

## **Bryson & Carla FAE Elective Mock Exam 2021**

### **Key Facts**

1. Invest €400,000 in new business
  - Sole trader v Ltd company – commencement 1 Jan 22
  - Purchase of building €400,000,
  - Use for trade 75%
  - Letting 25% - rental income €30,000 p.a.
  - Loss in 2022, will only work 8hrs pw until 2023
  - Salary €100,000 from employment in 2022
2. Transfer of assets to trusts
  - Pub (investment) – inherited 2005 MV €250,000, current MV €950,000 Bryson to Monica
  - Residential prop – purchased 2007 €450,000, current MV €350,000, Carla to Ben
3. Revenue Audit
  - Revenue audit letter received – 3 days
  - €20,000 p.a. lease agreement, received €14,000 only in 2018, Declared €14,000 Case V

### **Sole Trader:**

#### 1. Basis of Assessment

The taxable profits of the business will be calculated on the basis of accounting profits as adjusted for tax purposes. Expenses incurred wholly and exclusively for the purposes of the trade are allowable for tax purposes. Any private expenses including drawings are not deductible.

Pre-trading expenses such as solicitor and financial consultant, which would have been allowable had the trade commenced will be deductible in calculating taxable profits.

#### 2. Commencement Rules

Special rules re basis of assessment to IT for the first 3 years can result in taxation of same profits in two different tax years

- Commencement rules apply in first 3 years
- Consider accounting period end date 1 January to 31 December 2022 – not affected as AP matches tax year

#### 3. Capital Allowances

The building is not an industrial building, therefore IBAA will not be available. Any part of the building which constitutes P&M will qualify for capital allowances at 12.5% per annum for 8 years.

Capital allowances on P&M used for the trade will be offset against his Case I income. As a loss is anticipated in 2022, the capital allowances can increase the amount of loss relief or will be carried forward and used against Case I in 2023.

Capital allowances on P&M attributable to the 25% rented will be offset against his Case V income.

#### 4. Loss Relief

The loss incurred in 2022 can be offset against his other income i.e. employment income and rental income in 2022 under S381.

However, as he will not be actively involved in the trade, the amount which can be offset will be restricted to €31,750. This will yield a tax saving of €12,700 i.e. €31,750 x 40%

The balance of the loss will be offset against income from the same trade in 2023 under S382.

## 5. Taxable Income

He will be subject to income tax at 20% up to the amount of the standard rate band for married persons and 40% on the balance. Standard rate band for married persons with one income (Carla will have transferred the residential property) is €44,600. PRSI (4%) and USC (.5% up to 8%) will apply.

### **Limited Company:**

#### 1. Basis of Assessment

The taxable profits of the company will be calculated on the basis of accounting profits as adjusted for tax purposes. Expenses incurred wholly and exclusively for the purposes of the trade are allowable for tax purposes.

Bryson's salary will be taxable deductible for the company thereby saving corporation tax at 12.5% on the amount of any salary taken.

Bryson will only be subject to income tax on the amount of salary or dividends taken from the company.

Pre-trading expenses such as solicitor and financial consultant, which would have been allowable had the trade commenced will be deductible in calculating taxable profits.

#### 2. Close Company Rules

The company will be regarded as a Close Company i.e. under the control of five or fewer participators. Close company surcharge will be payable as follows unless the income is distributed within 18 months:

- Half of after tax undistributed Case II income @ 15%
- After tax Case V income less a trading deduction of 7.5% @ 20%

#### 3. Commencement Rules

These do not apply to limited companies.

#### 4. Capital Allowances

The building is not an industrial building, therefore IBAA will not be available. Any part of the building which constitutes P&M will qualify for capital allowances at 12.5% per annum for 8 years.

Capital allowances on P&M used for the trade will be deducted in calculating the company's Case I which will increase the amount of the available loss.

Capital allowances on P&M attributable to the 25% rented will be offset against the Case V income of the company.

#### 5. Loss Relief

The loss incurred in 2022 can be offset on a value basis against the corporation tax incurred on the rental income under S396B. This will yield a saving for the company of €6,250. i.e. €50,000 x 12.5%

#### 6. Taxable Income

The company will be subject to CT at 12.5% on Case I income and 25% on Case V Income.

#### Option to Consider

Given the higher taxing saving of the loss for 2022, when trading as a sole trader, Bryson could consider commencing in business as a sole trader and converting to a limited company in 2023.

### Settlement of Assets in Discretionary Trust

#### 1. Tax implications for the settlor:

##### CGT

CGT on the deemed disposal of assets to the trust:

Bryson

Consideration	Connected persons – market value imposed	950,000
Base cost		250,000
Gain		700,000
Annual exemption		(1,270)
Taxable gain		698,730
CGT @ 33%		230,581
Due date	15 December 2021	

Reliefs available: As Bryson rents the pub he is disposing of an investment rather than a trade, therefore Revised Entrepreneur Relief and Retirement Relief (<55) are not applicable.

Carla

Consideration	Connected persons – market value imposed	350,000
Base cost		450,000
Gain		(100,000)

Carla and the Trust are connected persons, therefore the loss on disposal is ring-fenced and can only be used by Carla against subsequent disposals to the trust.

Consider transferring the pub to Carla availing of the spousal exemption and then Carla disposes of both assets to the SAME Trust thereby enabling the loss of €100,000 to be offset against the gain of €700,000. This would yield a tax saving of 33%.

#### 2. Tax implications for the trustees:

## Stamp duty

Payable by the trustees. Bryson and Carla can pay the stamp duty or provide the cash to the trustees.

Pub – Stamp duty @ 7.5% of market value	€71,250
Residential property – Stamp duty @ 1% of market value	€4,500
Due date – within 30 days of transfer. Revenue allow 44 days in practice	

## Income Tax

Income tax at 20% on the rental income from the assets. PRSI and USC will not apply.

The higher rate of 40% is not applicable, tax credits and allowances are not available and the management expenses of the trust are not deductible.

Annual return of income of the trust must be made by the trustees.

A surcharge of 20% will apply to income of the trust if not distributed within 18 months of the end of the tax year in which the income is earned.

## Discretionary Trust Tax (DTT)

The trust deemed to take inheritance on latest of: the date settled, death of disponent or no principal object under the age of 21. This gives rise to:

- Initial 6% of market value of the assets of the trust
- Annual 1% of the market value of the assets at 31 December each year

However, as both Bryson and Carla are still alive, DTT will not arise unless:

- Bryson is deceased – DTT on death on market value of the pub
- Carla is deceased – DTT will only arise on the later of her death or Ben becoming age 21

Should the initial 6% DTT crystallise, a refunded of 50% of the charge will be available if the assets are appointed from the trust within 5 years. No refund of the annual DTT available.

## CGT

Trustees will be liable to CGT on any actual or deemed disposals during the lifetime of the trust.

The appointment of the assets to the beneficiaries is a disposal. A gain will arise if the market value of the assets at appointment is greater than the market value at settlement.

CGT will be payable @33%. No annual exemption.

### 3. Tax implications for the beneficiaries:

There are no tax implications for Ben and Monica at the time of transfer of the assets into the trusts.

## Income Tax

If any of the rental income from the assets is appointed to Monica or Ben they will be subject to income tax on the grossed up amount of the income distributed.

## CAT

On appointment of the assets to Monica and Ben a charge to CAT may arise. Assuming no increase in value of the assets and in the absence of any relief:

Market value at date of appointment		950,000
Small gift exemption		(3,000)
		947,000
Group A Threshold		(335,000)
Taxable value		612,000
CAT @ 33%		201,960
Due date	31 October 2022	

Reliefs available:

Business relief is not available as neither the pub nor the residential property are relevant business property.

CGT incurred by the trust on appointment of the assets can be offset against the CAT as the CAT is incurred on the same event as the CAT.

### Stamp Duty

There is no stamp duty on appointment of the assets from the trusts.

### Revenue Audit

A taxpayer receives letter of notification of audit giving 21 day's notice. If Carla wishes to make a qualifying disclosure she can apply for 60 day extension within 14 days of the date of notification i.e. within 11 days.

The benefits of Carla making a disclosure are:

- Mitigation of penalties
- Avoid publication
- Avoid prosecution

A qualifying disclosure must

- Be in writing
- List all the tax that is due under each tax head and the reason for the default
- Signed by the taxpayer
- Be accompanied by the tax due and the interest due on the tax underpaid.

Rental income is subject to income tax on a receivable basis. Therefore the full amount of €20,000 is taxable. It is possible that withholding tax was operated and this should be investigated.

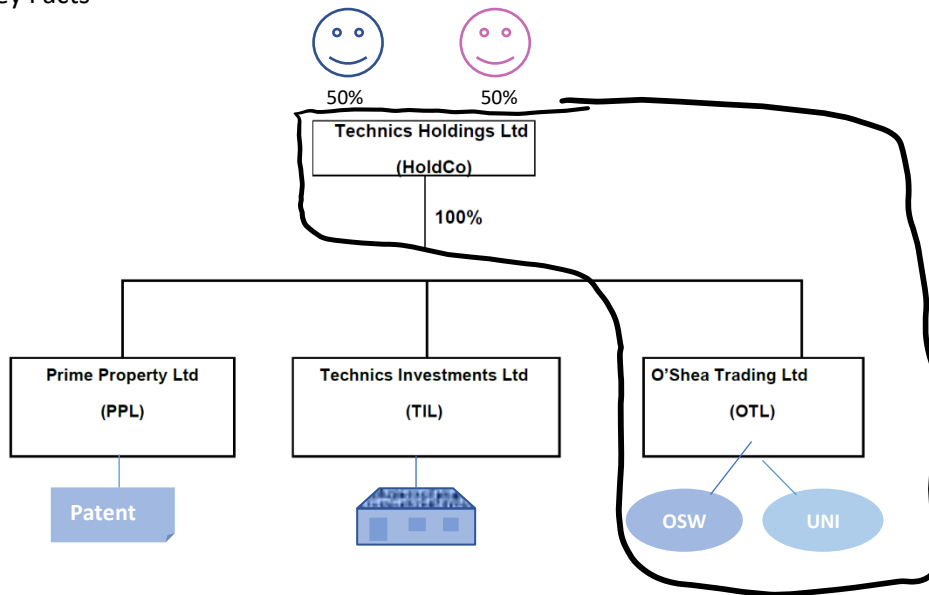
Income tax @ 20% on the undeclared amount of €6,000 is due i.e. €1,200. USC will also be payable.  
Total tax liability €20,000 x 20% = €4,000

Significant consequences –  $1,200/40000 > 15\%$  of the tax correctly calculated

The income tax plus USC underpaid is more than 15% of the correct tax due, therefore the applicable penalties are likely to be 20% of the underpaid tax.

## Technics Group FAE Elective 2019

### Key Facts



#### 1. Separate OSW & UNI trades

- No tax cost
- Newco to own UNI
- OSW Assets = leasehold premises, P&M, working capital, cash
- Unitrack assets = P&M, goodwill, intellectual property, working capital
- Proceeds of future sale to NewCo in 3 years

#### 2. Sale of commercial property

- Purchased Dec 2014 €450,000
- SP €675,000
- Past tax incentive to retain for number of years
- ? 2021 right time to sell
- No VAT advice required

#### 3. Patent acquisition tax planning advice

- Purchase cost €1,050,000
- Amortisation policy 16 years
- Sept 2021 commence trading in EU
- Loss in 2021 €60,000, Profit in 2022 €240,000

#### 4. VAT treatment of EU sales

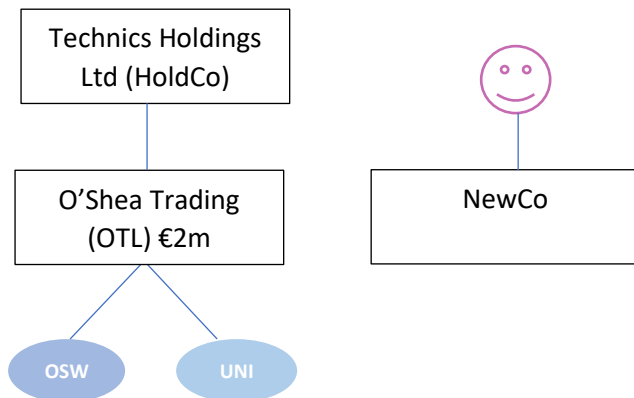
- Non-VAT registered customers
- Electronic services

Memo (1187 words vs 2049 words)

To:

From:

Subject:



In the absence of any relief the transfer of the trade of UNI to NewCo would give rise to:

- CT liability at 33% of the gain for OTL
- Technical distribution for HoldCo
- Stamp duty at 7.5% on the market value of the assets for NewCo

However, a re-organisation in the form of a share for undertaking 3 party swap can be done at zero tax cost.

The steps involved are as follows:

1. Deirdre incorporates a new company
2. OTL transfers the assets of the UNI trade to NewCo
3. NewCo issues shares to HoldCo in consideration for the assets of UNI

### **Disposal of assets of UNI by OTL**

S615 applies on the basis that the following conditions are satisfied:

- OTL does not receive any consideration for UNI
- NewCo and OTL are both Irish resident after the transfer
- The re-organisation is for bona fide commercial reasons

Application

- The disposal is deemed to take place at no gain/no loss
- NewCo takes on the assets at their original base cost and acquisition date
- The relief applies to chargeable assets and not trading stock
- There is no clawback of this relief if NewCo is subsequently sold in 3 years

### **Technical distribution by OTL to HoldCo**

S587 operates to apply S584 to the re-organisation such that the distribution is not pursued by Revenue.

- distributable reserves of OTL need to be equal to at least book value of the UNI assets transferring

- the transfer must be for bona fide commercial reasons

Application:

- The shares in NewCo are deemed to step into the shoes of the OTL shares in the proportion of the value of the UNI trade to the value of OTL.

### **Acquisition of assets by NewCo**

S80 applies on the basis that the following conditions are satisfied:

- The assets transferred constitute an undertaking
- The consideration for the assets of UNI consists of at least 90% new shares issued to HoldCo
- NewCo is Irish resident
- The re-organisation is for bona fide commercial reasons

Application

The acquisition of the assets is exempt from stamp duty

There is no clawback of this relief on a subsequent disposal

The issue of new shares by NewCo is not subject to stamp duty

### **Other tax issues**

Transfer of business relief should apply such the transfer will be deemed not to be a supply of goods or services for VAT purposes

S400 deems the UNI trade to be continuing for the purposes of balancing allowances and charges and trading losses

- Plant and machinery will transfer to NewCo at TWDV and no balancing allowance or charge arises for OTL.
- Trading losses forward of UNI transfer to NewCo to be used against income of the same continuing trade.

### **Future disposal of NewCo Shares**

In the absence of any relief, a disposal of the shares in NewCo in 3 years would give rise to a CT liability at 33% for HoldCo on the gain on the uplift in value of the shares.

S626B should be available to Holdco on the basis that the following conditions will be satisfied:

- HoldCo will own more than 5% of the ordinary shares for a continuous period of 12 months in the 2 years prior to the disposal
- NewCo is Irish resident
- NewCo is a wholly or mainly trading company
- NewCo does not derive the greater part of its value from Irish land and buildings. Care should be taken to ensure that the value of any land and buildings acquired by NewCo does not breach this condition.

Application



- The gain on disposal will be exempt and the full amount of the proceeds will be available to HoldCo to re-invest.

### Sale of Commercial Property

In the absence of any relief, a CT liability of €74,250 will arise for PPL i.e. €225,000 x 33%.

TIL can avail of an exemption from CT under S604A on the basis that the following conditions are satisfied:

- The property was purchased between 7 December 2011 and 31 December 2014
- The property is situated in Ireland – must be in Ireland or EEA
- The property was acquired at market value
- The property has been retained for the required minimum ownership period – originally this was 7 years but was reduced to 4 years in FA 2017

#### Application

- Disposal in December 2021 takes place after the required minimum period of ownership of 4 years. Therefore the gain is exempt.
- If the disposal takes place after 7 years, i.e. after December 2021, the exempt portion of the gain is limited to 7 years of the total period of ownership.

### Patent Acquisition

TIL can avail of capital allowances on the intellectual property on the basis that the following conditions are satisfied:

- The patent is a specified intangible asset
- The patent qualifies for recognition as an intangible asset under IFRS i.e. IAS 38

#### Application

PPL will have a two options in relation to the annual wear and tear allowance on the qualifying expenditure of €1,050,000:

1. 7% straight line for 14 years followed by 2% straight line in the 15th year
2. The amortisation/impairment charge in the Statement of Comprehensive Income.

Option 1 provides for a faster write off, i.e. 15 years instead of 16 years. Therefore, TIL should avail of option 1.

These capital allowances can only be offset against income from “relevant activities” . TIL will need to identify the income of the relevant activities and this will be treated as a separate trade.

A further restriction applies in that only 80% of the income can be sheltered by the capital allowances and interest incurred on acquisition of the patent.

		2020		2021
Trading profit/(loss)		(60,000)		240,000
Add back amortisation	€1,500,000 / 16 years	65,625		65,625
Relevant trading income		5,625		305,625
80% of relevant trading income		<u>4,500</u>		<u>244,500</u>

Allow interest on borrowings first	0		0	
Capital allowances	<u>4,500</u>		<u>142,500</u>	
Total capital allowances and interest		<u>(4,500)</u>		<u>(142,500)</u>
Case I		<u>1,125</u>		<u>163,125</u>
Capital Allowances for AP	73,500		73,500	
Capital Allowances C/F	<u>0</u>		<u>69,000</u>	
	73,500		142,500	
Utilised in this AP	<u>(4,500)</u>		<u>(142,500)</u>	
Balance C/F	<u>69,000</u>		<u>Nil</u>	

**Pretend:** Interest in 2020 is €3,600, 2021 is €26,000. Relevant trading income 2020 €6,000, 2021 €132,000. Same qualifying expenditure.

		2020		2021
Trading profit/(loss)				
Add back amortisation	€1,500,000 / 16 years			
Relevant trading income		6,000		132,000
80% of relevant trading income	<u>4,800</u>		<u>105,600</u>	
Allow interest on borrowings first	3,600		26,000	
Capital allowances	<u>1,200</u>		<u>79,600</u>	
Total capital allowances and interest		<u>(4,800)</u>		<u>(105,600)</u>
Case I		<u>1,200</u>		
Capital Allowances for AP	73,500		73,500	
Capital Allowances C/F	<u>0</u>		<u>72,300</u>	
	73,500		145,800	
Utilised in this AP	<u>(1,200)</u>		<u>(79,600)</u>	
Balance C/F	<u>72,300</u>		<u>66,200</u>	

## VAT treatment of EU Sales

### Mini One Stop Shop (Moss)

TIL can avail of an optional simplification measure to reduce cost and admin burden on the supply of digital services to non-taxable persons.

TIL will need to register for the scheme, otherwise it will be required to register for VAT in each member state in which it makes a supply and charge and account for VAT in each member state.

### Operation of MOSS

- TIL submits quarterly returns in Ireland paying the VAT due to each member state through ROS.
- The first return will be due for the quarter ending 30 September 2021 and must be filed via ROS by 20 October 2021
- The MOSS return only remits VAT on sales, does not provide for reclaim of Input VAT

- An electronic VAT refund (EVR) claim may be necessary to recover any foreign input VAT incurred by TIL
- A 10 year record retention period applies for sales accounted for under MOSS.

### Encore FAE Elective 2018

#### Key Facts

1. Transfer of 30% shareholding directly to 3 siblings
  - Value €2million each, base cost in 2000 minimal
  - Aged 57, RR/RER applicable?
  - 30% directly
2. Transfer 10% shareholding to DT for Niamh
  - Set up & life of trust
  - Sale of shares by trust
3. Sale of Audio Plus / Purchase of Property now
  - Expected MV €3m, base cost €1m
  - Option to purchase property for €3.18m personally or by Audio plus now
  - Substantial increase in value in future
4. Revenue Audit
  - €40K underpayment
  - Computer system error

### Disposal of 40% Shareholding

In absence of relief – CGT @ 33% on circa €8m = €2.64 million

RR is available to David on the basis of the following conditions being satisfied:

He is aged over 55, he owns > 25%, trading company, director 10 years & F/T working director for 5 years.

Marginal relief is available  $(8m - 750000) \times 50\% = €3.625$  million. Therefore, RR not beneficial for David.

ER is available to David subject to conditions:

1. David owns > 5% shares
2. Minimum ownership > 3 years
3. Worked managerial or technical capacity for > 3 years
4. Co = qualifying company
5. Application of relief

Consideration		8,000,000
Less base cost	(100 x 40% x 1.193)	(47)
		7,999,953

Annual exemption		(1,270)
		7,998,683
CGT @ 10%		100,000
CGT @ 33%		2,309,624
		2,409,624

Tax saving €1 million @ 23% = €230,000

Alternatively:

ER applies to €1m so 23% saving (33% - 10%)

CGT with ER €2.64 million less €230,000 = €2.41 million

SD @ 1% = €20,000 each sibling & trust for Niamh's shares (trust may need to sell shares to pay SD otherwise David could transfer the cash to the trust)

CAT

In absence of relief CAT @ 33% on the excess of group B threshold & SGE

Business relief

Conditions satisfied

Shares in unquoted trading company if after taking the benefit any of the following apply:

- Beneficiary owns ≥25%
- Beneficiary + relatives own >50% = satisfied by David siblings
- Beneficiary owns 10% + worked F/T for preceding 5 years

➤ Application of relief to siblings = 90% reduction in taxable value

Market Value	Connected persons	2,000,000
Less SD	If incurred by beneficiary	(20,000)
Taxable Value		1,980,000
BAR 90%	Clawback period = 6 years	(1,782,000)
		198,000
SGE		(3,000)
Group B		(32,500)
		162,500
CAT @ 33%		53,625
CGT offset – same event David directly to 3 siblings	Clawback period = 2 years	(53,625)

Clawback < 6 years increases CAT liability by €588,060 (1,782,000 x 33%).

CGT offset available to each = €2.4m /4 = €600,000 for each of the 3 siblings to receive the shares directly

CAT not applicable to Niamh as shares transferred to DT

If shares appointed = Business relief is available to Niamh

If trust sells shares and appoints cash business relief n/a on cash

€198,000 – 32,500 – 3,000 = €162,500 @ 33% = €53,625 less CGT incurred by the trust offset = no CAT

BR clawback = 6 years

CGT offset clawback < 2 years – note only the trusts CGT and not David's

SD as above

### **Discretionary Trust – Trustees Tax Implications**

IT on income of the trust @ 20% + surcharge @ 20% undistributed < 18 months

Credit for IT but not surcharge when income distributed

DTT n/a as David is not deceased. Will arise on death @ 6% initial charge and 1% p.a. thereafter on 31 December each year, refund of half the initial 65 of appointed within 5 years

### **Purchase of Property**

Option 1: Purchases Personally

SD @ 7.5% for David

Case V @ 52% for David on rental income from the lease & Audioplus receives CT deduction for rent

Borrowings to acquire property = interest charge, deductible in calculating Case V

CGT liability for David on future disposal at 33% (funds received personally in his own hands)

Option 2: Audio Plus Purchases

SD @ 7.5% for AP

Borrowings to acquire property = interest charge, deductible in calculating Case I S81, wholly & exclusively for trade (Ringmahon Case)

CT liability for Encore on future disposal at 33%, distribution of proceeds to David suffers IT, PRSI & USC @ 52%

€3,180,000 + €3,000,000 = €6,180,000

3180/6180 > 50% = AP shares are a specified asset

On disposal of AP, S626B will not apply IF shares derive greater part of value from property – highly likely, therefore additional CT @33% for Encore on €2million even with no change in value of the property

Preferred option = David purchases

### **Revenue Audit**

Unprompted qualifying disclosure – reduced penalties, avoids publication and prosecution

- In writing, signed by or on behalf of David
- Statement of details of default
- Accompanied by payment of tax plus interest .0274% per day
- Declaration

Careless behaviour with significant consequences

PENALTY TABLE 1	CATEGORY OF BEHAVIOUR	PENALTY	QUALIFYING DISCLOSURE MADE	
DISCLOSURES		%	FULL COOPERATION PENALTY REDUCED TO	
All tax/duty defaults where there is a qualifying disclosure	Penalty table for tax/duty defaults that occurred on or after 24/12/2008	Where full cooperation not given by taxpayer	Prompted Qualifying Disclosure and full cooperation – penalty reduced to:	Unprompted Qualifying Disclosure and full cooperation – penalty reduced to:
All qualifying disclosures in this category	<i>Careless<sup>1</sup> behaviour without significant consequences</i>	20%	10%	3%
First qualifying disclosure in these categories	<i>Careless behaviour with significant consequences<sup>2</sup></i>	40%	20%	5%
	<i>Deliberate<sup>3</sup> behaviour</i>	100%	50%	10%
Second qualifying disclosure in these categories	<i>Careless behaviour with significant consequences</i>	40%	30%	20%
	<i>Deliberate behaviour</i>	100%	75%	55%
Third or subsequent qualifying disclosure in these categories	<i>Careless behaviour with significant consequences</i>	40%	40% (no reduction)	40% (no reduction)
	<i>Deliberate behaviour</i>	100%	100% (no reduction)	100% (no reduction)
PENALTY TABLE 1	CATEGORY OF BEHAVIOUR	PENALTY	NO DISCLOSURE MADE	
NO DISCLOSURE		%	FULL COOPERATION PENALTY REDUCED TO	
All defaults where there is no qualifying disclosure	<i>Careless behaviour without significant consequences</i>	20%	15%	
	<i>Careless behaviour with significant consequences</i>	40%	30%	
	<i>Deliberate behaviour</i>	100%	75%	