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Institution **CIOT - ATT-CTA**  
Course **CTA Adv Tech IHT Trusts and Estates**

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Answer-to-Question-\_1\_

To qualify for BPR it is necessary for Zennie to hold relevant business property.

### **General rules**

Business property cannot be investments or the holding of land; furthermore, there is a minimum ownership requirement of 2 years, which will be discussed below.

Assets that are 'excepted', which means that they are not used as part of the business, do not qualify for BPR.

### **Holding companies**

Zennie does not directly hold the shares in the relevant companies in this case, but holds share in ZXennie Group Ltd, which is a holding company. As this does not carry on a trade, normally it would not qualify as BPR.

However, there is an exception for holding companies, where the primary function is to act as a holding company. As Zennie Group does nothing but hold other companies, it falls within these rules.

It is necessary to show that overall Zennie group is holding

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business property. Put differently, the group of companies has to be a trading group. That is satisfied in the present case because the activities of the group is one mainly of trading, as the running of a hotel business is a trade rather than an investment.

However, this does not mean that Zennie will benefit from 100% BPR on the value of the Zennie group:

- Minority interest in companies are investments rather than business property (which affects Citriner)

- Excepted assets, which are not used in the business, do not qualify for BPR.

Looking at the individual companies:

Amber Ltd.

The value of £50m is unlikely to qualify for 10% BPR. The reason is that £2.5m is cash surplus to requirements for the business (this could be reduced by paying dividends). Also, the yacht worth 1.2m is excepted unless it can be shown that it is used in the business, which seems unlikely as it is for Z's personal use. As such on £46.3 m of value will qualify for BPR.

Bloodstone

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This will qualify for BPR at 100% as the hotel is a trade. It does not matter that the operation is in Malta. It is not clear if the co is incorporated in Malta, but BPR is available on overseas COs.

#### Citrine

The value of Citrine is not reduced by BPR. To be a subsidiary for a holding company, it must own a controlling interest of at least 50% of the shares. This is seen as an investment, and the £5m value does not get BPR.

#### Diamond

The issue with Diamond is that it has only been owned for 6 months, whereas the normal minimum requirement is 2 years. However, Diamond is not owned directly by Zennie, but is an asset of the holding company. As Zennie has owned the holding co for more than 2 years, this will mean that BPR is available on this value.

#### Emerald

The issue with Emerald is that it has quoted investments of £500k. On their own they do not qualify for BPR. However, under the Brander, or Farmer approach, if they are used in the

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business, then they qualify for BPR is overall the company is a trading company. As it would make a small aperty iof teh company (10% of value) it comes within Brander, and is therefore overall a trading company. However, they would need to show how these investments are integrated into the busienss.

### **The Glade**

The holding of furnished holiday lets is not generally considered to be relevant busienss property; ratehr, ti is viewed as the holding of land and therefore does not qualify for BPR.

If the Galde is acquirted by Emerald, it is possible that teh Farmer/Brander approach outlined above would continue to apply. More than 50%^ of teh value of the company would contiune to be attributable to trading acrtivity. This would mean that the company would as a whole retain BPR, provided that the holiday lets would not count as an excepted asset. This would require Zennie to show that hte holiday letys were part of the overall business and integrated into the hotel business.

On teh other hand, if the holiday lets are likely to take up a disporportionate amount of time in terms of their running, or produce more profits than the rest of the busniess, Emerald may lose its overall status as a trading co. INn which case none of it would benefit from BPR, and the holiday lets should be put

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into their own subsid co.

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-----ANSWER-1-ABOVE-----  
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-----ANSWER-2-BELOW-----  
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Answer-to-Question-\_\_2\_\_

Kaja enjoys a QIIP in the trust fund as her interest in possession arose immediately on Theo's death, so satisfies s. 49A. As such, she is deemed to own the trust fund outright.

Option 1: terminate and appoint

IHT

As Kaja is deemed to own the fund outright, if her interest is terminated and an absolute interest is immediately appointed to the children, then Kaja will be treated as having made a PET.

The value of the PET would be on the loss to donor principle. As the fund is currently worth £4.01m, Kaja would be deemed to have made a transfer of this value. There would be no immediate charge to IHT. The value of the PET would be reduced by BPR available upon Quality sausages, although the children would need to retain them (or replacement property) for 7 years to be sure of the relief.

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If Kaja were to die within 7 years, then the PET would become chargeable at the rate of 40% above K's available NRB. This tax would be paid by the donees.

CGT

The appointment to the children would also trigger a charge to CGT as a beneficiary becoming absolutely entitled is a disposal for CGT purposes. Liability would be as follows:

1) Quality Sausages

MV	1 700 000
Cost	1 300 000
Gain	400 000

However, as these are business assets, s. 165 will apply and the gain will be held over. All that is needed is for the trustees to make the election.

2) Main residence

MV	750 000
Cost	500 000
Gain	250 000





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This is payable by the trustees by 31 January 2024; except for the gains on the property which are payable within 30 days.

It may be possible to claim a condition exemption on the motobiokes if they are of heritage interest; this would allow gains to be held over.

Option 2: Terminate and continuing trust

This would count as an immediately chargeable transfer; due to S. 80, as the trust was created in favour of a spouse on their death and it has become relevant property, we would use K's cumulative total:

Kaja's NRB:

No transferable nil rate band, as Theo used his on death.

NRB                    325 000  
Less CT to to close company (80 000 - 6000 AE) = 74 000  
Less CT to IIP (using AE) = 114 000

Value transferred            4 010 000  
Less BPR                    (1 700 000)  
  
2 310 000

NRB                    325 000  
less                    (74 000)  
less                    (114 000)                    (137 000)  
  
2 173 000

@20%                    434 600

IHT due (by 30 June 2023) is £434,600

There is no CGT as there is no disposal.

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Option 3: K's death

The settled property would be aggregated with K's free estate as follows:

Free estate		250 000
Settled estate (after BPR)		2 310 000
NRB	325 000	
less 2017 gift	(94 000)	
less	(74 000)	
less	(114 000)	(43 000)
		2 517 000
IHT @ 40%		1 006 800

ER 39.328%

Settled estate: IHT £908 479 payable by trustees by 30 June 2023

Free estate: IHT 98,320 payable by K's executors by 30 June 2023 unless the IHT return is submitted earlier.

There is no CGT in this option. As K had a life interest, she benefits from the death up lift, and the children will acquire the trust fund on a no gain no loss basis at the MV on KJ's death. There are no held over gains either which will become chargeable.

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-----ANSWER-2-ABOVE-----

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-----ANSWER-3-BELOW-----  
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Answer-to-Question- \_3\_

1. IHT and CGT on creation of trust

a) IHT

The creation of the trust will have been an immediately chargeable lifetime transfer. It is necessary to calculate Cora's lifetime transfers by this point:

June 2018

Gift to trust	100,000
AE	(6,000)
CLT	94,000
NRB	(325,000)

No IHT

10 May 2020

Gift to trust	2,500,000
Less AE	(6,000)
CLT	2,494,000
NRB	325,000
Less	94,000
	(231,000)
	2,263,000

@ 25% (20% grossed up) 565,750

CLT - 3 059 750

This was payable by Cora by 30 April 2021

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b) CGT

There is no hold-over relief as the trust is settlor-interested; nor does there appear to be business relief as they are an investment.

MV	2,500,000
Cost	(800,000)
Less IHT	(565,750)
	1,134,250
Less AE	(12,300)
	1,121,950
@28%	314,146

This was payable by Cora within 30 days of the trust being established.

2.

As Cora has retained an interest in the trust fund as she is not excluded from benefiting, it falls within the GROB rules. However, there is also a death within 7 years of the trust, emanating more IHT may need to be paid on the CLT. This requires two calculations, the first ignores the GROB:

**a) Ignore the GROB**

Lifetime transfers:

June 2018

Gift to trust	100,000
AE	(6,000)
CLT	94,000
NRB	(325,000)

This is chargeable as within 7 years, but it is below the

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NRB, so no additional IHT.

10 May 2020

Gift to trust	2,500,000	
Less AE	(6,000)	
CLT	2,494,000	
NRB	325,000	
Less	94,000	(231,000)
		2,263,000
@40%	905,200	
Credit for tax paid	(565,750)	
Additional IHT due		339,450

Payable by the trustees by 31 Jan 2023.

Death estate:

Assuming there is no conditional exemption on the statue collection, teh Death estate has a value of £2,710,000. IHT will be:

Value of estate	2,710,000	
RNRB (1)	nil	
NRB	325,000	
less	3,059,750	
(and earlier transfers)		nil
@40%	1,084,000	

(1) there is no residence nil rate band, as hte value of her estate is more than £350,000 over the taper threshold.

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Total IHT due under option 1: 1,423,450

**b) include GROB; ignore CLT**

Under this option the CLT is ignored:

Lifetime transfers:

June 2018

Gift to trust	100,000
AE	(6,000)
CLT	94,000
NRB	(325,000)

This is chargeable as within 7 years, but it is below the NRB, so no additional IHT.

10 May 2020 - ignore

Death estate

Value of estate	2,710,000
GROB	2,600,000
RNRB	nil
NRB	325,000
less	(94,000)
	(231,000)
	5,079,000
@40%	2,031,600
Less IHT paid on CLT	(565,750)
Total IHT	1,465,850

As this sum is larger than the IHT due under the first option, the second option will be adopted.

IHT will be paid as follows:



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Free estate: £748,108 (payable by the executors by 31 Jan 2023 unless IHT return submitted earlier

GROB: £717,742 - payable by the trustees of the Property trust by 31 Jan 2023.

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-----ANSWER-3-ABOVE-----  
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 -----ANSWER-4-BELOW-----  
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Answer-to-Question- \_4\_

1.

IT liability of the executors

a) 2019/20

	rental	savings	divi
	11,400	2,250	600
no interest on loan			
20/7.5	2,280	450	45
Distributable	9,120	1,800	555

IT payable by 31 Jan 2021 - £11,475

No distributions this tax year, so all is carried forward.

b) 2020/21

	rental	savings	divi
	22,800	750	1200
no interest			

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on loan			
20/7.5	4,560	150	90
Distributable	18,240	600	1,110
c/f	9,120	1,800	555
	27,360	2,400	1,665
Less (1)	(4,050)		
Less (2)	(8,000)		
c/f (3)	15,310	2,400	1,665

IT payably by 31 Jan 2022 - £4,733

(1) The distribution of £60,000 to Eva is with interest of £4,050, which need to be matched with income in the pool.

(2) there is a distribution of £8,000 to Leah which is matched with income in the pool; although this is from the discretionary trust, as the estate is still in administration it is treated in the normal way.

R185:

Eva:

Net	Tax
£4,050	1,013

Leah

Net	Tax
£8,000	2,000

There is still undistributed income in the estate. Normally this would be treated as being disposed of on the end of administration. However, as there is a discretionary trust of the residue, this does not occur, and the income goes into the pool for the discretionary trust, as detailed below.

2. Initial value of the trust

Total estate	1,850,000
Less IHT	(360,000)

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Less Sleepy hopllow (500,000)  
 Less legacy (60,000)  
  
 Initial value £930,000

### 3. IT on trustees

2020/21 - the trust has not yet started as the estate is in adminsitration; as such, the execugtors will file a return for this year as above, where they pay IT at the basic rate. The only difference is that the ISA will now become taxable:

	rental	savings	divi
	22,800	750	3,600
no interest on loan			
20/7.5	4,560	150	270

Total IT - £4,913

Credit for IT paid: (£4,733)

IT due: £180.

2021/22

	rental	savings	divi
	22,800	300	3600
there appear to be no TMEs			

Rental income

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£1,000 @20%	200
£21,800 @45%	9,810

Savings	
£300 @45%	135

Dividend	
3600 @38.1	1,372

Total IT:       £11,517

R185 for Rebecca:

As this distribution was made after the end of the administration period, it is treated as a normal distribution from a discretionary trust. This means that it is treated as a distribution from non-savings income and carries a 45% tax credit, as below:

Net	Tax
£11,000	9,000

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-----ANSWER-4-ABOVE-----  
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-----ANSWER-5-BELOW-----  
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Answer-to-Question- 5\_

It may be necessary to double-gross up the value of the gift to Mabel, as:

- a) The gift to Mabel is a specific legacy; unless there is a direction to the contrary, this means that it is free of tax;
- b) the residue is left in apt to the conservative party and, as they have more than 2 MPs a gift to them is exempt; and
- c) the other part of the residue is non-exempt.

Tom's chargeable lifetime transfer was £300,000; he appears to have had a transferable NRB at 10% from his wife. There is no RNRB, as his property is not left to a lineal descendant.

Double grossing up:

1. Gross tax free legacy:

Value	450,000
less NRB remaining	(25,000)
less TNRB	(325,000)
Chargeable	100,000

Gross up at 40/60                      66,667

Gross value: 166,667

2. Chargeable value of estate:

Total estate	1,635,000
less gross legacy	(166,667)
	1,468,333

Charge to tax x 50%                      734,167

Taxable estate/:                              166,667

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	734,167
	900,834
Less NRB	(350,000)
	550,834
@40%	220,334

3. Calculate ER

$220,334 / 900,834 = 24.459\%$

4. Double gross

$100 / 75.541 \times 450,000 = 595,703$

5. Recalculate charge estate

Total estate	1,635,000
Less gross legacy	(595,703)
Residue	1,039,297

50% charge to tax	519,649
Add gross legacy	595,703
	1,115,352

Less NRB	(350,000)
Taxable estate	765,352

@40%	306,141
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6. Recalculate ER

$306,141 / 1,115,352 = 27.448\%$

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Tax on tax free gift to Mabel:  $595,703 \times 27.488 = \text{£}163,508$

This falls onto the residue, so is borne by both the conservative party and Harold.

Tax on chargeable residue:  $519,649 \times 27.488 = 142,841$

This is payable from Harold share of the residue.

## 2. Distribution of the estate

Gift to Mabel	450,000
Residue $(1,635,000 - 450,000 - 163,508) = 1,021,492$	
1/2 residue to Conservative	510,746
1/2 to Harold $(510,746 - 142,841)$	367,905
HMRC	306,141

Due date for payment is 31 December 2022, unless IHT return submitted earlier.

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-----ANSWER-5-ABOVE-----  
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-----ANSWER-6-BELOW-----  
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Answer-to-Question- \_6\_

1. Distribution pre- 31 December 2022

If the assets are distributed before this date, it will mean that they are distributed whilst the estate is in administration.

a) Family Home

IHT

Jubaila has a QIIP in possession in the family home as the requirements for s. 49A are met, as her entitlement to the income arose on her husband's death. As such she is deemed to own it absolutely. As such, the appointment of an absolute interest to her will be a 'nothing' for IHT purposes. There will be no PET or exist charge.

CGT

Normally when a trust is terminated and a beneficiary obtains an absolute interest, then there is a disposal for CGT purposes. There would be no hold-over relief here, as the termination of the trust is not a chargeable event. However, as the wife was entitled to reside there under the terms of the trust (or, alternatively, was deemed to be entitled to more than 75% of the proceeds of sale for the special rules applicable to estates in administration), PPR would apply and there would be no CGT.

Alternatively, it could be argued that the property never vested in the executors as trustees, so they could not have made a disposal. This would mean that J took the property qua legatee under s. 62(6) TCGA. This would mean there was no disposal.

b) Sale of the car park

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IHT

The sale of the car park will not trigger an IHT event as it is a commercial transaction.

The distribution of the proceeds, however, would normally give rise to an exit charge as property is leaving a discretionary trust. However, provided this occurs within 2 years of death (which it would if distributed pre-31 Dec 2022), then under s. 144 IHT the transfer would be read back into the will.

The effect of s. 144 is that there would be no IHT charge on the appointment. It does not matter that the cash was not in the actual estate (but a car park was), as HMRC accept that s. 144 applies to substituted assets. There is no need for a read-back clause (as in s. 142); a simple deed of appointment would be sufficient.

CGT

The sale of the car park would give rise to a CGT charge as follows:

MV	180,000
Cost	(10,000)
Probate cost	$(10,000/1030000 \times \pounds 8000)$ (78)
Less improvement	(5,000)
	164,922

If sale occurs pre-31 Dec 2002 there will be an AE of (123000)=

Gain	152,622
CGT	30,524

If the sale occurs in 2023, there will be no AE, so CGT would be £32,984

Alternatively, if the car park is appointed to Cahil, he will take it qua legatee free from CGT at the probate base cost.

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c) Jewellery and shop and flat

The IHT analysis is the same as above - if it occurs within 2 years of death there will be no IHT charge due to s. 144.

As to CGT, the appointment would be qua legatee if it occurs during the administration period, meaning that there will be no disposal and Yusuf will acquire at probate value.

## 2. Distribution after the sale of the car park

As noted above, the AE work for executors would have finished; as such the disposal of the car park would be by the trustees. There would have been an AE of 6,150

MV	180,000
Cost	(10,000)
Probate cost $(10,000/1030000 \times £8000)$	(78)
Less improvement	(5,000)
	164,922
	(6,150)
	158,772
	31,754

Appointment of proceeds (148,246) would trigger an exit charge: on the proceeds of 148,246

Shop Jewellery and flat - the distribution would be a disposal for CGT purposes. However, hold-over relief would apply, as the disposal is chargeable to IHT as follows:

Loss to trust	60 000
	180 000

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105 000  
148,246  
493,246

(325000

168 246

@20

ER/AR