The Chartered Institute of Taxation

Advanced Technical

Taxation of Larger Companies and Groups

November 2024

Suggested answers

ANSWER 1

Any gain on the disposal of Restaurant A can be deferred if the sale proceeds are used to acquire replacement assets used in the trade. The amount of any rolled-over gain will reduce the base cost of the replacement asset whereas if the gain is held-over, it will be frozen until there is a disposal event in relation to the replacement asset. This occurs in the company holding the asset on the earlier of the replacement asset being disposed, it ceasing to be used in the trade, or 10 years after being acquired.

Proceeds from the sale not reinvested will be chargeable in the year of disposal.

Roll-over/hold-over legislation treats the trades of a capital gains group as one trade. A capital gains group comprises a company and its 75% subsidiaries, based on ordinary share capital. Accordingly, all the companies, other than East Ltd, are members of the same capital gains group.

Roll-over/hold-over relief is available if the replacement asset is used in the trade of the group and the expenditure incurred within 12 months before or 36 months after the disposal.

The asset being disposed and the replacement asset must be qualifying assets. These are land and buildings (the buildings and leases) and fixed plant and machinery (the beer pumping equipment). If the replacement assets are depreciating (i.e., with a life of less than 60 years) then hold-over relief applies.

Qualifying expenditure	£'000	**Reason**
Restaurant B	900	Roll-over as freehold building is used in the trade of group member.
Restaurant C	550	Hold-over as lease is a depreciating asset used in the trade of group member.
Beer pumping equipment used in pub by Porty Ltd	250	Hold-over as depreciating asset used in trade of group member.
15-year lease to be used as pub by Porty Ltd	300	Hold-over as lease is a depreciating asset used in trade of group member.
Total	£2,000	

Expenditure not qualifying	£'000	**Reason**
Coffee Shop B	500	Leased to a company not in the gains group.
Coffee Shop C	500	Building is not used in a trade of a group member.
Restaurant D	700	Expenditure forecast to be incurred more than 36 months after disposal.
Total	£1,700	

The net sale proceeds for Restaurant A are £2,450,000 (£2,550,000 less £100,000) and qualifying replacement expenditure is £2,000,000. Therefore £450,000 of the gain cannot be deferred.

Durbad plc has a £900,000 held-over gain that will crystallise on 31 January 2024. To avoid this, it is possible to roll-over the held-over gain into expenditure incurred on a non-depreciating asset before the 10-year anniversary. The £900,000 incurred on Restaurant B qualifies. A claim will reduce the base cost of Restaurant B to zero.

Of the remaining £1,100,000 of qualifying expenditure, £1,000,000 can be used to hold-over part of the gain on Restaurant A. This should be allocated first to the expenditure on the beer pumping equipment and 15-year lease as any held over gain on Restaurant C will crystallise in seven years' time.

Expenditure incurred by	Description	Held-Over Gain
		£'000
Capey Ltd	Restaurant C	450
Porty Ltd	Beer pumping equipment	250
Porty Ltd	Lease with a 15-year term	300
		£1,000

The gain on Restaurant A is:

	£'000
Proceeds	2,550
Disposal costs	(100)
Net Sale proceeds	2,450
Indexed base cost	(1,000)
Gain	1,450
Held-over	(1,000)
Chargeable gain	£450

Coffee Shop A was not used in a trade of a group member and so the gain cannot be deferred.

	£'000
Proceeds	2,000
Disposal costs	(50)
Net sale proceeds	1,950
Indexed base cost	(750)
Chargeable gain	£1,200

Total chargeable gains for the year ended 31 March 2024 for Durbad plc are therefore £1,650,000.

Holdover/rollover relief must be claimed within four years from the end of the chargeable accounting period in which the gain arises, or if later, four years from the end of the chargeable accounting period in which the new asset is acquired. The claim must identify the claimant, the assets disposed, date of disposal, consideration received, replacement assets acquired along with the date of acquisition and consideration paid.

Where another group company incurs the replacement expenditure the disposing and spending company must make a joint claim.

Provisional claims for roll-over relief will be allowed if the company declares in its company tax return for the year of disposal that it is intending to buy a qualifying asset for use in its trade before the three-year reinvestment period has expired.

MARKING GUIDE

TOPIC	MARKS	TOTAL
Restaurant disposal		
Explain base cost reduction for roll-over	1	
Explain rules for held-over gains crystallising	1	
Explain relevant grouping provisions	1	
Explain time limits for eligible replacement expenditure	1	
Identify £2m expenditure eligible for roll-over/hold-over	1	
Explain why £1.7m expenditure not eligible for roll-over/hold-over	1	
Identify opportunity to defer 2014 held over gain and revised based cost of replacement expenditure	2	
Note most beneficial allocation of held over gains	1	
Gain on disposal of Restaurant A, including explanation of partial reinvestment of proceeds rules	2	
		11
Coffee Shop disposal		
Gain on disposal of Coffee Shop A	1	
Explanation of why roll-over/hold-over not available	1	
		2
Claims requirements		
Identify required claims and time limits	1	
Note availability of provisional claims	1	
		2
TOTAL		**15**

ANSWER 2

Group relief eligibility

1) Profits and losses are normally time apportioned but if the losses are distorted by large lumps sums, an alternative to using time apportionment, such as following management accounts for overlapping periods, is acceptable.

2) Although the purchase contract for Austin Ltd was signed 28 February 2023, Dallan plc only took beneficial ownership on 31 March 2023. Austin Ltd can therefore only surrender its losses for the 9 months ended 31 December 2023.

3) Dallan plc has a 56.25% (75% x 75) interest in the share capital of Lubbock Ltd. Since a 75% interest is required for group relief, Lubbock Ltd's losses cannot be surrendered to the Dallan group. Losses can be surrendered between Austin Ltd and Lubbock Ltd but for the periods under consideration, both companies made losses.

4) A conditional sale contract for Howston Ltd was entered into 31 August 2023 and therefore arrangements for it to leave the Dallan group came into force from that date, so group relief is not available from 31 Aug 2023 even though the actual sale did not complete until 31 December 2023.

5) As Wacer Ltd left the group at the same time as Howston Ltd, similar restrictions apply.

6) Bolding Ltd went into liquidation on 30 June 2022. From that date, it ceased to have beneficial ownership of its assets and therefore Fromex Ltd ceased to be part of the group. Fromex Ltd can, however, claim group relief for the six months to 30 June 2022.

7) Hellenic SA is a dual resident investment company and cannot surrender losses.

8) Finez Ltd cannot claim group relief since Hellenic SA does not own 75% of its ordinary share capital but rather is only entitled to a dividend at a fixed rate with no other entitlement to profits.

9) Alpine plc is a consortium company because it is not a 75% subsidiary, at least 75% of its shares are held by companies owning at least 5%, and it carries on a trade. Accordingly, it can claim consortium relief equivalent to the lower of 50% of its profits and the losses of Amarillon Ltd.

10) Amarillon Ltd is a link company, meaning that consortium relief can flow between Alpine plc and other members of the Dallan group. As the Dallan group policy is for claims between the consortium member and consortium company to be prioritised, no link company claims apply for the two years ended 31 December 2023. Consortium claims cannot be made between Alpine plc and its other shareholders as one is a company not within the charge to UK tax and the other is an individual.

Group relief allocations

Amounts of group relief available are calculated by time apportionment of profits and losses of the overlapping periods and must also take into account other claims and surrenders made. Based on the information provided, the order of claims does not impact the quantum of relief. The suggested group allocations for the years ended 31 December 2022 and 2023 are shown below.

Year ended 31 December 2022

	Accounting period ended	Profit/Loss £'000	Notes	Overlap months
Dallan plc	31.12.22	2,000	-	12
Howston Ltd	31.12.22	500	Left group 31.08.23	12
Wacer Ltd	31.03.22	200	Left group 31.08.23	3
Wacer Ltd	31.03.23	300	Left group 31.08.23	9
Fromex Ltd	31.12.22	600	Left group 30.06.22	6
Amarillon Ltd	31.12.22	(5,000)	Consortium member	12
Alpine plc	31.12.22	1,000	Consortium company	12

	Overlapping profits/losses			Total overlapping profits/losses	Group relief	Balance
	01.01.22 to 31.03.22	01.04.22 to 30.06.22	01.07.22 to 31.12.22			
	3 months	3 months	6 months			
	£'000	£'000	£'000	£'000	£'000	£'000
Dallan plc	500	500	1,000	2,000	(2,000)	-
Howston Ltd	125	125	250	500	(500)	-
Wacer Ltd	50	-	-	50	(50)	-
Wacer Ltd	-	75	150	225	(225)	-
Fromex Ltd	150	150	-	300	(300)	-
Amarillon Ltd	(1,250)	(1,250)	(2,500)	(5,000)	3,575	(1,425)
Alpine plc	125	125	250	500	(500)	-

<u>Year ended 31 December 2023</u>

	Accounting period ended	Profit/Loss £'000	Notes	Overlap months
Dallan plc	31.12.23	2,500	-	12
Austin Ltd	30.06.23	(300)	Joined group 31.03.23	3
Austin Ltd	30.06.24	(600)	Joined group 31.03.23	6
Howston Ltd	31.12.23	(700)	Left group 31.08.23	8
Wacer Ltd	31.03.23	300	Left group 31.08.23	3
Wacer Ltd	31.03.24	(200)	Left group 31.08.23	5
Amarillon Ltd	31.12.23	(500)	Consortium member	12
Alpine plc	31.12.23	1,500	Consortium company	12

	Overlapping profits/losses				Total overlapping profits/losses	Group Relief	Balance
	01.01.23-31.03.23	01.04.23-30.06.23	01.07.23-31.08.23	01.09.23-31.12.23			
	3 months	3 months	2 months	4 months			
	£	£	£	£	£	£	£
Dallan plc	625,000	625,000	416,667	833,333	2,500,000	(850,000)	1,650,000
Austin Ltd	-	(75,000)	-	-	(75,000)	75,000	-
Austin Ltd	-	-	(100,000)	(200,000)	(300,000)	300,000	-
Howston Ltd	(175,000)	(175,000)	(116,667)	-	(466,667)	466,667	-
Wacer Ltd	75,000	-	-	-	75,000	(75,000)	-
Wacer Ltd	-	(50,000)	(33,333)	-	(83,333)	83,333	-
Amarillon Ltd	(125,000)	(125,000)	(83,333)	(166,667)	(500,000)	500,000	-
Alpine plc	187,500	187,500	125,000	250,000	750,000	(500,000)	250,000

<u>Losses carry forward</u>

The losses carried forward in Amarillon Ltd from the year ended 31 December 2022 of £1,425,000 can be surrendered in the year ended 31 December 2023. After surrender of 2023 current year losses, this leaves capacity in Dallan plc and Alpine plc to claim the losses.

Group policy is to surrender to Alpine plc in priority and the amount that can be surrendered is £250,000, being the lower of Amarillon Ltd's carried forward losses (£1,425,000) and 50% of Alpine plc's profits less the current year surrender (50% x £1,500,000 = £750,000 less £500,000 = £250,000). As Alpine plc is not part of the Dallan group, it has its own £5 million deduction allowance and therefore there is no restriction. The remaining carried forward losses of £1,175,000 can be surrendered to Dallan plc. As this is less than the £5 million deductions allowance for the Dallan group, no restriction is required.

MARKING GUIDE

TOPIC	**MARKS**	**TOTAL**
75% group requirement	0.5	
Austin 2023 surrender amounts (joining group date & calculations)	1	
Lubbock not a group company (less than 75%)	1	
Howston arrangements to leave and surrender amounts 2022 & 2023	1	
Wacer arrangements to leave and surrender amounts 2022 & 2023	2	
Fromex Ltd 2022 group relief (liquidation of parent)	1	
Hellenic SA (dual resident investment company)	1	
Finez Ltd (fixed rate preference shares)	1	
Consortium relief criteria (3 criteria)	1	
Alpine consortium relief calculations 2022 & 2023	2	
Other consortium members cannot claim/surrender	0.5	
Link company rules	1	
Group relief allocations for 2022 and 2023 (2 for each year)	4	
Amarillon Ltd carried forward loss surrenders	2	
Deductions allowance not applicable for both surrenders	1	
TOTAL		**20**

ANSWER 3

Value shifting adjustments apply on the disposal of a company where arrangements have been made to reduce its value and the main purpose of those arrangements is to obtain a tax advantage. The rules do not apply if the arrangements consist solely in the making of an exempt distribution.

Sednoy Ltd

A value shifting adjustment can create or increase a chargeable gain. These rules do not apply to the disposal of Sednoy Ltd as there was no arrangement to obtain a tax advantage. The listed shares were transferred to Parthy plc as the group wished to retain them for commercial reasons and the dividend was not paid out of profits reflecting transactions where the main purpose was to reduce UK tax.

A loss on the disposal of shares can still be restricted where there has been a material reduction in their value due to a transaction between group members (i.e. a depreciatory transaction). A restriction can only reduce or eliminate a loss. It cannot turn a loss into a gain or increase a gain.

The transfer of listed shares by Sednoy Ltd to Parthy plc for £10 million, when their market value was £30 million, was a no gain/no loss transaction at less than market value and therefore the depreciatory transaction rules apply on the disposal of Sednoy Ltd.

The £40 million dividend paid by Sednoy Ltd is treated as first coming out of post-acquisition profits of £5 million with the balance of £35 million coming out of pre-acquisition profits. The pre-acquisition element is regarded as a depreciatory transaction whereas the post-acquisition element is not so regarded.

Not paying for group relief is not regarded as a depreciatory transaction.

The chargeable gains calculation for Parthy plc on the disposal of Sednoy Ltd is as follows:

	£'000	Notes
Proceeds (June 2024)	20,000	
Cost (June 1990)	(70,000)	
Loss before indexation	(50,000)	
Indexation	0	1
S176 TCGA 1992 adjustment	20,000	2
S177 TCGA 1992 adjustment	35,000	3
Cannot create gain	(5,000)	
Allowable loss	0	

Notes

1. Indexation cannot create or increase a loss.

2. A just and reasonable adjustment in relation to the transfer of the listed shares is the difference between their market value of £30 million and consideration received of £10 million.

3. A just and reasonable adjustment in relation to the dividend is the £35 million paid from pre acquisition reserves.

Melburk Ltd

The transactions carried out prior to the disposal of Melburk Ltd created distributable profits of £45 million (£120 million proceeds less book value of £75 million) which were paid out as a dividend thereby reducing the value of Melburk Ltd. As the main purpose of the arrangements was to reduce the chargeable gain on the subsequent sale of its shares, the value shifting rules apply.

The transfer of the properties takes place on a no gain no loss basis but the intragroup transfer between Melburk Ltd and Bune Ltd does not give rise to an exit charge in Bune Ltd when the two companies leave the Parthy plc group by virtue of the associated companies exemption (in s.179(2) and (2ZB) TCGA 1992). Bune Ltd acquired the properties from Melburk Ltd when it was a wholly owned subsidiary of Melburk Ltd and continued to be so.

The chargeable gains calculation for Parthy plc on the disposal of Melburk Ltd is:

	£'000	Notes
Proceeds (May 2024)	75,000	
Cost (April 2015)	(30,000)	
Gain before indexation	45,000	
Indexation	(2,340)	1
Gain after indexation	42,660	
s.31(2) 1992 adjustment	45,000	2
Chargeable gain	£87,660	

1. Indexation from April 2015 to December 2017 (0.078 x £30 million).

2. Value shifting adjustment is due to arrangements to create £45 million profits to enable payment of the dividend.

Hobert SA

The payment of the £5 million dividend by Hobert SA prior to its disposal is not caught by the value shifting provisions as it consists solely in the making of an exempt distribution.

The chargeable gains calculation for Parthy plc on the disposal of Hobert SA is as follows:

	£'000	
Proceeds (January 2024)	15,000	
Cost (July 2020)	(10,000)	
Gain before indexation	5,000	
Indexation	0	Note 1
Chargeable gain	£5,000	

Note 1: No indexation from December 2017.

Durwine Ltd

Parthy plc had owned more than 10% of the ordinary share capital of Durwine Ltd, a trading company, for a continuous period of more than twelve months prior to its disposal. Therefore, the £11 million gain on disposal is not taxable by virtue of the substantial shareholdings exemption. The £1 million pre-sale dividend is not relevant.

MARKING GUIDE

TOPIC	MARKS	TOTAL
Sednoy Ltd		
Reason value shifting not applicable	1	
Basic depreciatory transaction rule	1	
Cannot turn a loss into a gain or increase a gain	1	
Explain basis and amount of depreciatory transaction on sale of listed shares	1	
Explain basis of depreciatory transaction on dividend distinguishing between pre and post-acquisition reserves	1	
Non payment of group relief disregarded	1	
Capital loss calculation	1	
		7
Melburk Ltd		
Basic value shifting rule	1	
Can turn loss into gain and increase gain	1	
Explain basis and amount of value shifting adjustment	1	
Reason no s.179 TCGA 1992 exit charge applies	1	
Capital gains calculation	1	
		5
Hobert SA		
Explanation of why value shifting rules do not apply to the dividend	1	
Capital gains calculation	1	
		2
Durwine Ltd		
Correct analysis of substantial shareholdings exemption	1	
		1
TOTAL		**15**

ANSWER 4

1. Danchar Ltd: Corporation Tax computation for the year ended 30 June 2024

	Notes	£	£
Profit per accounts			19,752,000
Add:			
Depreciation	1)	4,000,000	
Loss on disposal of plant	2)	1,000,000	
Non trading loan interest	3)	1,500,000	
Directors' bonuses	4)	500,000	
Gifts	5)	50,000	
Qualifying charitable donation	6)	50,000	
Impairment of connected party loan	7)	2,000,000	
			9,100,000
Less:			
Other income	9)		(1,000,000)
Trading profit before capital allowances			27,852,000
Balancing charge	Working 1		500,000
Capital allowances	Working 2		(9,179,500)
Trading profit			19,172,500
Non-trade loan relationship deficits			(1,500,000)
Qualifying charitable donation			(50,000)
Total taxable profit			17,622,500
Tax payable at 25%			£4,405,625

Notes:

1) Depreciation is capital in nature and is not deductible for tax purposes.

2) The loss on disposal is capital in nature and is not allowable for tax purposes.

3) The loan to fund the new equipment is for trading purposes and the interest is allowable. The loan to acquire the investment is not allowed as a trading deduction. Instead, it will be deducted from total taxable profits.

4) Bonuses not paid within nine months of the year end are not deductible therefore the payment due on 1 May 2025 should be added back and relief claimed in the period of payment.

5) Although gifts are less than £50, they are not allowable as they consist of alcoholic drinks.

6) The charitable donation to MIND was not made for the purposes of the trade and so is added back in the trading profit computation. It is allowed as a deduction against total profits if sufficient profits are available.

7) The impairment of the loan to a connected company is not allowed as a deduction. The write off of the loan from a customer is allowed.

8) The staff entertainment is an allowable expense.

9) The dividend received is exempt under the portfolio exemption as Danchar UK Ltd holds less than 10% of the shares of the payer and is entitled to less than 10% of its profits and assets on a winding up.

Working 1: Proceeds for disposal of plant

	£'000
Net book value	1,500
Loss on disposal	(1,000)
Proceeds	500

The plant was acquired on 1 June 2021. Because the plant addition attracted a super deduction, the disposal proceeds are dealt with as a balancing charge rather than a deduction from the main rate pool. As the disposal was in an accounting period commencing after 1 April 2023, the amount is not increased due the super deduction enhancement. A balancing charge of £500,000 should be added to trading profits.

Working 2: Capital allowances

	Notes	Main Pool	Special Rate Pool	Allowances claimed
		£	£	£
Tax written down value at 1 July 2023		2,000,000	1,500,000	-
New plant and machinery	a)	6,000,000	-	-
Full expensing	a)	(6,000,000)	-	6,000,000
Integral features	b)	-	3,000,000	-
AIA	c)	-	(1,000,000)	1,000,000
FYA 50%	d)	-	(1,000,000)	1,000,000
Vans	e)	1,250,000	-	-
New cars without emissions	f)	500,000	-	
FYA 100%	f)	(500,000)	-	500,000
New car with emissions	g)	-	75,000	-
Writing down allowance (18% and 6%)		(585,000)	(94,500)	679,500
Tax written down value at 30 June 2024		2,665,000	2,480,500	-
Allowances claimed		-	-	9,179,500

Notes:

a) The £6 million cost including the costs of installation is expenditure on main pool assets and full expensing can be claimed.

b) Integral features are special rate pool assets.

c) The annual investment allowance (AIA) is used against the special rate expenditure.

d) After the deduction for the AIA, 50% first year allowances (FYA) can be claimed, with the balance being added to the special rate pool.

e) The vans are main rate assets and are added to the general pool. Full expensing cannot be claimed as the assets are second hand.

f) New cars with emissions 0g/km are eligible for 100% FYA.

g) New car with emissions 160g/km fall in the special rate pool. There is no restriction for private use.

2. Post year-end transactions

Integral Features

	Notes	£'000
Acquisition cost		3,000
Depreciation	1)	(300)
Net book value		2,700
Proceeds		(1,800)
Loss on disposal	2)	900

Notes:

1) The depreciation charge in the year ended 30 June 2024 was £3,000,000 at 10%.

2) The loss on disposal will be taken to the income statement for the year ended 30 June 2025.

Where an asset on which the 50% first year allowances have been claimed is disposed of, a standalone balancing charge arises. It is necessary to calculate the relevant proportion to be applied to the disposal proceeds to identify this balancing charge. The disposal proceeds not subject to the balancing charge are deducted from the special rate pool.

The relevant proportion is calculated by dividing the qualifying expenditure of which the 50% was claimed (£2 million) by 2 (£1 million) then dividing the result by the total cost of the asset (£3 million). So, the relevant proportion is one-third.

Disposal proceeds were £1.8 million, therefore a balancing charge of £600,000 should be added to the trading profits of the company for the year ended 30 June 2025.

The remainder of the disposal proceeds (£1.2 million) will be deducted from the special rate pool in the year ended 30 June 2025.

New cars

	Notes	£'000
Acquisition cost		250
Depreciation	3)	(50)
Net book value		200
Proceeds		(150)
Loss on disposal	4)	50

Notes:

3) The depreciation charge in the year ended 30 June 2024 was £250,000 at 20%.

4) The loss on disposal will be taken to the income statement for the year ended 30 June 2025.

The expenditure did not qualify for full expensing or the 50 percent first year allowances because expenditure on cars is one of the general exclusions. But, as they are electric cars, the expenditure will qualify for the 100% first year allowances for new electric cars which are specifically exempted from the general exclusion that covers cars.

As the expenditure did not qualify for full expensing, there is no standalone balancing charge and the disposal proceeds of £150,000 will be deducted from the main rate pool.

MARKING GUIDE

TOPIC	MARKS	TOTAL
Part 1		
Adjustments to profit		
Depreciation	0.5	
Loss on disposal	0.5	
Bank interest disallowed as not trading expense	0.5	
Dividend is exempt income	0.5	
Bonus - calculating £500,000 was not paid within nine months	0.5	
Bonus - £1m was paid within 9 months and allowable in 2023	0.5	
Gifts - disallowing alcoholic drinks	0.5	
Staff entertaining allowable	0.5	
Qualifying charitable donation, add back and allow against TTP if sufficient	0.5	
Impairment of loans:		
Loan to customer is specific and in line with UK GAAP, therefore allowable	0.5	
Loan to connected party, disallowable	0.5	
		5.5
Capital allowances		
Add new plant to general pool including cost of installing allow full expensing	1.0	
Integral feature special rate pool; FYA 50%	1.0	
Vans are general pool irrespective of emissions but not full expensing	0.5	
New cars with less 00g/km - general pool but FYA 100%	1.0	
New car with160g/km - special rate pool. No restriction for private use	1.0	
AIA correct amount deducted from special rate or main pool	1.0	
Calculation of disposal proceeds	1.0	
Balancing charge not pool	1.0	
Calculation of WDA	0.5	
		8.0
Other		
Balancing Charge	0.5	
Bank interest is non-trading loan relationship debits	0.5	
Calculation of total taxable profits and liability	0.5	
		1.5
Part 2		
Loss on disposal of plant	1.0	
Loss on disposal of cars	0.5	
Need for balancing charge on plant	1.0	
Calculation of balancing charge	1.0	
Disposal proceeds to special rate pool	0.5	
No balancing charge on cars, proceeds to special rate pool	1.0	
		5.0
TOTAL		20.0

ANSWER 5

Filing UK tax returns

Jabert Ltd is required to continue to file an annual company tax return to HMRC, due 12 months from the end of the accounting period (AP), so for the AP ended 31 December 2023, the return is due by 31 December 2024.

Payment of UK Corporation Tax

For the AP ended 31 December 2023, Jabert Ltd is liable to pay Corporation Tax at a rate of 19% for the first three months and 25% for the last nine months on its taxable profits for the year.

For companies with taxable profits of less than £1.5 million, payment is due nine months and one day following the end of the AP. This will be 1 October 2024 for the AP ended 31 December 2023.

For larger companies there is a quarterly instalment payments regime.

Where taxable profits exceed £1.5 million but not £20 million, the quarterly payments for this AP will be 14 July 2023, 14 October 2023, 14 January 2024 and 14 April 2024.

Where the profits exceed £20 million, the quarterly payments for this AP will be 14 March, 14 June, 14 September and 14 December 2023.

The thresholds are calculated by reference to augmented profits, which is the amount of taxable profits plus dividends received.

However, the above thresholds are reduced by dividing the amounts by the number of related 51% group companies plus one. Given that Jabert Ltd has £3 million of accounting profits, and the apparent size of Curtis Inc, the payment of tax by Jabert Ltd is likely fall within the regime for very large companies.

Country-by-country reporting

As the following criteria are now met, Jabert Ltd will be required to make a country-by-country report (CbCR):

- Member of a group with at least one UK and one non-UK company; and
- Consolidated group revenue of over Euro 750 million.

However, Jabert Ltd can apply an exception as the information has already been included in a CbCR filed with the US because that report will be exchanged by the US with HMRC. The application for the use of the exception has to be sent to HMRC before the deadline by which Jabert Ltd would have had to file the report, which is twelve months after the end of the AP to which it relates.

The application should specify that the report is being filed in the US, which entity in the group filed the report and the date it was filed.

Transfer Pricing

Following the acquisition by the Curtis group, Jabert Ltd will change from being a medium sized company for the purposes of the UK transfer pricing legislation to being a large company. This is because the thresholds set out below apply to the company and any linked enterprises. As Curtis Inc is now linked with Jabert Ltd, the thresholds will clearly be exceeded.

The legislation applies to large enterprises which have:

- More than 250 employees; and
- Greater than Euro 50 million turnover, or
- Balance sheet greater than Euro 43 million.

The transfer pricing rules apply where there is a provision between connected persons that is not undertaken on arm's length terms and there is a potential tax advantage arising from this. Where the transfer pricing rules are engaged, the tax computation of the company should be prepared on the assumption that an arm's length provision applied instead of the actual provision.

Transfer pricing legislation not only relates to cross border transactions, but also to transactions between connected UK entities.

There will be two intercompany transactions between Jabert Ltd and Curtis Inc following the acquisition:

- License fee
- Management services

The group should consider which method of determining the arm's length principle is the most appropriate and carry out a benchmarking exercise to set the price.

Curtis Inc will need to update its master file to include the details of, and the provisions with, Jabert Ltd.

A master file is a global review of the group and will include the:

- group structure;
- geographical locations;
- transfer pricing policy;
- intercompany transactions; and
- consolidated financial statements.

A local file will need to be prepared by Jabert Ltd (for the year ended 31 Dec 2024) providing details of its operations and intercompany transactions in the UK. This file will include:

- country specific analysis of intercompany transactions;
- local organisational structure;
- details of controlled transactions;
- comparability and functional analysis;
- transfer pricing methodology; and
- local entity financial statements.

These files are not required to be submitted to HMRC. However, there are penalties for failing to have any documentation in place.

<u>Corporate Interest Restriction (CIR)</u>

Groups have the choice as to whether to appoint a reporting company for the purpose of the CIR.

If no reporting company has been appointed, then a group is not able to submit an Interest Restriction Return (IRR).

However, there are benefits for a group to submit an IRR, such as access to carry forward interest allowances. Where there is a reporting company, they must submit an IRR within 12 months of the end of the period.

It appears that Jabert Ltd will not be subject to any CIR disallowances. This is because its financing costs are less than the £2 million de minimis.

Even though there are currently no CIR disallowances, the Curtis group may wish to file an IRR to protect its position for future periods, such as access to carry forward amounts. If there is no CIR disallowance for a period, a group may file an abbreviated IRR (which is very straightforward), and then replace it later by a full IRR if required.

Stamp Duty

Persons acquiring UK shares are liable to UK Stamp Duty no matter where they are resident. Since Jabert Ltd is a UK incorporated entity, Curtis Inc is liable to UK Stamp Duty on its acquisition of the shares in Jabert Ltd.

The rate of Stamp Duty on shares is 0.5%, therefore since Curtis Inc paid £50 million, the Stamp Duty payable is £250,000. Stamp Duty forms and payment should be submitted and paid to HMRC within 30 days of the purchase transaction.

MARKING GUIDE

TOPIC	**MARKS**	**TOTAL**
File CT return 12 months end of AP	1.0	
Pay CT, rate	0.5	
QIP 51% companies	0.5	
Thresholds 1.5 and 20 million	1.0	
Dates of payment	1.0	
		4.0
CbCR conditions	1.0	
Exceptions	1.0	
Applying for exception	1.0	
		3.0
TP large so now applies - thresholds	1.0	
TP provisions	1.0	
Analysis required	1.5	
Master file contents	1.5	
Local file contents	1.0	
Need to maintain	0.5	
		6.5
CIR, probably no restriction but need to check	1.0	
May want to submit returns to protect position	1.0	
Can appoint a reporting company	0.5	
Can submit an abbreviated IRR	0.5	
Can replace an abbreviated IRR with full IRR later	0.5	
		3.5
UK shares within scope of Stamp Duty	1.0	
Non-residents have to pay	1.0	
0.5% and 30 days	1.0	
		3.0
TOTAL		**20.0**

ANSWER 6

Residence for UK tax purposes

Should the SylMarc group incorporate a company in the UK then that company will be regarded as resident for Corporation Tax purposes in the UK.

If central management and control is located in Gardania, the company will also be resident for tax purposes in that country. If no senior management functions are located in the UK, this is likely to be the case.

A UK incorporated company would prima facie be resident in two different countries. As the two countries have a double taxation treaty, if the company is treated as non-resident in the UK under the articles of that treaty, it will not be resident in the UK.

The tiebreaker in Article 4(3) of the OECD model treaty sets out that the company would be considered resident in the country where the two Competent Authorities agree it is, having regard to its place of effective management, place or incorporation and other relevant factors. Given that the senior management is located in Gardania, it is likely that the Competent Authorities will agree that the company is tax resident in Gardania. The company would not be taxable in the UK unless it trades through a permanent establishment there. This may be the case, as noted below with regard to whether the proposed activities could create a UK permanent establishment.

Permanent Establishment

A non-resident company such as SylMarc SA, would be liable to UK Corporation Tax if the company trades in the UK through a permanent establishment.

A permanent establishment can either be a fixed place of business through which the business of SylMarc SA is wholly or partly carried on, or where a person, other than an independent agent acting in the course of their business, acts on behalf of SylMarc SA and has and habitually exercises in the UK authority to conclude contracts in the name of that company.

As there will be staff physically working in the UK out of serviced offices and with the authority to conclude contracts, it is very likely that a permanent establishment will be created in the UK. This will be the case whether the activities are carried out through a new company incorporated in the UK (which is treated as non resident under a treaty tie-breaker) or through SylMarc SA.

The profits or losses attributable to the UK activities of the permanent establishment viewed as a separate enterprise would be taxable in accordance with UK tax law. For the purposes of calculating any profit of loss, the permanent establishment would be hypothesized as a separate and independent enterprise from the rest of the company and any transactions with the rest of the company would take place at arm’s length (either the newly incorporated company or SylMarc SA).

Any profits arising to the UK permanent establishment would be taxable in the UK. In this case it would be necessary to give notice of chargeability to tax to HMRC, and file a company tax return on an annual basis under the UK Corporation Tax Self-Assessment rules.

If there is a UK permanent establishment and SylMarc SA is also taxable in Gardania, it would potentially be able to claim double taxation relief for taxes suffered in the UK.

MARKING GUIDE

TOPIC	**MARKS**	**MARKS**
Incorporation test – UK resident	0.5	
CMC test – Gardania resident	1.0	
Dual resident – DTT	0.5	
Tie breaker test	1.0	
Result non-UK resident	0.5	
		3.5
Liable to CT if DTT/PE	1.0	
Two types of PE	1.0	
PE in UK	1.0	
Profits and losses taxed in UK	0.5	
Calculated in accordance with UK rules	0.5	
Transfer pricing principles	1.0	
PE needs to file company tax returns	1.0	
Double tax relief possible	0.5	
		6.5
TOTAL		**10.0**