

X00 - Topic – Nit’s APS OMB Checklist FA21

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0. Student Feedback – You Must Read This 😊

OMB APS Student Feedback – Passed Nov 2021 Exam

Student 1

Hi Nit,

Here goes:

1. I attended all the taught and revision classes, making sure I **did a report a week** to submit to our tutor. By submitting the report I was able to build on the feedback my tutor gave & really learn to improve on getting to the point. For those of us who don't write reports in our day to day job this was a **massive help**. In attending these classes I actually built up a **network of other students**. We were all going through this together. I am lucky enough to have a great support system at home, Whilst this is great, it's also **good to have others to talk to** who are going through these exams and who understand just how testing they are.
2. Sounds simple, but **making sure your knowledge is there**. This is key to being able to **identify what areas** you could be asked to give advice on. My knowledge was weak when it came to VAT & IHT, so I made time to brush up on these by looking at the memory joggers and **making sure I could do the basic calculations** required for the paper.
3. The only revision **can't be just looking at past papers**, but I went through all the past papers available to me and tried to put together bullet points on what I could pick out from the question and then **tied this back to the model answer**. This was great in identifying where I was and wasn't picking up marks, even easy marks.
4. For the large topics **I put together model answers/notes** of things to make sure I included (providing they were relevant to the question, you are marked down for knowledge dumping). And made proformas for calculations. The pre-seen helped a lot with this as the background info helped me to mock up these proformas so they could be applied & I didn't waste time looking through notes to make sure I had the right format.
5. I stopped looking at all notes/past papers a few days before the exam. To let my brain rest. I usually get really anxious with the exams so I used these days to unwind & prepare myself for the war that is a CTA exam!
6. **On the day I stuck to the plan**. I made sure I read the question thoroughly making notes as I went along. Our class put together these grids that were really handy in categorising the info well. **I did my calculations first**. Then put together my executive summary based on these calculations, then got on with the main body of the letter/report. The exam is very time constrained so it was key I stuck to the plan in order to finish on time.

Student 2

Hi Nit,

The things I did to prepare are:-

1. Reviewed **all past papers** you provided - read, annotate, plan and create an exec summary.
2. Created **watch-out lists** from areas I had missed from the RAP stage of the above and **used your cheat sheets** as revision material on areas from my watchout list to drill it into my head.
3. **Do all the extra reports on offer** from yourself (outside of the required mocks). These were invaluable to me and provided me with much more direction and feedback in comparison to the mocks.

By the end of this stage, **I was comfortable planning** an answer and missed very few points during my planning stage. My exec summary was poor at the beginning, but after direction from yourself I felt that I nailed the exec summary by the end of the course.

Then, leading up to the exam, I :-

4. **Created various model answers** and then added applied model answers based on the pre-seen information.
5. Created various calculators on excel for all possible scenarios based on the pre-seen information. This won't always apply but this **helped me MASSIVELY for the exam** as I was able to punch in values/costs/proceeds etc and my calculator did the rest. It then allowed me to basically copy and paste the figures into my exam without having to sit there and do all of my calculations during the exam time. This saved me so much time and gave me the confidence that I was able to get a full and rounded answer down in the time we had.

My biggest advice to anyone retaking or first timers is to follow your guidance. All of the above is everything that you had told us to do. The first time I sat the OMB APS paper I was a bit relaxed about it. I thought "ahh, it's less technical in comparison to the AT papers, I'll be fine", but **APS is a different beast** and needs a different approach, and **if they buy into 'Nit's method'**, they WILL pass, just like me and many others have managed to.

I hope that's useful and helps others pass.

Thanks again Nit,

Student 3

- 1) **LISTEN TO NIT** - not gonna lie to you I didnt quite understand how your way was going to help me pass at the beginning, it was difficult to change that thinking as we all used to with the AT papers
- 2) **model answers**
- 3) **read line by line** - EVEN the requirement on the first page re letter or report format
- 4) be patient and practice annotation - "what does this mean for tax?"
- 5) **trust the process!!** - so important

STILL SO GRATEFUL to have had you as a tutor in my life!!

Student 4

Hi Nit,

My 5 things below:

1. **listen to the way that Nit explains** how to read and break down the question line by line
2. **take the time to plan every question** that you attempt - do not rush the planning stage
3. **do not spend too much time revising** your technical knowledge - it just seems to come with practice questions
4. **complete every question that Nit sets** and marks as the feedback is so valuable
5. **write as many model answers as you can** - I used them a ridiculous amount in the exam

Student 5

Hi Nit

Please see my tips for passing the CTA case study:

1. **Believe in yourself and stay positive.** If you don't, you've lost before you've even started. For example, manifest every day and tell yourself, with conviction, "I will pass the CTA".
2. **Do whatever Nit says!** To put it bluntly, **buy in to Nits method or fail.** If you do as Nit says, you will pass this exam.
3. **Prepare model answers for key scenarios.** This will undoubtedly save you so much time in the exam and give you confidence that your answer is a good standard.
4. **Get organised.** The volume of information / materials can be overwhelming so it's crucial you get organised and find something that works for you.
5. For me personally, **I printed off all Nits revision summaries,** organised them into a folder and made hand written notes / highlighted key points.
6. **Do not get bogged down in the technical matters.** Your client will not understand or care. They want to know the **tax impact** (I.e how much tax will this save/cost them). Keep it high level with short punchy sentences.

1. Purchase of Own Shares – 60 Second Checklist

Key points

APS Exam Scenarios

- **How was the MV determined:** Has there been a **professional valuation**. If not, HMRC could **challenge** the value. We should recommend a professional valuation is sought
- **Why is the POOS taking place?** Check very carefully **why** the POOS is taking place. It must **benefit** the Co's trade
- **S/h disagreement:** The buy back is because the S/hs have **unreconcilable differences** regarding the strategic direction of the Co which is having an adverse impact on the trade
- **External S/h:** Wanting to **withdraw** his capital
- **Controlling S/h:** Who is **retiring** as a director + is making way for new management
- **Benefit the trade test will fail:** HMRC are also **unlikely to accept** that the trade benefit test is met where the seller **retains** a directorship or consultancy
- **Settling an IHT liability on death of a S/h:** Without a POOS, paying the IHT will cause financial hardship
- **S/h is repaid >MV for the shares:** The **excess** could either be taxed as a dividend **or** employment income
- **What is the plan for existing S/hs post POOS?** If the plan is to **scale down** activities, cease trading **or** disincorporate, then the benefit of trade test will **NOT** be met. The capital treatment will **NOT** apply
- **Co trading status for CGT BADR:** The Co's non-trading activities must be **>20%** of TAME for BADR to be denied
- **Co trading status for POOS:** The Co's non-trading activities must be **>50%** i.e. it must be wholly or mainly trading
- **Period of ownership between spouses/civil partners will only be aggregated:** Only if the spouse was **living** with the S/h when the shares were initially transferred + Also at the date of the POOS
- **Will other family members still own shares in the Co:** Check if the spouse/civil partner **or** children under 18 still own **>30%** post POOS. The capital distribution will **NOT** apply
- **How much % can the S/h retain post POOS:** For a retiring director- S/h this can be **up to 5%** for sentimental reasons.
- **Has the S/h or associates lent funds to the Co:** This will be taken into account when determining the **>30%** test the capital treatment will be denied
- **Loan capital problem:** Where the Co has nominal share capital, **small credit balance** on the loan account may mean that the S/h is still connected with the Co **even if** their spouse/civil partner is a loan creditor
- **Can the S/h's shares be purchased in stages:** This generally would **NOT** be recommended. Since on each POOS, we must ensure **both % tests** are met to ensure the capital conditions are met
- **Legal requirement:** It is important the Co **cancel**s the shares subject to the POOS
- **Key recommendation:** Seeks **HMRC clearance** before the transaction takes place that the **capital treatment** will definitely apply
- **Legal requirements:** Must be complied with otherwise the POOS will be invalid under Co law
- **What if the Co has insufficient distributable profits?** The balance can be paid from the **share premium account** provided the Co Articles permits + The S/hs pass a special resolution 75% + The directors sign a solvency statement confirming that Co will continue to be a going concern

Basic checks

- **S/h type:** Is the S/h a working **or** non-working S/h?
- **Reason:** For the share buy back?
- **Co type?** Unquoted trading Co **or** an investment Co?
- **Method of acquisition:** Were the shares purchased/subscribed/transferred from a spouse **or** inherited?
- **Length of ownership:** How long have the shares been held?

Income treatment

- **Applies:** If the capital conditions have **NOT** been satisfied
- **Tax impact:** Income tax using **dividend rates**. Income tax will be paid via self-assessment
- Dividend **allowance**
- **Check:** If the S/h is the original subscriber
- **Problem:** We can only use the **original subscriber's base cost**
- **Capital loss?** Compute the capital loss when the S/h's base cost **exceeds** the original subscriber's cost
- **Beneficial:** Only if the S/h is a **basic rate taxpayer** i.e. 7.5% dividend rate
- **Not beneficial:** For a higher rate taxpayer **32.5%** or additional rate taxpayer **38.1%**

Capital treatment

- Chargeable disposal of shares subject to CGT
- **Gain:** $SP - C - AE = \text{Taxable gain}$
- **Legislation:** Learn conditions under [s.1033 CTA 2010](#)
- **No election:** Applies **automatically** if all the conditions are met
- **Key recommendation:** Seeks **HMRC clearance** before the transaction takes place that the **capital treatment** will definitely apply

Capital treatment – Conditions for the Co

- **Co type:** UQT i.e. the Co is wholly **or** mainly trading **>50%**. [The **>20%** of TAME test does not apply here]
- **Reason for buy-back:** You must appreciate what qualifies for benefit the trade test **or** to settle an IHT liability which would otherwise cause undue hardship
- **Problem:** If the long-term plan is to **scale down activities** or cease trading **or** disincorporation. Capital treatment will not apply

Capital treatment – Conditions for the S/h

- **Residence status:** S/h must be **UK resident** when the POOS takes place
- **Period of ownership:** Held shares for either **3yrs** (if inherited on death together with deceased) **or** **5yrs** (subscribed **or** purchased)
- **Spouse ownership:** **Aggregated** for transfers between spouses provided **living together** from transfer to POOS
- **CGT BADR?** Computing the gain + Apply BADR **provided** the S/h satisfies FTTW [BADR will be denied if the Co's non-trading activities **>20%** of TAME]
- **HMRC permits:** S/h retiring + keeping a small % (max 5%) **or** S/h disagreement (must buy back all shares)

Capital treatment – Conditions for % reduction & ownership post POOS

- **2 % tests:** To be met (i) **Max 30%** holding post buy-back + (ii) **Min 25%** reduction test
- **Connected parties:** Only includes spouse + children under 18
- **Problem re 30% test:** When considering the 30% test, this **includes** share capital + loan capital. May need to repay loans to S/h in order for the 30% condition to be met
- **25% test:** There must be a min 25% reduction of the shares held **before** the buy-back

Capital treatment – Admin

- **Clearance:** Recommend the clearance procedure to **ensure** the capital conditions are met
- **Tax avoidance:** State the obvious like no tax avoidance motive
- **POOS return:** The Co must however still make a return of the buyback **giving details** of the payment and the reasons why the capital treatment is considered to apply within **60 days** after the payment.
- **Alternative option:**
 - Sell shares for $<MV$ + Immediate **gain** will arise
 - **Gift relief** scenario if shares are in an UQT Co (any % held) + Joint election by 5th April 2026 for 21/22 tax year
 - IHT **100% BPR** (any % held in an UQT Co for 2 years) + PET re undervalue
 - Useful if the shares have not been held for 3 **or** 5yrs **or** dissenting S/h wants to retain shares **or** Capital conditions **unlikely** to be met

Misc exam traps re capital treatment

- **Share valuation:** Has there been an **independent valuation**? HMRC could challenge this if there has been no valuation of the shares
- **Co payments to the S/h:** The Co must pay for the buyback **in full + in cash**. Payments by instalments to the S/h **will not qualify** for the capital treatment
- **Following are not classed as payments:** Transfer of an asset to a S/h **or** the creation of a loan account
- **Loan account credit balances pre POOS:** Should be **repaid** to the S/h **or** his associates before the POOS takes place to **ensure** the 30% connection test is met
- **Check S/hs position post POOS:** Capital treatment denied if he **retains >5%** in the Co **or** continues to be a **director** **or** enters into a **consultancy arrangement** with the Co
- **Being paid >MV:** Excess taxed **either** as employment **or** dividend income
- **Co will not qualify:** If it is **either** an unquoted investment Co **or** listed Co
- **Post POOS loan funding by the Indv:** The S/h advances funds to the Co post POOS and **continues** to own **>30%** of the combined loan + share capital
- **No tax avoidance motive:** There must **not be** an arrangement whereby the spouse / civil partner transfers part of his shares to his/her spouse or civil partner pre POOS, to try and reduce the overall CGT charge.

