The Chartered Tax Adviser Examination

November 2017

Suggested solutions

Application and Interaction Question 2

Rainbow plc
Report concerning restructuring of Kentucky subgroup

This report considers the tax issues arising from the proposals for the restructuring of the Kentucky subgroup. In particular it covers:

- The implications of transferring management of Kentucky Ltd from the UK to Ruritania;
- The options for the disposal of the business of Maine Ltd;
- Issues relating to staff retention post restructuring, specifically the impact and determination of employment status and share scheme opportunities.

Any Ruritanian tax considerations are based on information provided and further Ruritanian tax advice should be obtained before proceeding.

1. Executive Summary

a) The proposed change of management is likely to result in Kentucky Ltd ceasing to be UK tax resident; if so an exit charge will arise in the UK. To the extent that this relates to Ruritanian assets, this can be postponed, but would crystallise on any subsequent disposal of the assets within six years of the migration of Kentucky Ltd.
b) The tax charge liabilities arising from the sale of the properties by Maine Ltd or the disposal of its shares by Kentucky Ltd are broadly similar. The slightly higher net proceeds on the sale of the shares would be offset by a retrospective SDLT charge if the sale occurred prior to July 2018. Delaying the sale until after Kentucky Ltd becomes non-resident will result in an increased tax charge on the migration. You may wish to transfer Maine Ltd intra-group prior to the migration to avoid these additional tax liabilities.
c) Key staff could continue to provide services to the group post rationalisation, but are likely to remain as employees unless there are significant changes to the basis on which they operate, including independent operation, ability to substitute alternative personnel and form of remuneration.
d) A share option scheme can be introduced. To meet the criteria outlined, the choice is between Company Share Option Plan (CSOP) and Enterprise Management Incentives (EMI) and will depend whether the additional conditions for EMI are met and whether it is desirable to issue the options at a discount.

2. Transfer of management of Kentucky Ltd

UK Corporation Tax

A UK tax resident company is liable to Corporation Tax on its worldwide taxable profits and gains, whereas a non-tax resident company is only liable to UK Corporation Tax if it carries on a trade in the UK through a permanent establishment in which case it will liable to Corporation Tax on both the trading profits and any chargeable gains arising on associated trading assets situated in the UK.

Residence

At present, although not incorporated in the UK, Kentucky Ltd has been considered UK tax resident and paying UK tax on worldwide income. You are proposing that since the trading activities of Kentucky Ltd are wholly conducted in Ruritania, strategic management should be transferred from the London office to Ruritania.

Case law is relevant in determining the residence of non-UK incorporated companies. The key case in this area is *De Beers Consolidated Mines*, which identified the concept of central management and control and determined that the company in question was UK tax resident despite the fact that its main business was carried on in South Africa because the controlling board of directors exercised its powers in the UK.

Subsequent cases have considered whether board meetings represent the real control of the company or whether this is exercised by the shareholders. These cases have concluded that:

- If HMRC cannot prove that a company falls within their jurisdiction, it will not be taxed in the UK;
- The fact that a subsidiary's board may be advised what to do by the parent company does not mean that the subsidiary's board does not exercise central management and control – this is a question of fact as to whether the subsidiary's board is exercising its discretion when coming to decisions.

Further guidance can be found in the HMRC's Statement of Practice SP1/90, which discusses the influence of a parent company and notes that the parent company's residence will not normally determine that of the subsidiary. However if the parent takes on the board functions or the subsidiary's board always agrees the parent company decisions without independent consideration, then the subsidiary may be considered to have the same residence as the parent. The current proposals regarding the requirement of the parent company to receive reporting information concerning the activities of Kentucky Ltd do not appear to be for the purposes of controlling the business and are unlikely to result in the continuation of UK tax residence.

A further factor to consider is any Double Taxation Agreement between the UK and Ruritania. As the Agreement is in accordance with the OECD model treaty, the tie-breaker clause, which is used when a company could meet the definition of residence in more than one country, will look to the 'place of effective management'. In the circumstances described, this is likely to be in Ruritania, further supporting the view that Kentucky Ltd will be tax resident in Ruritania, rather than in the UK if the board changes are made.

Impact of change of residence

If Kentucky Ltd will no longer be UK tax resident, a number of steps must be taken in advance of its migration and its thereby ceasing to be within the charge to UK tax. The company must give notice in writing to HMRC of its intention to cease to be resident in the UK, specifying when it intends to cease to be resident. It must also provide a statement of tax payable to the date of migration (including Corporation Tax (CT), PAYE and any other amounts due) and detailing the arrangements to be made to settle this liability, which must be approved by HMRC.

The migration will be treated as a cessation of trade with the following consequences:

- An accounting period will end;
- Stock will be treated as disposed of on a cessation;
- Balancing allowances will arise on plant and machinery with the lower of the cost and market value representing the deemed disposal value to be recognised in the capital allowances pool; and
- Intangible assets, goodwill and other capital assets are also treated as disposed of and immediately reacquired at market value resulting in trading income and chargeable gains.

These rules would result in chargeable gains arising on the Ruritanian fixed assets of £150,000 (see Appendix 1) together with deemed trading income of £850,000.

In addition, if the shares in Maine Ltd were held by Kentucky Ltd at the time of the migration, the shares would be an asset on which a deemed gain would arise – see section 3b for details.

However, there are special rules relating to any chargeable gains arising on the foreign trading assets on a migration, allowing the charge arising on the gains to be postponed provided the migrating company is a 75% subsidiary of a UK company and a joint election is made within two years of the migration. As Rainbow plc is a UK company, this election would be available in connection with the gains arising on foreign assets but the gain on the shares in Maine Ltd is not eligible to be deferred because they are UK assets, and are not used in the foreign trade.

Similarly a joint election can be made to postpone the profit on the goodwill. This is available as the IFA was held for the purposes of a trade carried on outside the UK, through an overseas permanent establishment.

Assuming that the relevant elections are made, the tax payable on the migration will be the tax arising on any gain on the shares and the tax on the trading profits (comprised of the deemed profit on stock and any balancing allowances or charges arising on the plant and machinery).

When considering the tax cost associated with the migration, the future plans for the business should be considered. The elections result in the postponement, not elimination, of the gains and profit on goodwill. The gains can come into charge either in full or in part as profits effectively become realised. Although following its migration Kentucky Ltd will not be within the charge to UK corporation tax, the postponed gains will be taxed as part of the profits of the parent company, i.e Rainbow plc, if:

- Within six years, Kentucky Ltd disposes of any of the assets which contributed to the gain postponed (bringing in the relevant proportion of the postponed gain);

Or

- If at any time Kentucky Ltd ceases to be a 75% subsidiary of Rainbow plc (bringing in any remaining postponed gain);

Or

- If Rainbow plc ceases to be UK resident (bringing in any remaining postponed gain which has not already crystallised).

Whilst the final point would only be relevant if Rainbow plc were for some reason to cease to be UK resident, the potential divestment of the Kentucky business within three years is likely to bring into charge the full amount of the postponed gains, either on an individual asset basis or on the disposal of the shares. However as tax rates are currently reducing, the postponement should still result in less tax being paid, and at a later date, by Rainbow plc although there is no certainty as to the future rates.

3. Disposal of activities of Maine Ltd

When considering the disposal of the activities of Maine Ltd, there is a choice between selling the company or its investment properties; and also between this sale occurring before or after the proposed migration of Kentucky Ltd.

Option 1 - Property sale

Regardless of the tax residence of Kentucky Ltd at the time of the sale of the properties, Maine Ltd will remain UK resident and there will be a number of UK tax implications for it.

<u>Direct tax – Chargeable gains</u>

If the properties are sold by Maine Ltd, there will be UK chargeable gains or losses arising in the company. The total gains of £2.484m (see Appendix 2) will be taxable at the current rate of Corporation Tax (19%) resulting in a tax charge of £471,960 payable by the company, leaving net proceeds in Maine Ltd of £7,228,040.

<u>Direct tax – Capital allowances</u>

If the properties are sold, the purchaser may wish to identify any possible claims to capital allowances. On the basis that there are a number of eligible ‘integral features’ such as air conditioning and electrical systems within the properties, the pooling requirement must be met, whereby the purchaser is only able to claim capital allowances on the second hand fixtures if Maine Ltd has previously claimed allowances. It will, therefore, be necessary to review the allowances previously claimed and identify the value of previous claims as this will cap the value that can be claimed. An agreement should be reached and a joint election made as to the disposal value to be included in the capital allowances pool of Maine Ltd. Assuming that the purchaser is a UK taxpayer, determination of this value will represent a

commercial negotiation, with the lowest value being beneficial for Maine Ltd as this will maximise any balancing allowance or minimise any balancing charge arising on the cessation of the rental business.

Indirect tax – VAT

Whilst sales of land and buildings are generally exempt from VAT, there are a number of circumstances where this might not be the case. As the properties in question are commercial buildings which are now more than three years old, it is necessary to consider the option to tax. If Maine Ltd has previously opted to tax a building, it will be necessary to charge VAT on its disposal. The records should therefore be reviewed to confirm the position.

Stamp taxes

While SDLT will be payable on the acquisition of the properties, this will be a cost for the purchaser rather than any member of the Rainbow group. The amounts involved are of the order of £350,000, and therefore may explain the higher potential consideration for the shares rather than the properties.

Option 2 – Sale of shares

a) *Sale of shares whilst Kentucky Ltd is UK resident*

Direct tax

The sale of shares by a UK company will give rise to a chargeable gain or capital loss. Given the investment activities of Maine Ltd, the disposal will not be eligible for the Substantial Shareholdings Exemption which would have exempted the gain from UK Corporation Tax as the condition that the company being sold carries on trading activities is not met.

When calculating the gain, it is also necessary to take into account any de-grouping charges. A de-grouping charge arises if a company leaves a group whilst owning an asset which it received within the previous six years as a result of a no gain no loss intra-group sale. Therefore, if a share sale occurs before September 2018, it will be necessary to consider de-grouping charges in respect of the Birmingham, Leeds and London properties and if after that date but before July 2021, the London property only.

Any de-grouping charge will be calculated as a deemed disposal by Maine Ltd of the properties using the value at the time of the original purchases. Given that the Birmingham and Leeds properties had been appropriated from stock at market value by Magellan Ltd immediately prior to the sale, no de-grouping charge will arise in respect of these properties because there was no accrued gain which did not crystallise at the time of the original sale.

The de-grouping gain in respect of the London property of approximately £957,000 (Appendix 3) is added to the sale proceeds received by Kentucky Ltd on the disposal of the shares in Maine Ltd resulting in a total gain of approximately £2,175,000 (Appendix 3) and CT payable of £413,250 (assuming a rate of 19%).

Indirect tax – VAT

No VAT arises on the sale of shares.

Stamp taxes

Whilst Stamp Duty or Stamp Duty Reserve tax may be payable on the purchase of the shares, this will be a cost for the purchaser rather than any member of the Rainbow group.

However, the earlier sales of the properties must be reconsidered. Group relief for the SDLT charge would have been available at the time of their sales to Maine Ltd. This relieved SDLT

is clawed back if the shares of the purchaser are sold within three years of the asset sale. Therefore, if the shares of Maine Ltd are sold prior to July 2018, the transferee company (Maine Ltd) will leave the group within three years of the sale of the London property by Rainbow plc whilst still owning the land. This would result in a retrospective charge to SDLT on Maine Ltd based on the market value at the date of the transfer i.e. £3 million.

The charge will be £120,000, being 4% of £3 million (the rate of SDLT used being that in force at the time of the intra-group transfer).

This liability would be payable by Maine Ltd and is therefore likely to impact upon the level of the consideration that the purchaser would be willing to pay for its shares and would also arise if the share sale occurred after migration but before July 2018 .

b) Sale of shares post Kentucky Ltd Migration

As noted above, if the shares in Maine Ltd are still held at the time of Kentucky Ltd's migration, they will be subject to the exit charge arising to that company at the time of its migration.

Assuming that the estimated consideration of £7.8 million represents the market value of the shares of Maine Ltd, an additional £1.2 million would be included in the chargeable gains of Kentucky Ltd (see Appendix 3) resulting in UK tax to that company of £231,353. Any distributable reserves extracted from Maine Ltd prior to the migration may impact upon the level of the deemed gain, as the market value of its shares will be reduced by the extracted profits.

Whist there will be no further UK chargeable gain arising on the eventual disposal of the shares in Maine Ltd (as Kentucky Ltd will no longer be UK resident and so liable to UK Corporation Tax on its gains), Ruritanian tax of £288,000 (16% of £1.8 million) will arise on the accounting profit from the share sale.

In addition, the disposal of the shares will mean that Maine Ltd is leaving the Rainbow group. As a result the de-grouping charge of £957,000 described above in connection with the property transferred from Rainbow plc will come into charge if the sale occurs before September 2021. The de-grouping gain is charged on Maine Ltd (as Kentucky Ltd is not UK resident at the time of the disposal of the shares in Maine Ltd) and this could reduce the consideration that a purchaser is willing to pay for Maine Ltd (if this has not already been taken into account in the figures identified).

Conclusion

Appendix 4 shows the net cash available to Rainbow plc under the 3 alternatives.

It appears that the net proceeds are highest on a sale of shares by Kentucky Ltd prior to its migration, which also minimises the exit charge payable on the migration. However this benefit is reduced by the retrospective SDLT charge of £120,000 if the sale occurs prior to July 2018. Given that the differences are not significant, commercial factors including the professional and other costs associated with each option and details of the likely timing must also be considered. For example, the purchaser may prefer the acquisition of properties to the acquisition of a company.

One alternative that could be considered is the transfer of the shares in Maine Ltd to Rainbow plc prior to the migration. Any implicit profit within the value of the shares could then be extracted as a dividend reducing the value on which the exit charge would be calculated. However the extraction of the profit would be liable to the 5% withholding tax, thus reducing the benefit of this additional step.

4. Staff retention following restructuring

There are a number of key individuals to be retained within the business following the closure of parts of the business and the restructuring of other parts. These may be retained through new employment arrangements or incentivised through share option schemes.

Consideration of employment status

Whilst in many situations it is clear whether an individual is an employee of a business working under a contract of service or an independent contractor who is a self employed individual under a contract for services, there are situations where it is less clear.

As well as tax considerations, considered below, there are a number of differences, including:

- Employees have protection against unfair dismissal and have other rights under employment legislation;
- Employees can result in their employers being liable for their wrongful acts;
- Employees are preferential creditors on insolvency of their employers;
- Employees are entitled to a number of allowances and benefits, such as entitlement to annual leave;
- Employees receive some protection on a business disposal as the employment contract is transferred to the purchaser under the TUPE (Transfer of Undertakings (Protection of Employment) Regulations.

There is no single test to determine whether someone is an employee or independent contractor – instead all relevant factors must be considered together with the economic reality of the situation.

When considering whether former employees returning to provide services to Rainbow group remain employees, in addition to the wording of contracts, factors to be considered would include:

- Whether they are also able to (and actually do) undertake work for other customers;
- Whether they have their own business address, investing capital which is at risk and have overheads such as costs of premises;
- Whether under the contract agreed they are obliged to accept work offered;
- The nature of work routines (with fixed hours indicating employment status);
- Form of remuneration (with task basis indicating self employment);
- The amount of control over the work done;
- The ability to substitute other individuals to do some or all of the work (indicative of self employment); and
- Provision of equipment.

For individuals previously employed by the group, significant changes in the working patterns would be required in order to support non-employment status. If there are few changes to current arrangements, it is likely that they will still be considered as employees regardless of any job titles, etc. given in contracts.

If they are determined to be employees, income tax and the employee's NICs must continue to be deducted under PAYE and the relevant employer's NICs must also be paid by the employer.

Employee share schemes

Share schemes can be a key way of rewarding and incentivising employees. Share schemes can be tax-advantaged or not tax-advantaged.

When a company provides shares for an employee, either directly or on the exercise of previously issued options, Corporation Tax relief will be available to the company employing the individual concerned provided certain conditions are met. The shares must be ordinary shares with no special rights and relate to:

- A listed company (or subsidiary thereof); or
- A company which is not under the control of another company.

As the parent company Rainbow plc is not under the control of another company (due to the 50% ownership by the original founders), it would be better to issue share options in Rainbow plc than in one of the subsidiaries as this increases the chance of obtaining Corporation Tax relief. If relief is available, it will not be for the accounting expense (which will be non-deductible for tax purposes) but for the difference between the market value of the shares and the consideration, if any, paid by the employee. This Corporation Tax deduction will be available at the time that the shares are issued.

Unless a share scheme is an HMRC approved tax-advantaged scheme (see below), income tax arises on the difference between the market value of the shares at the time of exercise and the consideration payable by the employee. This will be taxable as employment income and collected via PAYE if the shares are marketable, in which case NIC will also be due. A chargeable gain arises to the individual when the shares are sold, where the base cost is the value of shares on which income tax/NIC was suffered plus any consideration paid. No income tax/NIC arises if options are issued, but the consequences described above flow on exercise of the option.

There are four main types of tax-advantaged schemes in the UK, but Save As You Earn (SAYE) and Share Incentive Plans (SIP) can only be used if there are to be available to all staff members.

It therefore seems likely that Rainbow plc would be more interested in a Company Share Option Plan (CSOP) or Enterprise Management Incentives (EMI). These can both be restricted to key employees owning less than 30% of the share capital and the choice is likely to depend on the desired terms of the grant and anticipated values as well as the group's eligibility for EMI. The EMI is restricted to employees who work for a substantial amount of their time for the company and to trading groups with gross assets less than £30 million and fewer than 250 employees at the time of grant.

With 200 remaining employees, subject to meeting the trading and asset value condition, Rainbow plc will be eligible to set up EMIs. The other key considerations of the two alternatives can be compared in the table below:

	CSOP	EMI
Maximum total value at grant per employee	£30,000	£250,000 Max amount in issue £3 million
Able to issue at discount exercise price?	No	Yes
Exercise period	Between 3 and 10 years	Up to 10 years
Tax treatment at grant	No income tax or NIC	No income tax or NIC
Tax treatment at exercise	No income tax or NIC	Any discount at grant is taxable employment income (restricted to the difference between the exercise price and market value at exercise if this is lower)
Tax treatment at disposal	Chargeable gain based on proceeds less exercise price	Chargeable gain with deduction for exercise price and any amount taxed at exercise. Entrepreneur's relief conditions relaxed so no minimum 5% holding and one year ownership period runs from grant.

Hence if the additional conditions are met, there is more flexibility with an EMI scheme and this may be beneficial for employees on the ultimate disposal of the shares.

Appendix 1 – Taxable income arising on migration of Kentucky Ltd on 31 December 2017

Gains

	Ruritania factory	Ruritania warehouse	Fixed plant and machinery
	£'000	£'000	£'000
Estimated market value on migration	400	450	150
Cost	(200)	(350)	(100)
Unindexed gain	200	100	50
Indexation – June 2002 RPI 176.2 (gives 0.482)	(96)		
Indexation – Jan 2005 RPI 188.9 (gives 0.382) (capped)		(100)	
Indexation – May 2013 RPI 250 (gives 0.044)			(4)
Indexed gain	104	Nil	46

It is assumed that the fixed plant and machinery comprises items with original cost and current value in excess of £6,000. If this is not the case items could benefit from the 'chattels exemption' reducing the total gain arising on the migration.

Trading income

		Taxable income £000
Goodwill	treated as having sold and immediately reacquired the goodwill at market value	750
Stock	market value of the stock brought into account (£300,000 - £200,000);	100
		£850

As the operations in Ruritania commenced in June 2002 (subsequent to the introduction of the new rules concerning intangible assets), the goodwill that has arisen will represent a trade intangible fixed asset (IFA).

Appendix 2 – Chargeable gains arising on the disposal of properties by Maine Ltd

	Birmingham property £'000	Leeds property £'000	London property £'000
Estimated proceeds	2,000	2,200	3,500
Cost (notes 1 and 2)	(1,350)	(1,600)	(1,500)
Unindexed gain	650	600	2,000
Indexation – September 2012 RPI 244.2 (gives 0.069)	(93)	(110)	
Indexation – December 2004 RPI 189.9 (gives 0.375)			(563)
Indexed gain	557	490	1,437

Note 1 - The Birmingham and Leeds properties would have been items of trading stock in Megellan Ltd. As a result they would have been treated as being appropriated from stock to fixed assets at market value immediately before the transfer to Maine Ltd in September 2012, resulting in a trading profit immediate before the transfer. The transfer would then have been treated as a sale of a capital asset from one group company to another; hence the properties would have been deemed to have been sold at a price resulting in nil gain nil loss. As a result, the base cost for Maine is the market value at the date of the intra-group sale and indexation will run from the date of the transfer.

Note 2 – The sale of the London property to Maine Ltd represented the intra-group sale of a capital asset and as such, on disposal of the property by Rainbow plc, Maine Ltd will effectively be treated as having acquired the property as at the original acquisition date by Rainbow plc.

Appendix 3 – Sales of shares of Maine Ltd

De-grouping charge on property sold by Rainbow plc:

	£'000
Market value at date of transfer	3,000
Cost	(1,500)
Unindexed gain	1,500
Indexation – December 2004 RPI 189.9 July 2015 258.6 (gives 0.362)	(543)
Indexed gain	957

Gain on the disposal of the Maine Ltd shares:

	£'000
Sale proceeds	7,800
De-grouping charge	957
Cost	(6,000)
Unindexed gain	2,757
Indexation – January 2012 RPI 238	(582)
Indexed gain	2,175
UK CT payable (say 19%)	413

Additional exit charge relating to the Maine Ltd shares if still held at time of migration:

	£'000
Estimated market value on migration	7,800
Cost	(6,000)
Unindexed gain	1,800
Indexation – Jan 2012 RPI 238	(582)
Indexed gain	1,218
UK CT payable (say 19%)	231

Appendix 4 – Disposal of the activities of Maine Ltd

	Asset sale £000	Share sale – pre migration £000	Share sale - post migration £000
Proceeds in Maine Ltd	7,700		
Tax in Maine Ltd			
• UK CT on gain	(472)		
Proceeds to Kentucky Ltd	7,228	7,800	7,800
Tax in Kentucky Ltd			
• Ruritanian	0	0	(288)
• UK tax	0	(413)	(231)
Net Proceeds	7,228	7,387	7,281
Withholding tax 5%	(361)	(369)	(364)
Proceeds to Rainbow plc	6,867	7,018	6,917
Notes	1	2	3

Notes:

1 If the profits are not extracted prior to migration an exit charge could arise. This would be 19% of the deemed gain on the shares based on the market value. Provided profits have been extracted as dividends prior to the migration only the 5% withholding tax cost reflected above will apply.

2 If a share sale occurs prior to July 2018 the purchaser may reduce the consideration by £120,000 due to the SDLT clawback. Net of UKCT saving (19%) and Ruritanian withholding tax (5%) there would be a reduction in the net amount received by Rainbow plc of approximately £92,000.

3 If a share sale post migration occurs prior to September 2021 the purchaser may reduce the consideration by £181,830 due to the tax arising on the de-grouping charge. Net of Ruritanian taxes (16 % and 5%) there would be a reduction in the net amount received by Rainbow plc of £143,646.

MARKING GUIDE

TOPIC	MARKS	
Kentucky		
Relevance of residence	1	
Non UK incorporated so case law relevant	1	
Concept of central management and control	1	
Board meetings indicative	1	
Parent company influence question of fact	1	
Must not usurp board authority	1	
POEM if treaty mirrors OECD	1	
Sensible conclusion applies to facts	1	
		8
Impact of change of residence		
Requirements (notice, date, statement of tax, (PAYE, CT etc), arrangements to pay)	2.5	
Effective cessation	1	
AP ends	0.5	
Stock treatment, £100k income	1	
Balancing allowances, market value disposal value	1	
Deemed MV disposal and reacquisition of intangible and other capital assets	1	
Calc of fixed asset gain (1/2 for each disposal value, 1 for each gain correct in total)	3	
Intangible trade asset (post 2002)	1	
Income gain of £750k	0.5	
Gain on shares if still held – 1.2m	1	
		12.5
Joint election available to defer gains	1	
75% sub of UK company, two year to make	1	
Also for intangible as Rainbow UK	1	
Because intangible was used for overseas PE trade	0.5	
Immediate tax - trading profits, stock and CAs	1	4.5
Crystallisation of postponed gains if	0.5	
assets sold, company sold or parent ceases to be UK resident	1.5	
either form of proposed divestment would crystallise charge	1	
but rates currently decreasing so election still beneficial	1	4
		29
Maine		
Property sale		
CGT in company	1	
Calc of gains		
Magellan transfer NGNL following appropriation from stock –	2	
correct based cost and acq date	1	
Rainbow – original acq cost and date	1	
Tax £472k	0.5	
		5.5
Capital allowances – integral features, pooling requirement	1	
Must have claimed previously, value capped	0.5	
Agree value and join election	0.5	
Commercial negotiation, impact on balancing allowances/charge	1	3
VAT – commercial buildings >3yrs old	1	
Check option to tax	1	
SDLT purchaser cost	0.5	2.5

Share sale		
No SSE as not trading	1	
Degrouping charge add to proc	1	
Relevance re dates	1	
But Magellan transfers effectively MV so no charge	1	
London property £957k	1	
Share gain £2,157k	1	
Tax £413k net proc £7,386k	1	7
No VAT on shares	0.5	
SD or SDRT purchaser cost	0.5	
SDLT group relief clawback	1	
July 2018 timing	1	
Calc £120,000	1	4
Sell post migration – shares in exit charge but no further CGT	1	
Ruritanian tax charge	1	
Any extraction of profits pre migration could minimise exit charge	1	
WHT on divi applies on all profit extraction so this has no impact on decision	1	
Compare and conclude	2	<u>6</u>
		28
Employment matters		
Employed/self employed issue	0.5	
Impact of employed/self employed (0.5 each relevant comment)	Max 2.5	
No one test but look at factors	0.5	
Consider contract	1	
Relevant factors (0.5 each)	Max 4	
Consider fact that moving from employment	1	
If e'ee, still PAYE, NIC etc	0.5	10
Share schemes		
CT deduction for tax advantaged scheme	1	
Must not be under control of another company so in Rainbow	1	
Non tax advantaged tax and NIC on exercise, tax on gain	1	
SAYE and SIP must be all employees	1	
So choice would be CSOP or EMI	1	
Additional conditions for EMI – assets and employee numbers	1	
Max value/discount?	1	
Tax treatment on grant	0.5	
Tax treatment on exercise	1	
Tax treatment on disposal (ER for EMI)	1.5	
Recommendation	1	<u>11</u>
		<u>21</u>
Total		**<u>78</u>**