



Chartered
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The Chartered Tax Adviser Examination

November 2017

Suggested solutions

Application and Interaction Question 1 - Individuals, Trusts and Estates

Application and Interaction November 2017

Question 1 (Individuals, Trusts and Estates)

1. Report to the Trustees

Introduction & Scope

This report is prepared for the trustees of the following trusts and considers the tax implications of various issues relating to them:

Daniel James 2001 Trust (the 2001 Trust)
Daniel James 2008 Trust (the Briar Trust)
Daniel James 2012 Trust No.1 (the No.1 Trust)
Daniel James 2012 Trust No.2 (the No.2 Trust)

The report is based on the information provided by the trustees in their letter of 1 November 2017 and from the records held by ABC Chartered Tax Advisers and is prepared and issued in accordance with our engagement letter dated 8 August 2016.

Our report is in three main sections, comprising:

1. An executive summary highlighting the key issues for the trustees.
2. Detailed report breaking down the relevant tax and other issues.
3. Appendices providing supporting calculations to the main body of the report.

1. Executive Summary

- a. The 2001 Trust deed does not include a power of advancement or a power to vary the terms of the trust. This means the trustees must either exercise a statutory power of advancement, which will only allow an advancement of up to half of the trust assets to the beneficiaries or the beneficiaries must jointly agree to end the trust. We recommend that the trust is wound up by agreement of the beneficiaries as this achieves the trustees' objective of transferring 20 shares (10 shares each) to them.

[Scottish Law – The 2001 Trust deed does not include a power of advancement or a power to vary the terms of the trust. This means the trustees cannot advance any of the trust assets to the beneficiaries, so the only alternative to achieve the trustee's objective of transferring 20 shares (10 shares each) to them is for the beneficiaries to agree to end the trust].

- b. A capital gains tax (CGT) liability of £352,222 will arise on the transfer of 20 shares from the 2001 Trust as Entrepreneurs' Relief should be available in respect of the shares transferred to Charlotte. The trust's tax liability can be deferred by claiming capital gains holdover relief in respect of Charlotte's shares, leaving £234,722 payable. Holdover relief is not available in respect of Evie's shares whilst she is not UK resident.
- c. If 20 shares in Bolts UK Ltd are transferred to Charlotte and Evie from the Briar Trust, a CGT liability of £495,722 will arise. Holdover relief will be available to defer the Trustees' tax liability in respect of Charlotte's shares, leaving £247,722 payable.
- d. We recommend that the Trustees wait until 6 April 2019, when Evie is UK resident, and then wind up the 2001 Trust and transfer all of the shares to the beneficiaries. This will allow a claim for holdover relief on the whole gain to be made and the beneficiaries will receive the shares at a higher base cost than a transfer from the Briar Trust in the same circumstances. Leaving the Briar Trust assets as they are will also allow future income distributions to be made to Daniel James' grandchildren.

- e. Charlotte should not settle the Briar Trust's legal expenses herself as this would result in the trust becoming settlor-interested giving rise to adverse income tax consequences for her.
- f. The tax pools of the No.1 and No.2 Trusts are not sufficient to make a net £10,000 income distribution to Ellie without a tax pool deficit arising and additional income tax for the trustees. We recommend that the income distribution is paid from the Briar Trust, as this trust has a much larger tax pool and this will also reduce the level of retained income to be included in the calculation of the Briar Trust's upcoming inheritance tax (IHT) ten year anniversary charge.
- g. Stamp Duty Land Tax of £15,200 will become payable on the purchase of a £315,000 property by the No.2 Trust. The Trustees should look at lower priced properties as they will not be able to pay for the other costs of purchase from the trust fund.
- h. The Trustees can reduce the anniversary charge for the Briar Trust by paying out the trust's undistributed income or resolving to formally accumulate the income. The calculation of the anniversary charge for the No.1 and No.2 Trusts will need to take into account not only the value of their own assets at the ten-year anniversary, but also the same day addition that was made to the other trust.

2. Report to the Trustees

a. Transfer of shares in Bolts UK Ltd to Charlotte and Evie from the 2001 Trust

i. Legal issues

We understand that the Trustees would like to wind up the 2001 Trust by transferring 10 shares each in Bolts UK Ltd ('the Company') to Daniel's daughters, Charlotte and Evie.

Unfortunately, we have found that the trust deed does not provide the Trustees with the power to advance the trust capital to the beneficiaries or allow any variation of the terms of the trust.

In these circumstances there is a statutory power provided to Trustees under the Trustee Act 1925 that allows the Trustees to advance assets to the beneficiaries, so long as the purpose of the advancement is an accepted one, such as establishing the beneficiary for life. However, the statutory power is limited to advancements not exceeding one-half of the beneficiary's potential share in the trust and such an advance must be brought into account when considering future distributions. On the face of it, this means that Charlotte and Evie may only be advanced up to five shares each from the trust.

[Scottish Law – replacement for the above paragraph. This means that it will not be possible to advance capital to the beneficiaries.]

Completely constituted trusts are normally irrevocable and cannot be varied, but if all the beneficiaries are known, over the age of 18 and have capacity, they can collectively agree to vary the terms of the trust or bring the trust to an end. In the case of the 2001 Trust as Charlotte and Evie are both over 18 and the ultimate beneficiaries of the trust, they could jointly agree to end the trust and request that the Trustees transfer the shares to them.

The Trustees would need to discuss this with them and also consider the tax implications of the transfer. However, this is a better option than exercising the statutory power as it will achieve the Trustees' aim of transferring 10 shares to each beneficiary and it is the route that we recommend.

If the Trustees choose this course of action we recommend the relevant paperwork is drawn up by a lawyer.

ii. Tax Implications

Capital gains tax

A transfer of the shares to the beneficiaries of the 2001 Trust will be treated as a deemed disposal by the Trustees at market value for CGT purposes. On the basis that the beneficiaries proceed with our recommendation to end the trust, the chargeable gain arising will be £2,350,000. (See Appendix 1 for calculations).

The trust gains on shares are normally taxed at 20%, but a 10% rate is available if the Trustees are able to claim Entrepreneurs' Relief. In addition, capital gains holdover relief may be available to the Trustees as the shares concerned are in an unquoted trading company. Details of the reliefs are provided below.

Entrepreneurs' Relief ("ER")

ER is potentially available where a disposal is made by a qualifying trust. In order to be a qualifying trust, the beneficiaries must have an interest in possession in the trust, which applies to the 2001 Trust.

In addition, the trust disposal must be either of a business owned by Trustees but run by a beneficiary or shares in a qualifying company. A company will qualify if it carries on trading activities and those activities do not to a substantial extent (broadly 20%) include any non-trading activities. The Trustees are transferring shares and we understand that Bolts UK Ltd is a trading company with no investment activities, so it should meet the qualifying company criteria.

Furthermore, the qualifying company must be the beneficiary's personal company throughout a period of at least one year prior to the disposal and during that period, the beneficiary must be an employee or officer of the company. A company is a personal trading company if the individual holds at least 5% of the ordinary share capital and that holding gives them at least 5% of the voting rights in the company.

In Charlotte's case, she has personally held 5% of the ordinary share capital and 5% of the voting rights in the company since 31 March 2008 when Daniel gifted five shares to her. She has been an employee of the company for more than one year. Therefore on this basis half of trust gain representing Charlotte's 50% entitlement will qualify for ER and the 10% tax rate will apply, assuming Charlotte has capacity within the ER lifetime limit of £10 million.

The Trustees and the beneficiary claim ER jointly, as it is the beneficiary's relief which is being used. This means that Charlotte's lifetime limit of £10 million will be reduced by any gains for which ER is given to the Trustees so her approval will be required for such a claim.

In comparison, Evie does not currently hold any shares in Bolts UK Ltd and has never worked for the company, so ER cannot be claimed in respect of the half of the gain relating to her and the 20% CGT rate will apply instead.

Despite being able to claim ER in respect of half of the gain, there will still be a total trust CGT liability of £352,222 if Charlotte and Evie receive all of the shares on a winding up of the trust.

Capital gains holdover relief

Capital gains holdover relief is not usually available for interest in possession trusts created before 22 March 2006. However, in the case of the 2001 Trust, the assets that the Trustees propose to transfer are shares in an unquoted trading company which qualify as business assets, meaning that holdover relief should be available.

It should be noted that other than in the case of UK residential property, it is not possible to make a holdover claim where the transferee is not UK resident in the tax year of the transfer.

Based on the information provided, Evie has not been UK resident since the 2014/15 tax year, which was the last year in which she lived in the UK for more than 183 days.

The Statutory Residence Test (SRT) determines whether or not an individual is resident in the UK. The first step in determining residency looks at whether the individual will automatically be treated as non-resident under a series of tests based on their residence status in earlier years and the number of days they have been living in the UK. In accordance with the automatic overseas test, Evie was not UK resident for the 2015/16 and 2016/17 tax years on the basis that she was UK resident in one or more the previous three years and she visited the UK for less than 16 days in each tax year. This will also remain the case for the 2017/18 under the same proviso.

Evie will continue to remain non-UK resident for the 2018/19 tax year but this will be on the basis that she will not have been UK resident in the previous three tax years and her planned return to the UK on 10 March 2019 means that she will have spent less than 46 days in the UK during the tax year.

The relevance of this is that if the shares are transferred out of the trust to her before 6 April 2019 when she is still non-UK resident, holdover relief cannot be claimed and a CGT liability of £234,722 will become payable (although in this case Evie's base cost for the shares she receives would be the current market value of £1.25 million).

Holdover relief may be claimed on the half of the chargeable gain relating to the transfer to Charlotte. The effect of the claim for the Charlotte, as recipient of the transfer, will be that she acquires the shares at the Trustees' original CGT base cost.

In comparison, if the Trustees wait until after 5 April 2019 to end the trust when Evie will once again become UK resident, then full holdover relief on the whole of the chargeable gain can be claimed and no CGT will have to be payable on the transfer.

The Trustees could wind up the trust in stages, making the transfer to Charlotte without delay, and waiting until after 5 April 2019 to make the transfer to Evie.

Inheritance tax (IHT)

The 2001 Trust provides Charlotte and Evie with an immediate entitlement to the income arising from the trust assets, so it is an interest in possession (IIP) trust. It was created prior to 22 March 2006, which means it is not a relevant property trust and will not be subject to IHT charges on the exit of assets or principal charges on each successive tenth anniversary of creation.

The original transfer of shares into the 2001 Trust was a potentially exempt transfer for Daniel and as seven years have passed since creation, the transfer is outside of his estate. However, if the shares remain in the trust and Charlotte or Evie do not survive until they are 50 years old, their share of the trust assets will still form part of their estates for IHT purposes.

b. Transfer of shares in Bolts UK Ltd to Charlotte and Evie from the Briar Trust

The transfer of shares in the company to Charlotte and Evie from the Briar Trust will differ as it is a discretionary trust falling under the relevant property trust regime. The terms of the trust permit the Trustees to distribute the income or capital of the trust at their discretion and there is no restriction on the level of that distribution.

Capital gains tax

In the same way as the 2001 Trust, a transfer of shares from the Briar Trust to the beneficiaries will be a deemed disposal at market value for CGT purposes. The trustees have a base cost of only £20,000 for the shares, so the taxable gain on the transfer will be £2,480,000 and the CGT payable at 20% on this will amount to £495,722 if no reliefs are claimed (see Appendix 2 for calculations).

ER cannot apply as the Briar Trust is not an interest in possession trust. However, as it is a relevant property trust, capital gains holdover relief may be claimed in respect of the shares but only where the transferee is UK resident.

Evie is currently non-UK resident so the claim may only be made in relation to the gain on Charlotte's transfer and she would receive her 10 shares at a base cost of £10,000. The Briar Trust will still have to pay £247,722 CGT in respect of the shares transferred to Evie. Evie's base cost for her 10 shares would be their current market value of £1,250,000.

Inheritance tax

The Briar Trust is a relevant property trust, so the capital distribution comprising the shares will attract an IHT exit charge. However, as the shares are in an unquoted trading company which the Trustees have held for more than two years, IHT business property relief (BPR) at 100% should be available to reduce the chargeable value to nil.

As the trust is discretionary, the Trustees must also consider the other potential beneficiaries aside from Charlotte and Evie when making a capital distribution. Daniel's Letter of Wishes states that he wants the shares in the company to pass to his daughters and for the Briar Close property to be held for his grandchildren. Even though the Trustees want to abide by Daniel's wishes, they must still consider if they are happy with this arrangement, particularly as a share transfer will leave the rental property as the only trust asset to generate future income.

A further factor to consider is the availability of BPR on the shares in Bolts UK Ltd in the future. The company does not carry out any investment activities at the current time, but if this changes in the future and the shares remain in the trust or if the shares are sold, then 100% BPR will not be available which will adversely impact on future ten year anniversary and exit charges.

Our recommendation

There are many issues for the Trustees to consider. However our recommendation is that 20 shares in Bolts UK Ltd should be transferred to Charlotte & Evie from the 2001 Trust after 5 April 2019 when Evie becomes UK resident once more.

This will allow a full capital gains holdover relief claim to be made, avoiding the payment of any CGT at that time and the beneficiaries will obtain the shares at a higher base cost than a transfer from the Briar Trust. In addition, leaving the Briar Trust untouched for the present time will allow more trust income to be generated which can then be distributed to the grandchildren in the future, as detailed in section D of the report below.

There will be some legal costs involved in drawing up the paperwork to end the 2001 Trust.

When the Trustees have decided the date for the share transfer it should be recorded on a Stock Transfer Form and the Company statutory records will need to be updated. The transfer is exempt from Stamp Duty as no consideration is being paid by the beneficiaries for the shares.

c. Briar Trust Legal Fees

The Trustees have advised that Charlotte wishes to pay the Briar Trust's legal fees relating to a boundary dispute.

We do not recommend this course of action as Charlotte settling the liability on behalf of the trust would result in her becoming a joint settlor of the trust in relation to her addition, and as she is also a potential beneficiary of the Briar Trust, the trust would become settlor-interested.

There are two adverse tax consequences that may arise if the trust becomes settlor-interested. The first is that Charlotte would become taxable on the trust income to the extent of her contribution to the trust. The Trustees would still be liable to income tax at the rate applicable to trusts, but Charlotte's tax return would have to be adjusted to show a proportion of the trust income flowing from her addition to the trust, although she would receive the benefit of a tax credit on the trust income attributed to her. The tax calculations can become quite messy if Charlotte's marginal rate of tax is lower than the Trustees' rate as any tax refund that arises in these circumstances must be repaid to the Trustees.

The second consequence is that where a trust becomes settlor-interested within six years from the end of the year in which assets subject to a holdover relief claim were added to the trust, the capital gains holdover relief previously claimed will be clawed back. With the Briar Trust, capital gains holdover relief was claimed on the transfer of shares in Bolts UK Ltd to the Trustees. However as this was in 2008, more than six years have passed so the clawback provisions will not apply. It should be noted that holdover relief would not be available on future transfers into the trust if it becomes settlor-interested.

d. Income distributions

The Trustees are proposing a net income distribution of £10,000 per year for the benefit of Charlotte's daughter, Ellie, from one of the discretionary trusts.

As the No.2 Trust has a very small tax pool of only £800 and is not generating very much income at the moment, we have discounted this trust for the payment of income distributions at the current time.

In relation to the No.1 Trust, we have prepared a calculation to check the position of the tax pool if the proposed distribution is paid from this trust (see Appendix 3). The Trustees will see that the trust's tax pool will be in deficit by approximately £1,932 at the end of 2017/18 if the distribution is made, which means that the tax credit attaching to the income distribution cannot be fully franked by the actual tax paid by the trust. The Trustees will be required to make up the difference by paying the deficit amount to HMRC under self-assessment. So, the No.1 Trust's Income Tax liability for 2017/18 will be just under £2,000 higher than expected and this will have a knock-on effect on the 2018/19 payments on account which will increase by just under £1,000 per payment if the income distribution is made.

The No.1 trust tax pool will be reset to zero at the start of the 2018/19 tax year. However if the trust continues to receive the same level of income and pay out the same level of income distribution as the previous year, the tax pool will be in deficit again at 5 April 2019 and additional income tax will become payable once more.

A better option to avoid this situation arising would be for income distributions to be paid from the Briar Trust. The Briar Trust has a tax pool of £28,375 and sufficient cash funds in its bank account to allow the income distribution to be paid without a tax pool deficit arising at the end of the 2017/18 tax year.

Paying out income distributions from the Briar Trust will not alter its annual income tax liability but it will be beneficial from an IHT point of view when looking at the Briar Trust's anniversary charge, as detailed in the next section below.

The Trustees may want to consider using the No.1 and No.2 Trusts for income distributions in the future once the tax pools have increased or paying out distributions across all three trusts to ensure that no single trust has a tax pool deficit.

We suggest the Trustees' decision to pay the income distribution is put in writing by means of a Trustees' Minute and a statement of trust income, form R185 (Trust), should be also be completed for Ellie. Assuming Ellie has no other sources of income, the grossed up income distribution from the trust will be partly covered by her personal allowance and the balance will only be liable to the basic rate of tax. As the income distribution carries a 45% tax credit, Ellie will be able to reclaim some of the tax credit by Charlotte completing an income tax

repayment claim form on Ellie's behalf and submitting this to HMRC. The income distribution must also be declared on the trust's self-assessment tax return.

e. No.2 Trust - Stamp Duty Land Tax (SDLT)

The No. 2 Trust Trustees intend to purchase a residential property for £315,000 and require confirmation of the SDLT payable.

Since 1 April 2016, Trustees have been required to pay SDLT at the rate of 3% on the first £125,000, 5% between £125,000 and £250,000 and 8% between £250,000 and £925,000. All of the SDLT rates are 3% higher than in January 2016 when the Trustees were previously negotiating a property purchase, so the SDLT payable will be £15,200 (see Appendix 4 for calculation).

The No.2 trust currently holds cash funds of £331,500, so taking into account the purchase price and the SDLT, the Trustees will be left with only £1,300 to settle other costs relating to the purchase, such as surveyor's costs and legal fees. Therefore, the Trustees may want to consider looking at lower priced properties due to the higher SDLT liability that is now payable.

f. Anniversaries of the trusts

The Briar Trust's ten-year anniversary is on 30 March 2018 and it will become subject to an IHT principal charge based on the value of trust assets at that date. Any undistributed income from the first five years of the trust that has not been formally accumulated as capital at the anniversary date, will also automatically be included as relevant property for the purposes of this calculation.

If no action is taken, the £32,000 of undistributed income of the five year period to 30 March 2013 must be included as relevant property in the calculation. As referred to in Section D above, if the Trustees start to pay income distributions from the Briar Trust, this will reduce the level of undistributed income that would otherwise be included as relevant property in the calculation on a "first in, first out" basis.

The other option available is to formally accumulate the income (if this has not already happened), which will effectively capitalise the undistributed income. The value will still be treated as relevant property, but only with effect from the date that it has been capitalised so the anniversary charge will be scaled back to recognise only the very short period during which the accumulated sum has been relevant property.

The ten year anniversaries of the No.1 and No.2 trusts do not fall until 1 July 2022 and 2 July 2022 respectively, but the charges will not be calculated in exactly the same way as the Briar Trust due to a change in the IHT trust regime.

The concept of "same day additions" has been introduced, which arise if value in excess of £5,000 is added to two or more trusts on the same day by the same settlor on or after 10 December 2014. In the case of the No.1 and No.2 trusts, the final gifts of £81,250 into each trust were both made on 28 December 2015, so are same day additions.

The No.1 & No.2 Trusts may still claim a full nil rate band each on calculation of their respective 10 year anniversary charges, but the value of the assets added to the other trust on the same day must also be brought into account. This effectively cancels out the benefits of having multiple nil rate bands where there have been same day additions to more than one trust. In future Daniel should add funds to the two trusts on different days.

If the No.1 Trust still holds AIM listed shares (in trading companies) which have been owned for two years at the anniversary date or have been replaced by other qualifying assets held for the requisite two year period, 100% BPR should be available to reduce the value on which IHT is charged.

Appendix 1

2001 Trust - Capital gains tax on deemed disposal arising on transfer of shares in Bolts UK Ltd to the beneficiaries.

	£
Deemed proceeds (market value)	2,500,000
Less: Base cost	(150,000)
Chargeable gain	<u>2,350,000</u>
Chargeable gain not eligible for ER (£2,350,000 / 2)	1,175,000
Less: Trust Annual Exemption (£5,550 / 4)	(1,388)
Taxable gain	<u>1,173,612</u>
CGT @ 20% (No ER on Evie's interest)	£234,722
Taxable gain eligible for ER (£2,350,000 / 2)	<u>1,175,000</u>
CGT @ 10% (ER due on Charlotte's interest)	£117,500
Total CGT payable (£234,722 + £117,500)	<u>£352,222</u>

If holdover relief is claimed:

Chargeable gain of £1,175,000 on Charlotte's interest will be held over	
Taxable gain remaining (after annual exemption, from above)	<u>1,173,612</u>
CGT @ 20% (No ER)	<u>£234,722</u>
Base cost of shares for Charlotte:	
Market value of 10 shares	1,250,000
Less: Gain held over	(1,175,000)
Base cost	<u>75,000</u>

The base cost of Evie's 10 shares will be £1,250,000 (market value).

Appendix 2

Briar Trust - Capital gains tax on deemed disposal arising on transfer of shares in Bolts UK Ltd to the beneficiaries.

	20 shares
	£
Deemed proceeds (market value)	2,500,000
Less: Base cost	(20,000)
Chargeable gain	<u>2,480,000</u>
Less: Trust Annual Exemption (£5,550 / 4)	(1,388)
Taxable gain	<u>2,478,612</u>
Total CGT payable @ 20%	<u>£495,722</u>

If holdover relief is claimed:

Chargeable gain from above	2,480,000
Less: Gain held over (Charlotte's interest only)	(1,240,000)
	<u>1,240,000</u>
Less: Trust Annual Exemption (as above)	(1,388)
Taxable gain	<u>1,238,612</u>

CGT @ 20% (No ER)	<u><u>£247,722</u></u>
Base cost of shares for Charlotte:	
Market value of 10 shares	1,250,000
Less: Gain held over	<u>(1,240,000)</u>
Base cost	<u><u>10,000</u></u>

The base cost of Evie's 10 shares will be £1,250,000.

Appendix 3

No.1 Trust – Estimated tax pool at 5 April 2018

	£
Tax pool @ 6 April 2017	2,022
Add: Trustees expected tax liability in 2017/18 (6,250 – 2,022)	<u>4,228</u>
	6,250
Less: Tax credits claimed by beneficiaries if £10,000 net distribution paid 10,000 x 45/55	<u>(8,182)</u>
Balance @ 5 April 2018	<u><u>(1,932)</u></u>

Appendix 4

No.2 Trust – Stamp Duty Land Tax on property purchase

Purchase price = £315,000	£
SDLT payable:	
£125,000 x 3%	3,750
£125,000 x 5%	6,250
£65,000 x 8%	<u>5,200</u>
Total payable	<u><u>15,200</u></u>

2. Meeting notes for trustee meeting

Procedures for appointment of trustees

The settlor only has the power to appoint new trustees if the trust deed gives him that express power. Alternatively, the trust may give the power of appointment to someone else.

It is necessary to check the deeds of all the Daniel James Trusts to see if an express power has been given to the settlor or anyone else.

In the absence of an express power, the Trustee Act 1925 gives the existing trustees the power to appoint new trustees and these powers may be exercised to replace a trustee who wishes to retire, so the statutory power could be used to replace Herbert with Poppy.

[Scottish Law – replace the above paragraph with this - There is a statutory power under the Trusts (Scotland) Act 1921 for the court to appoint new trustees where one cannot be appointed under the trust deed, but it should not necessary to use this statutory power as it seems that no one has any objections to appointing Poppy in place of Herbert.]

When a trustee changes the legal ownership of the trust property must be transferred from the old trustees to the new trustees (even if this includes some of the former trustees).

The change of trustees must be by deed. The deed of appointment has the effect of vesting the trust property in the new trustees, other than interests in land and registered shares.

The 2001 Trust and the Briar Trust hold shares in Bolts UK Ltd. The trustees need to complete a stock transfer form and provide this to the Company so the Company can amend its statutory records to include Poppy's name as trustee and remove Herbert's name.

The Briar Trust owns residential property, so the trustees need to alter the property ownership with Land Registry to remove Herbert and include Poppy.

With the No.1 Trust, the trustees should inform the fund managers for the quoted share portfolio and the registrars for the AIM listed shares to remove Herbert's name and include Poppy.

MARKING GUIDE

TOPIC	MARKS
<u>REPORT TO THE TRUSTEES</u>	
<u>Transfer of shares to Charlotte & Evie from 2001 Trust</u>	
No power of advancement – explain statutory power given in s.32 TA 1925 but can only advance up to half the assets	
[Or Scottish Law – no power of advancement – explain that this means there can be no advancement of assets]	2
Explain that Charlotte & Evie can jointly agree to end the trust as they are over 18, have capacity and are the ultimate beneficiaries.	1
Recommend that the beneficiaries end the trust	1
Explain that 2001 Trust is not a RPT so no IHT exit charge due on transfer of shares. Original transfer in was a PET and assets form part of Charlotte & Evie's estates if they do not reach the age of 50 years	4
Calculate chargeable gain on transfer from 2001 Trust	1
ER – explain what a qualifying trust is and why 2001 Trust qualifies.	1
ER – explain what a qualifying company is and that Bolts UK Ltd should qualify.	1
ER – must be personal company and an employee/officer. Explain that Charlotte qualifies, but Evie does not.	3
Correctly calculate CGT due at 10% and 20% rates, including correct calculation of AE and allocation of AE to non ER part of gain	3
Holdover relief – explain S260 holdover is not available to pre-2006 IIP's but as unquoted trading co shares holdover under S165 available.	2
Holdover relief – no CGT for trustees and lower base cost for Charlotte.	1
Holdover relief – not available if transferee is not UK resident, so not available for Evie.	2
Calculate CGT due if shares transferred now, with only half of gain held over and base cost of shares for beneficiaries.	3
SRT – Evie was resident in 2014/15 but non-resident for 2015/6, 2016/17 and 2017/18 under first automatic overseas test.	2
SRT – Evie non-resident for 2018/19 under second automatic overseas test.	1
Total	<hr/> 28 <hr/>
<u>Transfer of shares to Charlotte & Evie from Briar Trust</u>	
IHT – Briar Trust is an RPT, so exit charge arises. BPR at 100% should be available as shares in unquoted trading co and two year ownership.	2
IHT – other IHT considerations such as other potential beneficiaries, Charlotte & Evie's IHT position and future availability of BPR.	2
Calculate chargeable gain on transfer to beneficiaries.	1
Holdover relief under S260 available.	1
Holdover relief not available re Evie's transfer as she is non-resident.	2
Calculate CGT due if half of gain held over and base costs of shares for beneficiaries.	3
Recommendation – to transfer from 2001 Trust after 6 April 2019 and explain why.	2
No Stamp Duty payable on transfer as no consideration. Stock transfer form required and Company stat books should be updated.	1
Total	<hr/> 14 <hr/>
<u>Briar Trust Legal Fees</u>	
Charlotte settling fees for trust makes her joint settlor.	1
Potential beneficiary as well, so makes trust settlor-interested.	1
Charlotte is taxable on proportion of trust income if it is settlor-interested	1
Trustees still liable to income tax, but Charlotte must adjust her tax return.	
Must repay tax to trust if her marginal rate is lower than the trust rate.	2

Clawback of CGT holdover if settlor-interested within six years	1
Total	6
<u>Income distributions</u>	
State that No.2 Trust has no income so cannot make distributions and calculate deficit in tax pool for No.1 Trust and explain what this means.	4
Explain that additional income tax due under SA and increase in POA's for following year.	1
Explain this will continue if the trust has similar income and makes the same distributions annually and suggest paying out income from the Briar Trust instead.	1
Distribution of income from Briar Trust will help reduce IHT anniversary charge for Briar Trust and suggest using the other trusts in the future.	1
R185 (Trust) required for Ellie and explain basis of Ellie's income tax repayment claims	1
Total	8
<u>SDLT for No.2 Trust</u>	
State that higher SDLT rates have applied since 1 April 2016	1
Correctly calculate SDLT due.	1
Advise that this does not leave enough to pay other costs of purchase and suggest that they look for a lower priced rental property.	1
Total	3
<u>Trust Anniversaries</u>	
Briar Trust – explain that undistributed income from the first five years is treated as relevant property and included in anniversary calculation	2
Briar Trust - suggest income distributions paid out before anniversary to reduce level of relevant property.	2
Briar Trust – suggest formal accumulation of income. Relief will be given as not relevant property for full 10 years.	2
No.1 & No 2 Trusts – explain what same day additions are and recognise that there have been same day additions to the No1 & 2 Trusts	3
No.1 & No.2 Trusts – explain that separate NRB still available but value of same day addition to other trust must be included in each calculation.	3
No.1 & No. 2 Trusts – 100% BPR may be available re AIM shares	1
No.1 & No.2 Trusts – suggest investing in more BPR assets and making income distributions to be made in the future.	2
Total	15
<u>Notes for meeting with trustees</u>	
Settlor/someone else can only appoint if deed gives power, so need to review all deeds.	0.5
Statutory power given in TA 1925 [Or Scottish Law - TSI 1921 gives court statutory power to appoint trustees if trust deed is silent.]	1
Legal ownership of property must be altered.	0.5
Deed of appointment will vest some assets in new trustees.	0.5
2001 & Briar Trust – shares in Bolts UK Ltd, need to complete stock transfer form and get stat books updated.	0.5
Briar Trust – owns property, so Land Register to be updated.	0.5
No.1 Trust – inform portfolio managers of change to trustees.	0.5
	4
Total	78
Higher skills and presentation	22
Total	100