The Chartered Institute of Taxation

Advanced Technical

Taxation of Major Corporates

November 2021

Suggested solutions

ANSWER TO QUESTION 1

Derfel Ltd: Corporation Tax computation for the year ended 31 December 2020

	Notes	£	£
Profit per accounts			8,864,000
Add:			
Depreciation	1	5,000,000	
Bank interest	2	450,000	
Loss on disposal	3	75,000	
Legal fees – acquisition	4	80,000	
Legal fees – loan	5	30,000	
RDEC	W1	77,863	
			5,712,863
Adjusted profit before capital allowances			14,576,863
Capital allowances	W2		(5,234,806)
Trading profit			9,342,057
Non-trading loan relationship deficits	W3		(480,000)
Group relief	W4		(2,500,000)
Total Taxable Profits			6,362,057
@ 19%			1,208,790
RDEC	W1		(177,863)
Corporation Tax payable			**£1,030,928**

Notes

1) Depreciation is capital in nature and is not deductible for tax purposes.

2) The bank interest payable on the proportion of the loan used to purchase the shares in Nimment Ltd is not for trading purposes and therefore should be disallowed in the calculation of trading profits. Hire purchase interest is for trade purposes and therefore allowable against trading profits.

3) The loss on the disposal of the cars is a capital expense and not allowable.

4) Legal fees in connection with the acquisition of Nimment Ltd are a capital expense and not allowable against trading profits.

5) Legal fees in connection with the raising of finance are not trading expenses.

Working 1 - Research and Development Expenditure Credit (RDEC)

	£
In-house	300,000
Externally provided workers while unconnected £1,200,000 @ 3/12 @ 65%	195,000
Externally provided workers while connected £1,200,000 @ 9/12 @ 100%	900,000
Total	£1,395,000
£1,395,000 @ 12% @ 3/12	41,850
£1,395,000 @ 13% @ 9/12	136,013
	£177,863

Derfel Ltd and Nimment Ltd can jointly elect for the connected company rules to apply for the three months to 31 March 2020 (and the six months to 31 December 2019). The election must be made within two years of the end of the accounting period when the workers were first supplied which is by 31 December 2021. The election is irrevocable.

Working 2 - Capital Allowances

	Note	Main Pool	Special Rate Pool	Allowances Claimed
		£	£	£
Tax written down value at 1 January 2020		14,537,692	850,361	-
Hire purchase plant		3,000,000	-	-
First year allowances on R&D		(1,000,000)	-	1,000,000
Constructed plant	a)	2,100,000	-	-
New cars		-	250,000	-
Disposal proceeds	b)	-	(100,000)	-
Annual investment allowance	c)	(1,000,000)	-	1,000,000
		17,637,692	1,000,361	-
Writing down allowance (18% and 6%)		(3,174,785)	(60,021)	3,234,806
Tax written down value at 31 December 2020		14,462,907	940,340	-
Allowances claimed				£5,234,806

Notes:

a) The obligation to pay for plant that is constructed becomes unconditional when the work is certified. Therefore, the £1.5 million certified on 25 November 2020 is added to the main pool.

   Additionally, work completed in the accounting period and certified within one month of the end of the accounting period is treated as incurred immediately before the end of the accounting period, therefore the £600,000 certified on 5 January 2021 is also added to the main pool.

b) Proceeds for disposal of cars

	£
Net book value	175,000
Loss on disposal	(75,000)
Proceeds	£100,000

c) Annual investment allowance would normally be used against special rate pool additions in priority to the general pool but as it cannot be used against expenditure on cars, it is allocated wholly to the general pool.

Working 3 – Non-trading loan relationships (NTLR) debits

	£
Bank interest payable	(450,000)
Legal fees – incidental costs of raising a loan	(30,000)
NTLR deficit for period	(480,000)

Working 4 - Group relief

For group relief to apply, one company has to be a 75% subsidiary of the other or they must both be 75% subsidiaries of a third company. Since Derfel acquired 100% of the share capital of Nimment Ltd on 1 April 2020, losses can be claimed and surrendered between these companies from that date.

Group relief is only available for common periods and is restricted to the lower of the corresponding losses or profits. There are two common periods: 1 April 2020 to 30 June 2020; and 1 July 2020 to 31 December 2020.

The available profits of Derfel Ltd for the year to 31 December 2020 are £8,851,594 (trading profit £9,331,594 less NTLR deficit £480,000).

Date from	Date to		Nimment Ltd (Losses) £	Derfel Ltd Profits £
01 April 2020	30 June 2020	3/12 @ (4,000,000)	(1,000,000)	
01 April 2020	30 June 2020	3/12 @ 8,951,594		2,212,899
01 July 2020	31 December 2020	6/6 @ (1,500,000)	(1,500,000)	
01 July 2020	31 December 2020	6/12 @ 8,951,594		4,425,797
			(£2,500,000)	

Losses made before a company joins a group cannot be brought forward and surrendered until five years from the end of the accounting period in which the company joined the group.

MARKING GUIDE

TOPIC	MARKS	TOTAL
Adjustments to profit		
Depreciation	0.5	
HP interest trading expense	0.5	
Loss on disposal	0.5	
Bank interest disallowed as not trading expense	0.5	
RDEC calculation of amount	1.5	
RDEC add to profits but adjust for estimate	1.0	
RDEC availability of election, time limit, irrevocable	1.5	
Legal fees – acquisition	0.5	
Legal fees – costs of loan	0.5	
		7
Capital allowances		
P&M on hire purchase	0.5	
FYA on R&D	1.0	
Constructed plant in period work certified	1.0	
Exception to above if completed in period and certified within one month	1.0	
Calculation of disposal proceeds	0.5	
Allocate AIA against to general pool (cannot be used for cars)	1.0	
Calculation of WDA each pool	0.5	
Calculation of total allowances	0.5	
		6
Other		
Bank interest legal expenses are NTLR debits	1.0	
Calculation and use of NTLR deficit	1.0	
Conditions for group relief to apply	0.5	
Common periods	0.5	
Calculation	1.0	
Brought forward losses cannot be group relieved for five years	1.0	
Calculation of total taxable profits	0.5	
Calculation of liability	0.5	
Set off of RDEC	1.0	
		7
TOTAL		**20**

ANSWER TO QUESTION 2

Overview

The UK transfer pricing rules apply for Corporation Tax purposes to UK companies when:

1) There is a transaction or arrangement between connected persons ('the actual provision');

2) The actual provision between the two parties differs from the arm's length provision; and

3) The company is not exempt from the legislation.

An adjustment will only be made where there would be a UK tax advantage conferred as a result of the non-arm's length provision. The actual provision will be treated as if the arm's length provision had been made. Any adjustment is only made for tax purposes; companies can charge what they wish in their accounts.

There are OECD guidelines on appropriate methodologies to be adopted in calculating any tax adjustment.

The meaning of connected

Persons are connected where:

- one of the persons is participating in the management, control or capital of the other; or

- the same person(s) is participating in the management, control or capital of each.

'Control' is the power to secure that the affairs of a company are dealt with in accordance with a person's wishes, by means of shareholdings, voting power or powers conferred by documents regulating the company.

Exemptions

The transfer pricing legislation does not apply to dormant companies.

The transfer pricing rules will not apply where the advantaged person is a small or medium-sized enterprise (SME). However, there are exceptions.

The definition of small and medium is detailed in an EU directive

Criteria	Small enterprise	Medium enterprise
Employees	Less than 50	Less than 250
Turnover	Less than or equal to €10 million	Less than or equal to €50 million
Balance Sheet	Less than or equal to €10 million	Less than or equal to €43 million

The enterprise must meet the employee criteria, and either the turnover or the balance sheet criteria, to be SME.

Exceptions to the SME exemption

- A SME can elect for the exemption not to apply.
- For a SME, where the other party to the transaction is a resident of a non-qualifying territory. Beavol is a qualifying territory.
- For a medium sized company only, where a notice has been issued by HMRC.

Denaustin Ltd

The sale of the gym equipment is a transaction between two persons, the actual provision. Given that JHSE SL receives a 10% discount that is not available to other customers, the actual provision differs from the arm's length provision.

Prior to 15 January 2018, neither of the two companies controlled the other and neither was controlled by the same person and therefore the transfer pricing rules did not apply before 15 January 2018.

From 15 January 2018, as a result of Denaustin Ltd being able to control JHSE SL, the transfer pricing rules potentially apply to periods after 15 January 2018 including in the accounting period ended 31 December 2021.

Prior to 2021, Denaustin Ltd was a SME. Assuming none of the exemptions applied, Denaustin Ltd would have been exempt from the transfer pricing rules up until 31 December 2020. For 2021, however, the company is no longer a SME and is therefore required to apply the transfer pricing legislation.

Adjustments required

In the legislation, reference is made to the transfer pricing methods detailed in the OECD Guidelines. There are three main transactional methods and two transactional profit methods. Both the OECD and HMRC prefer the use of transactional methods because these are more objective.

Transactional methods

Comparable Uncontrolled Price (CUP)

The price charged in a controlled transaction is compared to the price charged in a comparable uncontrolled transaction.

Resale Price Method

The price is derived from working backwards from the retail price, deducting costs of transport, etc. and the expected margin.

Cost Plus

The price is determined by applying an appropriate mark-up on costs incurred.

Transactional profit methods

Transactional Profit Split Method

The division of profits are determined on the same basis that independent enterprises would expect under similar circumstances.

Transactional Net Margin Method

Net profits from controlled transactions are calculated as a percentage of a base (for example, costs, sales, assets).

Summary

Since there is a readily available CUP in the prices charged to the other customers, the CUP transactional method should be used.

The group may seek a bilateral agreement with HMRC and the Beavol tax authorities so that both authorities apply the same method.

MARKING GUIDE

TOPIC	MARKS	MARKS
Overview		
Application	1.5	
Adjustments only to tax	0.5	
		2.0
Connected		
Meaning of connected	1.0	
Meaning of control	1.0	
		2.0
Exemptions		
Dormant	0.5	
SME	1.0	
SME Election	1.0	
HMRC notice	0.5	
		3.0
Denaustin Ltd		
Identify adjustment required	0.5	
When the two companies are connected	1.0	
Identify that company exempt to 2020 but not in 2021	1.0	
		2.5
Methods		
OECD Guidelines	0.5	
CUP	0.5	
Resale Price	0.5	
Cost plus	0.5	
TNMM	0.5	
Profit margin	0.5	
		3.0
Summary		
Select CUP or other method if justified	1.0	
Seek bilateral agreement	1.0	
		2.0
PHS		0.5
TOTAL		**15.0**

ANSWER TO QUESTION 3

UK tax implications

Kukua Home SA is a non-UK resident company, which carries on a UK property business. Therefore, with effect from 6 April 2020, it comes within the charge to Corporation Tax (rather than Income Tax).

The company's first Corporation Tax accounting period commences on the day that it comes within the charge to Corporation Tax, which is 6 April 2020.

The tax written down values on the capital allowances pools on 5 April 2020 simply carry over to the beginning of the first Corporation Tax accounting period on 6 April 2020.

The goodwill held by the company for the purposes of its UK property business becomes an Intangible Fixed Asset on 6 April 2020 and is deemed to be acquired by the company for its accounting value on that date.

Any Income Tax UK property business losses which arose to the company when it was within the charge to Income Tax and which have not been relieved on 5 April 2020 may be carried forward into the Corporation Tax regime. The Income Tax losses that are carried forward must be set only against profits arising from the UK property business. Once the business ceases, any unrelieved Income Tax losses lapse. The relief is automatic and does not require a claim. The carried forward Income Tax losses cannot be disclaimed or group relieved, and are not subject to the 50% Corporation Tax loss cap.

Interest and other finance costs may no longer be deductible expenses in calculating the affected company's property income from 6 April 2020. Such costs will fall within the loan relationship regime and are considered to be non-trading loan relationship debits. The Corporate Interest Restriction (CIR) rules may apply to restrict the amount of finance costs that are deductible for CT purposes.

The company can claim a deduction for management expenses from its UK property income, provided the expenses are directly incurred for the UK property business.

Until 5 April 2020, the company will not be part of a group for group relief purposes because it was not within the charge to Corporation Tax. From 6 April 2020, the company is treated as a group member for Corporation Tax group relief purposes.

Disposal of property

Where UK land disposed of is fully residential and a non-UK resident company has held the land throughout the period from 6 April 2015 to 5 April 2019, the value of the land is rebased to 5 April 2015 and not to 5 April 2019.

A company can opt out of rebasing to 5 April 2015 and compute its gains using the original base cost of the asset. It can further limit the chargeable gain, if it so wishes, by time apportionment to the period after 5 April 2015.

Calculation of chargeable gain

Default basis		£
Proceeds		45,000,000
Less		
Market value at 5 April 2015	£35,000,000	(35,000,000)
Indexation Allowance	Apr 15 to Dec 17 (278.1-258.0)/258.0 = 0.078	
	£35,000,000 @ 0.078	(2,730,000)
Chargeable gain		7,270,000
Retrospective basis		
Proceeds		45,000,000
Less		
Cost		(30,000,000)
Indexation allowance	Apr 12 to Dec 17 (278.1-242.5)/242.5 = 0.147	
	£30,000,000 @ 0.147	(4,410,000)
Chargeable gain		10,590,000
Time apportionment	April 2012 to June 2021 is 110 months	
	April 2015 to June 2021 is 74 months	
	£10,590,000 @ 74/110	£7,124,182

It will be beneficial for the company to elect to apply the retrospective basis of calculation and to time apportion the gain.

MARKING GUIDE

TOPIC	MARKS	MARKS
Basis of calculation		
Within Corporation Tax	1.0	
First accounting period commences 6 April 2020	0.5	
No capital allowances disposal, CA TWDV carried forward	0.5	
Goodwill acquired for its accounting value	0.5	
Losses may be carried forward	1.0	
Automatic cannot be disclaimed or GR not subject to 50% loss cap	1.0	
Finance costs now loan relationships	1.0	
Corporate Interest Restriction rules apply	0.5	
Management expenses	0.5	
Now within group for group relief claim	1.0	
		7.5
PHS		0.5
Calculation of gain		
Residential therefore rebased to 5 April 2015	1.0	
Can opt out and time apportion	1.0	
Default		
Market value	0.5	
Indexation allowance	0.5	
Gain	0.5	
Retrospective		
Cost/proceeds	0.5	
Indexation allowance	0.5	
Gain	0.5	
Time apportionment	1.0	
Elect for retrospective basis	1.0	
		7.0
TOTAL		**15.0**

ANSWER TO QUESTION 4

1) Chargeable gain arising on sale of Sheffield factory

	£	£
Disposal proceeds of Sheffield property	5,000,000	
Proceeds of disposal of option	500,000	
Total proceeds		5,500,000
Purchase price	400,000	
Legal fees on acquisition	7,000	
Stamp duty	4,000	
Improvement expenditure	25,000	
Total cost		(436,000)
Unindexed gain		5,064,000
Indexation on acquisition, legal fees and stamp duty 1.314 x (400,000+7,000+4,000)	540,054	
Indexation on improvement expenditure 1.193 x 25,000	29,825	
		(569,879)
Indexed gain		4,494,121

Business asset rollover relief is likely to be available because Rummy Ltd is a trading company selling and buying qualifying assets. Since the purchase date of the Doncaster factory is fewer than 12 months before the sale of the Sheffield factory, the company has reinvested the proceeds within the qualifying time limit.

Business asset rollover relief is restricted because the full proceeds are not reinvested. The chargeable gain arising is the lower of:

(i)	The gain arising on disposal of the Sheffield factory site.	£4,494,121
(ii)	The amount of the proceeds not reinvested in the Doncaster factory site and fixed plant and machinery. [£5,000,000 + £500,000 - £3,000,000 - £1,050,000]	£1,450,000

A chargeable gain equal to the cash proceeds not reinvested of £1,450,000 crystallises in the year ended 31 December 2021.

The amount of rollover relief available is £3,044,121 (which is the gain of £4,494,121 less cash proceeds not reinvested of £1,450,000).

The company can choose to allocate the rollover relief to the Doncaster factory, or anther qualifying asset. It is better to allocate the rollover relief to an asset which is not depreciating, such as land, because the gain will only crystallize on sale of that asset and could therefore be rolled over indefinitely.

The base cost for chargeable gains purposes of the Doncaster site is £nil, which is the purchase price of £3,000,000 less maximum rollover relief of £3,000,000.

The remaining relief of £44,121 can be allocated to the fixed plant and machinery. This gain is not deducted from the base cost of that asset and is instead held over and crystallises on the earlier of the following events:

(i) Disposal of the new asset,
(ii) Ceasing to use the new asset in the trade,
(iii) 10 years since the date of acquisition of the new asset.

Explanations:

1. The granting of the option and the sale of the Sheffield site are treated as a single transaction with the consideration for the disposal being the sum of the consideration received for grant of the option and consideration received for the transfer of the site.

2. Indexation for companies was frozen on 1 January 2018.

3. Indexation factor for purchase price of factory, legal fees and stamp duty:
(278.1-120.2)/120.2 = 1.314

4. Indexation factor for improvement expenditure:
(278.1-126.8)/126.8 = 1.193

2) <u>Capital allowances claim on Doncaster site</u>

The maximum allowances available by pool are as follows:

Pool	**Amount (£)**	**Rate**	**Total (£)**
Special rate pool	400,000-400,000 = nil	6%	nil
Main pool - WDAs	[58,000 +1,050,000 +158,000 +150,000] – 600,000 = 816,000	18%	146,880
Annual Investment Allowance	1,000,000	100%	1,000,000
Structures and buildings pool	1,200,000 * 212/365	3%	20,910
Total			**1,167,790**

Explanations:

1. The integral features within the Doncaster property can be added to the pool and allowances claimed at a rate of 6% provided that Rummy Ltd enters into a joint s198 CAA 2001 election with the seller to specify the value of fixtures. However, the value on which capital allowances may be claimed by Rummy Ltd is limited to the original cost of the fixtures of £400,000. The election can be made up until 2 years from the date of the purchase, which is 31 May 2023, and must include information sufficient to identify the assets. The seller should add disposal proceeds of £400,000 to their special rate asset pool.

2. The lorries, fixed plant and machinery, office and computer costs and brought forward main pool TWDV (£150,000 + £1,050,000 + £158,000 + £58,000 = £1,416,000) all qualify for the general pool where annual allowances are available at a rate of 18% per annum on a reducing balance basis. The Sheffield factory plant and machinery has been part scrapped for nil consideration and so no disposal proceeds should be brought into the main pool. Writing down allowances continue to be available on the TWDV of the old plant of £58,000 because the company has not ceased trading.

3. An annual investment allowance ("AIA") of 100% is available for up to £1,000,000 of qualifying expenditure, which includes plant and machinery and integral features. It is more beneficial to allocate the AIA against integral features first as this accelerates capital allowances deductions.

4. The Doncaster factory building qualifies for structures and buildings allowances because it was built after 29 October 2018. A written allowance statement must be provided by the seller to Rummy Ltd to enable it to claim allowances. The statement must include the address and a description of the Doncaster building, the date of the earliest written contract for construction, the total qualifying costs and the date the factory came into use.

   Allowances are available at a rate of 3% per year, straight-line basis, starting from the date that the building came into non-residential use. The qualifying expenditure is the original construction cost of £1,200,000. Rummy Ltd can continue to claim allowances for the remainder of the building's tax life.

   Structures and buildings allowances cannot be claimed on amounts that also qualify for plant and machinery allowances.

   The structures and buildings allowances claim is restricted in 2021 by the number of days which Rummy Ltd had an interest in the factory and used it in its trade (212 days out of 365 days).

MARKING GUIDE

TOPIC	MARKS	TOTAL
Requirement 1:		
Calculation of total proceeds. Granting of the option and the sale of the Sheffield factory treated as a single transaction.	1.5	
Calculation of unindexed gain	1.0	
Indexation factor for purchase price of factory, legal fees and stamp duty	0.5	
Indexation factor for improvement expenditure	0.5	
Indexation for companies frozen on 1 January 2018	0.5	
Explanation of why business asset rollover relief is likely to be available	1.5	
Business asset rollover relief restricted	0.5	
Calculation of chargeable gain arising and rollover relief available	2.0	
Identifying depreciating asset and calculation of holdover relief	1.5	
Base cost for chargeable gains purposes of the Doncaster factory	1.5	
Subtotal		11
Requirement 2:		
Calculation of maximum allowances	2.0	
s198 CAA 2001 election	2.0	
General pool allowances and annual investment allowance	2.0	
Structures and Buildings allowances and written allowance statement	2.0	
Amount of Structures and Buildings allowance available	1.0	
Subtotal		9
TOTAL		**20**

ANSWER TO QUESTION 5

1) International Movement of Capital rules

The issue of shares by Preston Australia Pty Ltd is a reportable event under the International Movement of Capital rules because it is an issue of shares valued at more than £100 million by a foreign subsidiary. It is not an exempt transaction because it took place at below market value.

Crecie plc should make the report because as the top UK resident company of the group, it is a relevant reporting body.

The transaction should be reported to an officer of HMRC by 31 March 2022 (i.e. within 6 months of the transaction date). The report should include a full description of the transaction, including the date and reason for the transactions, the name of each party, and contain sufficient information about the transaction to allow HMRC to determine whether the transaction has given rise to an advantage in relation to UK taxation, including an estimate on the effect of the UK tax liability of the Crecie group.

If a report is not made, Crecie plc could be charged a penalty of £300 and a further amount of £60 for each day on which the failure continues, after the initial penalty was imposed.

2) Senior Accounting Officer (SAO) rules

Crecie group is within the SAO rules because UK revenue exceeds £10 million. During 2021, the group had two different SAOs; Anthony Fieldhouse and Peter Denny. During their time as SAO, they are responsible for ensuring that reasonable steps are taken by every UK company within the Crecie group to establish and maintain appropriate tax accounting arrangements.

Peter Denny must provide HMRC with a certificate by the statutory accounts filing deadline for Crecie plc (30 June 2022 and annually thereafter) stating whether the Crecie group had appropriate accounting arrangements for all of the previous accounting period, or explaining how they were not appropriate. Anthony Fieldhouse should have provided HMRC with a similar certificate regarding the year end 31 December 2020, by 30 June 2021.

The certificate should cover Corporation Tax and any amount assessable as if it were Corporation Tax, as well as all the main UK taxes.

By 30 June each year, Crecie plc must notify HMRC annually, in writing, of the following points:

- the financial year to which the notification relates;
- the name and contact details of persons acting as SAO (Peter Denny and Anthony Fieldhouse);
- how long that person has been SAO;
- the period within the financial year in which they were the SAO; and
- the companies for which the SAO was acting (all UK companies in the Crecie group).

Failure to notify results in a fixed penalty of £5,000.

A personal penalty of £5,000 could be levied on a SAO for any financial year, if they:

- fail to provide a certificate to HMRC by the filing deadline; and/or
- have not taken reasonable steps to ensure that the Crecie group establishes and maintains appropriate tax accounting arrangements.

A further £5,000 penalty could arise if the certificate contains a deliberate or careless inaccuracy.

MARKING GUIDE

TOPIC	**MARKS**	**TOTAL**
International Movement of Capital rules:		
The share issue is a reportable event	1.0	
Crecie plc is the relevant reporting body	0.5	
Deadline for reporting the transaction	0.5	
Information to be included in the report	1.0	
Estimation of tax liability and whether there is a UK tax advantage	0.5	
Penalties for not making the report	0.5	
Subtotal		4
Senior Accounting Officer rules:		
Scope of SAO rules	0.5	
SAO main duty	0.5	
Annual certification/statement including deadline	1.0	
Taxes covered by SAO rules	0.5	
Notification of identity of all persons acting as SAO	0.5	
Notification information to be included	1.0	
Discussion of penalties (corporate and personal)	2.0	
Subtotal		6
TOTAL		**10**

ANSWER TO QUESTION 6

If Moy Ltd acquires a non-UK sub-group, it should consider the UK controlled foreign company ("CFC") rules, whether the UK dividend exemption applies to distribution income and the most efficient relief available for the brought forward losses in Kuch Ltd.

Controlled Foreign Companies

The Kuch companies include non-UK resident companies, which are controlled by a UK resident parent company and are therefore CFCs.

The CFC rules are anti-avoidance rules designed to prevent diversion of UK profits to low tax territories. If UK profits are diverted to a CFC, those profits are apportioned and charged on Moy Ltd, as the UK parent company with at least a 25% interest.

Entity level exemptions take the entire income of each company outside the scope of the CFC rules. More than one exemption may apply.

Kuch GmbH, Kuch BV and Kuch Zrt are likely to be exempt from any CFC charge for at least the first 12 months of UK ownership, until 31 January 2022 under the Exempt Period Exemption that applies to companies coming under UK control for the first time. Any necessary restructuring must be undertaken to ensure that no future CFC charges arise.

The Low Profit Exemption may apply to Kuch BV in 2021 and 2022 as its accounting profits do not exceed £500,000 and non-trading income does not exceed £50,000. The company's total income is less than £50,000.

The Excluded Territories Exemption may apply to Kuch GmbH in 2021 and 2022. This exemption applies to CFCs resident in certain specified excluded territories including Germany, where there is a low risk of profit diversion, subject to certain conditions. Normally, for this exemption to apply, no more than 10% of a CFC's accounting profits (or £50,000 if greater) may fall within four specific income tests. However, a simplified Excluded Territory Exemption applies for CFCs based in five territories, including Germany, provided all of Kuch GmbH's income is taxed in Germany and it does not have a permanent establishment outside Germany.

The Low Profit and Excluded Territories Exemptions do not apply to Kuch ZRT because the company's profits exceed £500,000 and Hungary is not a qualifying territory.

The Low Profit Margin Exemption only applies where accounting profits are less than 10% of operating expenditure. Kuch ZRT's accounting profit is £3,750,000, which is 17.6% of operating expenditure of £21,250,000, and therefore this exemption does not apply.

The High Tax Exemption applies where local Corporate Tax paid is at least 75% of the theoretical UK Corporate Tax on the same profits. This exemption does not apply to Kuch ZRT because, assuming no adjustment to taxable profits under UK Corporate Tax principles, the rate of Corporate Tax in Hungary is less than 75% of UK tax.

Working:

Country	Amount (£)	Rate	Total (£)
Hungary Corporate Tax	£1,000,000	9%	£90,000
UK Corporate Tax	£1,000,000	19%	£190,000
75% of UK tax	£190,000	75%	£142,500

Therefore, no entity level exemptions apply to Kuch Zrt. However, an apportionment is only required if profits pass through a gateway. This is unlikely because the Kuch group was previously operating wholly outside the UK. Therefore, it is unlikely to have UK managed risks or assets or hold assets or risks under an arrangement to avoid tax. TIOPA 2010 Part 9A Chapters 5, 6, 7 and 8 do not appear to be relevant to a distribution company. No CFC apportionment is required.

Dividend payments

Dividend payments made by Kuch GmbH are likely to qualify for the UK dividend exemption rules, subject to certain conditions and anti-avoidance rules. To be exempt, the dividend must fall within at least one of five exempt classes, the most likely of which to apply are:

1. Dividends paid by a company controlled by the recipient – this exemption is likely to apply as Moy Ltd wholly owns Kuch GmbH and the definition of control is likely to be met.
2. Dividends arising from non-redeemable ordinary shares (or German equivalent) may also apply, depending on the nature of the share capital of Kuch GmbH.

A deduction must not be allowed in Germany for the dividend payment.

Germany may levy dividend withholding tax under domestic rules. The UK/German Double Tax Treaty may reduce withholding tax to nil. A UK tax credit is not available for any German withholding tax suffered because there is no corresponding UK tax on the income.

Loss utilisation

Losses sustained by Kuch Ltd before 1 April 2017 can only be offset against trading profits of Kuch Ltd arising from the same trade.

Losses sustained by Kuch Ltd from 1 April 2017 can be used against any profits of the company, for example, including interest or property income, if any.

Losses incurred during the year ended 31 December 2017 are apportioned on a time basis, unless this results in an unjust outcome.

Losses will be extinguished at the date of acquisition of Kuch Ltd by Moy Ltd if there is a major change in the nature or conduct of Kuch Ltd's trade, within five years of acquisition for losses incurred from 1 April 2017 and 3 years for losses incurred prior to 1 April 2017.

A major change in trade could include a major change to customers, outlets and markets of the trade or services or facilities provided.

Group relief for carried forward pre-acquisition losses will not be possible for five years following the accounting period of Kuch Ltd in which the acquisition takes place. Losses can first be offset during the year ended 31 December 2027.

Losses sustained by Kuch Ltd from the date of acquisition can be for group relieved to Moy Ltd, as there is 75% common ownership. A loss incurred by Kuch Ltd during the year of acquisition is apportioned on a time basis unless the outcome is unjust or unreasonable. Group relief claimed by Moy Ltd will be restricted to profits incurred after the date of acquisition in a similar way. The maximum amount of loss that can be surrendered is the lower of the available profit in the claimant company and the available loss in the surrendering company.

MARKING GUIDE

TOPIC	**MARKS**
CFCs:	
Identification of CFCs	1.0
CFC apportionment explanation	1.0
Reference to entity level exemptions	0.5
Exempt Period exemption	1.0
Low Profit exemption relevance to Kuch BV	0.5
Excluded Territories exemption relevance to Kuch GmbH	1.0
Low Profit and Excluded Territories exemptions do not apply to Kuch Zrt	1.0
The Low Profit Margin exemption does not apply to Kuch Zrt.	0.5
High Tax Exemption does not apply to Kuch Zrt.	1.0
TIOPA 2010 Part 9A Chapter 3 - because no entity level exemptions apply to Kuch Hungary Zrt	1.0
Chapter 4 is unlikely to apply to Kuch Zrt	1.0
Application of Chapters 5, 6 and 7	0.5
Dividend exemption:	
Explanation of dividend exemption	1.0
Application of dividend exemption	1.0
UK/German Double Tax Agreement and withholding tax	1.0
Losses:	
Pre and post 1 April 2017 losses	1.0
Extinguishment of losses if MCINOCOT within 5 years of acquisition	1.5
Major change in trade	0.5
Group relief not available for 5 years post acquisition	1.0
Group relief for losses arising post acquisition	2.0
Presentation and higher skills	1.0
TOTAL	**20.0**