

CIOT - ATT

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

Part/Module: **Part 1**

Answer-to-Question-_1_

It is a trust for a vulnerable beneficiary/ disabled person made from a will. Will be treated as a QIIP.

As such CGT is calculated as if the gains arose to the vulnerable beneficiary. This means the beneficiary's full £12,300 Annual exempt amount is available to be used to reduce the chargeable gain and if the individual still retains some basic rate band the gain will be chargeable at 10% as opposed to the normal rate for Trusts (20%).

An election should be made to HMRC confirming that the trust is qualifying and the beneficiary is vulnerable. Relief from CGT should then be claimed on the trustee's annual self assesment return.

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

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

Answer-to-Question-_2_

died 2012: 2012 NRB = 325,000
 is passed to lineal dicendents so RNRB applies

husband's death estate		850,000		
all to wife - exempt		(850,000)		
NRB unused	325,000			100%
RNRB unused (provided the house was jointly owned and so his half went to Jessica on his death)	100,000			100%

Jessica's death				
RNRB tapered over 2 mil - RNRB restriction	175,000	(120,000)	55,000	$[2,240,000 - 2,000,000] / 2$

estate			2,240,000	
less nrb			(55,000)	
Transfered RNRB tapered away			(175,000)	tapering has stopped within Jessica's RNRB 100% allowed
			2,010,000	
less NRB			(325,000)	
less transferred NRB @modern rate			(325,000)	
			1,360,000	
@40%			544,000	

Jessica has £55,000 of her own RNRB available after tapering and the same from her husband - continues beyond taper limit.

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

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

Answer-to-Question-_3_

the trustees can provide hmrc with the updated tax figures. We can then request that the penalties for late payment are applied against the revised ztax computations we can provide them instead of HMRC's own determinations.

If the trustees have paid this tax already we could request repayment, but if they have not it will substantially reduce the amount of tax liable and the severity of the penalties for late payment and submission.

We would argue that these delays were reasonable and ask for HMRC's discretion in recognising the good faith the trustees sought to resolve the issue and lift the penalties.

Filing the tax returns and having them accepted by HMRC will update their records and place the trustees in a tax repayment position.

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

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

Answer-to-Question-_4_

treated 2012 - too late for a QIIP.

BPR only available for trading assets, investment property will be excluded property.

allowable 100% for BPR		$[510,000 + 200,000] / [510,000 + 200,000 + 150,000]$	83%

proceeds		350,000	
less cost		(250,000)	
gain		100,000	
less holdover relief		(50,000)	
gain		50,000	
less aea		(6,150)	
		43,850	
83% BPR			
tax @20%		8,770	

NO BADR AVAILABLE SINCE THE BENEFICIARY DOES NOT HAVE an IIP in the shares

The trustees should consider whether James is old enough to

legally own shares outright, if he is a child there will need to be a bare trust established.

They must also consider whether this choice of action is the best for the beneficiaries and is in line with their duties as laid out in the trust deed.

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

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

Answer-to-Question- 5

	paitning	diamond necklace	antique car	
proceeds	4,000	7,000	exempt wasting chattle	
cost	(7,000)	5,000		
	(3,000)	2,000		
loss restricted to deemed procees to 6,000, +2,000 proceeds	(1,000)			
gain restricted to 5/3 x (gross proceeds - 6,000)		1,667		5/3 x [7,000-6,000]
Adjusted gain/loss	(1,000)	1,667	-	
total chargeable gain		667		

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

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

Answer-to-Question-_6_

	property	shares	
proceeds	270,000	14,000	
less costs	(240,000)	(16,000)	
gain	30,000	(2,000)	
less AEA	(nil)		
@28% payment on account	8,400		

No AEA since only for two years after year of death

Losses of share sales hadn't been realised yet and so could not be included in the 60 day cgt submission due after completion due 29 January 2023.
if these are still outstanding (now in november 2023) the penalties would be as follows.

5% of tax outstanding after 30 days, and another 5% after first penalty

although as of the

-----ANSWER-6-ABOVE-----

-----ANSWER-7-BELOW-----

Answer-to-Question-_7_

the transfer into the trust may have included a hold over claim byt he settlor under S.260 /S.165 when it was settled into the trust. This could mean that when the trust sells the shares its base cost is actually £285,000. This would expose it to a substantial gain liable to CGT.

Chartieis are not required to pay capital gains tax provided they use the gain for charitable purposes. for this reason it would be optimal for the settlor to claim holdover relief, giving the charity the shares at the notional base cost of £285,000 since they will not be chargeable on teh gain anyway.

-----ANSWER-7-ABOVE-----

 -----ANSWER-8-BELOW-----

Answer-to-Question-_8_

Reggie's death without Val's election

estate		2,400,000		
	Income above 2,350,000 no RNRB left			
less nrb		(325,000)		
		2,075,000		
less restircted 325,000 tax free to spouse		(325,000)		
		1,750,000		
@40%		700,000		
Val's death				
no UK assets - all exempt		No IHT charge		

Reggie's death with election

estate		2,400,000		
transferred to wife - exempt		no tax charge		
On valerie's death				
taxable estate	Regie's	2,400,000		
	val's	1,200,000		
		3,600,000		
less Reggie's NRB		(325,000)		
less Vals' NRB		(325,000)		
		2,950,000		
@40%		1,180,000		

Val should not make the election

 -----ANSWER-8-ABOVE-----

-----ANSWER-9-BELOW-----

Answer-to-Question-_9_

the downsizing rule gives the lower of the Value of the
qualifying residence and the NRB,

former allowance : £115,000

% of RNRB available on death.

not replaced so % of RNRB available before sale =

$115,000 / 150,000 = 77\%$

$77\% \times 175,000 = £134,750$

-----ANSWER-9-ABOVE-----

-----ANSWER-10-BELOW-----

Answer-to-Question-_10_

Quater up

$334 + (340-334) / 4 \times$ $40,000$		134,200	
$222 + (245-222) / 4 \times$ $20,000$		49,000	

average

$334+340 / 2 \times$ $40,000$		134,800	
$222 + 245 / 2$ $\times 20,000$		46,700	

not allowed quarter up valuation for CGT have to use average

-----ANSWER-10-ABOVE-----

-----ANSWER-11-BELOW-----

Answer-to-Question-_11_

1) she is using the property and is not paying market rent but stays with the donee for less than one month a year , is not a reservation of benefit.

2)They were living in the house together and sharing the bills, this seems a reasonable split of ownership, not a gift with reservation of benefit.

3) she is a named beneficiary of the trust and is able to benefit from the trust, this is a gift with a reservation of benefit.

-----ANSWER-11-ABOVE-----

-----ANSWER-12-BELOW-----

Answer-to-Question-_12_

when the trusteeship's residency is split (not all UK resident), the trust takes on the residency of the settlor. Since Sanjay was UK resident when he settled the trust, despite the trusteeship being split for residency (one UK and one USA), the trust remains UK resident due to Sanjay's residency.

However, if Sanjay were to settle the trust while being no resident with the same trustees, the trust residency would again defer to the settlor but would this time mean that the trust was non resident.

The IT implications are that a UK resident trust is liable to UK tax on its world wide income, whereas a non uk resident trust is only subject to IT on its UK holdings.

-----ANSWER-12-ABOVE-----

CIOT - ATT

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

Part/Module: **Part 2**

 -----ANSWER-13-BELOW-----

Answer-to-Question-_13_

1) IT payable by executors for Corina's estate's 22/23 return

	non savings	interest	dividends	
bank interest		4,000		
isa interest		exempt for first 2 years		
dividends			18,000	
treasury stock interest		12,000		
executors' expenses				not allowable
		16,000	18,000	
@20%		3,200		
@8.75%			1,575	
total income tax liable			4,775	

accrued interest and dividends have been removed as they were deemed to be already within the estate and so will be taxable on her individual return 5 april 2022 - 10 april 2022.

2)

calculate the distributable estate and R185.

	net	tax credit	gross	
dividends	15,608	1,575	17,183	18,000 - 1,575 - 817 (estate fees)
interest	12,800	3,200	16,000	

3)

Without election

Luca's income	non-savings	interest	dividend	
as per question	200,000		2,000	
R185		16,000	17,183	
No PA from income over 125,140	nil			
dividend allowance			(2,000)	
additional tax				
@45%		7,200		
@39.35%			6,762	
tax due			13,962	
less tax credit			(4,775)	
tax due			9,187	

With election

Adjustement for IHT paid		int	Divs
gross pre- death income		2,000	5,000
less tax @ basic rate 20%		(400)	
@8.75%			(438)
net pre death		1,600	4,562
IHT attributable to the net pre death income	$300,000/950,000 \times 100$		
	31.58%	505	1441
gross up IHT @basic rate x (100/80)		631	1,801
gross distributuins per R185		16,000	17,183
less: IHT adjsutment		(631)	(1,801)
income liable to higher rates		15,369	15,382
tax @ higher rates			
@45%		6,916	
@39.35%			6,053
631 @ 20%		126	
1,801 @ 8.75%			158

total tax charge			13,253
less tax credit			(4,775)
tax liable			8,478

An adjustment is made in the beneficiary's income tax computation where part of the income of the estate has already been charged to inheritance tax. The provision is ITTOIA 2005 s.669.

The beneficiary will claim this adjustment relief within their self assessment tax return Luca,s will need to be submitted digitally by 31 jan 2024.

4)

We must be concerned about whether the sharing of that information will be covered by the firms' PII insurance as we do not have an engagement letter and letter of engagement established with Luca. If this information were given in a printed form and used by a third party, for example Luca's wife to inform a decision and the computation turned out to be wrong we could expose the firm to financial and reputational risks.

We also have been given his personal information by the trustees, we do not clearly have his permission to hold and process this information. We should reach out to Luca and request his permission to retain and use this information in order to produce the work.

5)

Luca legal rights relating to the marketing project include the right to see all the information we hold about him.

the right to request that we stop using his information for marketing purposes

the right to request that we delete or update and incorrect information we hold about him

and the right to opt out of the marketing.

-----ANSWER-13-ABOVE-----

 -----ANSWER-14-BELOW-----

Answer-to-Question-_14_

Lifetime tax

Barn to Simon

value		60,000	
Less 16/17 and 17/18 exemptions		(6,000)	
Less APR		(54,000)	
		Nil,	

This transfer is a PET, the Barn qualifies for APR since it is used in the farm business and has been for over two years.

40 Acres of Farmland to the Mud Discretionary Trust

value		500,000	
less 18/19 exemption		(3,000)	
		497,000	
less APR		(497,000)	
		nil	

PET qualifies for APR since it has been tenanted for over 7 years.

cash to son

value		174,000	
less exemption		nil	

less NRB		(174,000)	151,000 remaining
		nil	

Pet, potentially chargeable upon death.

Cash to the mus disc trust.

chargeable life time transfer			
value		425,000	
less allowance		nil	
less remainign NRB		(151,000)	
		274,000	
paid my settlor @ 20/80		68,500	

2)
On Death

Barn to Simon

value		54,000	
APR rejected - not owned at death			
less NRB		(54,000)	271,000 remaining
tax charge		nil	

40 acres of farmland to trust

value		497,000		
20 acres still gets APR		(250,000)		
20 acres sold denied BPR		nil		
		247,000		
less nrb		(247,000)		24,000 remaining
tax charge		nil		

since not all proceeds were reinvested into qualifying assets all of the disposal is excluded from BPR

Cash to son

value		174,000	
less nrb		(24,000)	non remaining
		150,000	
@40%		60,000	
3 -4 years 20% taper relief		(12,000)	
		48,000	
less tax already paid		nil	
tax liable on his son		48,000	

Cash to Mud Disc Trust

value (+tax paid)		493,500	
less nrb		nil	
		493,500	
@40%		197,400	
less 3-4 years taer relief (20%)		(39,480)	
		157,920	
less tax paid		(68,500)	
		89,420	

3)
 moving out of the farm house means that the farmhosue will fail to qualify for APR since the conditions it must meet are
 a) charecter approriate to the property
 b) occupied by the person who manages the farm on a daily basis.

since condition B failed to be met since he moved out in 2020 it will not recieve APR relief and will be subject to IHT as part of his estate.

 -----ANSWER-14-ABOVE-----

 -----ANSWER-15-BELOW-----

Answer-to-Question-_15_

1) As standard inheritance of UK assets will not entail any inheritance tax on the assets they receive as it will be taken from the estate, this is a 'tax free' legacy and is standard for UK assets

However, Foreign assets are unless otherwise stated, 'tax bearing' legacies, where the donee bears the IHT due. Due to this, unless otherwise specified, I would expect Henry to be liable to IHT on his foreign share portfolio he inherits and for Phill and Bella to not have any IHT liability personally.

2)

Craig's death, Quick Succession Relief from Mary

estate		850,000		
no RNRB				
less NRB		(325,000)		
		525,000		
@40%		210,000		
less QSR		(54,857)		
tax liable		155,143		

QSR comp:

Mary's lifetime transfers

june 17		400,000	to trust
nrb		(325,000)	none left

August 17		200,00	to Craig
@20%		40,000	
no taper relief			
on death			
@40%		80,000	
less tax paid		(40,000)	
		40,000	
total tax on mary's transfer to craig		80,000	

$$80\% \times 80,000 \times [240,000 / 280,000] = 54,857$$

Phil's Death

lifetime transfers

value		280,000	
less nrb		(325,000)	
no tax charge			
in death			
value		280,000	
less nrb		(325,000)	
no tax charge			

In death estate

estate		670,000	
assumed no RNRB		nil	
less		(45,000)	

remiander NRB			
		625,000	
@40%		250,000	

3) The legal ownership is vested in the personal representative, executor trustees. The beneficiary owners are the legatees who are due to receive/ are receiving income during the administration period, and ultimately the assets once probate has been issued and the estate can be distributed.

A legatee is only entitled to the assets and rights that are specified in the will. If a person is not mentioned in the will as a legatee, they are not entitled to the property and rights of the deceased person.

-----ANSWER-15-ABOVE-----

-----ANSWER-16-BELOW-----

Answer-to-Question-_16_

To: Tax Partner
From : Tax Assistant
Date: 08 Nov 23
Subject: The Honey Trust

1)
If the rental property is advanced from the trust to Elsa, there will be a disposal for CGT purposes. This will use the current market value of the property as the notional proceeds and use historic base cost (from when Miss Honey settled the property in). This would also lead to an IHT charge on exit from the trust. With the IHT charge comes the opportunity to claim holdover relief under S.260 which means the property can be passed to Elsa with the historic base cost the trust received it for. Both Elsa and the trustees must make the claim together.

2) Currently Heinrich only has the right to the income of the trust, not the capital itself. As such Heinrich has no right to require the trustees to give him the trust. However, he has the right to the income generated from the rental property. To advance the property out of the trust to Elsa could entail him challenging whether the trustees are doing their legally binding duties as they are not protecting the assets of the trust for the benefit of the named beneficiaries.
Were Heinrich to agree to this it would be acceptable. Since Elsa only has a reversionary interest she does not currently have any right to the income or capital of the trust. Only a beneficiary who is over 18 and has mental capacity can consent, as far as we know Heinrich is capable of consent.

3)

a) If Elsa dies while Heinrich remains unmarried, she does not gain anything from the trust and there is no IHT, CGT or IT charge in relation to the trust since she only held a conditional reversionary interest. This is because it is excluded property.

b) However, if Heinrich dies before he is unmarried, technically the conditions of the reversionary interest are not upheld. The trustees may elect to appoint Elsa as a beneficiary at this point, else the assets of the trust could revert to the remainderman and the trust will be wound up.

If the IIP transfers to Elsa, she will become entitled to the full assets, not just the income as Heinrich was. This will mean that she can benefit from the control to request the trustees to sell assets, or to award them to her directly. These would be subject to exit charges, and the trust will continue to be subject to principle charges.