The Chartered Institute of Taxation

Advanced Technical

Taxation of Individuals

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Suggested solutions

ANSWER 1

The shares could be purchased either by Kate and Matthew personally or by Paintlite Ltd.

To purchase them personally using company funds, Kate and Matthew would need to extract funds from the company. They could declare a dividend, assuming the company has sufficient distributable reserves, however this is unlikely to be a suitable option as all shareholders (including Dennis and Liz) would be entitled to a dividend in respect of their current shareholdings. In addition, the dividend would be subject to income tax in the shareholders' hands, at up to a maximum rate of 38.1%.

Alternatively, if the articles of association authorise it to do so, the company could buy the shares back from Dennis and Liz. A company share buyback is advantageous as it allows a business to reduce the cost of its share capital while the remaining shareholders do not suffer any tax liability. Also, the retiring shareholders can obtain beneficial tax treatment where certain conditions are met.

The buyback of company shares is treated as an income distribution (calculated as proceeds less original subscription cost of shares) for tax purposes, taxed at dividend rates, unless certain conditions, as set out in s1033 CTA 2010 onwards, are met.

The transaction will receive capital treatment if:

- The transaction is wholly or mainly for the benefit of the company's trade and is not part of a scheme with the main purpose of tax avoidance
- The vendor is UK resident at the time of the transaction
- The vendor has owned the shares for at least five years
- The vendor's shareholding is substantially reduced, by at least 25%, as a result of the transaction
- The vendor is not connected to the company after the transaction (has no more than 30% of its issued ordinary share capital, voting rights and loan capital, and is entitled to no more than 30% of the company's distributable assets on a winding up).

The share buyback transaction must meet **all** of the above conditions to qualify.

The company can request advance clearance from HMRC prior to completing the transaction for confirmation that capital treatment will apply.

Dennis' position

Assuming Dennis is UK resident, he meets the conditions listed above. He has owned the shares for more than five years and will no longer be connected to the company after the transaction. HMRC generally consider that removing a retiring director from the company benefits its trade and does not have the purpose of tax avoidance and that retiring directors are allowed to retain no more than 5% of the share capital for sentimental reasons without jeopardising capital treatment.

As Dennis will retain a small number of shares, the substantial reduction condition must be considered in more detail. Dennis currently has a 30% shareholding in the company. If the company buys back both Dennis and Liz's shares, Dennis will retain a 4.76% shareholding (calculated as 2 shares out of the remaining 42 in issue). His new interest will represent 16% of his prior shareholding (4.76% / 30%). As his interest will be reduced by at least 25%, Dennis will meet the substantial reduction condition.

The proceeds he receives (£336,000) will therefore be subject to capital treatment. The capital gain of £323,420 (proceeds less base cost of £280 less the annual exemption of £12,300, assuming he realises no other capital gains in the same tax year) will be subject to capital gains tax at up to 20%.

However, Dennis' disposal will also qualify for Business Asset Disposal Relief on the basis that Paintlite Ltd is a trading company, he has held at least 5% of the company's shares and voting rights, has been entitled to at least 5% of the disposal proceeds on a winding up and has been an employee or officer of the company for at least 24 months. Therefore, the gain will be taxed at the preferential rate of 10%.

Liz's position

As Liz is non-UK resident for tax purposes so she will fail to meet the conditions for capital treatment on the share buyback.

As a result, the gain Liz realises (£359,700 calculated as proceeds received less her original subscription) will be treated as an income distribution. As Liz is non-UK resident, the distribution will be 'disregarded income'. Under the disregarded income regime (s811 – s828 ITA 2007), Liz's income tax liability will be limited to the total of tax deducted from her disregarded income plus the tax due on her other income ignoring the personal allowance. It is therefore likely that Liz will not suffer any income tax on the income distribution.

As Liz subscribed for the shares at par, there will be no capital gain on the disposal of shares. However, as Liz is non-resident, she would not be subject to capital gains tax on the sale of her shares anyway.

Tax implications of the share option

The grant of the share option by Kate and Matthew is a disposal for CGT purposes. Provided they do not receive payment for this and the arrangement is on an arm's length basis they will not have any tax to pay on at the time of the grant.

When Jon exercises the option, there will be a transfer of shares from Kate and Matthew to Jon. CGT will be charged on the difference between the exercise price agreed at the time of grant, less Kate and Matthew's respective base costs of the shares transferred.

Kate and Matthew would realise capital gains and are likely to qualify for Business Asset Disposal Relief, assuming they will continue to meet the conditions during the two year period immediately preceding the date of exercise. If so, both Kate and Matthew will be subject to tax at a rate of 10% on their capital gains.

Calculation of Kate and Matthew's tax liability on exercise

Assuming Kate and Matthew dispose of 5 shares each, they will each realise a capital gain of £32,650 which is calculated as:

	£
Consideration (exercise price £9,000 * 5)	45,000
Base cost (£10 * 5)	50
Capital gain	44,950
Annual exempt amount	(12,300)
Taxable gain	32,650
Tax @ 10%	3,265

MARKING GUIDE

TOPIC	MARKS
Requirement 1	
Kate and Matthew extraction of funds to purchase shares personally: - Declare dividend, subject to income tax - Unsuitable option as all shareholders would be entitled to dividend	1.0
Company share buyback	
Usually income treatment, taxed at dividend rates	0.5
- Distribution equal to proceeds arising less original subscription cost of shares	0.5
Capital treatment if certain conditions met:	
- Wholly or mainly benefit the trade - not for tax avoidance	0.5 0.5
- Vendor must be UK resident at time of purchase	0.5
- Vendor must have owned shares for at least 5 years	0.5
- Substantial reduction in the vendor’s shareholding - must hold <75% of prior interest after the buy back	0.5 0.5
- Vendor must not be connected to the company after the buyback - < 30% of issued ordinary share capital, voting rights and loan capital, or entitled to <30% of distributable assets on a winding up	0.5 0.5 0.5
- Allowed to keep no more than 5% for sentimental reasons	0.5
Can obtain advance clearance from HMRC	0.5
Dennis’ position	
Consider substantial reduction condition Conclude condition met as reduction greater than 25%	0.5 0.5
Capital treatment applies Calculation of gain	0.5 0.5
Qualifies for Business Asset Disposal Relief - Trading co? Held at least 5% - At least 2 years - Worked in the company	1.5
Taxed at 10%	0.5
Liz’s position	
Will not meet UK resident condition	0.5
Income distribution £359,970 Taxed as dividend, but disregarded income Tax liability limited to tax deducted from disregarded income or tax due on other income No tax due on income distribution	0.5 0.5 0.5 0.5
Potential exposure to CGT too - Proceeds equal to the original subscription price of the shares - Less individual’s base cost of the shares = no gain - OR Non-resident so no CGT in any case	 0.5 0.5
Requirement 2	
Tax implications of grant / exercise share option for Kate and Matthew	
- No tax on grant	0.5
- CGT on exercise	0.5
- Difference between agreed exercise price & base cost	1.0
- Identify that Kate & Matthew’s gains likely to qualify for BADR as long as conditions met for at least 2 year period prior to disposal (no requirement to repeat conditions if already set out above)	1.5
Calculation of gain	1.5
TOTAL	**20**

ANSWER 2

Ellie's final salary payment from her Portuguese employer will not be subject to UK tax. This is because it is treated as being part of her earnings for the year in which the employment was last held, which is 2020/21. For 2020/21 Ellie was not resident in the UK and performed all her duties in Portugal.

For company directors there are special rules to determine the date of receipt for employment income. The date of receipt is the earlier of:

1) The date the payment is physically made

2) The date the director becomes legally entitled to the payment

3) The earlier of:

   (a) The date when sums on account of their earnings are credited in the company accounts or records; or

   (b) The end of the company's accounting period if the earnings have been determined by the end of that period; or

   (c) The date the earnings are determined if that date falls after the end of the company's accounting period.

The bonus paid on 30 June 2022 will form part of Ellie's employment income for 2021/22 as it was determined by the end of the accounting period.

Ellie's 2021/22 Income Tax liability will therefore be £1,286 (W1)

As Ellie was not UK resident in 2020/21, the disposal of her shareholding would not have been subject to UK Capital Gains Tax. However, as she has now returned to the UK we must consider if she has been temporarily non-resident. An individual is classed as a temporary non-resident if they meet the following three conditions:

1) They have a period of non-residence that lasts for less than five complete years;

2) They had a period of residence immediately prior to leaving the UK and

3) They were UK resident for at least four out of the seven tax years immediately preceding the tax year of departure

Ellie meets all these conditions. The effect of this is that any capital gains arising on assets that Ellie owned prior to leaving the UK and that were sold while she was non-resident, will be treated as arising in 2021/22.

The gain of £21,720 will therefore need to be declared on Ellie's self assessment tax return for the year ended 5 April 2022.

The jewellery that Ellie sold is a chattel. Ellie has made a loss, but this has to be restricted. The rules at TCGA 1992 s.262(3) state that Ellie's sale proceeds are deemed to be £6,000.

The Capital Gains Tax due will be £61(W2). This will be due for payment on 31 January 2023.

Ellie's Primary Class 1 National Insurance Liability

As Ellie is a director, she has an annual earnings period for National Insurance purposes. The annual earnings period is pro-rated in the year of appointment, giving an annual earnings period consisting of the tax week of appointment and the remaining weeks in the tax year.

In Ellie's case this will give her an annual earnings period of 37 weeks.

Her total employment income subject to Primary Class 1 National Insurance will be £19,000 (£16,000 salary plus £3,000 bonus.)

Ellie's Primary Class 1 National Insurance Liability will therefore be £1,463 (W4)

Workings

(W1) Income Tax Liability

	£		
Salary	16,000		
Bonus	3,000		
Personal Allowance	(12,570)		
	6.430	x 20% =	1,286

(W2) Capital Gains Tax Liability

	£		
Gain	21,720		
Loss on Jewellery (W3)	(1,100)		
Annual Exempt Amount	(12,300)		
Losses B/Fwd	(1,631)		
	6,689	X 10% (N1)	669

£669 - £608 = £61 (N2)

Notes

(N1) Remaining basic rate band is £37,700 - £6,430 = £31,270

(N2) The tax that Ellie paid on the gain in Portugal can be deducted from the UK CGT liability.

(W3) Loss on Sale of Jewellery

	£
Deemed Proceeds	6,000
Probate Value	(7,100)
	(1,100)

(W4) NIC

Primary Threshold: 9,568 x (37/52) = £6,808

Upper Earnings Limit: 50,270 x (37/52) = £35,769

			£
6,808	X	0%	0
(19,000-6,808)	X	12%	1,463
			1,463

MARKING GUIDE

TOPIC	MARKS
UK resident is taxable on worldwide income	½
Treatment of final salary payment from Portuguese employment	1
Date of receipt rules	1 ½
Application of date of receipt rules to Ellie’s bonus	½
Temporary non residence rules	2
Effect of Ellie being classed as a temporary non resident	½
Jewellery is a chattel	½
Deemed proceeds for jewellery	½
Due date for Capital Gains Tax	½
Directors have an annual earnings period	½
Explanation of apportionment in year of appointment	1
Calculate Income Tax liability	1
Calculate loss on jewellery	½
Calculate Capital Gains Tax liability	2
Identify that relief is available for the tax paid in Portugal	½
Calculate Primary Class 1 National Insurance liability	2
TOTAL	**15**

ANSWER 3

			Non Savings	Savings	Dividend
			£	£	£
Employment Income (W1)			77,335		
Treasury stock interest (W2)				1,600	
Eurobond interest (W3)				875	
Overseas interest (W4)				375	
Unit Trust income					2,480
Less:					
Hazel Trouser Ltd loss (W5)			(14,000)		
White Skirt Ltd loss (W6)			(10,000)		
Green Shawl Ltd qualifying interest (W7)			(2,000)		
			51,335		
Personal Allowance			(12,570)		
Totals			38,765	2,850	2,480
Tax	37,700	@ 20%		7,540	
	1,065	@ 40%		426	
	500	@ 0%		0	
	2,350	@ 40%		940	
	2,000	@ 0%		0	
	480	@ 32.5%		156	
				9,062	
Double taxation relief (W8)				(75)	
Less: PAYE				(7,000)	
Total tax payable				1,987	
EIS clawback (W5)				9,000	

No tax relief is available on interest paid on the loan to acquire Turquoise Belt shares as the company is based outside of the EEA.

No income tax relief is available on the gift of shares in Indigo Sandal Ltd as the shares are unquoted. The disposal will be no gain no loss for CGT as it is a gift to a charity,

(W1) Employment Income

	£	£
Salary		75,600
Round sum allowance	1,750	
Expense for subscription to trade body	(850)	
No deduction for round sum allowance when used to entertain clients and allowance was not specific entertaining allowance		900
Relocation expenses	7,450	
Less: Relocation qualifying expenses falling under £8,000:		
Family trip to Birmingham to find suitable new property	(1,750)	
Stamp duty land tax on new property	(3,750)	
Costs of Lenny's temporary accommodation in Birmingham until house purchase final	(1,250)	
N.B. redecoration not a qualifying expense		700
Benefit re cheap loan		
(£12,500 + (£12,500 + £3,500))/2 = £14,250		
£14,250 @ 2%	285	
Less: interest paid	(150)	
Taxable benefit		135
Total employment income		77,335

(W2) Treasury stock interest

	£
£40,000 @ 4% =	1,600

(W3) Eurobond interest

	£
£1,750/2 =	875

(W4) Overseas interest

	£
£300*100/80 =	375

(W5) Hazel Trouser Ltd loss and clawback

	£	£
Proceeds on sale		30,000
Cost	50,000	
Less income tax relief (50,000 @ 30%) – (30,000 @ 30%)	(6,000)	
		(44,000)
		14,000
EIS clawback		
30,000 @ 30%		9,000

The loss on the sale of the shares is allowable against income as EIS relief has been claimed on the shares.

(W6) White Skirt Ltd s.24 negligible value claim

	£
Deemed proceeds	Nil
Less: Cost	(10,000)
Loss	(10,000)

The loss arising is allowable against income under s131 ITA 2007 as the shares are in an unquoted trading company.

(W7) Green Shawl Ltd

HMRC accept that when qualifying interest is paid on a loan taken jointly, the spouse / civil partner for whom the loan is qualifying can claim relief for the full amount of the interest if both spouses do not qualify for the relief.

(W8) Double Taxation Relief

UK tax on foreign income (£375 @ 40%)	150
Foreign tax	75

Deduction of foreign tax available in full as UK tax is more than foreign tax

MARKING GUIDE

TOPIC	MARKS
Salary and PAYE	½
Relocation Income	2
No deduction for entertaining clients for round sum allowance	1
Expense for professional body	½
Calculation of benefit in kind on beneficial loan	1½
Accrued interest	½
Overseas interest calculation	½
Dividends	½
Hazel Trouser – calculation of loss	1½
Hazel Trouser – EIS clawback	1½
Use of loss against income and explanation	1½
White Skirt loss against income and explanation	1½
Green Shawl qualifying loan interest	1
Personal allowance	½
Calculation of tax on non-savings income	½
Personal savings allowance	½
Calculation of tax on interest income	½
Dividend allowance	½
Calculation of tax on dividend income	½
No relief for Turquoise Belt investment with explanation	1
No relief for Indigo Sandal gift with explanation	1
Foreign tax credit relief calculation	1
TOTAL	**20**

ANSWER 4

Profits from the sale of land can be taxed as:

a) a trading profit under income tax principles, or
b) a capital gain, or
c) under the transactions in land rules in Part 9A ITA 2007.

The activity will be treated as a trade if the person disposing the land is a builder or property developer which will be determined under the "Badges of Trade" rules. The profits would be subject to Income Tax at rates of up to 45% and National Insurance. If taxed as a capital gain, tax will be payable at rates of up to 20% (28% for residential property) and normal relief and exemptions will apply.

Where the transactions in land rules apply, any profit or gain from disposing the land is treated as if it were a trading profit and is subject to Income Tax. As no trade is carried on, the profits do not attract National Insurance liabilities. These rules will apply if any of the following conditions are met:

Condition A: Land is acquired with the main or one of the main purposes of realising a profit or gain from its disposal, s.517B(4) ITA 2007.

Condition B: Property deriving its value from land is acquired with the main or one of the main purposes of realising a profit or gain from disposing of the land, s.517B(5) ITA2007.

Condition C: Land is held as trading stock, s.517B(6) ITA 2007.

Condition D: Land is developed with the main or one of the main purposes of realising a profit from disposing of the developed land s.517B(7) ITA 2007.

A deemed trading profit will arise under s.517D ITA 2007 where:

- A person realises a profit or gain from the disposal of an asset (for example, shares);
- At the time of the disposal, at least 50% of the value of that asset is derived from land in the UK
- That person is a party to an arrangement relating to the land, and
- The main purpose or one of the main purposes of the arrangement is to deal in or develop the land and realise a profit on its disposal.

Neither Scarlett or Melanie are trading so we must consider whether the disposals should be traded as a capital gain or if they should be taxed under the transaction in land rules.

<u>Scarlett</u>

Scarlett will receive a fixed sum on disposal, plus a percentage of the profits of the future development – a contingent element. This arrangement is often called a "slice of the action" contract.

These contracts are generally caught under the transaction in land anti-avoidance rules, under Condition D, as land is being developed with the main purpose or one of the main purposes of realising a profit from disposing of the developed land.

However, an exemption applies where Condition D is met and part of the profit or gain is attributable to a period before the intention to develop was formed.

This exemption removes an amount equal to the value of the land at the date of the first intention to develop, from the calculation of income chargeable to tax. In these circumstances HMRC are likely to treat the date the contact for sale as being signed as the first intention date. The value at this date is therefore subject to Capital Gains Tax with the remainder of the payments Scarlett receives being subject to Income Tax. If the amount of initial consideration is more than the value of the land at the first intention date this will be the amount subject to Capital Gains Tax.

A further exemption in the transaction in land rules exists where disposals qualify for Principal Private Residence Relief. The proportion of the proceeds relating to the dwelling house Scarlett occupied as her main residence would therefore not be subject to Income Tax or Capital Gains Tax.

Melanie

As the only asset of the company is the land at least 50% of the value of the shares will be derived from this, therefore the anti-avoidance rules will apply.

As the further sale proceeds are based on Ron's profits from developing the land, Melanie is a party to an arrangement concerning the land and it's clear that a main purpose of the arrangement is to deal in or develop the land.

However, an exemption also exists where there is a disposal of property deriving its value from land and part of the gain is fairly attributed to a period before the person was party to the arrangements. Consequently, the value of the shares at the date of the contract will be subject to Capital Gains Tax. As Melanie inherited the shares from her father only the increase in value since his death will be taxable.

Any further proceeds Melanie receives will be taxed as trading income in the year the profit arises.

MARKING GUIDE

TOPIC	**MARKS**
Tax treatment if trading profit or capital gain and conclude not trading	1
Tax consequences if transactions in land applies including National Insurance	1
Conditions for the anti-avoidance to apply:	
Condition A	½
Condition B	½
Condition C	½
Condition D	½
Deemed trading profit where 50% value derived from land and arrangements in place	1 ½
Scarlett's sale:	
Slice of the action with description of what this is	1
Why slice of the action falls under transactions in UK land	½
Exemption for period before intention to develop exists	1
Amount subject to exemption for period before intention to develop	1
Exceptions where transactions in land anti-avoidance does not apply - PPR	1
Scarlett's further consideration subject to income tax	½
Melanie's sale:	
Identification that anti avoidance rules may apply due to land value	1
Assessment of arrangements	1
Main purpose criteria	1
Exemption for period not party to arrangements and apportioned amount subject to CGT	1
Melanie's further consideration subject to income tax	½
TOTAL	**15**

ANSWER 5

Only a debt on a security that is not a qualifying corporate bond is a chargeable asset for capital gains tax.

Debt on a security

The definition of a debt on a security has been largely shaped by case law such as the tax avoidance case of WT Ramsay v CIR. The debt must be capable of being held as an investment so carry a commercial rate of return – for example by paying a commercial rate of interest or being redeemable at a premium. In the absence of an early redemption penalty the debt must exist for a sufficiently long period to provide a commercial return. The debt must be marketable and usually documented and usually evidenced in writing.

Both of the loans would seem to have these characteristics so each of them is a debt on a security.

Qualifying corporate bond

For a loan stock to satisfy the definition of a qualifying corporate bond, it must have been issued after March 1984 and:

i. The loan stock must be expressed in sterling; and

ii. The loan stock cannot be converted into any other currency.

Qualifying corporate bonds are exempt assets for capital gains tax. Therefore, any profit made on disposal is not charged to tax and losses are not allowable.

Therefore, Horace will only be able to claim a loss on the Series A 12% Loan Stock which can be converted into another currency as it is not a qualifying corporate bond.

The Series B 12% Loan Stock is a qualifying corporate bond and is therefore exempt and the loss is not allowable.

Claim or election

In order for a capital loss to arise, Horace needs either to dispose of the loan stock or to make a deemed disposal of it.

Where the owner of an asset makes a 'negligible value' claim, they are treated as if they had sold, and immediately reacquired, the asset at the time of the claim or at any earlier time specified in the claim (provided not more than two years before the beginning of the year of assessment in which the claim is made and the asset was of negligible value at that time) for a consideration of an amount equal to the value specified in the claim. This is a deemed disposal.

'Negligible value' is not defined but is taken by HMRC to mean 'worth next to nothing'.

If Horace does not make a negligible value claim, any capital loss will be delayed until he actually disposes of the loan stock.

Capital losses can only be used in the tax year when they are incurred or carried forward. A negligible value claim now may therefore allow Horace to claim a loss against a disposal that he otherwise may not have been able to.

MARKING GUIDE

TOPIC	**MARKS**
Loan stock must be a debt on a security to be a chargeable asset	½
Definition of debt on a security:	
It needs to be capable of being an investment with a commercial rate of return	1
It needs to be marketable	½
For concluding that each loan stock is a debt on a security	½
A qualifying corporate bond needs to be issued after March 1984	½
Be expressed in sterling	1
Not be convertible into another currency	1
Series B is a qualifying corporate bond and exempt	1
Series A is not a qualifying corporate bond and loss available	1
Negligible value claim possible	1
Treated as if he sold the asset at time of the claim or at an earlier time	1
HMRC take “negligible value” as meaning “next to nothing”	½
Benefit of timing of negligible value claim	½
TOTAL	**10**

ANSWER 6

Part 1)

Domicile rules

An individual acquires a domicile of origin at birth based on their father's domicile, provided the parents are married at that time. They can lose their domicile of origin and adopt a domicile of choice if their actions and future intentions involve a sufficient level of permanence. For example, by moving to another country, intending to settle there permanently and cutting all ties with their original home country.

However, new rules were introduced from 6 April 2017 meaning that two groups of non-domiciled individuals ("non-doms") are deemed domiciled in the UK for Income Tax and Capital Gains Tax purposes:

- Long-term residents (non-doms who have been resident in the UK for at least 15 of the previous 20 tax years); and
- Formerly Domiciled Residents (those born in the UK with a UK domicile of origin, who subsequently acquired a domicile of choice elsewhere but have resumed UK residence).

Once deemed domiciled, an individual no longer has access to the remittance basis of taxation. Instead, they must declare and pay tax on their worldwide income and gains.

Thomas & Lucille's domicile position

Although it appears that Thomas acquired a French domicile of choice when he married Lucille and settled in France, his return to the UK in 2007 raises a question over whether he actually lost his domicile of origin. As he intended to return to France after two years, and they retained their family home in Marseille, there is a strong argument for Thomas's French domicile of choice being valid.

However, this question would be raised again in 2009 when Thomas decided to stay in the UK for longer. He might argue that it was still his intention to ultimately return to France indefinitely, however the argument may be weakened by his change of plans.

If HMRC were to contest his domicile, the onus would be on Thomas to prove his UK domicile of origin has been lost and a French domicile acquired. If he were unsuccessful in doing so, his remittance basis claims from 2007 onwards may be invalid. Thomas would be required to disclose all of his worldwide income and capital gains from 2007 to date to HMRC to confirm – and correct, where applicable – his tax position.

Assuming Thomas could successfully argue that he had retained a French domicile of choice, he would have become deemed domiciled on 6 April 2017, as a Formerly Domiciled Resident. If he has claimed the remittance basis since that date, he would be required to make a disclosure to HMRC of his worldwide income and gains since 6 April 2017.

Lucille has a French domicile of origin. It is unlikely she acquired a UK domicile of choice despite the changes in her residence, since she always intended to return to France. Lucille does not meet the conditions of a Formerly Domiciled Resident as she does not have a UK domicile of origin. Her year of arrival in the UK (2007/08) was likely to have been a split year, which is considered a year of residence when calculating the long-term resident rule. In 2021/22, she has been resident for 14 of the previous 20 tax years. If she remains UK resident in the 2022/23 tax year, she will be considered a long-term resident and will become deemed domiciled from 6 April 2022.

Lucille is able to make claims for the remittance basis in 2021/22 if she wishes. From 2022/23 onwards, she will be taxed on the arising basis on her worldwide income.

Part 2)

Sale of Broadbean Ltd shares

The sale of shares is a potentially chargeable event for Business Investment Relief purposes. This triggers a tax charge, though steps can be taken to mitigate this, including sending proceeds offshore or reinvesting them in another qualifying company within 45 days. A chargeable event arises due to anti-avoidance provisions designed to stop individuals from bringing foreign income or gains to the UK, making a qualifying investment to avoid paying UK tax, and then selling the investment shortly after and retaining the cash in the UK.

Lucille will receive sale proceeds of £750,000. In order to avoid a taxable remittance, she must either:

- send £460,000 of the proceeds (i.e. the value of her original investment, which represents the funds remitted from overseas) offshore; or

- reinvest at least £460,000 in another qualifying investment

within 45 days of the sale (i.e. on or before 14 June 2022). The balance of the proceeds (£290,000) can remain in the UK without any further implications.

If Lucille fails to do this, she will be treated as making a remittance of £460,000 (equal to the sum originally invested) to the UK in 2022/23.

Remittance from mixed fund

As the original remittance was made out of a mixed fund account, the taxable remittance will be comprised of a proportionate amount of foreign income, gains and clean capital based on the amounts held in the account at time of original investment, as follows:

	Foreign income	Foreign gains	Clean capital	Total
Amount held at time of original remittance	£750,000	£250,000	£500,000	£1,500,000
Value invested in BIR investment, apportioned	(50%) £230,000	(17%) £76,667	(33%) £153,333	£460,000

The remittance will constitute £230,000 foreign income, £76,667 foreign capital gains and £153,333 clean capital. This will trigger an income tax charge of up to £103,500 and a capital gains tax charge of up to £21,467, depending on the level of her other income and capital gains in the year, the type of asset originally disposed of, and any other reliefs available.

Capital gains tax (CGT)

	£
Sale proceeds	750,000
Base cost (£460,000/4,600 * 3,000)	(300,000)
Restricted by EIS relief retained	90,000
Capital gain	540,000

Lucille will realise a capital gain of £540,000 on the shares sold. This gain is exempt from CGT because Lucille has held the shares for at least 3 years, and she claimed EIS income tax relief on acquisition of the shares. There will be no clawback of the income tax relief previously claimed as she has held the shares for more than 3 years.

However, a proportion of the £460,000 deferred by Lucille's EIS relief claim will also be brought back into charge when the Broadbean Ltd shares are sold. As only some of her shares are being sold, only a proportion of the deferred gain will be brought into charge. The chargeable gain will be £300,000 (i.e. 3,000/4,600 of the total gain deferred), resulting in a CGT charge of up to £60,000. This could be deferred or mitigated by subscribing in other EIS or SEIS shares.

MARKING GUIDE

TOPIC	**MARKS**
Domicile rules	
Explain domicile of origin and how it can be lost/a domicile of choice acquired	1
Explain long term resident rule	0.5
Explain returning formerly domiciled resident rule	0.5
Identify impact of return to UK in 2007 on domicile status	0.5
Identify impact of decision to stay in UK in 2009 on domicile status	0.5
Onus on Thomas to prove domicile of origin lost/domicile of choice acquired if contested by HMRC	0.5
Discuss impact on remittance basis claims and possible actions required	1
Identify that Thomas is an FDR Deemed dom from 6 April 2017	0.5 0.5
Lucille will become deemed dom under 15 out of 20 rule Split year in 2007/08, counts as resident for deemed dom rules Will become deemed domicile on 6 April 2022 2021/22 last year of remittance basis	0.5 0.5 0.5 0.5
Business Investment Relief	
Sale is potentially chargeable event	0.5
Tax charge triggered	0.5
Can be avoided if mitigation steps taken	0.5
45 days / on or before 14 June 2022 Reinvest or send proceeds offshore Limited to £460,000 because proceeds higher than original investment & equal to original amount invested Represents original remittance from overseas Explain anti-avoidance rule	1 1 2 0.5 0.5
If from a mixed fund, remittance is proportionate of funds in the account (not income in priority to gains or clean capital)	1
Calculation of tax position	
Remitted about apportioned 50%:17%:33% across income/gains/clean capital	1.0
Income tax charge up to £103,500 (max rate 45%)	0.5
CGT charge up to £21,467 (max rate 28%)	0.5
Capital gain on Broadbean shares exempt as EIS shares, held for >3 years & income tax relief claimed No clawback of income tax relief as held for >3 years	1.5
CGT liability on deferred gain brought back into charge. Taxable gain = £360,000. CGT charge = £60,000 Gain can be deferred or mitigated by reinvesting into EIS or SEIS shares	0.5 0.5 0.5
TOTAL	**20**