dominic happen at Nil Gain Nil Loss (NGNL) for CGT until the decree absolute or 5th April 2028 whichever is earlier.
  
  - If you retain your interest in your property until the property is sold in 5 years time you will likely crystallise a big capital gain as hardly any private residence relief (PRR) will be available since you moved out.
  
  - I advise to include a deferred sale agreement into your divorce settlement. This will mean the transfer to Dominic will happen at NGNL and then after the eventual sale you can make an election and have the same PRR exemptions as you would have on the date the property was transferred. This will be the most tax efficient whilst allowing for some further growth in sale proceeds over the coming years.
  
  - I recommend setting up your employment with Benekia Ltd as an employee rather than a Limited company. This ensures you are not caught by the IR35 off payroll working

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rules but retain all the benefits of being an employee such as holiday pay and sick pay.

- I would advise not to opt in to Benekia's salary sacrifice scheme and to lease the vehicle yourself as this will leave you with £1,753 more in net income than having a company car

### **Company Purcahse of Shares in Dashiell Consulting Ltd**

As Dominic does not have the funds available to purchase your shares a company buy back of your shares would be a sensible approach.

This way you receive cash for the market value of your shares and Dominic's holding becomes 100%.

### **Company Requirments**

When a company buys back shares from a shareholder the shares that have been brought back must either be cancelled or held as treasury shares.

In this instnace cancelling the shares would be the best option.

The company must ensure it has the power to buy back shares within it's Articles of Association. I would reccomend ensruing that the comapny's articles are reviewed by a Company law expert to confirm this.

On the basis the company does have the power to buyback it must ensure that the contract for the purchase of your shares is made available at the company's registered office address for at least 15 days before compelting the purchase.

A return then must be sent to Companies House within 28 days.

The company must also only complete the purchase out of its distributable reserves. Based on the balance sheet information you have provided at 31st March 2025, the company would have sufficient reserves to cover the purchase at the market value of £450,000.

The purchase also cannot be paid in installments.

### Shareholder Considerations

When a company purchases shares from a shareholder the proceeds are either treated as an income distribution or a capital distribution if conditions are met.

The conditions required for the capital method to apply are as follows:

- Shareholder must have held the shares for at least 5 years
- Shareholder must be UK resident
- Shareholders total holding must be reduced by more than 25%
- After the buyback the shareholder or their associates cannot hold more than 30% of the company shares.
- The purchase must be for the benefit of the trade

Since you acquired the shares in 2018 you have held the shares for 5 years.

You are currently UK resident.

Your shareholding will be purchased in full so it will be reduced by more than 25%.

As you and Dominic no longer live together you are no longer associates meaning you will meet the 30% holding rule.

As this buyback is occurring as a result of a divorce this would satisfy the benefit of the trade rules.

Therefore, this buyback will follow the capital method and be taxed as a capital gain.

You will also be entitled to claim Business Asset Disposal Relief (BADR) on this distribution. As you have owned the shares for more than 2 years, been an officer or employee for more than 2 years and hold more than 5% of the shares you will meet the criteria needed to claim BADR.

Claiming BADR will allow you to pay capital gains tax on the entire gain at the basic rate of 10% up to the lifetime limit of £1 million.

I have calculated your Capital Gain on this distribution to be £44,210 as per the workings in Appendix 1.

It is important to note that the shares you currently hold would qualify for 100% Business Property Relief for Inheritance Tax (IHT). This essentially exempts them for IHT.

However once sold the cash will become a fully chargeable part of your estate. As retaining the shares does not seem possible I would recommend scheduling a full IHT

review so we can advise and provide planning, now that this large amount of cash is included in your estate.

Unfortunatley as the purchase of your shares cannot be in installments and must be paid in cash it would not be possible for the commercial property owned by the company to be transferred to you as part of this buyback.

However I do recognise that currently the company does not have sufficient cash to be able to purchase your shares in full. As the company is looking to sell the commercial property it should look to use the proceeds from this sale to complete the buyback of your shares.

The company also has significant debtors that it could look to collect to provide the liquidity needed for this purchase.

### **Conculsion and Reccomendations**

I would reccomend that the company does complete a buyback of your shares in full and in cash. This buyback would qualify to be taxed as a Capital gain and with the claiming of BADR this is the most tax efficient way of selling your shares as you will pay tax at just 10%. This wil ensure your net proceeds are as high as they can be.

I would then reccomend speaking to an Independant Financial Advisor (IFA) as the best way to invest the cash appropriatley. This can then help replace the lost income from the dividends and salary from Dashiell Consulting Limited.

The company should look to use the proceeds from the sale of its commercial property and the collection of it's debtors to fund the purchase of your shares.

### **Potential Gift of Unit 1, Lavender Business Park**

As you are planning on gifting your property to your children it is important to note that any transfer will be a chargeable event for Capital Gains Tax (CGT) with deemed proceeds at the property's market value.

This is because your children are connected individuals for CGT purposes. Any actual consideration received will be largely irrelevant from a CGT perspective.

However, as the commercial property has been used in your personal trading company (Dashiell Consulting Ltd) any transfer would qualify for Gift Relief.

Gift relief requires a joint election that is made by both the donee and the donor.

Gift relief allows for any gain on the asset to be deferred and effectively transfers the base cost of the asset from the donee to the donor if no consideration is paid.

This election must be made on the first anniversary of 31st January following the tax year of the transfer.

However, in order for gift relief to be available at all it is imperative that the gift of this property to your children takes place before any buyback, transfer or sale of your shares in Dashiell Consulting Limited.

This is because Dashiell Consulting Limited will cease to be your personal company once you no longer hold your shares meaning any assets you own that were used in the company will no longer qualify for Gift Relief after disposal of the shares.

### Outright Gfit to Children

If you decide to gift the property outright in equal shares to your children Jonathan and Lucy, this would be a disposal with deemed proceeds at market value of £260,000.

With no gift releif claim this would crystalsie a capital gain of £135,000 before any deduction of annual allowance.

On the basis in the year of dispsosal you are a higher rate taxpayer this could create a CGT liability of up to £27,000.

If a claim for gift relief was made the gain would be deffered and become chargeable on your children when they eventually dispose of the property.

Thier base cost wold be their share of the £125,000 you pruchased the proeprty for in 2019.

There would be no CGT payable on this disposal if this claim is made.

### Gift to Children for consideration undervalue

If your children provide some consideration for the gift of this property proceeds would still be deemed at market value and the same Capital Gain of £135,000 would crystalise as above without a gift relief claim.

However, gift releif remains available at this sale undervalue. However the actual consideration you recieve would crystalise a gain.

For example if you were to receive £200,000 for the property from your children, even if a claim for gift relief is made you would still crystallise a chargeable gain of £75,000 immediately.

Your children's base cost would be their share of the actual consideration paid.

If consideration is given for the transfer of this property to your children, Stamp Duty Land tax (SDLT) may also be payable by your children at the non residential property rate of 2% if the consideration is greater than £150,000.

### IHT Considerations

Any gift of Unit 1 to your children would be a Potentially Exempt Transfer (PET) for IHT.

Although there would be no immediate IHT charge the transfer would become chargeable if you were to die within 7 years of the gift.

Taper relief may be available if death occurs between 3 and 7 years after the gift.

### Conclusion and Recommendation

Although you have mentioned you may require some funds from the transfer of Unit 1 to your children, my advice would be to gift the property in full for no consideration.

This prevents any immediate charge to Capital Gains Tax for yourself and also protects your children from any SDLT charge. Both of these charges will impact the net cash you

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recieve from the transfer. You may be able to use the proceeds from other disposals of your shares and marital home to fund any future house purchase but it may be worth seeking advise from an IFA on that front.

### **Marital Home**

If Dominic decied to increase the mortgage on the property to buy you out, the transfer of your share of the property would take place at Nil Gain Nil Loss (NGNL).

As you are married any transfers between you happen at Nil Gain Nil Loss. This means there is no taxable gain that arises on inter-spousal transfers.

However as you have seperated this only applies until 3 years after the end of the tax year of seperation. As you seperated in October 2024 NGNL will apply until 5th April 2028.

If your divorce is finalised (decree absolute) before then, NGNL will cease on that date.

As long as Dominic buys you out beofre either of these dates there would be no Capital Gain for you on the transfer of your share of the proeprty.

There would also be no SDLT consideration as transfer of property on divorce or between spouses is also exempt.

If this arrangement was to form part of the formal divorce settlement it would still take place at NGNL.

### **Retaining Interest in the Property**

If you decide to retain your interest in the property, as the property is unlikely to be sold in the next 5 years, it is likely that your divorce will finalise or almost certainly 3 years will pass from separation and any transfer would then be chargeable to Capital Gains tax.

You would be entitled to Private Residence Relief for the period you occupied the property as your main residence since you purchased it in 2018 as well as deemed occupation for the last 9 months of ownership of the property.

However, there would then be a significant period of time where you did not occupy the property from October 2024 until the date of sale.

This period would then be chargeable to Capital Gains tax in full.

The property has already doubled in value since purchase and will likely rise further again over the next few years so the chargeable gain could be quite large.

Any chargeable gain would also be taxed at the higher residential property rates of 18% and 24%.

As you have not yet purchased another home it would be beneficial for you to elect to continue to treat your marital home as your main residence for PRR purposes.

If you make this election however, any home you purchase before the sale of the marital home will not be entitled to PRR.

I would also recommend seeking legal advice in relation to the retaining your ownership and responsibility for payment of the mortgage.

You could look to include a deffered sale agreement within the Divorce Settlement.

This is where you transfer your share of the property to Dominic at NGNL but you retain a right to the future proceeds on the eventual sale of the home.

When the property is eventually sold you will be entitled to PRR at the same occupation period as you were when the transfer took place to dominic.

As you occupied the property from July 2018 until October 2024 this portion of any gain would be covered by PRR and be exempt from CGT.

You will also be entitled to claim the last 9 months of ownership as deemed occupation to exempt this portion of the gain to.

There would be a very small period that may be chargeable to CGT in this scenario.

### **Conclusion and Reccomendation**

To summarise it is important that any transfer to Dominic of your share takes place whilst NGNL still applies or as part of the formal divroce settlement. Failure to do this would reuslt in avoidable CGT liabilities.

I advise to look to set up deffered sale agreement within your divroce settlement. This will ensure you are entitled to your proceeds upon the eventual sale of the property in around 5 years time. It will also mean by making the relevant election that you perserve your PRR occupation period and exempt most of the gain on the disposal of the property.

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It is also likely that the value of the property will significantly increase over the next few years which will increase any net proceeds you receive from the sale of this property.

### **Employment with Benekia Ltd**

As Benekia is a client of Dashiell Consulting Limited I would recommend seeking legal advice on your Director's or employment contract that may contain any covenants or clauses that might restrict you from working for a customer or competitor.

It is important that any contract for the sale of your shares is also reviewed by a legal expert for any clawback clauses regarding future employments with customers.

I would advise that you operate as an employee with Benekia Ltd rather than through your own limited company.

If you decided to work for them via your own limited company you would be inside the IR35 off payroll working rules.

As your contract will contain a restrictive covenant this will prevent you from working for another firm. This is a key criteria for IR35 as you must be able to work for whom you wish through your personal service company for the rules to not apply.

It might seem attractive to operate in this way to enable you to take a tax efficient salary and dividends which are taxed at lower rates, from your company. However, under the IR35 rules any dividends you withdraw from the company will simply be deemed as a salary and subject to income tax and national insurance just as regular employment income.

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You will also be entitled to rights such as Statutory sick pay, annual leave and maternity leave if you are an employee.

### Company Car

If you decide to opt into the company's salary sacrifice scheme you need to be aware of the Optional Remuneration Arrangements rules (ORA).

These rules specify that where any employee forgoes an amount of their salary for a benefit like a company car they shall be taxed on the higher of:

- Benefit amount as calculated using normal rules
- The salary forgone

This does not however apply to low emission vehicles with a CO<sub>2</sub> of less than 50g/km. If your car is a low emission vehicle then these rules will not apply.

However on the basis the car is not a low emissions car you would be taxed on the car benefit of £5,033.

If you have a company car the cost of fuel will be reimbursed using HMRC advisory fuel rates. These update regularly and depend on the car's fuel type and engine size, so you should check HMRC's website for the most up to date rates.

### Using your own Vehicle

If you decide not to have a company car and use your own car you will be taxed on your

full salary of £60,000.

Your employer will reimburse you using the HMRC approved rates. These are 45p per mile for the first 10,000 miles and 25p per mile for each mile after the first 10,000.

On the basis you will do 5,000 miles per year your employer will reimburse you (5,000 \* 0.45) £2,250 per year.

This reimbursement of travel will be tax free as it is within the approved rates set by HMRC.

If your employer reimburses you above these rates then the excess will be taxable.

Please refer to Appendix 2 where I have calculated the net position for both having a company car and using your own vehicle and by funding the lease for the same vehicle.

I have calculated the total net income after tax and NICs with a company car to be £41,504. Please note that your car benefit is not subject to Class 1 National insurance.

I have calculated the net income by providing your own car to be £45,357.

Then I have allowed for reimbursement of business miles i have used the current mileage rate for a 1400cc to 2000cc petrol car at 15p per mile for the company car and the approved HMRC rate of 45p per mile for your own vehicle.

I have then deducted the leasing cost of £3,600 per year to arrive at a comparable net income figure. I have ignored the cost of fuel as this is identical for both options.

You will note that you end up with £1,753 more by providing your own car.

### **Conclusions and Reccomendations**

I advise that you become an employee rather than operating through a limited company to avoid being caught by the IR35 rules but also retain employment benefits like sick pay and annual leave.

I also reccomend that you chose NOT to enter the company's salary sacrifice scheme as you will end up with more net cash after tax and reimbursments.

Please ensure that you do seek legal advice regarding the restrcitve covenant in your new contract and any in your previous contract with Dashiell Consulting Limited.

I hope that you have found this information helpful bu#t if you any further questions please don't hesitate to get in touch.

Your Sincerly,

Tax Adviser

### **Appendix 1**

#### Calculation of Capital Gain on Company Purchase of Shares

	£			
Proceeds	450,000			
Less:				

Cost £70 per share *	4,900			
70 shares				
Capital Gain	445,100			
Less				
AEA	3,000			
Taxable Gain	442,100			
CGT @ 10% BADR	44,210			

**Appendix 2**

With Company Car	£		Without Company Car	
Salary	57,000	Salary	60,000	
Car benefit	5,033			
	62,033		60,000	
Personal Allowance	(12,570)	Personal Allowance	(12,570)	
Taxable Income	49,463	Taxable Income	47,430	
BR - 37,700 @ 20%	7,540	BR - 37,700 @ 20%	7,540	
HR - 11,763 @ 40%	4,705	HR - 9,730 @ 40%	3,892	
Total IT	12,245	Total IT	11,432	
NICs				
Salary	57,000	Salary	60,000	
37,700 @ 8%	3,016	37,700 @ 8%	3,016	
11,763 @ 2%	235	9,730 @ 2%	195	
Total IT & NICs	15,496	Total IT & NICs	14,643	
After Tax Income	41,504	After Tax Income	45,357	

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Reimbursement of Business Miles					
5,000 * 15p	750		5,000 * 45p	2,250	
After Reimbursement	42,254			47,607	
Cost of Leasing Car					
	0		£300 * 12	(3,600)	
Total Net Position	42,254			44,007	