

**The Chartered Institute of Taxation**

**Application and Professional Skills**

**Taxation of Individuals**

**November 2025**

**Suggested answer**

[Firm name]  
[Address]

Mrs Jo Ferguson  
9 Salisbury Close  
London

Dear Jo

I am writing to you regarding the proposed transactions in relation to your divorce from Dominic and your new job

The advice contained in this letter has been prepared using current tax rates and legislation and the information provided in your email of 28 October 2025. It should not be relied upon by any third party, including Dominic or Dashiell Consulting Ltd (the company).

## **1. Conclusions**

It would be beneficial for you to have the purchase of own shares from the company treated as a capital distribution rather than an income distribution. We would recommend seeking clearance from HMRC that they agree the relevant conditions are met. The repurchase must occur before you resign as a director so that you can claim Business Asset Disposal Relief so the rate of tax is 10%. However, the company cannot pay for the purchase of own shares using the property. It must pay you in cash only and then you buy the property afterwards. Although there will be a SDLT cost in doing it this way, the share purchase will not be legal any other way. This advice is detailed in section 2.

The transfer of the ex-marital home to Dominic now would not give rise to a capital gains tax liability at all if this is done within three years of the end of the year of separation or when the divorce is final, (whichever is earlier) and it is recommended that this option is taken rather than remaining an owner of the property until it is sold in five years' time. There is a risk of a CGT charge if you retain ownership of the property. The alternative is to enter into a deferred sale agreement. There are no SDLT implications as this is a transaction on divorce. This advice is detailed in section 3.

If you wish to gift the commercial property to your children, this is a transfer that would be deemed to take place at market value but it would be possible to mitigate the gain by claiming holdover relief. I would suggest that your children pay £125,000 for the property to give you some funds now without incurring any CGT or SDLT charges. This transfer would have to be done before you sell your shares in the company as once you are no longer a shareholder the property will no longer qualify for holdover relief. This advice is detailed in section 4.

With regard to the new employment, there is considerable risk that you would be treated as falling within the IR35 provisions if you operate through a limited company so I recommend becoming an employee of Benekia Ltd. It would be more tax effective not to have a company car as this will give you a higher net income. This advice is detailed in section 5.

The inheritance tax position is not reviewed in detail but your chargeable estate will increase on selling the shares. The gift of the property to the children would be a potentially exempt transfer. These are covered in the relevant sections.

## **2. Selling your Dashiell Consulting Ltd shares**

### *The company buying the shares*

A company can purchase its shares from the shareholders but it is important that the company law aspects of a purchase of own shares are met. Any breach of company law means the purchase is unlawful and you will be treated as remaining the beneficial owner. In addition, you would hold the proceeds received on constructive trust for the company. If the proceeds were not then repaid, it would be treated as a loan subject to the loans to participators rules.

It is HMRC's view that the company law requirements can only be met if the company makes a full cash payment to repurchase the shares. It would therefore not be possible to use the investment property to 'pay' for the repurchase.

If you wish to acquire the property, the company would have to pay you in full in cash, and then you would have to buy the property from the company in a separate transaction. The downside is that an SDLT charge would arise as you are buying the property. However, the charge is not significant. The SDLT cost for a commercial property worth £250,000 would be as follows:

<i>Consideration</i>	<i>Rate</i>	<i>SDLT</i>
£		£
0 – 150,000	0%	Nil
150,001 – 250,000	2%	<u>2,000</u>
Total		<u>2,000</u>

### Tax position

The key point here is whether the share sale proceeds (see appendix 1) are treated as a dividend or a capital gain. The default position is as a dividend, where £449,930 would be taxed partially at 33.75% and partially at 39.35%. However, as a capital gain, only £446,930 (see Appendix 1) would be taxed and the capital gains tax (CGT) rate is only 20%. Furthermore, you could qualify for business asset disposal relief (BADR), which would reduce the rate to 10% (see below).

You can get CGT treatment if various condition are met. The main conditions are as follows:

- You have had the shares for five years
- You are resident in the UK
- You must substantially reduce your interest and no longer be connected with the company after the purchase
- The purchase must be for the benefit of the trade and not be undertaken for the avoidance of tax.

These conditions all appear to be met. The only one where HMRC could take a different view is the final one. However, HMRC should accept that the divorce means that you no longer want to work together as directors and shareholders of this company. It is possible to get clearance from HMRC that they are happy that this condition is met and I would recommend applying for that clearance.

Once it is recognised as a capital gain, you can get BADR, but only if you are still an officer of the company at the time of the repurchase transaction. Therefore, it is important that the repurchase happens before you resign as director, which means it has to take place before 31 March 2026 and so would be in this tax year.

The other conditions to get BADR are already met:

1. You must have at least 5% of the ordinary share capital, voting rights, rights to income and rights to capital.
2. The company must be a trading company, where other activities, such as holding an investment property, are not significant. If 35% of the shares are worth £450,000, it suggests the company is worth approximately £1,285,000, so the investment property represents less than 20% of the value of the company, which is defined as insignificant. The turnover and profit from the property is also insignificant compared to the trading profit.

The BADR has to be claimed on your 2025/26 tax return. The CGT would be £44,693. This would be payable on 31 January 2027.

From an inheritance tax (IHT) perspective, you will be converting an asset (the shares) which would qualify for business property relief (and so would get 100% relief from IHT) to cash which would be fully subject to IHT.

### 3. Selling the Marital Home

You are considering either selling your share of the property to Dominic now, or remaining as joint owners until the property is sold in five years' time or Dominic has raised the funds to buy your half share in five years' time.

#### *Transfer of ownership to Dominic now*

This will be a disposal for CGT purposes. However, a transfer of property between spouses would normally not give rise to a capital gain or capital loss. With spouses who are divorcing, this no gain no loss treatment automatically continues until the earlier of the following dates:

- 5 April 2028, being the end of the third tax year after you separated; and
- The date on which the divorce is finalised.

However, if the assets are actually transferred as part of a formal divorce settlement which is after either of those two dates, then the time limit is extended to the date at which the transfer takes place.

You are still within the time frame for this to be treated as a no gain no loss transfer as long as the property is transferred before 5 April 2028 and your divorce is final, in which case, no gain will arise on you on the transfer.

#### *Remaining a joint owner of the property:*

If you retain an interest in the property, then there will be a gain when the property is subsequently sold. The key tax relief on the sale of an individual's home, which exempts the gain from CGT, is private residence relief (PRR). PRR is available if a property has been your only or main residence at some point during your period of ownership. In this case, the property will only be your main residence for part of the time, up until you moved out in October 2024, so the PRR is pro-rated for the time of occupation. Plus, where some PPR is available the final nine months are always treated as a period of occupation, even if the owner is not actually living in the property.

For example, if the property was sold in October 2030 for £750,000, then the total period of ownership would be 147 months with occupation being 75 months plus the final nine months. So the gain would be £750,000 - £300,000 = £450,000, split equally between you and Dominic, giving a gain of £225,000. The PRR on this would be £128,571 ( $£225,000 \times \frac{75+9}{147}$ ) and the chargeable gain £96,429.

However, there may be a way to mitigate this gain, providing you sell the property to a third party once the children have moved out, rather than Dominic buy you out.

As you have moved out of the house on separation and Dominic continues to live there, then you can elect to treat the house as your main residence so that the whole gain can be covered by PRR when the house is sold. The disposal has to be part of an agreement made by the parties in contemplation of the divorce, so you need to include the arrangements for the house formally in the divorce settlement.

However, if you do this, then in the period between you ceasing to live in the property and the sale, you cannot buy another property which you live in as your main residence unless you elect for the ex-marital home to continue to be treated as your main residence. Your sister's property would not be treated as a main residence for these purposes if you do not own any share in that property, however long you live there.

Therefore, if you choose to acquire another property before 9 Salisbury Close is sold, then you would have to decide which of the properties should be treated as your main residence and make any necessary election within two years of the new property being acquired or first being used as a residence.

If you sold your interest to Dominic in the future, this special PRR election is not available to you and the gain (£96,429 in the example above) will be taxable. Therefore, you would have to insist Dominic sells the property, even if he doesn't want to move and would rather buy you out.

An alternative is to have a deferred sale agreement where you transfer to Dominic now (with no gain arising as this will be on a no gain no loss basis) but have a legal agreement where you will benefit from a share of the profit when it is sold. This would need to be negotiated as part of the divorce. The proceeds you receive on the eventual sale will benefit from the same PRR that you would get on an arms length sale now so the majority of the gain will be covered by the relief.

Due to the uncertainty of the tax treatment if you remain a joint owner in the property, it is recommended that you sell the property now as part of the divorce agreement with an agreement, if possible, to get a share of future sale proceeds.

From an inheritance tax perspective, this property will be within your estate whilst you own it as would any cash which was generated by selling now to Dominic. There is an additional nil rate band of up to £175,000 where a house which has been the home of a deceased individual is passed on to a direct descendant and this would remain available whilst the house is owned. If you sell the house, there is the possibility of the relief remaining available if there are assets equivalent to the value of the house going to the children.

#### **4. Gifting Unit 1, Lavender Business Park**

The transfer of this property to the children would also be a disposal for CGT purposes, even though it is a gift. Whether or not they are not going to pay anything for the property, the taxable proceeds will be calculated as if the market value had been paid. Therefore, the gain on the property would be £260,000 less £125,000 = £135,000. This would be subject to tax at 20%, unless holdover relief is claimed (see below). No BADR would be available in this case, despite it being used in your business, as full market rent has always been paid.

##### *Holdover relief*

However, it is still a trading asset and where trading assets are gifted or transferred at undervalue, the gain can be held over.

If no consideration is paid, the whole of the gain can be held over and the chargeable gain becomes nil. Your children effectively take on the asset at its historical base cost of £125,000, so that their capital gain will be higher in the future when they dispose of the asset.

If they did get a mortgage and paid something for the property, then the amount of gain that can be held over is reduced by the amount by which the consideration exceeds the base cost.

As an example, if the children paid £150,000 for the property, you would pay capital gains tax on £25,000 (£150,000 paid less your base cost of £125,000). The gain held over would be reduced to £110,000 (£135,000 - £25,000).

They could, therefore, pay up to £125,000 without any gain crystallising on you and with the full amount of the gain being held over to avoid any CGT charges on you. In this case, their base cost would be £125,000 for calculation of any gain on a future disposal.

However, the property would only be eligible for this relief, if it is used, at the time of the transfer for the purposes of a trade conducted by your personal company. This means that you would need to make sure that the transfer took place before your shares were repurchased since, once the Dalshieil Consulting Ltd is no longer your personal company, the property would not qualify for holdover relief. Timing is therefore very important.

Holdover relief must be claimed and this would be a joint claim between you and your children. Any claim under this section must be made within four years of the end of the tax year in which the gift occurs. This is done by completing a claim form and submitting it to HMRC.

Finally, any consideration paid by the children would be liable for SDLT, but, there is a nil-rate band of £150,000 for commercial property, so they could pay up to £150,000 before any duty became payable.

In summary, it is recommended, that a decision is made about whether to transfer the property now as the gain will not be eligible for holdover relief once you no longer hold the shares in Dashiell Consulting Limited. If you need some funds, then the family could pay up to £125,000 without any tax being paid by you or SDLT becoming chargeable.

From an inheritance tax perspective, the property is currently covered by 50% business property relief but this would not be available once you do not own any shares in the company which is using it. The gift to the children would be a potentially exempt transfer which would mean the value of the gift would remain in your estate unless you survive for seven years

## **5. New job and remuneration package**

You have asked whether it is better to work as an employee or via a new limited company.

If you work through a limited company then there is legislation (which Nicki referred to as IR35) which means HMRC can review the terms of the engagement. They will consider if, despite the limited company in between, you are working like an employee directly engaged by Benekia. If that is the case, your company must pay tax and NICs on the money it receives for the work you do. On that basis, you would get no benefit of working through a limited company in terms of reducing your tax liability but you have the additional costs and inconvenience of operating through a limited company. As an employee you would also have employment law protections.

In this case, it is likely that HMRC would consider you would be an employee as you will be working five days a week in Benekia's offices, will be integrated into the company, be unable to work for anyone else and not have ownership of any intellectual property created. These are all indicators of employment.

I would therefore recommend that you are engaged as an employee. As an employee, you will be subject to tax on the salary and the value of any benefits. You will also be subject to employee's national insurance contributions. Benekia will reimburse you for your business mileage at the HMRC approved rates. Such reimbursement would be tax-free.

### *Company car or personal ownership of car*

Appendix 2 shows the calculation of the tax due, as an employee, with and without a company car, taking account of the costs of the PCP contract.

You have been given the figures of £5,033 for the car benefit. However, as Benekia Ltd has a salary sacrifice arrangement, the taxable value could be increased to the amount of salary waived if this is higher. In your case, you are only waiving £3,000 per year, so the cash equivalent is higher. You will be taxed on £5,033.

The HMRC approved rate for business mileage in a company car is 16p/mile. Therefore if you were doing 5,000 miles per year, this would be £800 tax free.

If you bought the car personally, there would not be any taxable company car benefit. Benekia would pay the authorized rate of 45ppm for any business mileage that you do (or 25ppm for any mileage in excess of 10,000 miles). Based on 5,000 business miles that would be a figure of £2,250 tax free. You would however, have to acquire your own car out of your net funds.

The calculations show that you are better off from an income perspective if you were purchasing the vehicle personally rather than being provided with a company car. We recommend therefore that you acquire the car personally.

Please do not hesitate to contact me should you require any further assistance.

Yours sincerely

[Tax advisor]

## APPENDIX 1

### Calculation of taxable proceeds on purchase of own shares

Capital gain

	£
Proceeds	450,000
Less cost	<u>(70)</u>
Gross gain	449,930
Less annual exemption	<u>(3,000)</u>
Net gain	<u>446,930</u>

## APPENDIX 2

### Calculation of net income with different car options

The cost of the fuel for the business miles would be:  $5,000/60 \times 6.50 = \underline{\underline{\pounds 541}}$

For a full year the figures would be as follows:

(a) With car provided

	£
Salary	57,000
Rental income	7,800
Car benefit	<u>5,033</u>
Total income	69,833
Less personal allowance	<u>(12,570)</u>
Net taxable income	<u>57,263</u>
Tax due	
37,700 @ 20%	7,540
19,563 @ 40%	<u>7,825</u>
Total	<u>15,365</u>
Class 1 NICs	
37,700 @ 8%	3,016
6,730 @ 2%	<u>134</u>
Total	<u>3,150</u>
Total tax and NICs	18,516
Net income after tax	46,284
Plus mileage reimbursed $5,000 \times .16$	<u>800</u>
Total	47,084
Less cost of fuel ( $5,000/60 \times 6.50$ )	<u>(541)</u>
Net income	<u>46,543</u>

(b) Without car provided

	£
Salary	60,000
Rental income	7,800
Total income	67,800
Less personal allowance	<u>(12,570)</u>
Net taxable income	<u>55,230</u>
Tax due	
37,700 @ 20%	7,540
17,530 @ 40%	<u>7,012</u>
Total	<u>14,552</u>
Class 1 NICs	
37,700 @ 8%	3,016
9,730 @ 2%	<u>194</u>
Total	<u>3,210</u>
Total tax and NICs	17,763
Net income after tax	50,037
Plus mileage reimbursed $5,000 \times .45$	<u>2,250</u>
Total	52,287
Less PCP costs	(3,600)
Less cost of fuel	<u>(541)</u>
Net income	<u>48,146</u>