Institution **CIOT - ATT-CTA**
Course **CTA Adv Tech IHT Trusts and Estates**

Answer-to-Question-_1_

1)

Joe is UK domiciled so is subject to IHT on his worldwide assets on his death from both his
death estate and any lifetime gifts in 7 years.

Joe has a qualifying IIP in the trust created by his wife on her death, as this is an IPDI trust.
There was no IHT payable on creation of this trust as there was a spouse exemption.

As the single life annuity Joe has purchased from his second pension fund is not a qualifying IIP then its value (i.e. the 'annuity slice' the portion of the £500,000 to produce his £60,000 income) will not aggregate with his estate.

Calculation of IHT payable on Joe's estate

	Note	£	£	
Share in listed companies		175,000		
Half share of cottage		625,000		
Pension Fund	1	800,000		
Cash in bank accounts		60,000		

ISAs		80,000		
Artwork		140,000		
			1,880,000	
Value of qualifying IIP (IPDI trust)			800,000	
Share of brother's estate			300,000	
Gross estate			2,980,000	
NRB	2		(650,000)	
Taxable	3		2,330,000	
IHT @ 40%			932,000	

Note 1

This will only be subject to IHT on Joe's death if he has made a binding nomination for the
fund to be paid to nominated beneficiaries on his death. If he has not made a a binding nomination (and say only provided the pension trustees with a letter of wishes) then this will be left out of his taxable estate on his death.

Note 2

Even though his wife did not use her RNRB on her death (which would leave Joe with a RNRB default allowace of 2 x £175,000 = £350,000). This is tapered away for a every £1 over £2million, so would not be available given his estate is worth over £2,700,000.

Beatrice has left her estate to Joe on trust under a qualifying IIP. Therefore, it was exempt from IHT under the spousal exemption. And Joe will have an uplifted NRB of 2 x £325,000 = £650,000.

Note 3

This is the baseline amount. As th 'donated amount' of £200,000 left to charity under Joe's will is not 10% of the baseline amount then the estate not qualify for the lower rate of 36%.

2)

As Joe's brother passed away in March 2022 then he may execute a deed of variation (DOV) whereby his share in his brother's estate (£300,000) is redirected away from his estate.

As he has not received any benefit or distribution from the share due to him from his brother's estate then alternatively, he may execute a Deed of disclaimer. If he does so then, as he is a residuary beneficiary, his share in brother's estate would pass under the rules of intestacy.

Therefore, the DOV would assist Joe in redirecting this £300,00 to his children immediately. If he was to include a statement in the DOV that s142 IHTA 1984 takes effect then his brother's will would be rewritten so that that this £300,000 share in residue passes directly from his brother's estate to his children. This £300,000 residuary gift would still be exempt from IHT and so would bypass Joe's estate to his children so that no IHT will be paid on it when Joe passes away.

If he were to redirect the £300,000 gift to his minor children then it would need to be held on trust given they are minors. This might also be a suitable option if his adult children need assitance with meeting their school fees etc. If the DOV were to be done this way then Joe would be classed as the settlor for income tax and CGT purposes.

The CGT implications of using a DOV would mean that Joe will be gifting his share in brother's estate to the new beneficiaries at market value. If the residue includes any chargeable assets (i.e. not just cash) then Joe will be left with a chargeable gain on the difference between the market value at the date of the DOV and the probate. If this is within his CGT A/E then this will be fine and the beneficiaries will take the residue at their higher market value for base cost purposes.

Otherwise, he can include a statement that s.62 TCGA 1992 takes effect in the DOV which will mean the new beneificiaries take the chargeable assets in the residue at probate value.

The DOV would also need to be signed.

3)

Joe has made no lifetime gifts so has his annual exemptions from both the current tax year and previous tax year (i.e. 2 x £3,000). Therefore, he could begin making use of this annual exemption each year remove some value from his estate.

He could also make small gifts up to the value of £250 each year to any beneficiaries which would be exempt from IHT.

Joe may well have surplus income given the level of his income from his annutiy, other pension fund and his other assets. Therefore, he could begin making gifts out his surplus income to remove value from his estate. As long as he established a regular pattern of gifts and this left him with sufficient income to maintain his normal standard of living, then these gifts would also be exempt from IHT.

As he currently has cash of £60,000 and other assets that may be readily liquidated (e.g ISAs, quoted ahres and artwork) which total £395,000 he may consider investing these in BPR qualifying assets (such as AIM shares). Once he has held these for 2 years then they will be exempt from IHT on his death.

Given that the current donated amount in his will is below the 10% baseline amount for the lower rate of 36% IHT to apply he may also consider inserting a formula clause in his will whereby the amount gifted to charity is the lower of £200,000 and 10% of the baseline amount. This is because the beneficiaries are likely to receive more as a result of this.

In order that he can beneit from the £350,000 RNRB he has available, he may also consider making gifts to his children/grandchildren now that will bring the value of his estate under £2 millions (i.e. where tapering begins not to apply). These gifts will be PETs should he pass away within 7 years but the IHT payable on this will taper away by 20% for every year he survivies after 3 years.

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

Margaret will have an uplifted NRB of 2 x £325,000 = £650,000, given her late husband left his entire estate to her and had made no lifetime gifts himself.

However, as her husband's estate exceed £2 million then his RNRB would have been tapered away to nil (beingn £100,000 - tapered for every £2 over £2million). Therefore, Margaret wil have not brought forward allowance RNRB from her husband's estate.

Margaret was UK domiciled so will be subject to IHT on her worldwide assets.

Calculation of IHT due on Margaret's death

	Note	£	£	
London home (2,000,000 - 200,000)	2		1,800,000	
Home contents			200,000	
Office		800,000		
BPR @ 50%	1	(400,000)		
Plan to Build Ltd		300,000		
Mortgage on London Home	2	(300,000)		
			-	
Painting	3		140,000	
Cash			30,000	
Investments			120,000	
Gross estate			2,290,000	
Liabilities				
Credit card	4	4,000		
Funeral expenses		5,000		
			(9,000)	

Net estate			2,281,000	
RNRB	5		-	
Uplifted NRB			(650,000)	
Taxable			1,631,000	
IHT @ 40%			652,400	
QSR on painting	3		(19,853)	
QSR on Spainish property	6		(9,375)	
IHT payable			623,172	

Note 1

The office was used by a company she controlled. Therefore, BPR available at 50%.

Note 2

As the mortgage on the London home was taken out after April 2013 and used to acquire relievable property (in this case relevant business property), then the mortgage debt is first set against the relevant business property.

Only the excess (£500,000 - £300,000) can be set against the London Home. And this is assuming this excess is not down to the accrual of interest or had any tax avoidance motive.

Note 3

Margaret has inherited a chargeable transfer in the five years before her death. Therefore, quick succession relief is available as follows:

60% x 45,000 x 125,000/(125,000 + 45,000) = £19,853

Note 4

Assuming repaid in full by the executors to the creditors

Note 5

Tapered RNRB not available as Margaret's estate has been left on discretionary trust.

Note 6

QSR is available on the IHT paid on the Spanish property Margaret inherited from her father regardless of it being sold by her as follows:

20% x 75,000 x (200,000 - 75,000)/200,000 = 9,375

2)

The gift of residue into trust for Margaret's daughters will be a chargeable transfer from her estate.

Normally it would be a relevant property trust. Which would mean it would be subject to IHT on any capital appointments and ten year anniversaries based on the initial value of the trust (£2,281,000 - £623,172).

However, if the daughters are to take the capital and any unaccumulated and undistributed income then it will actually be a bereaved minors trust.

This means that if any capital distributions are made for their benefit before turning 18 or when they take the capital at 18 then there will be no IHT charges.

In order to maintain the benefits of a bereaved minors trust no more than the lower of £3,000 or 3% of the maximum value of the trust in a tax year can be applied for anyone else's benefit.

As it is a discretionary trust, any income from the trust will be subject to income tax at the tate applicable to trustees.

This means, in each tax year, the the trust income will be subject 20% income tax on non-savings/savings income and 7.5% on any dividend income up the first £1,000 of income (i.e .the standard rate band).

Any non-savings/savings income above this will be subject to income tax of 45%. And any dividends will be subject to income tax of 38%. Relief will be given for any trust management expenses, which will be grossed up and taxed at the basic rate (against dividends first).

All tax paid (apart from that for the trust management expenses) will go into a 'tax pool' to frank any distributions made to the beneficiaries.

Any income distributions made to the beneficiaries will carry a 45% tax credit and will be classed as non-savings income.

The trustees wil take the assets at probate value and any chargeable gains made by them on will have a trustees CGT A/E to set against them each year with CGT paid at 20% or 28% for residential property.

However, as it is bereaved minor's trust then a vulnerable person's election may be made by the trustees by 31 January following the tax year to which it will first apply.

This is because it is a qualifying trust for this person.

Once this joint election has been made by the trustees and the guardians of the beneficiaries this will allow the trustees to make a claim each year for the election to apply.

This will then mean that any trust income is taxed on the trustees as if it accrued directly to the beneficiaires. This mean the trustees get the benefit of the personal allowances and savings/dividend allowances of the beneficiaries.

However, this will not apply to any income distributions made by the trustees which will taxable at 45%.

The election will also mean that any disposals are taxed on the trustees as if they accrued directly to the beneficiaries, which means the trustees will get the benefit of the fill CGT A/E for an individual and the lower CGT rates of 10%/18% up to the basic rate band for the beneficiaires.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

As trustees of the Donald Disc Trust are all non-resident then the trust has only ever been subject to income tax on its UK source income.

This means that the trustees should have been declaring the net rental income on the commercial property in the UK to HMRC since March 2016. This means the trust has undeclared UK income from 15/16 onwards.

The trustees would also have been required to prepare and submit a UK trust tax return to HMRC from 15/16 declaring this UK rental income.

As it is a discretionary trust then the trust will be subject to the rate applicable to trustees on this trust income. This means that the first £1,000 of income will suffer income tax at 20% and anything above this, income tax at 45%.

The trustees will be given relief for trust managment expenses. But this will be rateably apportioned between UK and foreign income. With the expenses then grossed up and taxed at basic rates.

As it is an express trust that has UK tax liability it should have also been registered on the Trust Register.

In order to begin to correct matters the trustees should register the trust on the Trust Register in order to obtain a UTR. The trustees should then make submissions to HMRC for 15/16 onwards and arrange payment of unpaid income tax.

As Donald has been UK resident since the trust was created in February 2016 (assuming he has become deemed domicile under the long term residency rules), then under s.624 ITTOIA (if this doesn't apply then under s.720 ITA 2007) and has the trust is settlor interested, the income is taxable on Donald as it arises. In this regard there is no relief for any trust expenses charged against the trust income.

However the trust income will retain its character in the hands of Donald as the settlor. This means it will taxed at his marginal income tax rate and he will be able to set his savings and dividends allowances against.

This means Donald should have been declaring all the trust income on his UK self assesment tax return. He should arrange for this to be declared accordingly, unless he has already done so. He will get credit for income tax paid by the trustees but any tax repayment with regard to the trust income he receives from HMRC should be repaid to HMRC.

As the trust is non-resident then it will only be subject to UK CGT on any direct or direct disposals of UK land and buildings. Indirect disposals being shares which derive 75% of their value from UK land and buildings. The other exception are assets used in a UK trade.

As the value in the Rice Ltd shares derive more than 75% of its value from UK buildings then should the trustees sell these shares, it will be reportable disposal for UK CGT purposes. Under the current rules they will need to submit a Non-Resident Capital Gains Return to HMRC within 60 days of the disposal and pay any CGT due within this date. The gain in the first instance will be calculated using the default method based on the value of the share derived from the UK land on 6/4/19. But the trustees may opt for the retrospective method (i.e. market value minus acquisition cost) if this produces a lower gains.

As the trustees plan to sell Meadowview in the current year and it is a commercial property then they will need to prepare and submit a NRCG Return as outlined above, with any CGT payable within the 60 day deadline.

Donald, as the settlor, is non-domiciled. Therefore, s.86 TCGA 1992 does not apply here. Therefore, he will not be subject to UK CGT on any gains arising from the trust.

This will continue to be the case even though he has become deemed domcile under the long term residence rules. This is because this protection continues to apply for deemed domicle persons under the long term residence rules. Which means they won't be considered deemed domcile for the purposes of s.86 TCGA 1992

However, as Donald and his adult children are all beneficiaries and UK resident then they will be caught under the rules by s.87

TCGA 1992. This means that should any beneficiaries receive any capital benefits or payments from the trust then they will be matched with any gains made by the trust.

This will be in a last in, first out basis, so any gains in the year of the payment/benefit will be matched first, following by the prior year and so on. The beneficiaries will not be able to set their personal losses against these agains.

The above applies under the transfer of assets abroad provisions, whereby Donald has transferred assets abroad and as a result income/gains have accrued to a non-resident entity.

It wil be difficult to argue the safe harbour provisions here, that tax avoidance was not part of the reasoning for creating the trust, given Donald created the trust to protect his wealth and that he was UK resident at the time of creating the trust.

Donald should also ensure that the trustees act independantly and do not follow his instructions.

2)

Donald creating the trust at a time when he was non-UK domiciled. Therefore, the trust also has non-UK domciled status and so non-UK situs assets are excluded property, and are not subject to UK IHT.

This will continue to be the case even though Donald became deemed domcile under the long term resident rules in April 2019 (as only formerly domiciled residents that become deemed domciled are impacted).

This means that the cash in the Guernsey bank account (as a non-UK situs) asset is not subject to UK IHT.

This also would have been the case with the Rice Ltd shares, as it is a non-UK resident company. However, rules introduced form April 2017 means that from that dates, the value in the non-UK company shares represented by UK residential property will be subject to UK IHT from that date where they are held by a non-resident trust.

This means that £775,000 of the value in the Rice Ltd shares held by the trust is currently subject to UK IHT relevant property charges. However, the actual rate will be based on the number of complete quarters since April 2017 (the date in which this value became subject to IHT).

However, no capital distributions have yet been made and the first ten year anniversary will be in 2026. Therefore, no IHT Returns or IHT have yet falleb dye.

As the commercial property is a UK situs asset then its value will be subject to IHT on capital distributions of it or if it is held at the ten year anniversary.

However, as the trustee plan to sell this property in the current year they would be advised to pay the proceeds into a non-UK bank. This would make it a non-UK situs and would mean it would not be subject to UK IHT.

Likewise, as the controlling shareholder of Rice Ltd, the trustees should arrange for the UK residential property to be sold and for the proceeds to be invested in a non-UK situs asset. This would mean that value would no longer be subject to UK IHT.

Alternatively, if the trustees were to dispose of the shares in Rice Ltd then the proceeds would remain subject to UK IHT for 2 years after the sale.

As Donald is settlor and a beneficiary of the trust then the value of any UK situs assets in the trust will be taken to be in his estate for IHT purposes.

--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_4_

Peter has a qualifying IIP in the trust created by his wife with the half share of the family home. This because it is an immediate post death interest trust.

When his family home was sold in October 2020, the CGT position would have been as follows:

The trustees would have been subject to CGT on any chargeable gain made on its half share of the property as follows:

	Note	£		
Proceeds (420,000/2)		210,000		
Less: cost - probate value Gladys' death (350,000/2)		(175,000)		
Chargeable gain		35,000		
PPR relief	1	(35,000)		
Taxable gain		-		

Note 1

Assuming Peter occupied the property for the period from Glady's death to sale (or at until at least 9 months beforehand) then this gain made on the trustees's share of the property is eligible for PPR relief in full.

As the trust was a qualifying IIP then when the trust's share of the net proceeds were gifted to the children, this would have been a PET made by Peter (as the life tenant of a qualifying IIP).

The PET will be calculated as follows:

	Note	£		
Net proceeds		210,000		
20/21 A/E	1	(3,000)		
19/20 A/E		(3,000)		
		204,000		

Note 1

The trustees would need to check the availabilty of these A/Es. And obtain Peter's permission they could be utilised.

Therefore, if Peter passes away before 23 October 2027 then this PET will become a chargeable transfer.

Assuming Peter had lived at the property as his main residence during the entire period of ownership then he also would have been eligible for PPR in full on the sale of his half share in the property.

When Peter gifted the £207,000 to Sally this would have been a PET. Unless, he annual exemptions available for 20/21 and 19/20 (i.e. not utilised as above) then this PET of £207,000 will be chargeable should he pass away before 12/11/27.

As Sally has used this funds to to purchase a property, which Peter began to occupy with her (within 7 years of the gift) then the pre-owed assets tax (POAT) rules apply given that he has indirectly benefited from his initial gifted and the GWROB rules don't apply (as there are no tracing provisions).

Therefore, Peter is subject to income tax on the notional benefit he receives from occupying the property rent free. This will be calculated as follows:

£750 x 12 x 90% = £8,100 (no discount given here for Peter jointly occupying the property with Sally, or his payment of half of the household expenses given it is not pursance of a legal obligation

Peter will need to declare this notional beneficial on his tax return for 21/22. The benefit will be

£8,100 x 9/12 = £6,075 (allowing for him moving in 3 months into the tax year).

As he is a higher taxpayer, he wil income tax for 21/22 to pay as follows:

6,075 x 40% = £2,430

However, in order to mitigate this, there are couple of options available to Peter:

He could make rental payments to Sally equal to her annual maintainance expenses and other running costs. This will reduce Peter's POAT charge without Sally making a rental profit.

He could make an election for the POAT rules not to apply. This way the £207,000 gift to Sally will be a gift with reservation of benefit and will be taxable in his death estate. This election would need to be made by 31/1/23.

2)

The annuity that Peter has received under his wife's discretionary will trust will be taxable in his estate, as it will be considered a qualifying IIP.

The value of this in his estate will be the annuity slice, calculated as follows:

Annuity grossed up (as received free of tax)

£10,000 x 100/80 = £12,500

12,500/30,000 x £720,000 = £300,000

The PETs of noted above, which were the gift of half the house sale proceeds from both the trust and from Peter will be become chargeable if he were to pass away now as follows:

	Note	£	£	
Net proceeds (207,000 x 2)		414,000		
A/Es x 2		(6,000)		
		408,000		
NRB	1	(325,000)		
Taxable		83,000		
IHT @ 40%		33,200		

Note 1

Gladys NRB was utilised by her gift into the discretionary trust on her death.

IHT on Peter's estate on death

	Note	£	£	

Cash		100,000		
ISA		143,000		
Life insurance policy death benefit	1	130,000		
			373,000	
Annuity slice (as above)			300,000	
Chargeable estate			673,000	
NRB			-	
Taxable			673,000	
IHT @ 40%			269,200	

Note 1

This is included in his taxable estate on death if Peter is both the life assured and the beneficiairy of the estate.

Therefore, if he were to nominate another person as the beneficiary then this would be removed from his taxable estate for IHT purposes.

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

5.

As the residence status of the executors are mixed, then as George was UK domiciled then the estate is UK resident for income tax purposes. This means it is subject to UK income tax on its worldwide income.

20/21

	Note	£	£	£
		NS	S	D
Rental (11,250 + 9,200 - 1,800 - 1,200)		17,450		
Dividends				5,000
Bank interest			3,000	
		17,450	3,000	5,000
Less: interest on probate loan		(1,500)		
		15,950	3,000	5,000
Tax @ 20%/7.5%		(3,190)	(600)	(375)
Distributable income		12,760	2,400	4,625

21/22

	Note	£	£	£
		NS	S	D
Rental (9,000 + 7,200 - 1,800 - 1,200)		13,200		
Dividends				3,200
Bank interest			2,500	
		13,200	2,500	3,200
Less: interest on probate loan		(1,250)		
		11,950	2,500	3,200
Tax @ 20%/7.5%		(2,390)	(500)	(240)
Distributable income		9,560	2,000	2,960

Note 1

Probate loan taken out on 09/2020. Therefore, interest deductible is for the period 09/2020 to 10/2020

Interest deductible for 21/22:

6/12 x 2,500 = 1,250

22/23

	Note	£	£	£
		NS	S	D
Rental (750+600-150-950)		250		
Dividends				100
Bank interest			100	
		250	100	100
Tax @ 20%/7.5%		(50)	(20)	(8)
Distributable income		200	80	92
21/22		12,760	2,400	4,625
21/22		9,560	2,000	2,960
Total distributable income		22,520	4,480	7,677

Julie's R185

NS - 22,520/2 = 11,260
S - 4,480/2 = 2,240
D - 7,677/2 = 3,829

	Note	£	£	
		Net	Tax	
NS		11,260	2,815	
S		2,240	560	
D		3,829	310	

As George was non-resident before his death, then his estate is treated as non-resident for CGT purposes.

20/21

CGT calculation

	Note	£		
Proceeds from UK shares		80,000		
Less:				
Cost		(60,000)		
SP 2/04 relief	1	(267)		
Chargeable gain		19,733		
CGT A/E		(12,300)		
Taxable		7,433		
CGT @ 20%		1,487		

Note 1

£8,000 x 60,000/1,800,000 = £267

22/23

CGT calculation

	Note	£	£	
Cottage net proceeds			345,000	
Less:				
Probate value		275,000		
Cost of strip of land		15,000		
SP 2/04 relief	1	1,222		
			(291,222)	
Chargeable gain			53,778	
CGT A/E	2		-	
Taxable			53,778	
CGT @ 28%			15,058	

Note 1

£8,000 x 275,000/1,800,000 = £1,222

Note 2

CGT A/E only available in tax year of death and following two tax years

2)

There is over £10,000 of income tax and CGT due for the period of administration. Therefore, this is a complex estate and the executors must register the estate on the Estate Register before 5 October 2020.

HMRC will then issue a UTR and the executors will then need to prepare a full estate tax return (SA900) for each tax year of the administration and report the income and disposals for the administration period on these tax returns,

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--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

Ten year anniversary IHT calculation

	Note	£	£	
Farmhouse		650,000		
APR @ 100%	1	(450,000)		
			200,000	
Farmland		800,000		
APR @ 100%	2	(650,000)		
		150,000		
BPR @ 50%	2	(75,000)		
			75,000	
Field			25,000	
Barns	3		400,000	
Shop		300,000		
BPR @ 50%	4	(150,000)		
			150,000	
Shareholding			54,400	
Cottage	5	50,000		
APR @ 100%		(40,000)		
			10,000	
Cash			33,000	
Chargeable assets			947,400	
NRB			(325,000)	
			622,400	
IHT @ 20%			124,480	

Effective rate (124,480/947,400 x 100)			13.1391%	
Actual rate			3.9417%	
Anniversary charge (947,400 x 3.9417%)	6		37,344	

Note 1

The farmhouse is used as the hub of the farming operations and are in common occupation with the farmland. Therefore APR @ 100% is available on the agricultural value.

However, the primary use of the property will be as a residence so no BPR is available on the remainder.

Note 2

The farmland is in use by the partnership. Therefore APR @ 50% on the agricultural value.

It is an asset used by the partnership so BPR @ 50%

Note 3

As these barns are held outside the farming partnership then no BPR available (but if I have misread and they are held by the farming business then BPR @ 100% will apply, as they will not be considered as excepted assets under s.112 IHTA 1984 given they make up a small proportion of the profit of the business and are required in future use of the business)

Note 4

Shope owned by a company controlled by the trust

Note 5

Occupied by retired farmworker

Note 6

This IHT is payable by the trustees to HMRC by 28 February 2023

An IHT100 will also need to be prepared and submitted to HMRC by this date.

2)
If the trustee appoint the field and shares to the beneficiaries within 3 months of the ten year anniversary there will be no IHT charge,