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Date of Examination

Tick box if you have answered in accordance with Scots Law

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Instructions

Your script will be scanned electronically. Failure to comply with these instructions may lead to your paper not being marked. You must:

- (a) Complete the details on this page and on the answer pages using BLACK or BLUE ballpoint pen only.
- (b) Write on one side of the page.
- (c) Not write in the margin areas indicated.
- (d) If you have used additional pages, please add your candidate number and the question number to these pages.
- (e) Do not put blank pages into the envelope at the end of the exam.

Please do all of the above before the end of the examination.

	Tick question attempted	For use by examiner only
1		
2		
3	✓	
4		
5		

FORMAT & STYLE OF ANSWER	MAXIMUM MARKS	MARKS AWARDED
<p>The answer is set out in the format demanded. Thus, if it is a letter, it will be properly set out as a letter with addresses, date, "Dear X" and conclude "Yours sincerely" etc. If it is a report, it will give some indication as to what it is about and who it is for.</p>	1	
<p>The report or letter should contain an introduction setting out the terms of reference, information being relied on etc. It should also contain a summary of the key findings and recommendations.</p>	2	
<p>The body of the letter or report should be laid out in a clear way with appropriate headings so that the reader can navigate around it easily and spot the key areas without reading the entire document to try to find a discussion of, for example, income tax on some employment related shares.</p>	1	
<p>The answer "flows" so that a logical chain of thought presented to the reader rather than a series of random comments (which may nevertheless be technically correct).</p>	1	
<p>The style of writing should be appropriate to what is being produced. For example, a report to a client or lay person (which will always be the main element of a question) should not contain large numbers of legislative references whereas a technical note to the tax partner should. Technical advice should be conveyed in style appropriate to the reader.</p>	2	
<p>RELEVANCE OF ANSWER</p>		
<p>The answer does not contain large amounts of irrelevant material which would only serve to confuse a client.</p>	2	
<p>Technical knowledge (which will be rewarded through the technical marks and should not affect the awarding of these marks) has been directly applied to the specific circumstances of the reader and has this resulted in an answer tailored to their circumstances.</p>	3	
<p>The question(s) posed has/have been answered.</p>	2	
<p>PROVISION OF ADVICE</p>		
<p>The report gives advice. This means that where possible it should come off the fence and suggest the best option rather than simply giving a list of unweighted possibilities which fail to give the client an answer to their real problem: what should I do?</p>	4	
<p>Advice should include relevant and appropriate planning for the future.</p>	2	
<p>Advice should be commercial. This means that candidates should consider the bigger picture rather than narrowly focussing on saving tax.</p>	2	
<p>TOTAL HIGHER SKILLS AND PRESENTATIONAL MARKS</p>	22	

REPORT

To: Andrea and Mungo Whitley
From: Billy Beaufort

Subject: Sale of Whitley Precision
Tools Limited and emigrating from
the UK

Date: 2 May 2018

1 Introduction

This report is based on our meeting on 16 April 2018 and the information provided by you.

This report is for the use of Andrea and Munro only and no liability is accepted for the use by anyone else.

This report will discuss the following

2 Executive Summary

1) If a sale of the trade and assets goes ahead, the final CT liability would be £176,167.

ER would be available on a distribution if a formal winding up of WPTL.

2) If you sell the shares, a gain will arise for you and CGT will be payable. A sale for cash consideration only will be eligible for ER in full.

3) A sale to JW will be eligible for ER and CR. CR should be claimed to defer CGT charge onto JW who should get ER also

This transfer will be a
PET for IHT and chargeable
if you die within 7 years.

a) You will become non-UK
resident in 2018/19 tax year
under case 1 at the time
you stop working for WPTL
So 31.10.2018.



1) The sale of Whitley Precision Tools Ltd by:

a) Asset sale

b) Sale of shares to a third party

c) Sale of shares to Joe Whitley

2) Emigration and related tax issues.

For the purpose of this report the following abbreviations are used:

- Whitley Precision Tools Ltd (WPTL)
- Andrea Whitley (AW)
- Mungo Whitley (MW)
- Joe Whitley (JW)
- Harrow Engineering Ltd (HEL)

Section 3) Asset sale

3.1) sale of assets

Assets will be sold by WPTL

and any adjustments to profit and

gains realised will be taxed in WPTL.

You will still own the shares.

For WPTL this will be the end

of its trade and chargeable

accounting period. The final Corporation

Tax (CT) return will be for the

year ended 31/10/2018.

This is due for submission by
31.10.2019 and any CT due is
payable by 1.8.2019.

Goodwill (GW)

As the incorporation of WPTL is
before April 2002, the GW is
treated as a chargeable asset. The
gain on disposal is calculated by
taking the proceeds and deducting
the base cost. As the GW has
been created in WPTL, there is no base

cost.

A gain of £300,000 arises.

Factory

The gain on the factory is calculated by taking proceeds and deducting the base cost, enhancement expenditure (i.e. improvements to the factory) and any associated acquisition or sale costs.

Indexation allowance is also available

for companies to give relief for inflation. This cannot create or increase a loss.

The chargeable gain is £178,075 as per appendix 1.

Plant and machinery (P+M)

The market values of the items in the pools at the end of the year must be deducted from the end of year balances

This will give rise to balancing allowances or charges.

NO annual investment allowance (AIA) is available in the year of the cessation of trade.

The total balancing charge is £174,000 as per appendix 2.

Investment in quoted shares

The chargeable gain will be the proceeds less cost less indexation allowance. The gain will be £52,225 as per appendix 3.

Stock

A trade profit would arise on the excess of the sale consideration over the cost. The current market value and cost is the same

So no profit arises.

CT liability

The CT liability for YE 31.10.18 would be £146,167 as per appendix 4. This is due by 1.8.19

3.2 Winding up WPTL

All the cash is in WPTL

So now we need to extract that into your hands.

As there is more than £25,000 to extract, an informal ~~distribution~~ winding up would treat the distribution as income in your hands and be subject to Income tax (IT) at 32.5% and 38.1% after your £5,000 dividend exemption each.

You could pay liquidator fees and use a liquidator for a formal winding up.

This would treat the distribution as capital.

A capital gain after your annual exemption (AE) of £1,300 each would be subject to Capital Gains Tax (CGT) at a rate of 20%.

However, as you each own at least 5% of the ordinary shares and have been working as an officer of WPTL for 12 months to the cessation of the trade, Entrepreneurs' relief could be claimed if the distribution is within 3 years of the end of trade.

Entrepreneurs' relief (ER) allows a 10% CGT rate up to lifetime gains of £10 million.

I recommend you appoint liquidators and claim ER if you decide to sell the assets of WPTL.

Section 6 Sale of shares

to HEL

The trade would remain in

WP TL and you both would

sell your shares.

You will receive consideration
in one of two ways:

1) Cash of £1,570,000 or

2) Cash of £1,000,000 and

~~£50,000~~ in £620,000 in

loan notes.

4.1 Cash consideration

You both realise a capital gain equal to proceeds less cost.

You each get a £11,300 annual exemption (AE) to reduce taxable gains.

The cost of the shares for AW on inheritance, is equal to the market value at the date of the death of her father (i.e. £50,000)

Transfers between Husband and wife take place at no gain no loss, so MW'S CGT base cost is equal to HW (i.e. £50 per share so £22,500).

The total CGT would be equal to 20% of the taxable gain as you are both higher rate taxpayers.

As explained previously, you can
each claim ER on this sale
provided the conditions are met
for 12 months up to sale of
the shares.

This CGT would be payable by
31 January after the end
of the tax year of disposal
so 31 January 2020 and
reportable on the 2018/19 tax
return.

Please see below for the	
CGT payable	
Proceeds	1,570,000
Cost	<u>(50,000)</u>
Gain	1,520,000
AE 11,300 x 2	<u>(22,600)</u>
Taxable	1,497,400
CGT at 10%	149,740
AW 55%	<u>82,357</u>
MW 45%	<u>67,383</u>

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4.2 Cash and loan note

consideration

Option 2 is receiving cash and loan notes for the shares.

This is a part disposal with

the cash element chargeable to

CGT now.

The element relating to the

loan notes is frozen and comes

into charge on the earlier of

the date of sale or redemption.

The elements are as follows:

	consideration	Gains Note 1
cash	1,000,000	969,135
loan notes	620,000	600,865
	<u>1,620,000</u>	<u>1,570,000</u>

Note 1

Proceeds $1,620,000 - 50,000 = 1,570,000$

So CGT now:

Gain on cash	969,135
2x AE	(22,600)
Taxable	<u>946,535</u>

ER 10% CGT rate so CGT is

£94,654 with £52,060

payable by AW and £42,594

payable by MW.

On crystallisation of the gain

on the loan notes £600,865

is taxable subject to any available

AE in the year of sale.

ER will not be available on

this as neither of you will

own 5% of the shares for
12 months to the crystallisation
date.

A gain or loss could be made
on the sale of the loan
notes, this is exempt as
it is a qualifying corporate
Bond.

I recommend a sale for cash
consideration, as you can
achieve ER 10% CGT on the

Section 5) Share sale to Joe

CGT

As Joe is your son, you are connected persons for CGT purposes. This means the proceeds for the CGT calculation are deemed to be equal to market value regardless of actual consideration.

As such, the CGT position for you is the same as a share

to H&L for cash consideration
only, meaning you can still
claim ER.

The base cost for JW will
be the market value at transfer
so £1,570,000.

The acquisition is not treated as
being made by reason of employment
and subject to IT as he is
your son.

As you are selling shares
in an unquoted trading
company as a gift (less
their market value, gift relief
(GR) can be claimed.

The investment in quoted shares
does not jeopardise GR.

You can defer the gain
by reducing JW's base cost.

The actual profit (i.e. consideration

in excess of cost) must

be left chargeable for you.

A joint election must be made.

I suggest you claim CR and ER
on the balance, to defer CGT charge.
Inheritance tax (IHT)

This is a Potentially exempt

transfer (PET). No IHT is

due on death. IHT is only

due if the donor (i.e. you)

dies within 7 calendar years

of the PET.

IHT is calculated on the loss to the donor's estate, at a rate of 20%.

2 ~~AAA~~ exemptions of £3,000 each could be claimed by you.

Business property relief (BPR) at 100% reduces the value subject to IHT as you have held shares in an unquoted trading company for 2 years

JW must hold shares at
your death or have reinvested
all proceeds in other BPR
if sold.

Stamp duty

Stamp duty of $\frac{1}{2}\%$ will
be payable by JW within
30 days of the transfer.

This is £3,925 and is
added to the base cost
for CGT.

Section 6) Emigration

UK residents are subject to

tax on their worldwide

income and gains. Non-UK

residents are ~~not~~ only subject

to IT on UK source income

and ~~not~~ subject to UK

CGT unless on a sale of

UK residential property.

6.1 Statutory Residence Test (SRT)

To determine the residence position for tax purposes, there are a series of legislative tests that must be applied in the order set out below:

1) Automatic overseas test. If you meet one of these test, you are automatically non-UK resident:

a) UK resident in one or more of the 3 preceeding tax years and you spend fewer than 16 days in the UK in the tax year

b) You were resident in none of the 3 preceding tax years and you spend fewer than 46 days in the UK in the tax year.

c) You work full time overseas during the tax year and:

- Spend fewer than 14 days in the UK in the tax year.
- Your UK workdays is less than 31.

You do not meet the above tests in the year of departure.

2) Automatic UK resident test.

a) You spend more than 183 days in the UK in the tax year.

b) You had a UK home in the year.



QUESTION NO. 3

CANDIDATE NO.

You have a home in the UK if there is a consecutive period of 91 days (30 being in the tax year at least) when you have no overseas home or have an overseas home but spend less than 30 days in it.

c) You work full time in the UK
You do not meet the above tests

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3) Sufficient ties test

The sufficient ties are:

- a) Family tie
- b) Accommodation tie
- c) Work tie
- d) 90 day tie
- e) Country tie

Only the 90 day tie applies as you have spent more than 90 days in one of the previous tax years (i.e. 16/17 and 17/18), and you do not have a child under 18 in the UK or have available accommodation (as you are selling your home).

Under the sufficient ties test you would need to spend over 120 days in the tax year to be a UK resident.

The Automatic UK test has been met as you have spent half the tax year in the UK!

If an individual leaves the UK and is still UK resident in the year of departure, then they can split the year into a UK part and non-UK part, if the relevant conditions are met.

QUESTION NO. 3

CANDIDATE NO.

When leaving the UK, the split year cases that can apply are cases 1, 2 and 3.

As you are not working overseas, the first two cases do not apply to you.

Case 3 applies when you cease to have a UK home.

For this case to apply you must:

a) Spend fewer than 16 days from when you cease to have a UK home.

b) become resident of Wellingtonia for tax under their rules within 6 months of ceasing to have a UK home.

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QUESTION NO. 3

CANDIDATE NO. .

c) have your only home in
Wellingtonia.

You meet these conditions and
can split the year so
that you are non-resident
from the date that you cease
to have a UK home.

The time up to this you are
UK resident and subject to
IT and NIC.

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6.2 Tax implications

If you sell your home on 31.10.19 and lived in it for the whole ownership period, you will qualify for principal private residence relief (PPR).

No gain will be subject to CGT.

If you leave the UK first and sell the house later, you may be non-resident under case 1 of the split year rules which takes precedence over case 3.

Case 1 is when you stop

Work in the UK

If you are non-UK resident at sale you are liable to non-UK resident CGT (NR CGT). You have 3 options:

1) Calculate the gain as normal and claim PPR up to 6 April 2015 plus the last 18 months.

2) Relieve from 6 April 2015 (not possible unless done already)

3) Time apportion gain.

QUESTION NO. 3

CANDIDATE NO. ...

You should take option 1
and claim PPR and on the
last 18m.

If you sell within 18 months
no CGT.

You will be a temporary
non-UK resident for CGT

If you return to the UK
within 5 tax years of

becoming non-UK resident

as you were UK resident

in 3 of the last 7
tax years.

Any gains while non resident
exempt unless you return

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QUESTION NO. 3

CANDIDATE NO.

Within 5 years and
have sold assets which
you held before becoming
non-resident.

SDLT is chargeable on
the consideration for
the sale of your UK
home.

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Appendix 1

Notes

Proceeds	500,000
base cost	(225,000)
base cost	(175,000)
extension	(50,000)
Gain	275,000

Indexation allowance @ (96,925)

Chargeable gain 178,075

NI

Indexation allowance on cost

$$\frac{279 - 149.1}{279} = 0.465 \times 175,000 \quad 81,375$$

Indexation on enhancement

$$\frac{279 - 192.2}{279} = 0.311 \times 50,000 \quad 15,550$$

Total

96,925

Appendix 2

	Main Pool	Special Pool
Travel b/fwd	54,000	11,500
add:		
Lattes	220,000	
less:		
equipment	(25,000)	
balance	<u>249,000</u>	<u>11,500</u>
Market values	(425,000)	(10,000)
allowance		1,500
charge	(176,000)	(176,000)
Total charge		<u>174,000</u>

Appendix 3	
	notes
Proceeds	85,000
Cost	(25,000)
Gain	60,000
Indexation allowance NI	(7,775)
Chargeable gain	52,225
NI	
$\frac{279 - 192.2}{279} = 0.311 \times 25,000 = 7,775$	

A&I

3

Appendix 4

expected profit	65,000
balancing charge	<u>174,000</u>
TTP	239,000

Gains:

GW	300,000
factory	178,075
Shares	52,225
	<u>530,300</u>

subject to CT	769,300
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CT at 19%	<u>146,167</u>
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Plan

IT/NIC/CGT/CT/VAT/HT/SD

Default for all

reliefs/elections

- eligible why?
- what it do?
- where go?
- why do it?
- how/when?

- Recommendation

A&I

3

1) intro
meeting

2) exec sum

3) Asset sale

3.1 Sale of assets

✓ assets by co - you still hold shares

✓ end of trade (CAP / final TR
due 31.10.19 / CT (if) due 11.8.19

✓ Profit / gains in co

✓ GW per Apr 02 so gain (not IFA)

$P - C - IA = \text{gain}$

✓ Factory $P - C - e - IA = \text{gain}$

✓ brief exp adjustments needed
 ✓ P+M No AIA - final
 ✓ lattes in and out so change
 ✓ other disposal
 ✓ Then adjust

✓ Vehicles

✓ SP adj

✓ MP adj

✓ add mv vehicles to PM for CAS

✓ Investments $P - C - IA = \text{gain}$

✓ Stock - no increase

✓ watch out for loss

3.2 wind up CO

✓ extraction

~~no spec div~~

- left in CO cash + sale consid.
debtors and liabilities = X

- no spec div

✓ more than £25k so informal = div
 • IT no NIC

- liquidate / fees / get cap route
 ✓ cap gain 20% but

- ER if 12m to trade cease
 has conditions

✓ get 10% up to £10m

• claim on TR by 31 Jan + 2 yr
 • CGT payable by ..

Recommend ER and liquidate

4) Share Sale

f You sell shares / trade stay in co

a) Sale proceeds ^{cash} 1,570,000 of

b) " " cash 1m + ~~150~~ loan note
620,000

4.1) opt A note (do 100% calc and split 55:45)

f $P - C = \text{gain}$

• Cost = probate (wife) + ngnl so £50/share

f both get AE

f Gain @ 20%.

f ER exp prev but 12m to sale
get 107.

f Payable by

4.2) opt 2 (100% calc
55:45)

✓ Part cash - part loan notes

✓ Part disp | cash element taxed now

✓ loan note element frozen until
• sale
• redeem

✓ Get another AE on crystallisation

✓ no ER as no share ownership unless Mungo get shares in future.

- gain/loss on loan note sale

(exempt as seems QCB)

✓ recommend?

5) sale to Joe (no num!)
~~- CGT~~
 ✓ MU as connected
 ✓ same pos as 4-1

✓ ER still in point

✓ Base cost for Joe = MU
~~may get ER in future~~

not ~~ER~~ ERs

- GR as unquoted/trade co.

- comment on Investments 20% rule
- Defer gain (not full GR)
- Real ~~proceeds~~ profit taxed / still ER

- Joe B.C less
 • ER future

LHT
 - PET

- No IHT now (only die 7 yrs)

- If death loss to donor = value @ 20%

- 2x 3k exemption

- BPR as 2 yrs held unq trade,
• Donor holds or reinvests

SD

f.o.s. % by Joe 30 days
✓ add to b.c

6) Emigrate

→ Uk res = worldwide I & C is
non-uk uk I & NO gain unless
uk res prop

G.I.S.R.T

- Series of tests

Auto O/seas

- test 1
- 2
- 3

- met / not met?

Auto UK

- Test 1
- 2
- 3
- 4

met / not met.

Ties

- Tie 1, 2, 3 etc
- Days in UK / tie

- first yr of non-res = ?

G.2 Tax imp

- IT - UK income

- CGT

• none in UK unless UK res_{POP}

• sale of home 31 oct or later

• UK res = PPR

• non UK res = part PPR

NRCGT 6 APR 15 options

1) normal way (PPR on part)

2) reval @ apr 15 (no PPR)

3) time app'n (no PPR)

- SDLT for friend

- recommend?