



May 2024 Examination

PAPER 5

Inheritance Tax, Trusts & Estates

Part I Suggested Answers

1. Mr. Yin was both resident and domiciled in the UK when he settled both trusts. As such if any trustee is UK resident this makes the trust UK resident. (1/2)

Mr. Yin's wife, as one of the trustees of the Yin Family Settlement No. 1 is UK resident and therefore the Yin Family Settlement No. 1 is UK resident (1/2).

Both trustees of the Yin Family Settlement No. 2 are non-UK resident and therefore the Yin Family Settlement No. 2 is non-UK resident (1/2).

As a UK resident trust, the Yin Family Settlement No. 1 is subject to UK income tax on its worldwide income (1/2), whereas the Yin Family Settlement No. 2, as a non-UK resident trust, is not subject to UK income tax on its overseas source income (1/2).

As a UK resident trust, the trustees of the Yin Family Settlement No. 1 will also be chargeable to UK Capital Gains Tax on the trust's worldwide gains (1/2).

As a non-UK resident trust, the trustees of the Yin Family Settlement No. 2 will not normally be liable to Capital Gains Tax in the UK (1/2).

Total Max (3)

2. As Joseph has a life interest in half of the trust Investors' relief is available on half of the gain arising on disposal of the shares (1/2) as the following conditions are met:

- The company is an unlisted (1/2) trading company (1/2)
- The trustees subscribed for the shares (1/2)
- The interest in possession is not for a fixed term (1/2)

and for a period of at least three years prior to the sale:

- The trust has owned the shares (1/2)
- Joseph has had the life interest (1/2)
- Joseph is not an officer or employee of the company (1/2)

The remaining half of the life interest is held by Tom, and therefore this half of the share sale will not qualify for Investors' Relief (1/2) as he is an employee of the company (1/2).

Total Max (4)

3. The Income Tax Payable for 2023/24 is:

	£ Non- savings	£ Savings	£ Dividends	
Income:				
Rental Profits	9,000			
Interest		2,000		
Dividends			15,000	
	9,000	2,000	15,000	
Less: Annuity	(9,000)	(1,000)		1
Taxable Income	-	1,000	15,000	
Less: Management Expenses (1,000 x 100/91.25)			(1,096)	1
		1,000	13,904	
Tax				
1,000 @ 20%			200	½
1,096 @ 8.75%			96	½
13,904 @ 39.35%			5,471	½
			5,767	
Add: Tax deducted from annuity (10,000 x 20%)			2,000	½
Total Tax Liability			7,767	

Total (4)

4. Belmont House was held as tenants in common with Mr. James' wife, so each owns an undivided share in the property (½). On Mr. James' death his share of the property passes in accordance with his Will (½).

Properties that are held jointly by husband and wife must be valued under the related property rules (½), so the value of Mr. James' share is half of the value of the entire property, with no discount.

$$£550,000 \times 50\% = £275,000 \text{ (½)}$$

Fenwick House was held as joint tenants with Mr. James' son, so the property is not divided into shares, but each co-owner owns the whole property together with the other (½). On Mr. James' death the entire property passes to his son by survivorship (½).

Properties held jointly with individuals who are not a spouse or civil partner do not fall within the related party rules, and therefore the value of Fenwick House will benefit from a deduction of between 5 and 15% (½) representing the reduced value for not owning the entire property. Taking a 10% deduction this would be:

$$£440,000 \times 50\% \times 90\% = £198,000 \text{ (½)}$$

Total (4)

5. The Capital Gains Tax due on the transfer of the shares is as follows:

	£	
Proceeds	600,000	
Cost	(500)	½
Gain	599,500	
Less: Annual exempt amount	(6,000)	½
Taxable Gain	593,500	
Tax @ 20%	118,700	½

Mr. Patel could elect to pay the Capital Gains Tax in 10 equal annual instalments as the disposal meets the following conditions:

- The shares are unlisted and therefore represent a qualifying asset (½)
- The transfer was a gift, and no proceeds were received (½)
- There is a liability to CGT (½)
- There is an immediate charge to IHT with gift relief unavailable (½), because Mr Patel's minor children are beneficiaries of the trust, making it settlor interested. (½)

NB: Marks will be given where 50% of the proceeds and costs are used.

Total Max (3)

- 6.

	£	
Value of gift 16/4/21	450,000	
Less: AE 2021/22	(3,000)	½
AE 2020/21	(3,000)	½
Less: NRB	(325,000)	½
Chargeable Transfer	£119,000	

£47,600 ¹/₂
 IHT @ 40%

The due date for the IHT was 31 October 2023, 6 months following the end of the month of death.

The first annual instalment of £4,760 was due on the same date and will therefore be paid 12 months late.

Late payment interest will be due as follows:

$$£47,600/10 \times 6.5\% = £309 \text{ (1)}$$

The instalments are interest bearing as the property is not subject to either Agricultural Relief or Business Property Relief.

The second instalment of £4,760, and interest on the outstanding instalments at that date, is due 31 October 2024.

The instalment interest payable on 31 October 2024 is as follows:

$$£47,600 \times 9/10 \times 6.5\% = £2,785. \text{ (1)}$$

The total amount payable 31 October 2024 will therefore be £4,760 + £309 + £4,760 + £2,785 = £12,614 (1/2).

Total **Max (4)**

7. As Sandra is non-UK domiciled (1/2), the general rule is that she is only subject to UK Inheritance Tax on transfers of assets that are situated in the UK (1/2).

The property is not liable to UK inheritance tax as property is situated in the place it is physically present and therefore this is situated outside of the UK and is excluded property(1/2).

The shares in the open-ended investment company (OEIC) are not liable to UK Inheritance Tax as Sandra was non-UK domiciled at the date of transfer and these are therefore excluded property under s. 6(1A) IHTA 1984 (1/2).

The UK foreign currency account is liable to UK Inheritance Tax as money held in a bank account is usually treated as situated in the place that the bank is located i.e. within the UK. (1/2).

The exemption relating to foreign currency accounts applying to non-resident and non-domiciled individuals does not apply as Sandra is UK resident at the time of her death.

Cash is treated as being situated in the place it is physically present, i.e., the UK, so the €1,000 cash would be subject to UK Inheritance Tax despite being foreign currency (1/2).

Total **(3)**

8. If no election is made:

	£	£
Gross Estate	1,255,000	
Less: Spouse Exemption (restricted)	(325,000)	1/2
Chargeable Estate	930,000	
Less: Nil Rate Band	(325,000)	1/2
Taxable Estate	605,000	

IHT @ 40% 242,000 1/2

On Rebecca's husband death:

UK Estate inherited from Rebecca (1,255,000 - 242,000)	1,013,000	½
Less: NRB	<u>(325,000)</u>	½
Taxable Estate	688,000	
IHT @ 40%		<u>275,200</u>
		<u>517,200</u>

If election is made:

	£	£
Gross Estate	1,255,000	
Less: Spouse Exemption (unrestricted)	<u>(1,255,000)</u>	½
Taxable Estate	NIL	
IHT @ 40%		NIL

On Rebecca's husband's death:

UK Estate inherited from Rebecca	1,255,000	
Foreign Assets	1,300,000	½
Less: NRB	<u>(325,000)</u>	
Less: Transferable NRB	<u>(325,000)</u>	½
Taxable Estate	1,905,000	
IHT @ 40%		<u>762,000</u>
		<u>762,000</u>

If Pierre were to make an election to be UK domiciled, the Inheritance Tax due would be higher and therefore we advise him not to make the election (1/2).

Total **Max (4)**

9. The legacy to Charlotte is a pecuniary legacy, as she is being left a specific amount of money. (½)

The legacy to John is a specific legacy as he is being left a particular item from Mr. Vardy's estate. (½)

The legacy to Amber is a contingent pecuniary legacy, as she is being left a particular amount of money subject to a condition or contingency i.e., that she is married. (½)

The legacy to Irene is a residuary legacy, as she will be left what is remaining from the Estate following distribution of the pecuniary and specific legacies. (½)

Total **(2)**

10. As an ATT member, Josie is required to abide by the regulations set out in the PCRT.

Josie should ensure her own tax affairs are always up to date (1).

As Josie is in dispute with HMRC relating to her own tax return, she is recommended to appoint a tax agent (1).

Total **(2)**

11.

	£	£	
Initial Value of Property		750,000	½
Nil Rate Band at Date of Exit	325,000		½
Less: Settlor's chargeable transfer in 7 years before creation of the trust	<u>(120,000)</u>		½
Available nil rate band		<u>(205,000)</u>	
		<u>545,000</u>	
Notional IHT @ 20%		109,000	½
Effective Rate (109,000/750,000 x 100)		14.533%	½
Actual Rate (14.533 x 30% x 16/40)		1.744%	1
Exit Charge (600,000 x 1.744%)		<u>£10,464</u>	½

(NB: If candidates included annual exemptions in their answers, full credit will be given)

Total

Max (3)

12.

		£	
Balance b/f on 6 April 2023		17,000	
Add: tax paid by Trustees			
Non-savings Income	1,000 @ 20%	200	½
	9,000 x 45%	4,050	½
Dividend Income	28,904 x 39.35%	11,374	½
Less: Tax credits claimed by beneficiaries	(20,000 x 45/55)	<u>(16,364)</u>	½
Balance c/f on 5 April 2024		<u>16,260</u>	

Total

(2)

13. As Stephen did not have a valid Will in place, his free Estate will be distributed according to the intestacy rules set out in the Administration of Estates Act 1925 (½)

However, Stephen's share of the marital home (£200,000) will pass to Laura under the right of survivorship as it was held as joint tenants and will not be distributed under the intestacy rules (½).

Under the intestacy rules:

All personal chattels (£5,000) will pass to Laura (½). Laura will also receive a statutory legacy of £322,000 plus any interest due to her from the date of death (½).

Half of the residue of the estate (£36,500) will also pass to Laura (½), and the children will take an equal share in the other half of the residue (£36,500/4 = £9,125 each) (½).

Total

Max (2)



May 2024 Examination

PAPER 5

Inheritance Tax, Trusts & Estates

Part II Suggested Answers

Candidates will be given credit for relevant points not on the mark scheme.

14.

1) Income Tax and Capital Gains Tax payable in the period to Jakub's death

Income Tax 6 April 2023 to 5 September 2023	Non-savings £	Interest £	Dividends £	
Rental income (2,000 x 5)	10,000			½
Bank interest*		nil		
Dividends (Personal allowance covered by pension income)			12,000	
Taxable income	10,000		12,000	
Tax at 20% - 10,000 x 20%	2,000			½
Dividend allowance - tax at 0% - 1,000 x 0%			0	½
Tax at 8.75% - (12,000 – 1,000) x 8.75%			963	½
Total Income Tax payable			2,963	
* Bank interest taxed in estate on receipts basis				½
CGT 6 April 2023 to 5 September 2023	£			
10 June 2023 – painting disposal				
Proceeds	10,000			
Base cost	(25,000)			
Capital loss	(15,000)			½
The capital loss can be carried back up to <u>3 years</u> LIFO – Jakub had £2,000 of CGT payable in each year preceding his death, this loss can therefore be relieved against the <u>2022/23 CGT liability</u> and then partially against the <u>2021/22 CGT liability</u>				1½
Total CGT repayment is therefore: £15,000 x 20%		£3,000		½
Total marks for part 1				(5)

2) Income Tax and Capital Gains Tax payable by Jakub's Executors

Income Tax 6 September to 5 April 2024	Non-savings £	Interest £	
Savings interest (receipts basis) £3,000 x 2		6,000	½
Rental income 6 September 2023 – 29 February 2024 (2,000 x 4) + (2,300 x 2)	12,600		1
Taxable income	12,600	6,000	
Tax at 20% (no personal or savings allowance)	2,520	1,200	½
Total Income Tax payable		3,720	
CGT 6 September 2023 to 5 April 2024	£	£	
12 November 2023 - share disposal			
Proceeds	30,000		
Base cost (value at death)	(35,000)		
Cost of obtaining probate under SP 2/04: 35,000 x 0.8%	(280)		½
Capital loss		(5,280)	½
1 March 2024 – sale of investment property			
Proceeds	240,000		

Base cost (value at death)	(220,000)		
Cost of obtaining probate under SP 2/04: 220,000 x 0.8%	(1,760)		1/2
Capital gain		18,240	1/2
Net gains for year		12,960	
Less annual exempt amount		(6,000)	1/2
Taxable gains		6,960	
Total CGT payable at 28% (residential property)		£1,949	1/2
Total marks for part 2			(5)

3) Jakub's death estate

	£	£	
Death estate before adjustments		800,000	
Add CGT refund received		3,000	1/2
Less Income Tax payable to date of death		(2,963)	1/2
Accrued income:			
Add interest accrued to savings account at death	2,500		1/2
Less 20% income tax charge	(500)		1/2
Accrued interest chargeable to IHT		2,000	
Chargeable death estate		£802,037	
N.B. Executors' income tax and CGT liabilities, and probate costs not allowable deductions.			1/2
Total marks for part 3		MAX	(2)

4) Administration of the estate

Reporting the disposal of the investment property

The Executors were required to report the disposal of the investment property to HMRC via a capital gains tax UK property disposals return within 60 days of the disposal; therefore, they may have missed the deadline for this (1/2). Interest and late filing penalties under FA 2009, Schedule 55 will apply (1/2).

An informal payment of the total Income Tax and CGT liability for the entire administration period could be made (after deducting CGT already paid via a capital gains tax UK property disposals return) (1/2) as the following conditions have been met:

- the total liability is £5,669 (£3,720 + £1,949), therefore under the £10,000 limit (1/2)
- the administration of the estate was completed by 30 April 2024 ie within two years of the date of Jakub's death (1/2)
- the probate value of the estate is £802,037, therefore under the £2.5 million limit (1/2)
- the total proceeds of assets sold by the executors in 2023/24 were £270,000 and £nil in 2024/25, therefore under £500,000 for any tax year. (1/2)

With the payment, the Executors submit a single Income Tax and Capital Gains Tax computation for the period of the administration. (1/2)

Total marks for part 4

Max (3)

Total marks for question 14

(15)

15. Email
 From: Tax Adviser
 To: Tax Partner
 Date: 8 May 2024
 Subject: The Style Discretionary Trust

Thank you for your email, please find the calculation of the 10-year charge and answers to your various queries below.

1) Calculation of 10-year charge:

	£	£	
Value of trust property on 13 December 2023:			
Investment portfolio		500,000	
Agricultural land	160,000		
Less APR at 100% x AV as now <2 years left on lease despite it being a pre-1 September 1995 lease	(110,000)		1
		50,000	
Shares in Dress Ltd	120,000		
- No BPR as held for less than 2 years	-		½
		120,000	
Cash		30,000	
Undistributed and unaccumulated net income (20,000 x 5)		100,000	1
		800,000	
Initial value of related settlement:			
Cornelia Life Interest Trust		150,000	½
		950,000	
NRB at TYA	325,000		½
Settlor's CLTs in 7 years before creation:			
Creation of Mirrorball Discretionary Trust	(35,000)		½
Capital distributions in past 10 years (50,000 + 50,000)	(100,000)		½
Nil rate band remaining		(190,000)	
		760,000	
Notional tax at 20%		152,000	½
Effective rate: 152,000/950,000 x 100		16.00%	½
Actual rate: ER x 30%		4.8%	½
Principal charge:			
On Dress Ltd shares:			
120,000 x 4.8% x (40 – 32)/40	1,152		1
On all other assets:			
(500,000 + 50,000 + 30,000 + 100,000*) x 4.8%	32,640		½
		33,792	
* No apportionment for unaccumulated undistributed income			½
Total marks for part 1			(8)

2) Steps to take before engaging with the trustees of the Style Discretionary Trust

Before accepting the trustees of the Style Discretionary Trust as clients, we must first comply with the identification requirements set out in the anti-money laundering guidance (1/2) to ensure we manage the risks of acting for the client (1/2).

Although we seem to have sufficient expertise to prepare the relevant computation, we need to ensure that there is no conflict of interest (1/2), for example with another client.

Our next step should be to seek professional clearance from their previous adviser (1/2). We should make it clear that we are only being engaged to complete the 10-year charge calculation, and request only any information pertinent to completing that calculation (1/2).

We should prepare a letter of engagement (1/2). When preparing our letter of engagement to send to the client, we should ensure the scope is limited to the 10-year charge calculation only (1/2) and ensure that our fees are set out clearly (1/2). If the trustees would like us to complete additional work in the future, we will need to issue a new engagement letter with updated schedules (1/2).

Total marks for part 2

MAX (4)

3) Legal implications of providing investment advice to the trustees.

Unless we have been given specific permission under FSMA 2000(1/2), we cannot provide specific investment advice (1/2) to the trustees, or we will be committing an offence (1/2). Such an offence could result in a maximum term of two years' imprisonment (1/2) and/or a fine (1/2).

We are able to advise the trustees on the general tax implications (1/2) of disposing of any investments they currently hold (1/2) or of making any new investments (1/2).

Total marks for part 3

MAX (3)

Total marks for question 15 (15)

16. 1) IHT on lifetime transfers:

	£	£	£	
14 February 2011 – cash to Portico Trust		306,000		
AE 2010/11		(3,000)		½
AE 2009/10		(3,000)		
CLT		300,000		
NRB 2010/11		(325,000)		½
Taxable transfer			Nil	
23 April 2017 – cash to Chimney Life Interest Trust		100,000		
AE 2017/18		(3,000)		½
AE 2016/17		(3,000)		
CLT		94,000		
Nil rate band 2017/18	325,000			
Settlor's transfers in prior 7 years	(300,000)			½
		(25,000)		
Taxable transfer		69,000		
IHT @ 20/80 as Thelma paid the tax			17,250	½
Chargeable Lifetime transfer (94,000 + 17,250)		111,250		½
5 January 2018 - Vintage car to nephew		60,000		
AE already used		-		½
PET		60,000		
- PET when made so no lifetime IHT			Nil	
- GWROB as Thelma continued to use car				½
1 August 2020				
- Further PET to Ian when Thelma stopped using the car		75,000		½
AEs not available on release of a PET (deemed transfer)		-		½
PET		75,000		
- No lifetime IHT			Nil	
1 December 2020 – gift of main home to children		165,000		
AE 2020/21		(3,000)		½
AE 2019/20		(3,000)		
PET		159,000		
- no lifetime IHT			Nil	
- GWROB as Thelma continued to live in the house				½
Total lifetime IHT			17,250	
Total marks for part 1				(6)

2) Tax as a result of Thelma's death:

		£	£	
14 February 2011 – cash to Portico Trust				
CLT		300,000		
> 7 years before death so no additional tax				½
23 April 2017 – cash to Chimney Life Interest Trust				
Gross CLT		111,250		
NRB on death	325,000			½
Settlor's transfers in prior 7 years	(300,000)			½
		(25,000)		
Taxable on death		86,250		
IHT @ 40%		34,500		½
Taper relief 6-7 years = 80%		(26,700)		½
		6,900		

Less lifetime tax paid		(17,250)		1/2
Additional tax payable on death (cannot create repayment)			nil	1/2
Double charges relief for gift of car, compare the two PETs:				
1)				
5 January 2018 – Vintage car to nephew				
PET		60,000		
NRB on death	325,000			
Settlor's transfers in prior 7 years (300,000 + 111,250)	(411,250)			1/2
		Nil		
Taxable on death		60,000		
IHT @ 40%		24,000		1/2
Taper relief 5-6 years = 60%		(14,400)		1/2
Additional tax payable on death		9,600		
2)				
1 August 2020 – Vintage car to nephew (GWROB released)				
PET (no AEs available as previously mentioned)		75,000		
NRB on death	325,000			
Settlor's transfers in prior 7 years	(111,250)			1/2
		(213,750)		
Taxable on death		Nil		
Take higher tax charge from initial PET			9,600	1/2
Double charges relief for gift of main home, compare PET to GWROB of home in the estate.				
1)				
1 December 2020 – gift of main home to children				
PET now chargeable		159,000		
Nil rate band on death	325,000			
Settlor's transfers in prior 7 years (111,250 + 60,000)	(171,250)			1/2
		(153,750)		
RNRB (remains available as main home remains in death estate although its value is disregarded)		(175,000)		1
Taxable death estate		Nil		
2)				
Death estate with main home ignoring PET:				
Cash		40,000		
Main home	175,000			
Less RNRB	(175,000)			1/2
		0		
		40,000		
Nil rate band on death	325,000			
Settlor's transfers in prior 7 years (111,250 + 60,000)	(171,250)			1/2
		(153,750)		
Taxable death estate		Nil		
Take higher tax charge from initial PET plus death estate without home (2,100 + 0)			2,100	1/2
Total IHT payable as a result of death			11,700	
Total marks for part 2				(9)

Total marks for question 16

(15)

17.

1) Inheritance Tax implications for Basil on creation of the trust

Basil will have made a PET on creation of the trust as it is a pre-FA 2006 trust (1/2), which would only become chargeable should he die within 7 years (1/2).

Capital Gains Tax implications for Basil on creation of the trust.

The transfer to the trust is a chargeable disposal for CGT purposes (1/2) and as the trust is a connected person to Basil, he is deemed to dispose of the portfolio at its market value (1/2). He will therefore have a capital gain equal to £600,000, less the base cost of the assets in the portfolio (1/2). Basil would not have been able to hold over the capital gain as transfers to A&M trusts are not chargeable for IHT purposes (1/2) unless any of the shares were qualifying business assets (eg shares in an unquoted trading company) (1/2).

Total marks for part 1

MAX (3)

2) Income Tax treatment

The income tax treatment of the trust will change over time depending on whether any or all beneficiaries have IIPs in the trust property (1/2).

While all beneficiaries are under the age of 18 and therefore do not have an IIP in the trust property, the trust income is taxed at the rates applicable to trusts (1/2).

Once all the beneficiaries are over the age of 18 and therefore each have an IIP, the trust income is taxed at basic rates (1/2).

For the period when some beneficiaries have IIPs while others do not, the trust is a "mixed" trust (1/2). This means that the share of income subject to IIPs is taxed at the basic rate, while the remaining income is taxed at the rates applicable to trusts (1/2). In the tax years during which the beneficiaries turn 18 and attain their IIPs, the date the trust income was received will need to be considered and allocated to either the time before or after the respective IIP was attained (1/2).

Inheritance Tax treatment

The trust was an Accumulation and Maintenance trust; therefore it was not subject to exit charges (1/2) or principal charges (1/2).

From 6 April 2008, as the terms of the trust say that beneficiaries become entitled to trust capital at 25, it follows the tax treatment of an 18-25 trust (1/2). The trust is not subject to 10-year charges (1/2). However, the trust will incur exit charges (1/2) when capital is distributed to beneficiaries who are over the age of 18 (1/2). No exit charges will arise on distributions to beneficiaries under the age of 18 (1/2). Exit charges are calculated using the initial value of trust assets (1/2), and the quarters are counted from the later of the beneficiary turning 18, or 6 April 2008 (1/2).

Total marks for part 2

MAX (7)

3) Under s.32 TA 1925, trustees could use their power of advancement to make a capital distribution to Leoni (1/2). The purpose of any advancement must be a recognised one, such as setting up the beneficiary for life, rather than for day-to-day needs (1/2); this advancement is therefore likely to fall within this remit as it is to enable Leoni to purchase her own home (1/2).

The total amount advanced must be limited to Leoni's presumptive share of capital (1/2) and must be set off against the total amount to which she is entitled (1/2).

Leoni's entitlement to trust capital is conditional on her reaching the age of 25 (1/2), and it would therefore fail if she was to die before reaching that age (1/2). In that case, there is no requirement for the amount already advanced to her to be returned to the trust (1/2).

[Scots Law alternative:

Under Scots law, the trustees may only advance capital to Leoni if they have the express power to do so under the trust instrument (1/2). The total amount advanced must be limited to Leoni's presumptive share of capital (1/2) and must be set off against the total amount to which she is entitled (1/2).

Leoni's entitlement to trust capital is conditional on her reaching the age of 25 (1/2), and it would therefore fail if she was to die before reaching that age (1/2). In that case, there is no requirement for the amount already advanced to her to be returned to the trust (1/2).]

Total marks for part 3

MAX (3)

Total marks for question 17

(13)

Presentation skills – awarded for quality of written answers

(2 marks)