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CIOT - ATT-CTA

Paper: **ATT Paper 5 IHT Trusts and Estates**

Part/Module: **Part 1**

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Answer-to-Question-\_1\_

Alfonso was born in the UK and lived in the UK up until he finished school which means he had a domicile of origin and domicile of dependence in the UK.

As Alfonso returned to the UK and lived here since then, he will be UK resident for the tax years 2020/21 and 2021/22 prior to his death. Someone who was born in the UK with a UK domicile of origin and are UK resident is known as a formerly domiciled resident (FDR).

Alfonso is an FDR and therefore is deemed to be UK domiciled for IHT purposes on his death.

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-----ANSWER-1-ABOVE-----  
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-----ANSWER-2-BELOW-----  
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Answer-to-Question- 2\_

Double tax relief is available on the lower of the foreign tax suffered and the UK IHT on the foreign asset.

Foreign tax = 30000

UK tax = 150000 x 40% = 60000

Therefore double tax relief of £30,000 will be available on the death estate.

Death estate:

Estate			900000
Less: NRB			(325000)
Less: RNRB	N1		(175000)
Taxable estate			400000
IHT @ 40%			160000
Less: Double tax relief			(30000)
IHT payable			130000

N1:

The full Residence Nil Rate Band (RNRB) is available as there is a residential property in the estate and it is gifted to Alex's daughter.

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



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-----ANSWER-3-BELOW-----  
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Answer-to-Question- 3\_

Sally has created a valid life interest trust as she has created a trust where the income of the trust will all be entitled to go to Tom, being the life tenant and upon his death the income and capital will transfer to Lucy, being the remainderman.

Sally has created a protective trust. This is because it gives the beneficiary a right to the income of the trust in much the same way as an interest in possession, but the terms of the trust are such that the right to income will terminate on bankruptcy or attempts sell the right to future income.

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-----ANSWER-3-ABOVE-----  
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 -----ANSWER-4-BELOW-----  
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Answer-to-Question- \_4\_

Christian created an 18 to 25 trust on his death. There is an exit charge on the date of Lenny's wedding as this is the date that he becomes entitled to the trust property after the age of 18.

Initial value			675000
Initial value of related trust	(Sister's trust created on same day)		650000
			1325000
Less: NRB			(325000)
Taxable			1000000
Notional IHT	(100000 x 20%)		200000
Effective rate	(200000/1325000 x 100%)		15.094%
Actual rate	(15.094 x 30% x 24/40)		2.717%
Exit charge	(815000 x 2.717%)		22144

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 -----ANSWER-4-ABOVE-----  
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-----ANSWER-5-BELOW-----  
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Answer-to-Question-\_5\_

1)

The value of the gift for IHT purposes will be the lower of the average marked bargains and quarter up value:

Average marked bargains =  $(360+338)/2 = 349p$

Quarter up value =  $340 + (360-340)/4 = 345p$

Therefore the value of the shares for IHT purposes will be:

$5000 \times 3.45 = \text{£}17,250$

2)

Amara's sister is a connected person, therefore the value of the gift for Capital Gains Tax purposes will be the market value of the shares at the date of the gift.

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-----ANSWER-5-ABOVE-----  
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-----ANSWER-6-BELOW-----  
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Answer-to-Question- 6\_

As Lars has never been domiciled or resident in the UK, his death estate will only include his UK assets.

Oslo ASA:

A proportion of Lars' holding in Oslo ASA relates to UK residential property, which will therefore be included in his death estate for IHT purposes:

$$900000/2500000 \times 800000 = \text{£}288,000$$

Bergen Plc:

As a foreign company Bergen Plc will not form part of Lars' death estate even though it is listed on the London Stock Exchange.

Robert loan:

According to the 'lex situs' rules, a debt is classed as being located in the country of the debtor, in this case being Robert. As Robert is UK resident, this debt will therefore be included in Lars' death estate.

Cash held in dollars at a London bank account:

This contains foreign current, so even though it is a UK located asset, it will be regarded as excluded property.

Death estate:

Estate			288000
Less: Debt			(50000)
Taxable estate			238000



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IHT @ 40%			95200
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-----ANSWER-6-ABOVE-----  
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-----ANSWER-7-BELOW-----  
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Answer-to-Question-\_7\_

Richard will be assessed on the higher of his 'normal value' of his shareholding in Invest Ltd and his related property value which will include his shares held The Timber Trust:

Normal value:

$$9000 \times 22 = \text{£}198,000$$

Related property value:

$$9000 \times 20000 / (20000 \times 56) = \text{£}504,000$$

Therefore, the IHT value of teh Invest Ltd shares to be included in Richard's death estate is £504,000.

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-----ANSWER-7-ABOVE-----  
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-----ANSWER-8-BELOW-----  
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Answer-to-Question- 8\_

Proceeds	(975000 x 0.5)		487500
Less: Cost	(340000 x 0.5)		(170000)
Capital gain			317500

The trustees could make a claim for gift relief as the distribution to the beneficiaries will be a chargeable transfer for IHT as an exit charge.

If one of the beneficiaries had lived in the house for a period of the duration in which the property was owned by the trust then Principle Private Residence (PPR) relief could be available on the distribution that would reduce the gain chargeable to Capital Gains Tax.

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-----ANSWER-8-ABOVE-----  
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 -----ANSWER-9-BELOW-----  
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Answer-to-Question- 9\_

The sale of the investment property to Sanjay's son's business will be deemed a Potentially exempt transfer (PET) to Sanjay's son on the difference between the market value of the property and the actual proceeds, making a gift of £230,000 (350000 - 120000).

As this PET was made more than 7 years prior to Sanjay's death it will not be chargeable on his death.

Bead Discretionary Trust:

(Lifetime tax)

CLT			440000
Less: NRB			(325000)
Taxable			115000
IHT @ 20/80			28750

Death tax:

CLT	(434000 + 28750)		462750
Less: NRB			(325000)
Taxable			137750
IHT @ 40%			55100
Less: Lifetime tax paid			(28750)
IHT payable			26350

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-----ANSWER-9-ABOVE-----  
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 -----ANSWER-10-BELOW-----  
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Answer-to-Question-\_10\_

Fall in value relief will be available to Tom as the painting had fallen in value in the time between the gift and when Tom sold the painting. The value of this relief will be £60,000, being the difference between the value at the time of the gift and when Tom sold it.

Gift			310000
Less: 2019/20 AE	(3000/2)		(1500)
Less: 2018/19 AE b/f	(3000/2)		(1500)
PET			307000
Less: Fall in value relief			(60000)
			247000
Less: NRB			(247000)
Taxable			0

There will be no fall in value relief available on the gift of the cash as it is not available when the property transferred was cash which was then used to buy an asset which falls in value.

Gift			600000
Less: 2019/20 AE			(1500)
Less: 2018/19 AE b/f			(1500)
PET			597000
Less: NRB	(325000 - 247000)		(78000)
Taxable			519000

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IHT @ 40%			207600

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-----ANSWER-10-ABOVE-----  
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-----ANSWER-11-BELOW-----  
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Answer-to-Question-\_11\_

1)

Nadine did fulfill the relevant undertakings that must be given to HMRC for the exemption from IHT to continue during her ownership as she:

- Allowed reasonable access
- Maintained and preserved
- Kept the property in the UK
- Publicised the undertaking through advertisement

2)

If Scarlett was to give new undertakings to HMRC and fulfil all the requirements of HMRC's undertakings then she would be able to claim conditional exemptions from IHT. This is because on her death, Nadine gifted the heritage property to Scarlett with new undertakings being given.

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-----ANSWER-11-ABOVE-----  
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-----ANSWER-12-BELOW-----  
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Answer-to-Question-\_12\_

Amelie is non-UK domiciled which means that only her UK assets will form part of her death estate for IHT purposes. As her loan was used to buy the property in France, it will not be deductible from her death estate, even though it was secured against her UK residence.

Ben's loan was taken out in order to extend his factory used in his personal trading company. This personal trading company will qualify for BPR at 50% and therefore the loan will be deducted from the value of the personal trading company before the BPR is deducted.

Danny's loan was taken out before 5 April 2013 and will therefore be deducted from the value of his rental property in his death estate as this is what the loan was secured against.

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-----ANSWER-12-ABOVE-----  
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Paper: **ATT Paper 5 IHT Trusts and Estates**

Part/Module: **Part 2**

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 -----ANSWER-13-BELOW-----  
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Answer-to-Question-\_13\_

1)

		SI	DI
Bank interest		100	
Dividend			45000
Total trust income		100	45000
Less: Management expenses	(800 x 100/92.5)		(865)
Income after expenses		100	44135
Standard rate band:			
100 @ 20%		20	
900 @ 7.5%		68	
RATs:			
43235 @ 38.1%		16473	
865 @ 7.5%		65	
Tax payable by trustees		16626	

Tax pool:

Balance b/f			0
Add: tax paid by trustees			
Standard rate:			
Savings			20
Dividends			68

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RATs:			
Dividends			16473
			16561
Less: Tax credits claimed by beneficiaries	(45/55 x 10000)		(8182)
Balance c/f			8379

2)

As there is no non-savings income and no savings income following the allocation of the standard rate band, the tax rate of the distribution to the beneficiaries will be at the dividend rate of 38.1%.

Tom is an adult child and therefore does not fall under the s.629 rules of the income being taxed on Joseph.

Tom R185:

		Net	Tax
Trust income		5000	3078

Mona will receive the distribution from the trust in the same way as Tom under s.624:

Mona R185:

		Net	Tax
Trust income		5000	3078

3)

As Joseph's spouse is a beneficiary of the trust, under s.624 this means that the full trust income made in the 2021/22 tax year will be taxable on Joseph.

		NSI	SI	DI
Employment		35000		

income				
Trust income - Interest	(100 x 100/55)		182	
Trust income - Dividends	(45000 x 100/61.9)			72698
Net income		35000	182	72698
Less: Personal allowance		(12570)		
Taxable income		22430	182	72698
NSI:				
22430 @ 20%			4486	
SI:				
182 @ 0%			0	
DI:				
2000 @ 0%			0	
15088 @ 7.5%			1132	
55610 @ 32.5%			18073	
			23691	
Less: Trust tax credit - Savings	(182 x 45/55)		(149)	
Less: Trust tax credit - Dividends	(72698 x 38.1/61.9)		(44746)	
Tax liability	(Tax credits from trusts cannot reduce liability below 0)		(0)	
Less: PAYE			(0)	
Tax repayable			(4486)	

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The income tax repayment should be paid back to the trustees of the trust.

4)

Gift relief is not available on a transfer to a settlor interested trust such as this one. Therefore Joseph will incur a capital gains tax (CGT) charge on the transfer of the shares into the trust.

Proceeds	(Market value)		500000
Less: Cost			(350000)
Chargeable gain			150000
Less: AEA			(12300)
Taxable gain			137700
CGT @ 20%			27540

The due date for this CGT payment will be 31 January following the end of the tax year, ie, 31 January 2023.

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-----ANSWER-13-ABOVE-----  
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-----ANSWER-14-BELOW-----  
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Answer-to-Question-\_14\_

1)

Verity:

The nil rate band in the tax year 2008/09 was £312,000. Verity would've had the spousal exemption available on the estate transferred to John leaving the cash to her nephew as the only taxable element of her estate.

Net estate			125000
Less: NRB			(125000)
Taxable estate			0

Her remaining Nil Rate Band (NRB) would've been £187,000 (312000 - 125000), being 60% of her NRB. This 60% would've then been transferred to John so he would have had 160% of his NRB available on his death.

John:

The NRB in John's year of death was £325,000.

NRB available on death:

$325000 \times 160\% = \pounds 520,000$

John's estate:

Net estate			420000
Less: NRB			(420000)
Taxable estate			0

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John's remaining NRB would've been £100,000 (520000 - 420000), being 19% of his available NRB. This would then have transferred to Rachel on his death, giving her a NRB of 119% of the NRB.

Rachel:

Rachel's NRB available on her death would've been 119% of the NRB available in 2021/22:

$$325000 \times 119\% = \text{£}386,750$$

2)

There are two types of joint property ownership, being joint tenants and tenants in common.

For joint tenants, on death of one of the owners, the property will become 100% owned by the remaining owner(s) and so the full value will be deemed to transfer to the other owner(s).

For tenants in common, on death of one of the owners, their proportion of the property will pass according to whomever stated in their will or their next of kin according to the laws of intestacy.

3)

Rachel will be taxed on the value of her property co-owned with her brother as this will automatically transfer to him as it is owned as joint tenants.

$$545000/2 = \text{£}272,500$$

Estate			860000
Less: Spouse exemption			(577500)
Less: Charity gift			(10000)



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exemption			
Net estate			272500
Less: NRB			(272500)
Taxable estate			0

4)

In order to make a valid Will, the testator (the creator of the Will, ie, you in this case) must have mental capacity to make a Will and comply with the formal requirements set down by the Wills Act 1837. The key requirements are as follows:

- A Will must be in writing. No particular form of words is necessary. Wills may be in any language, typed, printed, or written by hand. The Will may be written on any material.
- A Will must be signed by the testator. While the testator usually inserts their normal signature on the Will, any form of mark or words associated with the testator is sufficient. The signature may be on any part of the Will provided it was intended to give effect to the Will.
- The testator's signature must be witnessed by two persons who are present together when the testator signs the Will. The witnesses must then each sign the Will in the presence of the testator and of each other.

A witness cannot benefit under a Will.

- The testator must be sui juris, that is, they must have the capacity to make a Will. This means that they must be over the age of 18 and have mental capacity. A minor cannot make a valid Will.
- The testator must intend the Will to be operative as a testamentary disposition and the Will must have been made of the testator's own free will.

Once an individual has made a Will they can change aspects of it or they can set it aside (revoke it) altogether. A Will can be revoked in the following ways:

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- By executing a later Will or codicil which expressly revokes all former Wills. Care must be taken not to revoke concurrent Wills in other countries if they are to remain valid.

- By physical destruction or by directing its physical destruction which must be done in the testator's presence, provided that in either case the destruction is intended to revoke the Will.

- By letter, signed by the testator and witnessed by two persons, to the effect that a Will is to be revoked.

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-----ANSWER-14-ABOVE-----  
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 -----ANSWER-15-BELOW-----  
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Answer-to-Question-\_15\_

1)

The Interest in Possession (IIP) trust set up on Ahmed's death will be a qualifying IIP as it was created on death.

Where a qualifying IIP ceases and capital passes to another beneficiary, this is a Potentially Exempt Transfer (PET) for Inheritance Tax (IHT).

Lifetime PET = £420,000

Death PET:

PET			420000
Less: NRB			(325000)
Taxable			95000
IHT @ 40%			38000
Less: Taper relief	(40% x 38000)		(15200)
IHT due			22800

The IHT payable as a result of the death of Nikita is usually paid by the trustees, although her daughter could be made liable for any tax which remains unpaid by the due date).

Death estate:

Estate	(265000 + 12000 + 162000)		547000
Less: NRB			(0)

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Less: RNRB	N1		(0)
Taxable estate			547000
IHT @ 40%			218800

N1:

The residence nil rate band will not be available as the residence has never been Nikita's private residence.

2)

If a member receives commission on introduction of a client to a third party, they should inform the client of a member's relationship with that 3rd party, and of the amount and terms of commission or reward which a member will receive.

Moreover, a member should be able to justify the introduction of the client to that 3rd party as being in the best interests of the client.

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 -----ANSWER-15-ABOVE-----  
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-----ANSWER-16-BELOW-----  
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Answer-to-Question-\_16\_

1)

As Jason and Edward hold life interests in the Green Family Settlement, their personal shares owned are combined with the shares held in the trust which means that the trust is essentially deemed as having more than 5% ownership of the shares even though it only owns 4%. This makes the Red Ltd a personal trading company of the trust, hence making it a business asset of the trust.

The conditions for Business Asset Disposal Relief (BADR) state that for a trust, the life tenant must have owned 5% or more of the shares and worked for the company throughout a period of up to two years ending within the three years up to the date of the disposal.

As Jason has greater than a 5% shareholding and has worked for Red Ltd for more than two years, this means that the sale of these shares will be eligible for BADR. The shares have also been held for longer than 2 years by the trust as they were subscribed for in April 2018, meaning that they have been held for more than 3 years.

As this gain qualifies for BADR, this means that the gains made can be taxed at 10% as opposed to the normal rate for trusts of 20%.

As the IIP has two life tenants with an entitlement to income, the gains eligible for BADR are apportioned. The apportionment is by reference to the qualifying beneficiary's proportional entitlement to the trust income.

This relief must be claimed jointly by the Trustees and the life tenant on or before the first anniversary of the 31 January following the tax year of disposal, ie, 31 January

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2023.

Gift relief is not available as these shares were sold as opposed to being gifted.

2)

As a result of a BADR claim, the life tenant's lifetime gains 'ceiling' of £1 million is reduced by the gains for which BADR is given to the trustees. This is to prevent an individual doubling up his BADR by transferring assets to an IIP trust for his own benefit.

This creates a conflict of interest for the beneficiary as they may want to keep their £1 million ceiling for their own personal gains qualifying for BADR in the future and so may not wish to consent to the trust's BADR claim.