The Chartered Tax Adviser Examination

November 2017

Advanced Corporation Tax

Advisory Paper

Suggested Solutions

Answer 1

The loans provided from Alpha Ltd to Finco Ltd and from Finco Ltd to Beta Ltd are "loan relationships". A company has a loan relationship if: it owes or is owed money as respects a money debt; and that debt arose from a transaction for the lending of money.

The unpaid invoice for the plastic bottles is treated as a loan relationship for tax purposes. It is a relevant non-lending relationship on the basis that:

- There is a money debt, that is, a debt which falls to be settled by the payment of money, which was not created by the lending of money; and
- The debt creates an impairment loss in respect of an unpaid business payment; that is, a payment that would be taken into account as a receipt of a trade.

The general rule is that all profits arising to a company in connection with its loan relationships are taxable. The amounts to be brought into the Corporation Tax computation are the 'credits and debits' which:

- Are computed in accordance with generally accepted accounting practice; and
- Represent the company's profits and losses and interest and expenses arising from its loan relationships.

Special rules apply to the taxation of the loan relationships where at any point during the accounting period, a company and the person "standing in the position of creditor or debtor" are connected. This definition includes a person who indirectly stands in that position by reference to a series of loan relationships. As such, the special rules will apply if Beta Ltd and Alpha Ltd are connected; even if Finco Ltd is not connected to Alpha Ltd. These rules mean that impairment losses are non-deductible, and where relevant, a company is not required to bring in a credit for the release of a debt.

Connected within the loan relationship rules means:

- Alpha Ltd controls Beta Ltd;
- Beta Ltd controls Alpha Ltd; or
- The same person controls Beta Ltd and Alpha Ltd.

Control is defined as "the power of a person to ensure the company's affairs are conducted in accordance with their wishes" by:

- The holding of shares or the possession of voting power; or
- As a result of power conferred in the Articles of Association or any other document.

In this case, control is not created due to the holding of shares or voting power as Alpha Ltd only holds 40% of the shares and voting power in Beta Ltd. However, on the basis Alpha Ltd, acting through its directors, can appoint a majority of the directors to the Board of Beta Ltd, Alpha Ltd can ensure that Beta Ltd's affairs are conducted in accordance with its wishes. Alpha Ltd and Beta Ltd are therefore connected.

As Alpha Ltd and Beta Ltd are connected, Alpha Ltd will not be able to claim a tax deduction for the debits in its Corporation Tax computation arising due to the bad debt provision or the unpaid invoice.

MARKING GUIDE

TOPIC	MARKS
Loans meet the definition of a loan relationship	1
Unpaid invoice treated is a money debt (s479 CTA 2009)	1
Unpaid invoice treated as a loan relationship (s478 CTA 2009)	1
Profits and losses from loan relationships are taxable	0.5
Generally follows accounting principles	0.5
Special rules apply if connected at any point in	1
accounting period, includes indirect creditor through series of relationships.	1
Definition of connection (s466 CTA 2009)	0.5
Definition of control (s472 CTA 2009)	0.5
Beta - Not connected through shareholding or voting rights	1
Connected due to shareholders' agreement	1
Special rule means no deduction for debit in Alpha Ltd	1
TOTAL	**10**

ANSWER 2

Memorandum
To: Chief Financial Officer
From: Tax Manger
Date: X November 2017
Subject: Transfer of supermarket building and sale of Pink Properties Ltd

I have set out below the Corporation Tax consequences of the proposed conditions of sale.

Transfer of Supermarket Building

Blue Buildings Ltd, Pink Properties Ltd and Purple Properties Ltd form a capital gains group as Blue Buildings Ltd holds 75% or more of the share capital of the other entities.

The transfer of the supermarket building from Pink Properties Ltd to Purple Properties Ltd would therefore have been a no gain, no loss transfer. The base cost in the building for Purple Properties Ltd will be cost plus indexation.

The transfer of the property could fall within the "value shifting" rules. These rules apply to the sale of shares in a company by another company where:

- Arrangements materially reduce the value of shares; and
- One of the main purposes of the arrangement is the obtaining of a tax advantage.

The transfer of the supermarket building is at less than market value and therefore it does reduce the value of Pink Properties Ltd shares. However, the reason for the transfer is not to gain a tax advantage but for commercial reasons, linked to a proposed sale. The value shifting rules are therefore unlikely to apply.

Degrouping charges

Degrouping charges arise where a chargeable asset is transferred between two companies in a group under a no gain no loss transfer and the company receiving the asset later leaves the chargeable gains group, whilst still holding the asset, within six years of the transfer. In this case, the intra-group transfer of the supermarket building at no gain no loss could create a future degrouping charge. However, as the company receiving the asset remains in the chargeable gains group with the principal company, i.e. Blue Buildings Ltd, a degrouping charge does not arise when Pink Properties Ltd is sold to Boutique Buildings plc. A degrouping charge could still arise if Purple Properties Ltd left the chargeable gains group within six years and at that time, it still owned the supermarket building.

Substantial shareholdings exemption ("SSE")

SSE automatically exempts gains on the sale of shares subject to certain conditions being met. SSE will not be available as the conditions required for a sale before 1 April 2017 will not be met since the Blue Buildings group is not a trading group and Pink Properties Ltd is not a trading company.

Gain on disposal of Pink Properties Ltd

Cash

A taxable chargeable gain will arise in Blue Buildings Ltd on the cash consideration. But as some of the consideration is in shares, a part-disposal takes place.

Shares in Boutique Buildings plc

Where shares are exchanged for other shares, there may be no disposal for capital gains purposes and no gain arises. Instead, the new shares take on the base cost and date of acquisition of the old shares. As Boutique Buildings plc will own 25% or more of Pink Properties Ltd, this treatment applies automatically as long as the exchange is performed for bona fide commercial reasons and does not form part of a scheme, which has tax avoidance as one of the main purposes.

Blue Buildings Ltd can apply for clearance from HMRC and I would recommend this is done to obtain certainty that, for tax purposes, the transaction will be treated as being performed for commercial reasons.

Cash payable in the future

As it is not possible to calculate now exactly how much Blue Buildings Ltd will receive, the future payment is deferred unascertainable consideration. Under the *Marren v Ingles* principle, the right to receive the future consideration is treated as a separate asset: an "earn-out". The present value of the earn-out is taxed now and forms the base cost of the earn-out. When the cash is eventually received, the earn-out is treated as having been disposed of. A gain or loss will arise when the cash is received if the cash received is greater or smaller than the base cost.

If a loss is made on the disposal of the earn-out, that loss can be utilised against any other capital gains made in the year of disposal of the earn-out or carried forward. It cannot be carried back against the disposal of the shares in Pink Properties Ltd.

Calculation of chargeable gain

	£
Proceeds on disposal (150+60)	210,000,000
Less: cost	
A/(A+B) x original cost	
(150+60)/(150+60+390) x 100	(35,000,000)
Gain on disposal of shares	175,000,000
Indexation allowance on cost June 13 – Mar 17 [(267.5-249.7)/249.5) x 35,000,000	(2,537,044)
	172,462,956

Tax payments

Due to the level of taxable income on the chargeable gain, tax payments will be made on a quarterly basis on 14 July 2017, 14 October 2017, 14 January 2018 and 14 April 2018 in respect of the year to 31 December 2017. Interest will be charged if the quarterly payments are less than the total tax payable for the year. If the sale has not been considered in the tax payments already made an additional payment should be made in January to ensure ¾ of the total tax on the chargeable gain has been paid.

MARKING GUIDE

TOPIC	MARKS
Companies in a capital gains group	1
Transfer of supermarket building would be no gain no loss	1
Rules for a degrouping charge to arise	1
Recognition that a degrouping charge does not arise	1
Value shifting rules may apply	1
Discuss conditions for rules to apply	1
Substantial shareholding exemption automatically exempts gain if conditions met	1
Conclude conditions not met	1
Cash element of consideration taxable now	1
Share for share rules mean no disposal	1
Conditions for share for share rules to apply	1
Application for clearance	1
Recognition that there is deferred and unascertainable consideration	1
Explain application of Marren v Ingles rules re PV being taxed now	1
Gain or loss arises in future on receipt of cash	1
Availability for relief for losses if future cash less than market value of earn-out	1
Calculation of proceeds	1
Calculation of base cost	1
Calculation of indexation (not 3.d.p)	1
Tax payment dates	1
TOTAL	**20**

ANSWER 3

E-mail response dated X November 2017

To: Tom.Smith@Homespun.com
From: Bob.Jingle@CharteredTaxAdvisers.com
Re: Tax analysis on payments and receipts

Dear Tom

I have set out below the answers to each of your questions in turn.

Dividends received by a UK company are exempt from tax where the dividend falls within an exempt class and no anti-avoidance rules apply. The anti-avoidance rules seek to counter any tax advantage that arises when the distribution is part of a scheme devised to create a tax advantage. One of the exempt classes includes dividends paid by a company controlled by the recipient. Homespun plc controls Homespun (Finden) Inc as it holds 100% of its share capital and it is unlikely that any of the anti-avoidance rules will apply so the dividend should therefore be exempt from UK tax.

Homespun (Finden) Inc should withhold 30% tax on the dividend and pay this to the Finden tax authorities. Double tax relief for the overseas tax paid on the dividend would not be available in the UK because the dividend is not taxable in the UK.

A company can elect for a dividend to be treated as taxable within two years of the accounting period in which the dividend was received. In this case, I would not advise that the election is made as this would not improve the taxation position for the group.

When UK companies make royalty payments to individuals or non-UK resident companies, they are required to deduct income tax at the basic rate of 20% at source and pay it over to HMRC. The Finance Act 2016 widened the definition of royalties and as such, tax should be withheld on payments for the use of brand names.

Individuals

Homespun plc should withhold tax at 20% on the payments to the UK resident individuals and pay this to HMRC. A CT61 return detailing the royalties paid to the individuals should be filed along with any payment due on a quarterly basis. The return should be filed and any tax payments made within 14 days of the quarter end date. These are 31 March, 30 June, 30 September, and 31 December.

Malaydian company

Under the OECD Model Tax Convention for Double Tax Agreements, there is no withholding tax on royalties. On the basis Malaydia and the UK have a Double Tax Agreement which follows the OECD Model Tax Convention, Homespun plc should not withhold tax on the payments to the Malaydian resident company.

UK tax legislation allows a company to pay royalties without withholding tax if the company has a reasonable belief that relief from withholding tax is available and therefore Homespun plc does not need to apply for relief from withholding tax on the payments to the Malaydian company. Details of the royalty payments will need to be included in Homespun plc's Company Tax return.

UK resident company

Homespun plc's UK subsidiaries should not withhold tax on the payments to Homespun plc because Homespun plc is a UK resident company.

The royalties received by Homespun plc would be taxable as non-trading income. This income should be pooled with the royalties payable by the company and the net gain or loss taxed or relieved.

The royalties paid by Homespun plc's subsidiaries would be deductible against trading income on the basis that such payments are made for the purposes of their trade.

The interest receivable from Homespun (Kugola) Pty Ltd will be taxed in Homespun plc as a non-trading loan relationship. Any interest paid will be pooled with the interest receivable and the net credits or debits taxed or relieved.

Under the OECD Model Tax Convention for Double Tax Agreements, withholding tax on interest should not be higher than 10%. As such, Homespun (Kugola) Pty Ltd should not withhold 15% tax on the payment of interest to Homespun plc but should withhold the amount declared in the UK/Kugola Double Tax Convention.

Where income is taxed in two jurisdictions double tax relief is available in the UK. This provides relief for the lower of the overseas or UK tax paid. Relief is only available in the UK if the withholding tax rate is reduced to the lowest rate available under the Double Tax Agreement. If Homespun (Kugola) Pty Ltd withholds an amount higher than that declared in the UK/Kugola Double Tax Agreement, full double tax relief would not be available.

Transfer Pricing

Transfer pricing legislation seeks to stop companies gaining a UK tax advantage by entering into transactions with connected parties using non-arms length prices.

These rules could apply to the intra-group licences and loans as Homespun plc directly controls all of its subsidiaries and therefore they are connected.

The UK's transfer pricing legislation applies to transactions between connected UK entities and therefore you will need to ensure the royalty rates between Homespun plc and the UK subsidiaries are priced on arms' length terms.

Principles set by the OECD are used to provide guidance in assessing the arms' length price of a transaction. A number of methods are used but the most objective method is the comparable uncontrolled price. This measures the actual price charged against the price that would be charged in a similar transaction between third parties.

You should benchmark the royalty and interest rates against rates used between third parties in similar transactions.

The tax rate in Kugola is lower than the UK tax rate. This means that interest paid by Homespun (Kugola) Pty Ltd to Homespun plc will create a tax deduction in a jurisdiction with a lower tax rate than the jurisdiction where the interest income is taxed; the UK.

If the interest rate agreed between the parties on this loan is too low, HMRC could argue that you are obtaining a UK tax advantage as your UK income will be lower than it would

be on arms' length terms. In this case, HMRC can impute additional interest on the loan and tax this interest in the UK.

Homespun (Kugola) Pty Ltd could apply to the Kugola tax authorities for a compensating adjustment to be made to give a tax deduction in Kugola for the additional interest taxed in the UK.

Please let me know if you would like to arrange a call or meeting to discuss the above.

Kind regards

Bob Jingle

MARKING GUIDE

TOPIC	**MARKS**
Dividends generally exempt if exempt class	1
Controlled company is an exempt class	0.5
No relief for the overseas tax paid	1
Explain that election is possible and whether or not it is advisable	1
Royalty definition includes brand names	1
Royalties taxed as intangible assets	1
Holding company and therefore taxed as non-trade	0.5
Subsidiaries would get a trade deduction	0.5
Tax withheld on royalty payments at 20%	1
Withhold tax on royalty payments to individuals	1
Model tax convention has 0% on royalties	1
Don't withhold on payments to Malaydian company	1
Tax not withheld on payments to UK resident company	0.5
CT61 needs filing quarterly	0.5
Deadline for CT61	0.5
Interest taxed as non-trading loan relationship	0.5
Model tax convention has 10% withholding on interest	1
Should withhold treaty rate	1
Explain availability of double tax relief	1
Recognition that transfer pricing rules apply	0.5
Meet connected parties definition	0.5
Discussion on Kugola tax rate	1
Interest imputed if not arms length	1
Compensating adjustment possible	1
UK to UK transfer pricing	0.5
TOTAL	**20**

ANSWER 4

Schedule of taxable profits

		Circle plc	District Ltd	Jubilee Ltd	Oveg Ltd
		£	£	£	£
Trading profit	Note 1		1,178,000	2,160,000	0
Chargeable gain	Note 2	72,828			
Allowable loss b/f		(25,000)			
		47,828			
Non-trade credit		200,000			
Non-trade debit		(54,000)			
Non-trade loan relationship deficit b/f		(50,000)			
Subtotal		143,828			
Property income loss	Note 3	(143,828)			
Group relief – Circle plc	Note 3		(1,168,000)	(1,374,952)	
Consortium relief – Oveg Ltd	Note 3			(434,756)	
Less qualifying charitable donation			(10,000)		
Taxable profits		0	0	350,292	0

Note 1: Adjustment to profit workings

		Circle plc	District Ltd	Jubilee Ltd	Oveg Ltd
		£	£	£	£
Profit/(loss) before tax		(2,674,000)	1,168,000	2,142,000	(621,080)
Add:					
Interest payable		54,000			
Depreciation		517,500			
Fees re planning permission	Note 4	6,000			
Donation to charity	Note 5		10,000		
Entertainment costs	Note 6			18,000	
Deduct:					
Interest receivable		(200,000)			
Profit on disposal		(135,000)			
Capital allowances	Note 7	(305,280)			
Trading profit/(loss)			1,178,000	2,160,000	(621,080)
Property income loss		(2,736,780)			

Note 2: Assignment of lease

Gain on sale of lease

	£	£
Sale proceeds		300,000
Cost of lease	200,000	
Restriction for wasting asset (see note)	(10,847)	
	189,153	
Indexation allowance ((267.5-222.8)/222.8) =0.201(3.d.p.) x £189,153	38,019	
		(227,172)
Chargeable gain		72,828

Restriction for wasting asset:
The lease has less than fifty years to run at the time of disposal, and therefore a wasting asset with a part disposal calculation required to calculate the allowable cost. The allowable cost is restricted for capital gains purposes using the Lease Percentage Table.

[(Percentage for 40 years – percentage for 33 years)/percentage for 40 years] x original cost = Disallowed cost

[(95.457-90.280)/95.457] x 200,000 = £10,847

Calculation of sale proceeds:

	£	£
Sale proceeds (balancing figure)		300,000
Cost of leasehold	200,000	
Accumulated depreciation	(35,000)	
		(165,000)
Profit on disposal		135,000

Note 3: Loss analysis

		Circle plc	Circle plc	Circle plc	Oveg Ltd
		Capital loss	LR debit	Property income loss	Trade loss
		£	£	£	£
Balance b/f at 1 October 2016		25,000	50,000	0	0
Current year property income/ trading loss				2,736,780	621,080
Offset against chargeable gain in year		(25,000)			
Offset against LR credit in year			(50,000)		
Surrendered against other taxable income				(143,828)	
Group relief surrender to District Ltd	Note 8			(1,168,000)	
Group relief surrender to Jubilee Ltd	Note 8			(1,374,952)	
Consortium relief	Note 9				(434,756)
Losses c/f at 30 September 2017		0	0	50,000	186,324

Note 4: Fees

The professional fees concerning planning permission are disallowed since they relate to capital expenditure, being the proposed extension to a building.

Note 5: Donation

The donation to charity is disallowable in relation to trading profits but deductible from total taxable profits as a qualifying charitable donation. As group relief is set against total profits after the deduction of any qualifying charitable donations, in order to benefit from a deduction for the charitable donation, it will be necessary to restrict the claim for group relief in District Ltd to leave £10,000 of profits within the charge to Corporation Tax.

Note 6: Entertainment

The cost of the meal for the sales staff is deductible as staff entertaining. The pens are gifts costing more than £50 each and are therefore not deductible. The remaining entertaining costs are disallowable.

Note 7: Circle plc - capital allowance working

	Special rate pool	Main pool	Capital allowances claimed
	£	£	£
Brought forward at 1 October 2016	220,000	350,000	
Plant additions during the year	270,000	106,000	
Annual Investment Allowance	(200,000)		200,000
Subtotal	290,000	456,000	
WDA @ 8%/18%	(23,200)	(82,080)	105,280
Carried forward at 30 September 2017	266,800	373,920	
Total allowances claimed			305,280

Note 8: Group relief
Where a company owns at least 75% of the ordinary share capital of another company, they form a group for group relief purposes so here, Circle plc may surrender its property income loss to Jubilee Ltd and District plc.

The property income loss is surrenderable to the extent that it exceeds Circle plc's profit related threshold. The profit related threshold is the taxable profits for the year ignoring any losses of the current period or any other period. In this case, it is the taxable profit excluding the non-trade loan relationship deficit brought forward (£50,000) so £193,828 (£143,828 + £50,000).

Capital losses brought forward are not added back in calculating the profit related threshold. (*Taylor v MEPC Holdings Ltd 2004 1 All ER 536*)

Note 9: Consortium relief
Oveg Ltd is a consortium company on the basis that:

- It is a trading company
- It is owned by two companies who jointly own at least 75% of the ordinary share capital AND
- It is not a 75% subsidiary of any company.

Oveg Ltd may surrender its losses to the consortium members; that is Circle plc and the other 30% shareholder company. The consortium members may claim losses in proportion to their percentage shareholding in the consortium company, so 70% in this case.

Where a consortium member is a member of a group for group relief purposes (Circle plc), then another member of the group (Jubilee Ltd) may claim the consortium relief that could be claimed by the consortium member.

The maximum surrenderable amount is the lower of:

70% of Oveg Ltd's trading losses = 621,080 x 70% = **£434,756**

70% of Jubilee Ltd's taxable profits = 2,160,000 x 70% = £1,512,000

MARKING GUIDE

TOPIC	MARKS
Calculate sale proceeds on assignment of lease	1
Calculate gain on assignment of lease, part disposal, indexation	3
Add back depreciation	0.5
Fees re planning permission are disallowable, explain why	1
Entertaining is not deductible except staff entertaining. Cost of pens is not deductible. Explain why.	1.5
Calculate capital allowances due for Circle plc plant additions AIA WDAs	 1 1
Calculate property income and trading income of each company correctly (0.5 mark each company)	2
Offset correctly brought forward losses in Circle plc against current year profits (1 mark for capital gains and one for non-trade loan relationship brought forward)	2
State that Circle plc, District Ltd and Jubilee Ltd form a group relief group for tax purposes and explain why	1
Calculate surrenderable property losses correctly	2
Explain that Oveg Ltd qualifies as a consortium company for consortium relief purposes	1
Explain that where a consortium member is a member of a group for group relief purposes then another member of the group may claim the consortium relief that could be claimed by the consortium member.	1
Calculate consortium relief surrender correctly	2
TOTAL	**20**

ANSWER 5

Memorandum

To	Bob Bassett
From	Terry Jones
Subject	Bigstone group
Date	X November 2017

I refer to your email dated 30 October.

Disclosure of Tax Avoidance Schemes (DOTAS)

Notifiable arrangements

Certain tax avoidance schemes are deemed to be "notifiable arrangements" and are required to be disclosed to HM Revenue & Customs by their promoter.

Notifiable arrangements are arrangements which:

a) Fall within any description prescribed by Treasury Regulations ('TEST 1') AND
b) Enable or might be expected to enable any person to obtain an advantage in relation to any tax (which includes Corporation Tax) ('TEST 2') AND
c) Are such that the main benefit or one of the main benefits that might be expected to arise from the arrangements is the obtaining of that advantage ('TEST 3').

TEST 1

The arrangements (also called "hallmarks") that are likely to be the most applicable are the financial products arrangements. These arrangements have the following conditions:

1) Condition 1 - the arrangements include at least one specified financial product, AND
2) Condition 2 – the main benefit or one of the main benefits of including a specified financial product in the arrangements is to give rise to a tax advantage, AND
3) Condition 3 – the specified financial product contains at least one term which is unlikely to have been entered into by the persons concerned were it not for the tax advantage, OR
4) Condition 4 – the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.

According to SI2006/1543 loans are a specified financial product. So Condition 1 is met.

The main benefit which arises from the scheme is a deduction for Catte Ltd against its taxable profits with no corresponding receipt for Bigstone plc, so Condition 2 is met.

The scheme contains terms whose purpose is to give a tax advantage and which would not appear in a normal loan agreement. Therefore, Condition 3 is met.

Although Condition 4 appears also to have been met, since Condition 3 has been met, it does not need to be considered further.

Therefore TEST 1 is met.

TEST 2

"Advantage" in relation to any tax is defined at s.318 FA 2004. The definition includes:

> "Relief or increased relief from or repayment of that tax or the avoidance or reduction of that charge to tax…."

Since Catte Ltd is obtaining a deduction against its taxable profits with no corresponding receipt for Bigstone plc, this test would be met.

TEST 3

A main benefit of entering into the scheme is to obtain the tax advantage. Therefore TEST 3 is met.

Conclusion

The scheme meets the conditions for being a notifiable arrangement for the purpose of DOTAS.

Failure to notify chargeability

Crankton Ltd should have given notice of its chargeability to Corporation Tax by 30 September 2016. That deadline is missed and the company is liable to a penalty under Schedule 41 FA 2008 unless it can show a reasonable excuse.

Reliance on the previous accountant is not a reasonable excuse unless the taxpayer can show it took reasonable care to avoid the failure.

Penalties are charged based on a percentage of potential lost revenue where the failure to notify was:

- Deliberate and concealed - if the failure was deliberate and concealed, 100% penalty applies.
- Deliberate but not concealed – if no steps were taken to conceal, 70% penalty applies.
- Careless – if the taxpayer has not taken reasonable care, 30% penalty applies.

The potential lost revenue is equal to the amount of tax payable for the accounting period that remains unpaid twelve months after the end of the accounting period.

In this case, the 30% penalty is likely to be the most appropriate.

Mitigation

A 30% penalty may be reduced to nil where the taxpayer makes an unprompted disclosure, unless HM Revenue & Customs does not become aware of the failure until twelve months after tax first becomes unpaid, in which case the penalty may not be reduced below 10%.

A disclosure is unprompted where the person making it has no reason to believe that HM Revenue & Customs has discovered or are about to discover the inaccuracy in the tax return.

Where a disclosure is prompted the maximum penalty reduction is from 30% to 10%.

In this case the disclosure will be unprompted. Tax first became unpaid nine months and two days after the accounting period end – so on 2 July 2017. If the disclosure is made within twelve months from this date the maximum penalty reduction will be to nil.

MARKING GUIDE

TOPIC	**MARKS**
Requirement to disclose certain notifiable arrangements to HMRC	0.5
Describe TEST 1, TEST 2 and TEST 3	1
TEST 1: Describe Condition 1 and explain if the avoidance scheme is caught	1
TEST 1: Describe Condition 2 and explain if the avoidance scheme is caught	1
TEST 1:Describe Condition 3 and explain if the avoidance scheme is caught	1.5
TEST 1: Describe Condition 4	0.5
Explain if the proposed avoidance scheme is caught by TEST 2	1
Explain if the proposed avoidance scheme is caught by TEST 3	1
Conclude on whether the scheme is notifiable	1
Explain deadline for notifying HMRC that Crankton Ltd had commenced to trade and explain that deadline has been missed	1
Explain reasonable excuse and whether it applies here	1
Explain penalties that can be charged and conclude which level of penalty (30%) is most likely	2
Define potential lost revenue	0.5
Explain consequences of making prompted or unprompted disclosure to HM Revenue & Customs	2
TOTAL	**15**

ANSWER 6

Joel Peters
Finance Director
Duckford Engineering Ltd
[Address]

A Tax Adviser
Trustbuild LLP
[Address]

X November 2017

Dear Joel

I set out below the Corporation Tax implications of the information you provided to me.

Schedule of works for the extension

Concrete ceiling, floors, walls and windows: Expenditure on the provision of a building is excluded from qualifying for plant and machinery allowances. “Building” includes ceilings, floors, walls and windows. The construction of these items will not, therefore, qualify for plant and machinery allowances.

Electrical systems, fixed ceiling and wall lighting and built in heat and air conditioning: These items fall within the definition of integral features and will therefore be restricted to 8% writing down allowances.

Tables and chairs, loose rugs and moveable desk lamps: These items have a functional use in the trade and will qualify for plant and machinery allowances at 18%.

Partitions: These are moveable and intended to be moved. As such they have a functional use and should qualify for plant and machinery allowances at 18%.

Amendment to Company Tax return

The deadline for making a claim for capital allowances for the year to 30 September 2015 is 30 September 2017. That deadline has been missed.

HM Revenue & Customs has the power to admit claims outside of the normal time limits but only tend to exercise that power if the claim could not have been made within the statutory time limits for reasons beyond the company’s control. A late claim is not admitted where it results from an oversight or negligence of the claimant company (see Statement of Practice 5/01). Here the company appears to have forgotten to make a claim, so it is unlikely that a late claim will be admitted.

A claim may be made for the year to 30 September 2016 and subsequent years, but a claim for Annual Investment Allowance will not be possible since it is only available for the year in which the expenditure is incurred (which was the year ended 30 September 2015).

The warehouse

Fixtures

Duckford Engineering Ltd is likely to be buying certain assets qualifying for capital allowances including fixtures as part of a wider agreement. In order for the company to claim capital allowances on the fixtures, two requirements need to be met.

1) **The pooling requirement**: Expenditure on the fixtures needs to have been added to a capital allowance pool in a chargeable period beginning on or before the day on which the past owner ceases to be treated as the owner of the fixtures, AND

2) **The fixed value requirement:** A relevant apportionment of the sale price to the fixtures has been made. This means either an election in respect of the sale price is made under s.198 CAA2001 or The Appeal Tribunal determines the part of the sale price of the building that constitutes the disposal value. The former is more straightforward and always recommended as part of a sale and purchase agreement.

Point 2 requires an election to be made jointly between the seller and buyer. The effect of the election is to make the disposal value of the fixtures for the seller and the acquisition cost for the buyer the same amount. The election fixes that amount at a figure not exceeding either the capital expenditure treated as incurred by the seller or the actual sale price. The amount should be agreed as part of the negotiation over the acquisition of the building.

The election must be made within two years from the date of purchase of the building, accompanying the tax returns of both the seller and the buyer. The election once made is irrevocable.

The election must contain certain prescribed information including:

a) The amount fixed by the election;
b) The name of each person making the election;
c) The tax district of each person making the election;
d) Particulars sufficient to identify the fixtures being acquired; and
e) The nature of the land interest being acquired.

I therefore recommend that Duckford Engineering Ltd enter into the election with the seller of the building.

Moveable plant

If a single price has been agreed for the building, the fixtures and the moveable plant then the acquisition cost of the moveable plant will be determined using a just and reasonable apportionment of the consideration paid.

Duckford Engineering Ltd should, therefore, agree a price for the building that includes an appropriate element for any moveable plant that it wishes to buy.

Yours sincerely

A Tax Adviser

MARKING GUIDE

TOPIC	MARKS
Ceilings, floors, walls and windows do not qualify for plant and machinery allowances. s.21 CAA 2001 refers.	1
Heating systems, hot and cold water systems and electric lighting are integral features and qualify for special rate plant and machinery allowances at 8% per annum	1
Tables and chairs loose rugs and moveable desk lamps qualify for plant and machinery allowances main pool.	1
Moveable partitions qualify for plant and machinery allowances (main pool).	1
Claim for capital allowances:	
Explain time limits for making claims, missed claim	1
Circumstances in which HM accept late claims	1
A claim for plant and machinery allowances may be made in a subsequent year but not for Annual Investment Allowance	1
Fixtures:	
Explain pooling requirement and fixed value requirement.	2
For s.198 CAA2001 election explain disposal value that seller and purchaser can agree.	1
Election must be made jointly.	0.5
Election must contain specified information. List that information.	2
Time limit for making that election.	0.5
Describe how qualifying expenditure for moveable plant is determined.	1
Presentation mark	1
TOTAL	**15**