

The Chartered Institute of Taxation

Advanced Technical

Inheritance Tax, Trusts & Estates

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Suggested solutions

ANSWER 1

Daniel's domicile

Daniel had a UK domicile of origin as he was born in the UK to a single UK domiciled mother followed by an Australian domicile of dependency when he moved with her to Australia which later became an Australian domicile of choice.

Despite the above, Daniel is a formerly domiciled resident (FDR) under the UK deemed domicile legislation. For both Income Tax and Capital Gains Tax (CGT) he is deemed UK domiciled throughout his residence here.

For Inheritance Tax (IHT), this applies from the second year of his UK residence i.e., from 6 April 2024. Daniel will cease to be deemed UK domiciled for IHT from the first year of his non-UK residence. Split years are treated as a year of UK residence so Daniel will revert to his Australian domicile of choice for IHT on 6 April 2030.

How does this affect Daniel as settlor and trustee regarding the trust?

Income Tax and CGT:

The trust will be UK resident whilst Daniel is the sole trustee and is UK resident.

The trust will be assessable on its worldwide income and gains and Daniel will need to register the trust using the Online Trust Registration Service (TRS) for the 2023/24 tax year by 5 October 2024. He will also need to complete a trust return and make payment of any Income Tax and/or CGT liability on or before 31 January 2025.

No split year treatment applies where there is a change of trust residence.

The trustees will be subject to Income Tax and CGT as follows:

		£
Income Tax:		
Dividend income	£1,000 @ 8.75%	87
	£35,750 @ 39.35%	<u>14,068</u>
		14,155
	£	
CGT:		
Gain	25,500	
Less trust AE	<u>(6,150)</u>	
Chargeable gain	<u>£19,350</u>	
CGT @ 20%		£3,870
Total Income Tax and CGT for 2023/24 payable 31/1/25		£18,025

Payments on account will be due 31 January 2025 and 31 July 2025 of £7,077 each.

The trust tax pool will be as follows:

	£
b/fwd	0
Tax liability 2023/24	14,155
Less distributions:	
(£5,665 x 3 x 45/55)	<u>(13,905)</u>
c/f	<u>£ 250</u>

There is therefore no tax pool adjustment required.

As Daniel was neither UK resident nor UK domiciled when he made the settlement, for the trust to revert to non-UK resident status whilst he resides in the UK, Daniel would either need to resign in favour of a non-UK resident trustee or appoint a non-UK resident trustee.

Any overseas trustees would need to be involved in making trust decisions not merely rubberstamping those of Daniel for the change to be effective i.e. not anti-avoidance.

It is recommended that Daniel does this before 5 April 2024 to mitigate the trust's exposure to UK Income Tax and CGT from 2024/25 onwards.

As the trust holds no UK situs assets and produces no UK source income, the trustees would then have no ongoing reporting or payment obligations regarding UK Income Tax or CGT.

Daniel would need to claim to reduce the payments on account as there would be no ongoing liability to Income Tax.

The trust would be liable for an emigration charge under s.80 TCGA 1992 for 2023/24 as the trust assets would be deemed to have been disposed of and immediately reacquired at their market value at the date. Based on the latest unrealised gains report there would be an additional CGT charge of at least £2,266.

As Daniel is not a beneficiary of the trust, it is not settlor-interested for UK Income Tax or CGT. When the trust reverts to being non-resident, the trust will continue to be non-settlor-interested for Income Tax. However, as his daughter and grandchildren are beneficiaries of the trust the trust would be settlor-interested for CGT purposes as the definition for overseas trusts under s.86 TCGA 1992 is wider than for UK trusts.

Daniel would be chargeable to CGT if the trust should realise any gains whilst it is non-UK resident, and he is UK resident and deemed UK domiciled. From a tax perspective any further disposals should ideally be delayed until after Daniel leaves the UK i.e. 30 June 2029.

If Daniel should become chargeable to CGT, he would benefit from the UK annual exemption (currently £12,300) and would be charged on the balance of any gains at the higher rate (currently 20%). Daniel would be able to request reimbursement from the trust for the CGT incurred.

IHT:

As the trust was created when Daniel was Australian domiciled containing non-UK situs assets, it would usually be an excluded property trust for IHT.

However, the FDR rules mean that the trust ceases to be an excluded property trust whilst Daniel is deemed UK domiciled i.e. from 6 April 2024 and reverts to an excluded property trust when he ceases to be deemed UK domiciled i.e. from 6 April 2030.

Capital distributions from the trust made from 6 April 2024 would be caught by the deemed UK domicile rule and so the proposed distribution to his daughter should be made before then as any capital distributions made between 6 April 2024 and 5 April 2030 will trigger an exit charge.

Daniel should not add property to the trust whilst he is deemed UK domiciled as this will create a mixed trust with both excluded property and relevant property (RP).

There will be a 10-year anniversary (TYA) charge on 30 April 2024 as follows:

Principal charge (PC)

		£	£
Current value of RP @ TYA (assuming distribution to daughter made pre-6 April 2024 and no undistributed income > five years old)	A		708,000
Initial value of RP in a related settlement	B		<u>0</u>
Total (A+B)	C		708,000
NRB at date of PC		325,000	
Less:			
Settlor's chargeable transfers in seven years prior to settlement		(0)	
Distributions by trustees in last 10 years subject to an exit charge		(0)	
			<u>(325,000)</u>
NRB remaining	(D)		<u>383,000</u>
Notional transfer (C - D)	E		<u>76,600</u>
Notional Tax (E x 20%)	NT		10,819
Effective rate (NT/C x 100)	ER%		3.246%
Actual rate (ER x 30%)	AR%		10.819%
PC = A x AR% x (n-x/40) note 1	EC		<u>£574</u>

Note 1: n = 40, x = 39, n-x = 1

MARKING GUIDE

TOPIC	MARKS
Domicile:	
Origin - UK, dependency, and choice – Australia	0.5
Deemed UK domicile under FDR rule	0.5
Dates from and to for IT & CGT (1/7/23 – 30/6/29) – split year treatment, IHT – full tax years (6/4/24 – 5/4/30)	1
Income Tax & CGT:	
Trust UK resident – sole UK-resident trustee	0.5
Worldwide income and gains, TRS & SA requirement 2023/24, no split year – pre-entry gains assessable	1.5
Calculation (IT @ 8.75%, 39.35%, CGT – trust AE, @ 20%)	2
POA	0.5
Tax pool calculation – no adjustment required	0.5
Replace or add non-UK resident trustee to make non-UK resident, no rubberstamping	1
Non-UK situs assets nor UK source income = no ongoing reporting or IT/CGT obligations in UK, reduce POAs	1
Emigration charge	1
No settlor interest whilst trust UK Resident, whilst trust non-UK resident (IT only)	1
Settlor interest – CGT – extended definition s.86 TCGA 1992 – including children, grandchildren, recommend no disposals whilst in UK	1
CGT AE, marginal rate of 20% applies to any disposals, reimbursement (0.5 each)	1.5
IHT:	
Trust – excluded property – temporary loss of status under FDR deemed UK domicile rule	1
Timing of distribution to daughter to avoid exit charge – pre-6 April 2024	0.5
Additions to trust to be avoided – mixed trust status, admin burden and planning complexity	1
TYA charge 30/4/24	0.5
TYA calculation:	
Current value (less distribution to daughter, no undistributed income > five years)	0.5
NRB not reduced by distribution to daughter within 10 years as not subject to exit charge (being excluded property at date of distribution)	0.5
Notional transfer, notional tax, effective rate	1
Actual rate, PC applied to current value with rate relief applied for period not relevant property	1.5
TOTAL	20

ANSWER 2

1) Missie

Given her degenerative condition she may wish to settle a trust for her own benefit whilst she has mental capacity.

It would not be appropriate for her to act as a trustee, alternative trustees (professional or appropriate family/friends) should therefore be appointed.

It is usual for such a trust to be a discretionary trust (DT) to avoid means testing for UK benefits.

Missie's illness means that for tax purposes she will be regarded as a "disabled person" (DP) by meeting the relevant tax definition of becoming:

- a) incapable of administering her own property or managing her own affairs because of a mental disorder within the meaning of the Mental Health Act 1983; or
- b) entitled to a relevant disability benefit e.g. the personal independence payment (PIP).

The trust is deemed to be a "disabled persons interest" (DPI) from the outset. The transfer of value into trust is IHT neutral as it is neither a potentially exempt transfer (PET) nor a chargeable lifetime transfer (CLT). The trust assets remain within Missie's estate.

The trust will not be subject to the relevant property (RP) regime that usually applies to a DT and no principal or exit charges will apply.

The trust is settlor interested and cannot benefit from special rules regarding "vulnerable beneficiaries" for Income Tax. The trustees initially pay Income Tax at the 45% rate applicable to trusts (RAT) subject to a £1,000 basic rate band. Missie is then assessed on the trust income as though she had received it directly, receiving a 20%/45% tax credit from the trustees as appropriate. Any Income Tax repayment received by Missie in respect of the trust income should be repaid to the trust.

The transfer of the property into trustees' ownership will be a chargeable disposal by Missie for Capital Gains Tax (CGT) purposes. No CGT will be payable as 100% principal private residence relief (PPR) will apply.

For CGT, the special rules regarding "vulnerable beneficiaries" can apply. This means that the trustees and Missie will together be able to make a vulnerable person election (VPE). This needs to be submitted by 31 January following the 31 January after the end of the tax year for which it is to first apply i.e. for 2023/24 this would be 31 January 2026. The trustees can then elect each year whether to adopt special treatment allowing them to treat trust gains as though they were directly assessable on Missie thus benefitting from her annual exemption and basic rate of CGT.

2) Georgiana

Missie could re-direct part of her inheritance to a trust for Georgiana for when she reaches age 18 years via a Deed of Variation (DOV) with an IHT statement made under s.142 IHTA 1984.

It must be made in writing and signed by Missie within two years of her husband's death i.e. by 21 January 2024.

Missie's husband's nil rate band (NRB) and residence nil rate band (RNRB) would cover the re-direction to Georgiana resulting in no additional IHT. This would leave no TNRB/TRNRB available on Missie's death.

The trust would be treated as a Bereaved Minor's trust (BMT) for IHT as it would be deemed settled by Missie's husband. This would exclude the Trust from any ongoing IHT exposure.

If Missie does not make a statement under s.142 IHTA 1984 the settlement will be treated as made by Missie. As a BMT cannot be settled during a person's lifetime the trust would fall within the RP regime for IHT. That redirected value would then be a CLT with potential IHT arising as follows:

On creation:

	£
Initial value	500,000
Less: NRB	<u>(325,000)</u>
Chargeable	<u>£175,000</u>
 IHT @ 20% (assuming that the trustees pay the tax)	 <u>£35,000</u>

On Missie's death within seven years:

	£	£
Settlement		500,000
Less: NRB	325,000	
Less: TNRB (restricted)	<u>175,000</u>	<u>(500,000)</u>
Chargeable		<u>£0</u>

The trust would be subject to ongoing principal and exit charges.

For CGT purposes, Missie should also make an election under s.62 TCGA 1992 as part of the DOV. This disregards the disposal at the date of variation and relates the asset base cost for the trustees back to Missie's late husband's death i.e. the probate value of £300,000. Otherwise, a charge to CGT would arise on Missie as follows:

	£
Deemed proceeds	400,000
Less probate value	<u>(300,000)</u>
Net Gain	100,000
Annual exemption	<u>(12,300)</u>
Chargeable gain	<u>£87,700</u>
 CGT @ 18% (£50,270 – £14,000) = £36,270	 6,529
CGT @ 28% (£87,700 - £36,270) = £51,430	<u>14,400</u>
Total CGT returnable and payable within 60 days	<u>£20,929</u>

If Missie does not make the s.62 TCGA 1992 election the trustees' base cost for the holiday home will be £400,000.

Income Tax and CGT treatment

As Georgiana is a relevant minor (as at least one of her parents has died), the trust could benefit from favourable treatment for both CGT and Income Tax purposes as it would not be settlor interested for Income Tax purposes since Missie is deemed to be the settlor.

This means that, given the relevant elections, Georgiana's trust would also benefit from Georgiana's own personal allowance, the basic rate band for Income Tax, and her savings and dividend allowances.

Any income distributions to Georgiana would be deemed to carry a 45% Income Tax credit and the trustees would need to keep a tax pool which could become overdrawn if excess income distributions were made, resulting in a tax charge.

Georgiana will be treated as automatically receiving both the accumulated income and capital as a capital distribution on reaching majority with no additional tax effect. She will then be assessed on the ongoing income and gains personally.

Marking GUIDE

TOPIC	MARKS
Missie:	
Self-settlement into trust whilst still has capacity, appointment of alternative trustees, discretionary trust for purposes of means tested benefits protection (0.5 each, max 1)	1
Disabled person definition and qualification – relevant benefits e.g., PIP sufficient to gain mark	0.5
Identification of a DPT for IHT, self-settled = IHT neutral, no PET/CLT, remains part of estate	0.5
DT – no exit or principal charges	0.5
Disposal for CGT – PPR relieves any gain	0.5
Identification of settlor interested for IT & CGT	0.5
Cannot benefit from special rules for “vulnerable persons” (VP) for IT, trustees IT @ trust rates, distribution to Missie with 20%/45% credit, any repayment back to trust	2
VP election applicable for CGT – mechanism – trustees/Missie VPE1, timing, trustees election via SA annually	2
CGT effect – AE, basic rates	0.5
Georgiana – use of DOV:	
DOV – s.142 IHTA 1984 – holiday home and cash £100,000 - mechanism – in writing, signed by Missie, timing (0.5 each)	1.5
Covered by husband’s NRB/RNRB (settlor via Will for purposes of IHT), BMT no ongoing IHT	1
Without DOV – lifetime settlement by Missie – CLT	0.5
Calculation IHT on CLT – on settlement –NRB, no RNRB, rate	1
IHT on CLT – on death, (NRB, TNRB (restricted) applies = nil	0.5
Ongoing principal and exit charges	1
CGT liability – calculation – MV, probate value, AE, rates 18%/28%, higher base cost (0.5 each, max 2)	2
Georgiana – trust liability to IT/CGT:	
Relevant minor i.e., at least one parent deceased = special treatment for CGT as for a self-settled DPT until Georgiana reaches majority	1
Special treatment also applies to IT as not settlor interested – settlor is Missie for IT/CGT	1
Effect – PA, basic rate, interest, and dividend allowances (0.5 each max 1)	1
Distributions 45% TC, tax pool, excess distributions resulting in tax charge (0.5 each, max 1)	1
Georgiana to receive accumulated income and capital at majority as capital distribution with no tax consequences and thereafter has an ongoing personal liability	0.5
TOTAL	20

ANSWER 3

1) IHT on Gerard's death:

BPR/APR:	£ Gross	£ APR/BPR (Note 1)	£ Net
House and contents	600,000	0	600,000
Cash after liabilities	300,000	0	300,000
Spanish Villa	300,000	0	300,000
Agricultural land	200,000	200,000	0
Shares	450,000	450,000	0
Liabilities	(20,000)	0	(20,000)
Total	1,830,000	650,000	1,180,000

Note 1:

The estate contains property qualifying for Agricultural Property Relief (APR) at 100% - the farmland has been owned by Gerard for over seven years, it has been used for agricultural purposes throughout and it has vacant possession within 12 months. The probate value is the agricultural value as there is no planning potential attributed to the farmland.

The estate also contains property qualifying for Business Property Relief (BPR) at 100% - Gerard's unquoted trading company satisfies the "wholly or mainly" trading test as it is wholly trading, the value of the shares are not restricted by excepted assets and the shares have been held for more than two years.

Spreading under s.39A IHTA 1984:

As there are specific gifts of non-APR/non-BPR property and residue containing APR/BPR property s.39A IHTA 1984 applies to spread the APR/BPR partially against the non-APR/non-BPR assets to reduce them to the "appropriate fraction" as follows:

$$\frac{(\text{Total value of estate after APR/BPR}) \text{ less } (\text{Specific gifts of APR/BPR property after APR/BPR})}{(\text{Total value of estate before APR/BPR}) \text{ less } (\text{Specific gifts of APR/BPR property before APR/BPR})}$$

$$= \frac{£1,180,000}{£1,830,000} = 118/183$$

Specific legacies:

House and contents	£600,000 x 118/183 = £386,885
£100,000 to Charity	£100,000 x 118/183 = £64,481
Spanish Villa	£300,000 x 118/183 = £193,443

Death Estate:

Estate after APR/BPR (above)	£	1,180,000
Less exempt legacy (per fraction)		(64,481)
		<u>1,115,519</u>
NRB/TNRB (Note 2)	(325,000)	
RNRB/TRNRB (Note 2)	<u>(0)</u>	
		<u>(325,000)</u>
Taxable estate		790,519
Add exempt legacy to charity		64,481
Baseline amount		855,000
X 10%		<u>85,500</u>
Donated amount = £100,000		
IHT @ 36%		<u><u>£284,587</u></u>

The chargeable estate rate is therefore £284,587/£1,115,519 x 100 = 25.512%

Note 2:

A full nil rate band (NRB) is available as Gerard made no lifetime transfers in the seven years before his death.

The residence nil rate band (RNRB) is not available, as although Gerard's residence is part of his estate, this is not passed to his direct lineal descendants (of which there are none). It passes instead to his niece.

As Gerard has never been married or in civil partnership there is no TNRB/TRNRB available to the estate.

2) Distribution of estate:

		£	
Niece	House and contents Spanish Villa (£300,000 – (193,443 x 25.512 / 100))	600,000 250,649	Tax borne by residue. Tax borne by niece
Nephew	Residue (£200,000 + £450,000 + £200,000 - £20,000 – £284,587 + (£193,443 x 25.512 / 100))	594,764	Residue bears all tax excluding on Spanish Villa (tax- bearing)
Charity	£100,000	100,000	Exempt
HMRC	IHT – as above	284,587	
Total		1,830,000	

MARKING GUIDE

TOPIC	MARKS
Death estate:	
Availability of APR agricultural land - agricultural use, owned > 7 years, post 1995 (licence), vacant possession within 12 months, 100%	1
Availability of BPR 100% unquoted trading company - meets "wholly or mainly" test, held > 2 years, no excepted assets, 100%	1
ID s.39A applies, non-APR/non-BPR specific gifts, APR/BPR residue	1
Appropriate fraction calculation (0.5), apply to specific gifts (0.5)	1
Estate – Estate after APR/BPR, less exempt legacy, NRB only, Taxable estate (0.5 each)	2
Add back charitable legacy (after S.39A IHTA 1984), Baseline amount @ 10%, IHT @ 36% taking charitable legacy before s.39A IHTA 1984, estate rate (0.5 each)	2
Distribution of estate	
Niece – house and contents, Spanish Villa (ID bears own tax), Charity, Nephew (0.5 each), HMRC (PAG above)	2
TOTAL	10

ANSWER 4

1) Instalments

Some property will qualify for the instalment option. The Inheritance Tax (IHT) due on qualifying property is payable over 10 years in equal annual instalments. S.227 and s.228 IHTA 1984 detail qualifying property.

	Note	£	Total chargeable to IHT £	Due immediately £	Instalment option available £
Shares in Starlings Ltd	1		400,000		400,000
Shares in Fred's Investments Ltd	2		18,000	18,000	
Shares in Aimer's Holidays Ltd	3		680,000		680,000
Farmland		300,000			
APR at 50% of AV		<u>(100,000)</u>			
Balance	4		200,000		200,000
Cash in investment account	5		100,000	100,000	
			£1,398,000	£118,000	£1,280,000

	£	30 April 2024 £	Due 30 April 2025 £	30 April 2026 £
Due immediately				
£118,000/£1,398,000 x £83,880	7,080	7,080		
In 10 instalments				
£1,280,000/£1,398,000 x £83,880	76,800	7,680	7,680	7,680
	£83,880	£14,760	£7,680	£7,680

If the farmland is sold in April 2025 then
 $£200,000/£1,398,000 \times £83,880 = £12,000$ less
 instalments already paid thereon will immediately
 become due:

Less: IHT on farmland instalments			(1,200)	(1,200)
Add: Balance of farmland IHT becoming due			10,800	
			£14,760	£6,480

Notes:

(1) Starlings Ltd – although this is a trading company the shares have not been held for two years and so no business property relief (BPR) is available.

The shares are unquoted, their value is in excess of £20,000 and the trustees have in excess of a 10% holding. Therefore s.228(1)(d) IHTA 1984 provides that the instalment option is available.

(2) Fred's Investments Ltd – This is not a trading company and so no BPR is available.

The shareholding is in excess of 10% but the value of the shares is below £20,000 so s.228(1)(d) IHTA 1984 is not available.

The trustees have cash reserves and the IHT on these shares would be a maximum of £1,080 (£18,000 x 6%) so it is unlikely that paying the tax will cause them undue hardship. Therefore s.228(1)(c) IHTA 1984 does not apply and the instalment option is not available.

Though more than 20% of the IHT is due in instalments, s228(1)(b) applies only to transfers on death.

(3) Aimer's Holidays Ltd – It is highly unlikely that BPR would apply as the level of services would need to be significant and they are not.

The trustees had control of the company (55%) and so the instalment option is available.

(4) Farmland – The land is used for agricultural purposes and has been owned by the trustees for more than seven years.

However, only 50% agricultural property relief (APR) is available on the farmland as the lease is a pre- September 1995 lease and vacant possession cannot be obtained within two years.

APR is only available on the agricultural value of the land.

The instalment option is available on the unrelieved value as it is land, and the instalment option would be available as the land qualifies for APR (s.234 IHTA 1984).

If the farmland is sold in April 2025 then the instalment option would no longer be available and the balance of any IHT due on its value would become payable immediately.

(5) Cash – no instalment option is available.

2) Interest

Some instalment property bears interest and some does not. S.234 IHTA 1984 details which property would bear interest.

	Note	Instalment option available £	Interest bearing £	Non- interest bearing £
Shares in Starlings Ltd	6	400,000		400,000
Shares in Aimer's Holidays Ltd	7	680,000	680,000	
Farmland net of APR	8	200,000		200,000
		£1,280,000	£680,000	£600,000
Apportioned IHT £76,800 (above) x £680,000/£1,280,000			£40,800	
Each instalment (1/10)			£4,080	

(6) Starlings Ltd - As it is a trading company the instalments would not bear interest.

(7) Aimer's Holidays Ltd - It is not a trading company for BPR purposes and so interest would apply.

(8) Land qualifying for APR would not bear interest.

Simple interest would apply on an annual basis at the relevant rate on the interest-bearing instalments and is due as follows:

	£	
Interest bearing principal	40,800	
Payment 30 April 2024	<u>(4,080)</u>	
	<u>£36,720</u>	
Interest to 30 April 2025 @ 3.5%		£1,285
Payment 30 April 2025	<u>(4,080)</u>	
	<u>£32,640</u>	
Interest to 30 April 2026 @ 3.5%		£1,142

MARKING GUIDE

TOPIC	MARKS
(1)	
<u>Starlings Ltd</u>	
Trading company but not held for two years – no BPR	0.5
s.228(1)(d) reasoning and conclusion instalments available	1.5
<u>Fred's Investments Ltd</u>	
Not a trading company (why) – no BPR	0.5
Does not fit in s.228(1)(d) IHTA 1984	1
Unlikely to claim hardship s.228(1)(c) IHTA 1984	1
No instalment option available	0.5
<u>Aimer's Holidays Ltd</u>	
Not a trading company (why) – no BPR	1
Control so instalment option available	1
<u>Farmland</u> – 50% APR is available and why	1
50% reduction only on the agricultural value of the land	0.5
Land – so instalment option available	0.5
<u>Cash</u> – no instalment option available	0.5
Apportion IHT between instalment/non-instalment option	1
Show instalment IHT due on 30 April 2024/25/26 at 1/10	2
Show amount due immediately	0.5
If farmland sold IHT becomes due immediately and calculate	1
(2)	
Starlings Ltd - Trading company – not interest bearing	1
Aimer's Holidays Ltd - Not a trading company – interest bearing	1
Farmland s234 – land qualifying for APR is non-interest bearing	1
Apportion IHT between interest bearing & non-interest bearing to calculate interest bearing principal	0.5
Calculate one interest bearing instalment	0.5
Show interest rate and apply to principal after deducting relevant instalment payments giving interest for 2025 and 2026	1.5
Simple interest only	0.5
TOTAL	20

ANSWER 5

(1)

Cash gift to Victoria

This will potentially trigger a pre-owned assets tax (POAT) charge.

The contribution condition has been satisfied as Lady Hannah has made a cash gift which has then been used to purchase an asset from which she enjoys a benefit.

For chattels, the charge is calculated by applying the official rate of interest to the contribution made and the annual charge for 2022/23 would initially be:

$$£250,000 \times 2\% = £5,000.$$

However, Lady Hannah's enjoyment of the asset was only from 6 September 2022, so the charge for 2022/23 can be pro-rated as follows:

$$£5,000 \times 7/12 = £2,917.$$

Lady Hannah has made a promise to pay £2,000 per annum but nothing has been paid to date. To be deductible from the POAT charge any payment for the use of the asset must be under a legal obligation and paid in the relevant tax year. Neither of these conditions have been satisfied and so no deduction is available.

This POAT charge is below the £5,000 de minimis limit but it must be aggregated with any other POAT charges arising in the tax year to determine whether overall the limit is breached.

Cash gift to Lucinda

This will potentially trigger a POAT charge since the contribution condition has been satisfied (as explained above).

The charge for land is calculated by reference to the annual rental value (£100,000). As Lady Hannah's gift has funded only a quarter of the purchase value i.e. £500,000/£2 million, this is initially pro-rated as follows:

$$£100,000 \times 1/4 = £25,000.$$

The charge can only apply to the extent that the land is being occupied by Lady Hannah and so this is further apportioned as follows:

$$£25,000 \times 10/52 = £4,808.$$

The £3,000 payment (10 x £300) is made under a legal obligation and so it can be deducted before calculating the net charge.

Total gross charges = £2,917 (above) + £4,808 = £7,725 which together exceed the £5,000 de-minimis.

The Income Tax liability is as follows:

	£
Painting (£2,917 x 45%)	1,313
Use of flat (£4,808 - £3,000 = £1,808 x 45%)	814
Total Income Tax liability	<u>£2,127</u>

No POAT charge would apply, despite Lady Hannah benefiting from the use of the painting and flat if:

- a. Lady Hannah had elected by 31 January 2024 for the gifts with reservation regime to apply to the gifts, or
- b. Lady Hannah had made a full payment of the amount of the charge in the tax year under a legal obligation in respect of the painting, or
- c. Lady Hannah's occupation of the flat was limited in nature. Revenue Interpretation 55 (RI55) sets out some examples:
 - i. If her stay with Lucinda was less than one month per year (or two weeks without)
 - ii. If she only made social visits excluding overnight stays or domestic visits for example for babysitting Lucinda's children
 - iii. If it was a temporary stay for a short-term reason e.g., convalescence or redecoration of property

(2)

Capital Gains Tax

CGT will be due of £24,000 ($£420,000 - £300,000 = £120,000 @ 20\%$).

Recapture charge

The recapture charge will be charged on the net proceeds of sale, after deducting CGT, so £396,000 ($£420,000 - £24,000$).

This will be treated as the top slice of the aunt's estate.

This will be taxed at an IHT rate of 40% not 36%. So, the recapture charge due is:

$£396,000 \times 40\% = £158,400$.

MARKING GUIDE

TOPIC	MARKS
(1)	
<u>Cash gift to Victoria</u>	
Chattel – MV x OFR	1
Pro-rated for time	0.5
No deduction for rental – must be legal obligation and on a paid basis	0.5
<u>Cash gift to Lucinda</u>	
Pro-rated for contribution	0.5
Use of annual rental value	0.5
Pro-rated for time	0.5
Can deduct £3,000 payment as legal obligation	0.5
Aggregate charge exceeds £5,000 de minimis so POAT applies	0.5
45% applied to both to give an amount of income tax	0.5
Election into GWR regime	0.5
Full payment of the charge value under a legal obligation in the tax year of charge	0.5
If occupation was de minimis – RI55 has examples (0.5 each, max 1) Stay was for less than a month each year Social visits excluding overnight stays/domestic visits e.g., or babysitting of Lucinda's children Temporary stay for a short-term reason e.g., convalescence of Lady Hannah or Lucinda or e.g. If Green Acres was being redecorated	1
Sub total	7
(2)	
CGT due of £420k-£300k = £120k x 20% = £24,000	1
Recapture charge is on MV at sale less CGT paid, so £396,000	1
Treated as top slice of estate	0.5
Taxed at 40%, not 36% so £158,400	0.5
Sub total	3
TOTAL	10

ANSWER 6

(1)

Where land is sold by the appropriate person at a loss after death, s.191 IHTA 1984 permits a claim to revise the probate values and generate an Inheritance Tax (IHT) refund.

Land gains and losses made in the three years after death must be aggregated. This is done on gross values (i.e., sales costs are ignored). Where a profit or loss is less than the lower of £1,000 and 5% of the probate value it is excluded from the computation. Cradley Hill is excluded because the loss is below the £1,000 threshold.

Losses in the fourth year are included, but profits in year four are ignored and not aggregated. Aldridge Way was sold at a profit in year four and so is excluded. Bilston Street was sold at a loss within four years and so is included in the computation.

	Probate value	Sale price	Profit/loss	Date of sale
	£	£	£	
24 Darlaston Rise	380,000	295,000	(85,000)	20 September 2021
40 Essington Drive	425,000	380,000	(45,000)	5 November 2021
42 Fulbrook Road	350,000	375,000	25,000	4 April 2022
5 Bilston Street	635,000	545,000	(90,000)	14 June 2023
		£1,595,000	(£195,000)	

IHT refund due = £195,000 x 40% = £78,000

Deed of variation

A deed of variation has been entered into within two years of death. S.142 IHTA 1984 provides that the effects of the deed can then be read back into the Will of the deceased.

Shares with a probate value of £2 million have been redirected from Lynda to Sally. The value used is the value at the date of death, not the value at the time of the variation. Lynda is a chargeable beneficiary, but Sally is not because for purposes of the IHT spousal exemption a spouse includes an estranged spouse.

An IHT refund of £2 million x 40% = £800,000 is therefore due.

(2)

Executors' Capital Gains Tax 2022/23

	£
Stock market portfolio - Net gain	15,800
Offset loss b/fwd (restricted) (N2)	(3,500)
Annual exemption (N3)	<u>(12,300)</u>
Chargeable to CGT	<u><u>0</u></u>

The redirected shares are deemed to have been transferred on Raymond's death at probate value as a s.62 TCGA 1992 statement was made by Lynda when she made the deed of variation on 22 April 2022. No CGT therefore arises on Lynda.

**Executors' Capital Gains Tax
2023/24**

	£	Residential gain £
1 Aldridge Way		
Proceeds	350,000	
Sales costs	(4,500)	
Base cost	(245,000)	
Costs under SP2/04 (N1)	<u>(392)</u>	
Chargeable gain		100,108
5 Bilston Street		
Proceeds	545,000	
Sales costs	(5,000)	
Base cost (as revised)	(545,000)	
Costs under SP2/04 (N1)	<u>(872)</u>	
Loss		(5,872)
		<u>94,236</u>
Offset loss b/fwd		<u>(1,500)</u>
Chargeable to CGT (N3)(N4)(N5)		<u>92,736</u>
CGT Payable:		
At 28%		<u>£25,966</u>

Notes:

- N1 Deductions have been taken where possible under SP2/04. As the estate is worth £20 million, a deduction of 0.16% (which would be capped at £10,000 in total) has been taken. The actual cost of obtaining probate could be deducted instead.
- N2 The loss brought forward has been restricted to preserve the annual exemption.
- N3 The annual exemption is available in 2022/23 but not 2023/24 as it is only available in the year of death and two subsequent tax years.
- N4 The antique clock is a wasting chattel as it is plant and machinery and not used in a business, the gain is not therefore taxable.
- N5 The classic car is an exempt asset, and the loss is not therefore allowable.

MARKING GUIDE

TOPIC	MARKS
(1)	
<u>s.191 claim possible in respect of land sale by executors</u>	1
Aggregated profits & losses in first three years – include Darlaston Rise, Essington Drive and Fulbrook Road to calculate net loss	2.5
On gross values i.e. no sales costs deducted	0.5
Ignore profits/losses below lower of £1k or 5% of PV – Cradley Hill excluded	1
Losses in fourth year included – Bilston Street included	1
Profits in year 4 ignored – Aldridge Way	1
Calculation of IHT refund due	0.5
<u>Deed of variation in favour of wife</u>	
Executed within two years of death so reading back available	0.5
In favour of wife. Spouses exempt even if estranged.	1
Calculation of IHT refund due	1
(2)	
<u>2022/23 Capital gains</u>	
Deed of variation in favour of wife – operation of s.62 TCGA 1992 = nil CGT Lynda	1
Offset b/f loss and recognise restricted to preserve AE	1
Offset AE and note it's the second year after death so available	1
<u>2023/24 Capital gains</u>	
Revised base cost Bilston St	1
Sales costs deducted for CGT	1
SP2/04 costs at 0.16% capped at £10k or actual cost of obtaining probate	1
Antique clock is a wasting chattel and gain is not taxable	0.5
Aston Martin is a motor car, and the loss is not allowable	0.5
Offset balance of b/f loss against gain	1
Explicit mention that no AE available as three years after death	1
Taxed at 28%	1
Total	20