Question 1 (68873681)

Notes in preparation for internal meeting

Part a – Knowledge obtained from advising other clients

Our previous experience in advising a client with a presence in the country of Garia will be beneficial to our client since they have no experience of carrying on an overseas business. We will be able to advise our client in relation to the tax legislation and regulations that will need to be complied with, in addition to any requirements or advantages that may be available to them. Our previous client traded via a permanent establishment rather than a subsidiary but this will still be useful as it could potentially provide an additional insight as to the options available to Lamar with regard to trading overseas.

Care must however be taken not to disclose any confidential information regarding that previous engagement since we are bound by the fundamental principle of confidentiality, and therefore we should only use our general experience rather than any specific client knowledge when advising Lamar.

Part b – Investment in JAY Ltd by REP Ltd

(i) Residency of JAY Ltd

<u>If JAY Ltd is resident in Garia:</u>

It will be considered an overseas subsidiary and so will not be subject to UK corporation tax and it will only incur 13% business tax on its taxable profits in Garia. Losses will not be able to be relieved to either REP Ltd or CRO Ltd (or vice versa)

<u>If JAY Ltd is resident in the UK:</u>

JAY Ltd will trade in Garia using a permanent establishment (PE) which means that any profits made from the PE will be subject to UK CT at 19% plus the 13% business tax in Garia. These profits will be treated as trading income of JAY Ltd and, potentially, capital allowances may be available. Double taxation relief will be available on the overseas income from the PE so any double taxation of these profits will be mitigated by this.

In terms of trade losses incurred by JAY Ltd, relief will be available to REP Ltd since, if it were to own 30%, a consortium would be formed. In this case the total relief would be limited to either the percentage interest that REP Ltd has in JAY Ltd's losses, or REP Ltd's taxable total profits (the lower of these two values).

i) Election to exempt the profits of JAY Ltd's overseas PE

If a claim is made to exempt the PE from UK CT, this will mean that no profits arising in Garia would be subject to UK tax but no losses will be available to be used by JAY Ltd either (now or in the future). The claim would be irrevocable and apply to any existing or future overseas PE's JAY Ltd may own so careful consideration must be given as to whether or not it would be beneficial. If the claim is not made, any losses will be available for relief against other UK profits and if the permanent establishment is profitable, DTR will be available to minimise the impact of any double taxation that may potentially arise.

(iii) CFC rules

Assuming the advice given is correct, if JAY Ltd is resident in Garia any trading profits arising in JAY Ltd will not become chargeable and incur in a CFC charge in the UK. This charge would involve a proportion of the chargeable profits (not gains) being apportioned to each corporate shareholder with an interest 25% or more and then suffering a19% UK tax charge (with a possible DTR deduction corresponding to the corporate shareholder's share of the overseas tax already paid in Garia). This charge would be completely separate from, and in addition to, the UK CT payable on the taxable total profits of the UK shareholder company.

It should be explained to Lamar that these rules have been implemented in order to deter UK resident companies acquiring, or setting up, overseas subsidiaries in order to artificially divert profits to tax havens in order to pay a significantly lower rates of tax than they would have done had those activities been carried out in the UK.

Part c - Purchase of investment property by REP Ltd

The purchase of the commercial building represents a standard-rated VAT transaction which means that REP Ltd will suffer input VAT of £40,000 (£200,000 x 20%) and the total cost of the building will be £240,000. This input VAT will not be recoverable since the lease represents an exempt supply

However, REP Ltd has the option to waive the exemption effect by making an option to tax (OTT) claim. This means that the property will now be chargeable to VAT and the full input VAT suffered can be claimed (together with any VAT suffered on running costs). In this respect the advice given by the friend is correct.

However the friend is not correct to state that the option to tax would have no impact on the tenant or any future purchaser. The option to tax will mean that output VAT will need to be charged on the lease of the building as well as on a future sale. If the building is to be leased or sold to a non taxable business, or one that is fully or partially exempt, this will increase their costs associated with either renting or buying the building and may potentially deter them from doing so.

The company will therefore need to consider whether it will be likely to be making such supplies to fully taxable businesses before deciding whether or not to opt to tax the building concerned.

Part d – Personal tax affairs

(i) Cessation of Freya's business on 31 October 2023

Freya's liability to income tax and Class 4 NIC				
		17 m ending 31 October 2023		
		£		
		94,000		
Balancing charge (W1)		1,560		
Overlap profits		-31,400		
		64,160		
PA		-12,570		
Taxable income		51,590		
37,700	20%	7,540		
13,890	40%	5,556		
Total income tax liability		**13,096**		
Class 4 NICs				
12,570	0%	0		
37,700	10.25%	3,864		
13,890	3.25%	451		
Class 4 NIC liability		**4,316**		

W1 - Capital allowances				
		PU car		Bal charge
B/f		8,700		
Addts - p&m				
Proceeds		-11,100		
		-2,400		
Balancing charge BU		2,400	@ 65%	1,560

(ii) Proposed gift of shares on 1.11.23

The gift will be considered as a chargeable lifetime transfer (CLT) for IHT purposes so we need to calculate if there will be any lifetime tax payable

The value of the transfer will represent the loss in wealth for Lamar.

Freya currently owns 80,000 shares which represents a total of £1.92 million (80,000 x £24 as shareholding is more than 75%). If she gifts the shares, she will be left with 60,000 shares which represents a total of £1.02 million (60,000 x £17 as her shareholding is now only 60%). This is a loss in wealth of £900,000 and so, the value of the CLT.

No BPR is available and no annual exemptions (AE) either since the cash gift to her sister would have used up all the available amount for this tax year and previous. So, £900,000 will be the net chargeable value of the transfer

Total nil rate band available: £158,000. This is £325,000 less £167,000 (CLT to trustees in May 2019 using the AE available in the tax year 19/20 – the AE from the previous year is used up by the cash gift to her brother)

Excess over the nil rate band will be taxed at 20% IHT but we need to gross up the payment since this payment is being made by Freya (rather than the trustees):

£900,000 less £158,000 = £742,000 x 25% (or 20/80) = £185,500

This amount will fall due six months after the end of the month of the transfer i.e. 31 May 2024

Summary of marks:	
Technical:	
Part a	4
Part b(i)	6
Part b(ii)	3
Part b(iii)	3
Part c	5
Part d(i)	7
Part d(ii)	7
Total technical marks	35
Professional:	
Communication	4
Analysis and Evaluation	2
Scepticism	3
Commercial Acumen	3
Total professional marks	12, MAX 10
Overall total	45 / 50

Question 2 (68776273)

Part a(i) – Reliefs available to Amelia in respect her trading loss of the year ended 31 December 2023

Amelia could offset the loss of £14,000 against her total income of the year i.e. 2023/24 tax year. This would be against her savings income of £6,000 as she had no rental income in this year. Amelia would lose out on her savings nil rate band for the year. The £6,000 would also have been covered by her personal allowance.

Amelia could also carry the remaining loss of £8,000 back to 2022/23 and could offset this against her total income for that year. This would realise a tax saving at 20%, giving a refund of £1,600 from HM Revenue and Customs (HMRC).

Amelia could also make a claim to offset the loss against any capital gains that arise during the year

Part a(ii) – Tax savings

If Amelia offsets the loss against the total income for the year, there will be no tax saving for the reasons stated above in (a)(i)

If Amelia then chooses to carry the loss back against her total income for the previous year there will be a tax saving of 20% * £8,000 = £1,600.

If Amelia makes a claim to offset the loss against her chargeable gains for the year - see spreadsheet

Spreadsheet extract

Part a(ii)				
Saving if loss against chargeable gains				
CGT Liability		**Non Res Gains**	**Residential property**	
Rental property			45,000	
Shares*		28,000		
		28,000	**45,000**	
Loss b/f			-10,700	Allocated against res property as higher rate of tax
Total gains		**28,000**	**34,300**	
AEA			-12,300	
Taxable gains		**28,000**	**22,000**	
* No BADR available as shareholding less than 5%				
Less loss			-14,000	
Gain		28,000	8,000	
Tax				
	18%		1,440	
	10%	2,800		
Total CGT			4,240	
If the loss had not been offset, some of the capital gain would have been charged at the higher rate				
Therefore this is a saving of:				
At higher rate				
50,000-37,700 at 20%		12,300	2,460	
37,700 - 36,000 at 10%		1,700	170	
			2,630	
Note: Tax residential property gain first to benefit from lower rate of tax				

Part b – Capital gains tax (CGT) and income tax (IT) implications for Amelia of the proposed sale of Warehouse 1, and the acquisition of Warehouse 2 and the forklift truck

When Amelia disposes of the warehouse she will be able to claim rollover relief on the gain as she is making an acquisition of qualifying business assets within the qualifying time period.

The qualifying time period is one year before the disposal which takes place on the 1 May 2024 and up to three years after the disposal. The acquisition of the new business assets is on 1 March 2024, so within this time period.

As the full amount of the proceeds are not being reinvested in the new assets, the amount of rollover relief must be restricted. This is the lower of:

- The amount not reinvested, £12,000
- The chargeable gain - £32,000 (assuming no AEA remaining)

As only 3/4 (75%) of the building was used for trade purposes, the rollover relief must be restricted by 25%

The rollover relief will be deducted from the base cost of the new assets, reducing their allowable costs when they are sold in the future.

There will not be any IT implications.

See spreadsheet for workings

Spreadsheet extract

Part b			
Capital gains tax			
Warehouse 1			
		£	
Proceeds		118,000	
Cost		-86,000	
Gain		32,000	
Rollover relief		15,000	Balancing figure x 75%
Chargeable		**17,000**	
Rollover relief restricted to 75%			
20,000 x 75%			
Base cost of warehouse and truck			
Cost		106,000	
Less rollover relief		-15,000	
Base cost		**91,000**	

Part c – Voluntarily deregister for value added tax (VAT) purposes on 31 December 2023, from what date her VAT registration would be cancelled, and the immediate consequences for her of deregistering

Amelia can voluntarily deregister for VAT if her taxable supplies are expected to be below the de-registration threshold for the next 12 months. The threshold is currently £83,000.

According to her forecast figures, this will be the case and therefore she can apply to deregister.

The VAT de-registration will take place from the date that she applies to HMRC or a mutually agreed date between both parties.

From the date of de-registration, Amelia will have to stop charging VAT on her sales with immediate effect.

She will also no longer be able to reclaim VAT on her purchases.

She may have to repay VAT to HMRC on any stock items that she still owns where VAT was reclaimed.

Summary of marks:	
Technical:	
Part a (i)	2
Part a (ii)	6.5
Part b	4.5
Part c	2.5
Total technical marks	15.5
Professional:	
Analysis and Evaluation	5
Commercial Acumen	0
Total professional marks	5
Overall total	**20.5**

Question 3 (69065887)

Part a – Explain why Taupe Ltd is classed as a close company

A company is a close company if 50% or more of the ordinary shares are controlled by five or fewer participators or any number of directors. When establishing the participators, connected persons (spouses, parents and children) are treated as one participator.

As Dorian and his father, Basil, own 28% and the other directors own 25%, jointly they own 53% of the company and therefore it is a close company.

None of the other shareholders own 5% or more, so the participators are Dorian, Basil and the five directors.

Part b – Explain, with supporting calculations, the tax implications for both Dorian and Taupe Ltd, if Dorian repays the £7,500 loan on 30 April 2025, rather than on 30 June 2025.

As Dorian works full-time for Taupe Ltd, the loan at a beneficial rate will be treated as an employment benefit. However, a loan amount up to £10,000 is exempt from taxable benefits and therefore will have no income tax consequences for Dorian.

Taupe Ltd had to pay a tax charge of 33.75% on the loan amount to HMRC as an anti-avoidance rule, and this amount is repayable by HMRC within nine months from the date the loan principal has been repaid by the participator.

If the loan will be repaid on 30 April 2025, the £2,531 will be repaid to Taupe Ltd earlier and this will therefore give the company a cash flow advantage.

Part c – Explain, with supporting calculations, which of the two alternatives for providing assistance with travel costs, will produce the lower overall cost for Dorian

As Dorian is already a higher rate taxpayer, any taxable benefit will be taxed at 40%. There is no national insurance charge for employees, only employers.

Alternative 1: interest free loan

As Dorian has already been provided with an interest-free loan of £7,500 earlier, the additional £4,800 will put the total amount above £10,000 and the whole loan will become a taxable benefit.

When the loan is written off, it is deemed extra income to Dorian and will be taxed at 40% as well as employee national insurance (NIC).

The total costs for Dorian under alternative 1 are:

	£
Interest free loan benefit (£7,500 + £4,800) x 2.0% x 40%	98
Income tax and NIC on loan written off (4,800 x 43.25%)	2,076
Total cost to Dorian	**2,174**

Alternative 2: Mileage allowance

If Dorian uses his personal car for business travel, he can claim approved mileage allowance payments (AMAP) at 45p per mile up to 10,000 miles and 25p above. However, he cannot claim this on his normal commute from home to work.

The employer cost for parking is irrelevant to Dorian, as this is not a taxable benefit, so the £1,200 can be ignored.

	£
Taxable benefit £3,600 x 40%	1,440
Dorian's net annual cost of driving (£5,220 - £3,600)	1,620
Total cost to Dorian	**3,060**

Alternative one would produce an overall lower cost Dorian, and this option would be £886 cheaper annually than alternative 2.

Part d – State, with reasons, the due date for filing Taupe Ltd's corporation tax return for the year ended 30 April 2022, and the implications for Taupe Ltd in respect of filing it late.

As the accounting period (AP) ended 30 April 2022, the corporation tax payment was due on 1 February 2023 (nine months and one day after the end of the AP assuming Taupe Ltd is not required to pay corporation tax (CT) by instalments) and the filing 12 months after the end of the AP.

As HMRC issued a notice on 8 June 2022, the filing due date would be the later of the due filing deadline and date on issued notice, so 30 April 2023 will be used for establishing how late the return was.

Taupe Ltd filed the CT return on 6 July 2022 for AP ended 30 April 2021, which was due by 30 April 2022, so it already had a late filing of two months and six days, and a fixed penalty would have applied of £100.

As this is the second time it is late and now more than three months on top of the £100 for late between 0-3 months and additional £100 for later than three months, an extra penalty of £1,000 is payable in respect of this late filing.

The total penalty will therefore be £1,200 for the late filing of AP ended 30 April 2022.

Summary of marks:	
Technical:	
Part a	4
Part b	3
Part c	7
Part d	2.5
Total technical marks	16.5
Professional:	
Analysis and Evaluation	5
Commercial Acumen	0
Total professional marks	5
Overall total	21.5