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Instructions

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	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 trustees

from - A Advisor

Date - 8 november 2017

Subject - Draft report covering issues
raised in letter 1 november 2017

This report is for the trustees of the following trusts:

Daniel James 2001 trust '2001 trust'

The Bnair 2008 Discretionary Trust '~~BNair~~^{Bnair} Trust'

Daniel James 2012 Discretionary Trust 'no 1 trust'

Daniel James 2012 Discretionary Trust 'no 2 trust'

The report relies on information contained in the firm's permanent files and on additional information contained in the letter dated 1 november 2017.

The report is intended for the trustees of the above trusts only and should not be relied upon by third parties.

The trustees should note that the report is based on tax law and rates applicable at the time of writing and as these can change trustees should not contact this firm before taking any future action to ensure no changes have occurred.

Contents

1. Executive Summary
2. Bolt UK Ltd Shares
3. Boundary Dispute Costs
4. Stamp Duty Land tax
5. Distribution of income
6. Briar trust - reducing the liability
7. No. 1 + No. 2 trusts - anniversary charge

Executive Summary

1. 2001 trust total CGT on transfer of Shares if no Gift Relief claim £351,675
2. Joint election should be made by Charlotte and trustees for entrepreneur's relief.
3. no gift relief is available on transfer to Evie as Evie is currently non-resident.
4. Distribution from Bncor trust would lead to a capital gain of £494,900.
5. A gift relief claim would reduce this liability to £247,450
6. Distribute Shares from Bncor trust and make a Gift relief claim on disposal to Charlotte. This means trustees can continue to follow Daniel's wishes and minimise their CGT.
7. Trustees should pay the legal fees ~~to~~ relating to the boundary dispute.

8 Executive Summary Continued

8 Stamp Duty Land Tax of £5,750 would be payable on the proposed property purchase.

9. Distribute income from the Bnor trust to reduce the value prior to the anniversary charge. Once the Bnor trust tax pool has been used the no₁ trust should be used for distributions.

10 RISS must be completed to report the distributions

11 Refunds of the tax credits attaching to the trust income will be available to grandchildren and potentially Evie and Charlotte depending on other income.

12 Effective rate for anniversary charge on no₁ + no₂ trusts will be 6% as no nil rate band is available.

2 Bolt UK Ltd Shares (The Shares)

The trustees would like to transfer 20 shares to Charlotte and Eric (10 shares each) from either 'the 2001 trust' or 'the Bnar trust'.

Review of the terms of the 2001 trust taken by this firm in 2004 (September) showed that it did not contain any powers of advancement or any clauses that allow the trustees to vary the terms of the settlement.

At that time the trustees agreed that they would do nothing to vary the trust.

Prima facie this suggests that the trustees are unable to distribute the shares from the 2001 trust. However it should be noted that trustees if they are in agreement can vary the terms of a trust if this is in the best interests of the beneficiary.

Such action should be undertaken by a legal professional.

In addition when Daniel created the Bnar trust in 2008 he expressed a wish that the rental property be held for future grandchildren and that the shares be held equally. I have assumed that this means that Daniel would not wish for some of the shares to be distributed from Bnar ~~with~~ to one daughter while the trust retained the shares for the other daughter.

Appendices 1, 2 and 3 show the capital gains charges and IHT charges on the proposed distribution from the trust.

2001 trust

This is a interest in possession trust and therefore the trusts could qualify for entrepreneurs relief on the disposal of the shares.

This is because Charlotte has an interest in possession and qualifies for entrepreneurs' relief. Charlotte has 5% of the shares personally, has had them for more than twelve months, is an officer of the company and the company is a trading company.

The election for entrepreneurs relief to apply on the gain would need to be made by the trustees and Charlotte jointly as it was up part of Charlotte's lifetime allowance. Assuming that Charlotte agrees to the claim then this gives the trustees a 10% tax rate on Charlotte's half of the gain. Meaning there is tax to pay of £117,225.

Ernie's shares will not qualify for entrepreneurs' relief because she is not an officer of the company and she does not hold any shares personally. Tax on Ernie's share would be £234,450.

Alternatively, the trustees could make a gift relief claim. This is available because the shares are unquoted shares in a trading company.

Gift relief ~~however~~ holds over the gain into the base cost of the shares meaning that Charlotte and Evie inherit the trustees base cost.

This would mean a higher capital gains charge would be ~~paid~~ ^{payable} by Charlotte in the future.

A gift relief claim will not be possible on a transfer to Evie as she is currently non-resident. If the trustees wished to make a gift relief claim then this would need to wait until after March 2019 once Evie is resident in the UK again.

The CGT liability with a gift relief claim would be reduced to £235,450.

Charlotte's base cost would be £75,000 on a future disposal of the shares.

~~Bncr Trust~~ AS the trust ~~is~~ is a qualifying interest in possession there would be no charge to IHT when the trust ceased as the trust assets are already deemed to be in Charlotte and Eric's estate.

Bncr Trust

Appendix 2 shows the capital gains tax due on a disposal from the Bncr Trust.

A disposal from the Bncr trust would be possible if the trustees decide that they do not wish to close the 2001 trust.

CGT payable would be £494,900.

However a gift relief claim would be possible on the shares that were distributed to Charlotte. This would mean Charlotte's base cost now £10,000 going forward.

A gift relief claim would not be possible for Eric as she is currently non-resident.

A gift relief claim would reduce the tax payable to £247,450.

The trustees would not be eligible for entrepreneurs' relief as this is a discretionary trust with no interest in possession. However assuming that the conditions for entrepreneurs' relief continue to apply in respect to Charlotte she would qualify for the 10% rate on a future disposal of the shares.

I would recommend that the shares are

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distributed from the Bnar trust and a gift relief claim is made in respect of the distribution to Charlotte.

The distribution will also lead to an exit charge for IHT purposes. However because the shares qualify for business property relief (BPR)-because they are shares in an unquoted trading company which have been held for more than two years - the exit charge is nil. Therefore there will be no inheritance tax to pay when the distribution is made.

Although no inheritance tax has been paid a gift relief claim is still possible because it is chargeable to IHT. Appendix three shows this.

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3. Boundary Dispute Costs

In the normal course of expenses revenue expenses are deducted from rental income and capital expenses are deducted from the proceeds when a property is sold.

for ~~costs~~ expenses to be deducted they must be wholly and exclusively incurred in the course of the property business.

Legal fees are considered to be a capital expense and would therefore be deducted as a cost when the property is sold. However to be deductible the fees must have been incurred or reimbursed by the owners of the property or the trustees.

If Charlotte were to ~~reimburse~~ pay the expenses then they would not be allowable as an expense when the property was sold therefore

Would recommend that these costs are paid by the trustees. The current value of the trust shows that there is £21,500 in the bank account some of which could be used to pay these expenses.

4. Stamp Duty Land Tax (SDLT)

You are correct in thinking that Stamp Duty Land tax will be due on the purchase of the property by the trust.

This is calculated in bands with the amount up to £125,000 chargeable at 0%, the ~~amount~~^{price} £125,000 chargeable at 2% and the difference between £315,000 and £250,000 (£65,000) chargeable at 5%.

Total ~~and~~ SDLT payable on the proposed transaction will be £3,750.

5. Payment of Income

When a trust distributes income the way that income is treated depends on the type of trust. An interest in possession trust's (the 2001 trust) income retains its nature in the hands of the beneficiary and is taxed accordingly with a tax credit of either 7.5% (dividends) or 20% (other income).

Income from a discretionary trust does not retain its nature and always carries a 45% tax credit when it is received by the beneficiary.

A discretionary trust pays tax at 45% on income from savings and non-savings and 38.1% on dividends. Tax paid by the trust is paid into a tax pool. The tax pool is used to 'pay' the credits that are attached to the income which is distributed to beneficiaries.

If the tax credits on distributed income exceed the tax paid by the trustees plus any pool amount carried forward this leads to an additional tax charge at the end of the tax year.

This often arises if the trust receives a lot of dividend income which is taxed at 38.1% and distributions are made with a 45% tax credit.

you have mentioned that you wish to make a distribution of £10,000 annually ^{to the} This would carry a tax credit of £8,181 leading to a gross distribution of £18,181.

This should be reported on a form R85 which is completed at the end of the tax year and given to the beneficiary. The income is then included on the beneficiary's tax return

as non-savings income. On the assumption that Ellie, who is only just starting nursery, has no other income this will mean that Ellie receives a tax refund of 25% (45-20) of the tax withheld.

It would be possible to calculate an amount that should be paid to Ellie so that the gross distribution and tax refund is equal to the £10,000 meaning that the trust does not have to distribute £10,000 each year. Please do not hesitate to contact me if you would like this calculation performing.

Currently the Bnar trust has a tax pool of £28,375 bought forward. Based on a distribution of £10,000 and a corresponding tax credit of £8,181 then the trust could distribute £10,000 for the next three years without fully utilising the tax pool. However, the advice in my next section will discuss this

further ~~cost~~ in connection to reducing the Briar trust anniversary charge.

once the tax pool of the Briar trust has been fully utilised then the nos trust should be used.

The pool should be checked each year and payments made to match the pool balance to ensure no additional tax charge.

Distributions of ~~the~~ cash will have no CGT implications.

There will be no exit charge if distribution of income and not capital.

Briar Trust - reducing the tax liability

The Briar trust has an anniversary charge becoming due in March 2018.

Currently the trust has £60,000 of undistributed income of this £32,000 which will become capital on the date of the anniversary charge as it is more than five years old. This will increase the value of the trust for the anniversary charge and increase the percentage used to apply to any exit charge in the ten years following that date.

The undistributed income and in particular the £32,000 should be distributed before March 2018. £10,000 could go to Ellie as outlined in my previous section with the additional £20,000 going to either Charlotte and Evie or other grandchildren.

There is a sufficient pool brought forward to cover these distributions.

Evie and grandchildren would be entitled

to refunder on the assumption they have very little other income in the UK.

Distributing the shares prior to the anniversary charge would also reduce the value of the trust. However as the shares currently qualify for BPR it would not impact on the amount of the charge. It would mean that there were no dividends thus the income would be taxed at 45% improving the pool position.

Paying the legal fees discussed previously would reduce the bank account balance.

The BPR position of the shares should be considered and reviewed regularly but currently it is assumed that Bolt UK Ltd will continue as a trading company.

~~Net + No 2 trusts Anniversary~~
~~Charge~~

NO₁ + NO₂ TRUSTS

Anniversary charges

An anniversary charge is calculated on the current value of the trust at the date of the charge.

Therefore if the trusts were to maintain the same value the NO₂ trust would have a value of £331,500 and NO₁ trust £400,620.

The AIM shares held in the NO₁ trust would qualify for BPR if they have been held for more than two years which would reduce the value of that trust to £199,300.

In addition to this because Daniel has made additions to both trusts on the same day the trusts become related trusts for IHT purposes.

This means that the initial value of each trust is taken into consideration when calculating the anniversary charge of the other trust.

Therefore you will have the current value of no. 1 trust plus the initial value of no. 2 trust ~~plus~~ and vice versa.

From this you will deduct the nil rate band which is applicable at the date of the anniversary charge. The nil rate band is reduced by gross chargeable lifetime transfers in the seven years prior to the creation of the trust.

The trusts were created in 2012 so we need to look for transfers made since 2005. The prior trust was created in 2008 and fully utilised the nil rate band. Therefore there

will be no nil rate band available to set against the value of the trust when calculating the effective rate of tax to be applied to the trust assets.

This means that the effective rate will be 6% of the value of the trust. This must be paid six months from the end of the month in which the charge arose.

The anniversary charge will occur in July 2022 and you may therefore wish to consider whether you invest in shares which qualify for BPR relief to reduce the charge.

AIM shares qualify for relief if held for max than two years. Some of the quoted shares could be sold (look at portfolio and sell those standing at a loss or use gain

below annual exemption) and the money used to purchase AIM Shares.

Note annual exemption will be reduced as there are max than one trust with the same settlor
 $5,500/4 = £1,375.$

The no2 trust could use some of its cash funds to purchase AIM Shares.

Please do not hesitate to contact me for further advice or clarification.

I will be happy to assist with further computations relating to tax pools and distribution of income and the completion of R183 forms or self assessment tax returns for the grandchildren.

Notes for meeting with trustees
for Poppy to become a trustee.

It is allowable for a trustee to choose their own replacement. Therefore Herbert may choose Poppy to replace him.

Need to ensure that there are no reasons that Poppy cannot be a trustee - not a murderer, criminal convictions.

Need to notify that trustee has retired and that new trustee has been appointed.

Run through with Poppy the duties of a trustee. To act in the best interest of the beneficiaries in so far as a normal, prudent person would. Make investments and decisions with care.

Do not have to follow the interests, instructions of the settlor if trustees believe beneficiaries interests would be best served by a

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different course of action.

Advise Poppy that the firm will need to carry out money laundering checks and inform the trustees that a new letter of engagement will be issued to cover Poppy as well as the other trustees.

Notify Poppy that she is responsible along with the trustees for filing the trust's annual returns and ensuring reporting requirements are met.

Appointment of Poppy will not affect the residence status of the trust. It will remain UK resident.

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Appendix 1

Capital Gains Charge on
Disposal from 2001 Trust

Proceeds 2,500,000

less

Cost (150,000)

2,350,000

less Annual

exemption (5,500)

2,344,500

will be reduced
to as much
than one trust.

Charlotte's share

1,172,250

@ 10% = 117,225

Ernie's share

1,172,250

@ 20% = 234,450

Total tax = £351,675

Appendix 2Capital Gains on disposal of
Shares from Briar Trust

Proceeds 2,500,000

less Base cost (20,000)

2,480,000

less Annual exemption (5,500)

2,474,500

will be reduced as
more than
one trust.Tax @ 20% = £494,900

Appendix 3

Exit charge on disposal
from Briar Trust

Initial value of trust

Cash 475,000

Shares 450,000

925,000

less nil rate band 325,000

less GILT in prev 7yrs (0) (325,000)

600,000

Tax @ 20%

120,000

Effective rate

12.973

If Shares then covered by BPR so value of distribution will be reduced to nil by BPR relief therefore no exit charge.

Planning

Procedure for Poppy's appt.

notify of retirement of Herbert. OK for him to choose his own replacement.

notify that new trustee has been appt'd - ensure Poppy knows her duties as a trustee

Act in best manner

best overall outcome for beneficiaries

Firm will need to do ML + we will need to add her to the engagement letter.

Planning

What do the trustees want to know?

Bolt UK Ltd Shares

17/8
4 trusts

Transfer 20 to Charlotte + Evie

2001 Trust

QIIP

Charlotte

trust cld get ents

✓ relief for C

but not Evie

base cost 150,000



CGT 351,675

Exit charge ^{HT} 0

PGT

Bnair Trust

Exit charge

BPR available

after to 10yr

✓ charge

based on IV

925,000

Base cost shares

✓ £20,000

✓ £494,900

CIFT relief - joint claim

✓ GHT

nil

✓ BPR

Planning

Bolt Shares

Trustees do not have to follow the wishes
of the settlor - clearly can if they
wish. - all trustees must agree

Close 2001 trust down - distribute shares
351,675

C + E higher base cost for shares

C does ent's claim - joint uses up
some of her allowance

If not

higher CGT - £143,225

but gift rules claim
E's not

lower base cost 20,000

for C + E going forward but
new tax to pay now.

What
money do
trustees have
to pay
the tax?

Planning

Bolt UK

Bnarr non ^{no} cash -

2001 trust doesn't. - no gift relief
claim available.

no gift relief for Evie as non-resident.

Planning

Boundary dispute

Lawyer's fees £10,500

Charlotte - Ben's wishes to pay this
as she raised the issue

Costs to be deductible

- Wholly/exclusively - K - deducted
as cost when selling the
property

If Charlotte pays then this is not an
expense of the trust + would not
be deductible

'unless re-imbursed to Charlotte
~~via the trust~~ from the trust

'doing this would incur tax on
Charlotte - far better for the trust
to pay the money themselves.

Stamp Duty Land Tax

NO 2 TRUST - PROPERTY 315,000

0 - 125,000 @ 0% = 0

125,000 - 250,000 @ 2% 2,500

315,000 - 250,000 @ 5% 3,250

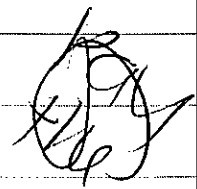
5,750.

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Planning

Payment of y.

no income from disc'y trust



£112 10,000 per yr

R185. - carries 45% tax credit

- re fund as grandchildren will not be 45% taxpayers but

Barr Trust

NO 1

NO 2

tax pool

use this

28,375

next.

18,181

tax 8,181

3yrs to use up pool.

advance for future

check pool each yr

credits in pool need to match credits pd out

additional tax charge

dis'n of cash no CGT.

exit charge - no exit charge if dis'n of y not capital

Appendix Plannings

Briar Trust

Reducing the liability

|

60,000 undis'd y - pay this out
to ↓ the value of
the trust 32,000 will become k
on next ten yr charge.

10,000 to Ellie or alternatively

- give her £20,000 for this yr
+ next.

or 10,000 to each of Ellie, Charlotte

| + Evie

have the credits in the pool

So will not lead to additional
liability

, but priority for BPR

distribute shares prior to 10yr charge

- ↓ value of trust for principal
charge + exit charges going
forward.

Pay the
legal fees

consider
if
nature
of
business
changes

NO + NO₂ trusts

Anniversary charges.

IV + additions

all ~~behave~~ have paid amounts into trusts by same settler on same days (eventhough not created on the same day)

Therefore the two trusts become related property.

This means that the IV of each trust is taken into account when calc'g the 10 yr charge

IV trust

Additions

IV related trust

NO NRB
 rate — available
 6% — as used by
 BNR trust

Will increase the amount charged to tax.

BPR AIM shares - consider selling quoted shares placing in AIM shares.

Plan of answer

Intro

~~Exec~~ Summary

~~Both~~ UK Shares

Boundary Dispute costs

~~Stamp~~ Duty

Payment of y.

&

Brar Trust - ~~&~~ ↓ liability - make payments.

R

N₁ + N₂ trusts.

Other matters.

Appendix.

Planning

2008 trust - created 30/3/08

10 yr charge March 2018

Disc'y

Owns a rental property
cost £450,000

+ 20 Shares Bolt UK Ltd

1

Base cost 20,000 due to holdover
relief claim

Daniel pd IHT 42,250

IV of trust	475,000	Cash
	450,000	Shares
	<u>925,000</u>	

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Planning

2001 trust

Created 31/12/2001

QIIP - entitled to y @ntu 50 - then k
absolutely.

Base cost shares £150,000

Trustees would be eligible for ERIs relief
because of Charlotte - joint
application
↑
Was some of Charlotte's lifetime
allowance.

Planning
Charlotte

31/3/08 - Charlotte - PGT
- value????

Order of gifts

31/12/01 - 20 Shares in BOH.

30/3/08 - 475,000 cash - 2008
450,000 Shares Bnar trust

31/3/08 - 5% shares to Charlotte - PGT.

1/7/12 - no 1 trust

2/7/12 - no 2 trust

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<u>Planning</u>		
2012 trust 1 - created 1/7/12 ten yr charge July 22.		
IV trust	81,250	
additions	81,250	10/12/13
	81,250	11/12/14
	81,250	28/12/15
completely disc'y		Related as transfers made into them
<u>no 2 trust</u> - created 2/7/12		on same day by same settlor.
IV	81,250	
additions	81,250	10/12/13
	81,250	11/12/14
	81,250	28/12/15

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