

EXAMINERS' REPORTS MAY 2023

CHIEF EXAMINER'S COMMENTS

Results

As a whole, the results this session were some of the best we have ever seen with no paper having a pass rate below 40%. Whilst there was an element of "erring in favour of the candidate" (see below), the underlying results this session were still extremely good. The weakest performance this session was on the IHT, trust and estates papers where some candidates seemed unprepared.

Return to Centres

The underlying return to centres and the Exam4 software worked well. However, there were major issues with the online legislation on the first day, and also intermittent issues with one provider's legislation across the exam session.

On the first morning, some candidates sitting Advanced Technical exams were unable to access the LexisNexis online legislation. In the afternoon some were unable to access the Croner-i online legislation, although we know some gained access later on in the exams in both the morning and afternoon sessions. These access issues were rectified by the legislation providers as quickly as possible.

For the whole of the exam session there were intermittent issues for some candidates with the LexisNexis legislation where it was "lagging", which made access very difficult.

Candidates therefore had widely differing issues ranging from no problem at all to issues affecting all papers they sat both in terms of direct access and indirect issues of time wasted.

Candidates were invited to submit special circumstance forms setting out the issues they faced and these were considered to ensure that candidates were not worse off as a result of the difficulties with the legislation: we erred in favour of candidates.

AWARENESS

Module A: VAT including Stamp Taxes

General Comments

Generally, there was a satisfactory performance by most candidates. However, candidates should try to remember that this is a paper on VAT and Stamp Taxes and therefore reference to other taxes and/or tax reliefs (for example, group loss relief in Q3) earns no credit.

Question 1

Several candidates were confused as to what constitutes relevant expenses for a limited cost trader, and so came to the conclusion that Saul was not a limited cost trader despite being told in the question that he was. In this case, credit was given if the VAT payable was calculated at 14.5%. Some candidates compared the relevant expenses to a threshold of £1,000 even though quarterly figures were given. Some deducted input VAT in the calculation of the VAT payable.

Question 2

This question was generally badly done. Most candidates did not know the correct treatment of the VAT scale charge and simply claimed a deduction for the business proportion of the input VAT on the private fuel. The gift of the pens was frequently completely ignored.

Question 3

The most common mistake was to state that Howard could not be part of the group, either because he was not a company or because he was not making taxable supplies. Some candidates thought that including Howard and/or Hamlynne Ltd in the group would result in the exempt and zero rated supplies of those entities becoming standard rated. Several candidates thought that the cashflow effect of including a company in the group which makes zero rated supplies and which files its VAT returns monthly was that the monthly repayments of VAT would become quarterly repayments. Some candidates wrote about the availability or otherwise of group loss relief claims which was irrelevant to this paper and so earned no credit.

Question 4

Several candidates wrote about monthly payments of VAT under the annual accounting scheme despite the question stating that the company had elected to make three interim payments. The due dates for payment were sometimes confused with those for the payment of Corporation Tax by instalments.

Question 5

The most common mistake was to limit the recovery of the input VAT on the lease car to 85%. Poor explanations cost candidates marks with regard to the entertaining expenses and the Christmas party, with several candidates limiting the recovery of the input VAT on the staff party to a proportion of £150.

Question 6

No comments.

Question 7

No comments.

Question 8

A worrying number of candidates thought that the option to tax made by Wixler plc on Goodman House automatically transferred with the sale to Hyssen Ltd. Otherwise performance in this question was generally satisfactory, with most candidates picking up the marks on the VAT treatment of the rent charged to tenants and the renovation costs.

Question 9

This question was generally well done, but a number of candidates lost a relatively easy mark for not deducting the input VAT on the standard rated purchases to arrive at VAT payable for the quarter.

Question 10

This question was frequently very well done, with most candidates demonstrating a good knowledge of the new penalty rules, but some candidates didn't seem aware of them at all and wrote at length about the default surcharge. A question like this highlights the importance of using up-to-date material to study for these examinations.

Question 11

No comments.

Question 12

The majority of candidates didn't realise that if Multiple Dwellings Relief is not claimed, then the SDLT is calculated at non-residential rates. A few candidates who did realise this then increased the rates by 3% for an additional residential property.

Module B: Inheritance Tax, Trusts & Estates

General Comments

Overall performance on this module was good, with a good number of well-prepared candidates doing well across the majority of the questions. However, some questions were not even attempted by a substantial amount of candidates.

Question 13

Several candidates missed the fact that the spouse's remaining NRB could be claimed, or claimed the full amount, and some calculated the remainder of NRB using a percentage, which wasn't necessary when the NRB in the year of death was the same as the current year NRB, which resulted in unnecessary rounding proving too high or low remaining NRB. Some candidates missed that the spouse's RNRB could be claimed in full, and some incorrectly calculated QSR which was not relevant to this question.

Question 14

Performance from many candidates was good. The most common mistake was forgetting to calculate the amount received by the daughter. A small number of candidates correctly used the 40% tax rate but did not show whether they had even considered if the reduced rate of 36% applied.

Question 15

A small number of candidates did not attempt it, and a few did not do well as they did not show a good understanding of the domicile rules.

Question 16

A few candidates didn't realise the gift to charity was exempt. The most common mistake was calculating the tax due on the CLT at 20% instead of 20/80.

Question 17

A large number of candidates either forgot about taper relief or used it in the wrong place in the calculation, either after deducting the lifetime tax, or even before the IHT was calculated.

Question 18

While some candidates performed well, the majority forgot to state what additional information was required to determine whether BPR or APR were available, such as how long the assets had been owned. Although it was pleasing to see a lot of candidates remembered the significance of whether the lease pre-dated 1 September 1995.

Question 19

While a good number of candidates scored well, many candidates appeared to struggle with the related property rules, and some candidates used the related property rules in the first part of the question where they were not required.

Question 20

Performance on this question was very poor, with a large number of candidates not attempting this question or scoring poorly, although a small number of well-prepared candidates scored well.

Question 21

Performance on this question was mixed. A good number of well-prepared candidates achieved full marks, however a large number of candidates did not attempt the question.

Question 22

The majority of candidates that attempted the question did well, however many did not. Common mistakes included missing the £1,000 standard rate band, or taking it at 0% instead of 20%, and forgetting to gross up the trustee's expenses.

Question 23

A good number of candidates who attempted the question scored full marks. However, a large number of candidates did not attempt this question. The most common mistake was taking the full AEA instead of half, or omitting the AEA. Another mistake was with the cost of the land, with some candidates calculating this as $\frac{4}{5}$ th of the original cost, instead of using the part disposal formula.

Question 24

Performance on this question was not as good, and a lot of candidates did not attempt this question. A small number of candidates performed well, demonstrating good knowledge of the reporting requirements and associated penalties. Common mistakes included saying that the IHT needed to be reported within 6 months instead of 12 months, or giving the payment due dates as the reporting dates, and not giving amounts for penalties that would be due. Some candidates also used up valuable time performing calculations for this question, which were not required.

Module C – Corporation Tax

Overall comments

Candidates are encouraged to read the questions carefully and to provide explanations where required. There were some gaps in knowledge, for example, the bed and breakfasting rules for close company loans to participators.

Question 25

Most candidates dealt well with this question.

Question 26

Many candidates dismissed this question quickly on one of two grounds: 1) the expense could not be recognised because it would be paid after the year end; and 2) the expense was capital in nature.

Question 27

Common errors here were deducting the proceeds on the super-deduction asset from the main pool and ignoring the 50% SR allowance.

Question 28

Common errors were to take account of the income element of the lease over the term of the lease and to deduct the legal expenses. As for question 1, some candidates thought that income should be included on a paid basis, not the accruals basis.

Question 29

Many candidates did not attempt this question and those that did struggled with elements of it. Errors were made in calculating the rollover relief for Patent 1, and some candidates thought that no tax relief could be claimed for the amortisation. Generally, candidates knew to adjust for the accounting entries.

Question 30

Most candidates were unaware of the bed and breakfasting rules. Many candidates struggled with the simpler parts of the question – for example, the rate of tax, where a wide range of rates were used, from 2% to 40%.

Question 31

Although the question clearly stated that the company claims the RDEC, many candidates answered based on the rules for SME tax relief. Some candidates were confused between the two – for example, using 14.5% as the rate. Many candidates believed that rent was a qualifying cost.

Question 32

Candidates performed well in this question

Question 33

Many candidates did not restrict the maximum amount of group relief by reference to the common period or if they did, only time apportioned the available loss, not the available profit. A lot of candidates wasted time explaining why the companies formed a group.

Question 34

Most candidates performed well in this question. A common error was to fail to include the structures and buildings allowances. Some candidates missed the indexation allowance, and some struggled to calculate it correctly.

Question 35

Candidates performed well in this question.

Question 36

Some candidates did not provide enough detail, for example referring to the threshold without giving the figure.

Module D – Taxation of Individuals

General Comments

Generally, there was a good performance by most candidates, however several candidates did not read the question carefully enough and wasted time writing, sometimes at length, on areas that were not relevant to the question.

Question 37

Some candidates thought that the interest on the Treasury Stock was exempt. Several candidates either ignored the qualifying interest or deducted it from interest income or in some cases, from the dividend income.

Question 38

The most common error was in relation to the Christmas party. Some candidates thought that it was exempt as it was staff entertaining and others thought that the first £150 was exempt. The car benefit was frequently time apportioned. Some candidates treated the payroll donation to charity as a gift aid donation.

Question 39

The most common mistake was confusion over the calculation of threshold income and adjusted income and knowing which figure was to be used in the tapering of the annual allowance. Other than that, this question was generally well done.

Question 40

Several candidates included the golf clubs and membership in the calculation of Class 1 Primary and Secondary NIC. Where it was recognised that Class 1A was due, the amount was frequently either not grossed up or grossed up at an incorrect rate.

Question 41

Several candidates calculated what they considered to be the taxable amounts and then divided them according to the capital contributions rather than to split equally. Most candidates recognised the availability of the rent a room exemption and remembered that it was per residence, not per person. While the availability of the property allowance was regularly considered, most candidates did not realise that it was per person and deducted £1,000 from the relevant income before dividing the result.

Question 42

Several candidates did not appreciate that the replacement of domestic items relief does not apply to FHLs and stated that only the 'like for like' cost of the microwave could be deducted. Some also applied this rule to the replacement kitchen units instead of treating them as a repair to the property. The treatment of losses was generally well understood.

Question 43

Despite the gift aid donation being given gross in the question, where it was even considered, several candidates grossed it up again. Some candidates ignored the fact that Morag was a Scottish taxpayer.

Question 44

No comments.

Question 45

This question was either done very well or very badly. A few candidates treated the option as tax-advantaged, despite the question clearly stating that it was not. There was some confusion over how to calculate the capital gain, with some candidates treating the Income Tax and NIC payable on exercise as allowable costs.

Question 46

This question was often very well done, although some candidates wasted time discussing the automatic tests when it was clearly stated in the question that they had not been met.

Question 47

Most candidates failed to realise that the shares purchased on 1 August 2018 qualified for Investors' Relief. Where it was recognised, the 10% rate was often applied to the whole gain. Some candidates made an attempt at apportioning the gain, but this was often done incorrectly.

Question 48

The majority of candidates completely misunderstood this question and wrote at length about penalties for late notification, late payment and errors.

Module E: Taxation of Unincorporated Businesses

General comments

Some candidates demonstrated gaps in their knowledge, as highlighted below.

Questions 49-51

Most candidates dealt well with these questions.

Question 52

Although candidates were comfortable applying the rules for SBAs, common errors were to include the cost of the water and power systems and either to fail to time apportion the allowance or to do so from the wrong date.

Question 53

All aspects of the question were dealt with well excluding the drawings: roughly half the candidates deducted the drawings from the profit.

Question 54

A significant number of candidates did not seem to be aware of the restriction on loss relief.

Question 55

Many candidates made errors in this question, including deducting the loss on a LIFO basis and deducting it from trading income only.

Question 56

Again, many candidates made errors in this question. Common errors were to deduct the cost of the car, to ignore the car completely, to deduct the full amount of the interest and to miss the adjustment expense.

Question 57

Many candidates struggled to apportion the gain between BADR qualifying and non-qualifying.

Question 58

A significant number of candidates did not attempt the gift relief calculation, stopping at calculating the gain. For those that did calculate gift relief, a common error was to include the stock as a chargeable asset.

Question 59

Most candidates performed well in this question. A small number merely listed possible factors and did not provide explanations.

Question 60

A common error was to assume a flat penalty of £100.

ADVANCED TECHNICAL

Taxation of Owner Managed Businesses

General comments

Overall, candidate performance was mixed on this paper. As in previous sittings, candidates performed relatively well in standard computational questions, such as the adjustments to profit in question 1 and the capital allowances in question 4. However, candidates struggled with other questions. In particular question 3, where candidates demonstrated a lack of awareness of the tax issues around EMI options, despite these being a core syllabus topic for the OMB paper. In question 5, it was disappointing to see candidates make basic errors in income tax calculations, as well as wasting time discussing points that were not relevant to the requirement (something which was also seen, to a lesser extent, in question 4).

Question 1

This question required candidates to calculate taxable profits for a company (including an SME R&D claim and capital allowances) and the corporation tax liability for a period that spanned the rate rise on 1 April 2023.

Candidates generally performed well, showing a good understanding of the adjustments required and good presentational skills. Common errors included:

- In the R&D calculation, treating the overhead costs as allowable without comment or adjusting by 90%. A large minority also used the wrong percentage for the salary costs.
- Not adjusting the super deduction for the fact that the period overlapped 1 April 2023.
- The lease premium adjustment calculation.
- The marginal relief calculation and the augmented profit.

Question 2

This question required candidates to calculate the net cost to a sole trader of taking on an employee, and explain the ongoing tax and NI compliance requirements.

Candidates generally performed well in identifying the costs of the employee. However, very few treated the NI correctly, with most completely ignoring the employment allowance and a significant minority stating it was not available to a sole trader or where there is only one employee. For the minority that did consider the employment allowance, it was often incorrectly applied to Class 1A contributions.

Most candidates either did not consider the tax and NI savings for the sole trader from having an employee or simply stated that 40% of the cost could be saved. Very few gave any consideration to Class 4 NI and a significant minority calculated Corporation Tax savings.

Most candidates were able to gain some marks in part two of the question. Candidates who performed less well were often vague and did not state key dates. Very few identified the opportunity for quarterly payments.

Question 3

This question focused on the grant of an EMI qualifying option.

Candidates performed poorly. Identifying the concept of a disqualifying event was key to this question. However, even those candidates who identified the concept did not apply it correctly, with

most treating the options as unapproved following the event. A material number of candidates calculated capital gains on the option exercise, despite the exercise of an option not being a capital disposal.

Candidates also performed poorly with regards to the PAYE/NIC obligations, not appreciating that the concept of readily convertible assets applies to both PAYE and NIC. Despite there being sufficient information in the question to determine that the shares were not readily convertible, many candidates “hedged their bets” and provided conditional answers, which was not rewarded.

Question 4

This question looked at capital allowances for a hotel business, and the capital allowances implications of the proposed purchase and sale of hotels.

Candidates generally performed well, with many scoring high marks in the first part. The main errors were including incorrectly applying the super deduction and splitting into two accounting periods, despite the business being a sole trade. Approximately half of candidates wrongly concluded that the plain panelling added to the ambience of the hotel. Building costs were usually correctly calculated. Errors included allocating demolition costs to the general pool and the use of a written down figure for the prior year claim. Quite a few candidates included only the deposit for the car acquired on hire purchase.

The second part of the question was less well answered. Despite being asked only for capital allowances implications, quite a few candidates gave information on the CGT treatment. Some also wrongly stated that the AIA only applies to new assets.

Question 5

This question required candidates to explain the CGT implications of incorporating a sole trader business, and calculate the different income tax liabilities of remaining as a sole trader or incorporating.

Candidates performed poorly in both parts of the question.

In the first part, despite the question clearly only asking for CGT implications, many candidates wasted time discussing other topics such as the transfer of stock and capital allowances.

In the second part of the question there were frequent basic errors in the income tax liability calculations, including taxing income in the incorrect order, taxing dividend income at non-savings rates and not taxing all income. Candidates should avoid taking “short cuts” in calculations. Despite the question also clearly stating that profits would be extracted in full by way of dividend, some candidates gave advice on extracting profits via a mixture of salaries and dividends.

Question 6

This question tested understanding of the move to a tax year basis for an unincorporated person. It also included a profit adjustment and self-employed NI calculation.

Candidates generally performed well, showing a good understanding of the transitional rules and the move to the new basis. Presentation and layout was generally of a good standard. Only a handful of candidates demonstrated understanding of the transitional overlap relief rules for businesses that commenced under the prior year basis of assessment. A large minority also incorrectly stated that the cessation of a business in September 2022 occurred in tax year 2023/24.

In the NI calculation, a large number of candidates wasted time preparing maximum NIC calculations. Many also allocated the nil rate to each business thus giving two NIC free amounts.

Taxation of Individuals

General comments

Candidates performed well on this paper with most making a good attempt at all the questions.

Question 1

This question required candidates to calculate an individual's Income Tax and Capital Gains Tax liability for the year. Overall, candidates performed very well on this question.

The individual in question was an additional rate taxpayer with a range of income sources, such as employment income and benefits, investment income, child benefit and employer pension contributions. The individual also held investment assets which had chargeable events during the year. This included shares in an EIS company which was subject to liquidation in the year, shares in an SEIS company which were sold in the year, and shares in an offshore non-reporting fund which were also sold during the year.

Most candidates identified the Income Tax clawback and the possibility of a s.131 loss relief claim on the EIS shares but many struggled to accurately calculate the loss available. Many candidates also appeared to confuse the Capital Gains Tax implications of the EIS and SEIS share transactions, with some applying the EIS rules to the SEIS share disposal and vice versa.

The question also required candidates to consider rules applicable to higher earners, including the high income child benefit charge and the pension allowance excess charge rules. Most candidates accurately calculated the high income child benefit charge payable and also correctly concluded that a pension allowance excess charge was not applicable, despite their calculation of the individual's threshold income and adjusted income levels being flawed.

Question 2

This was a question testing candidates' knowledge of The Statutory Residence Test for non- UK domiciled individuals arriving to the UK to take up full time employment.

Candidates generally addressed the automatic UK residence tests well.

However, most candidates did not consider all the relevant split year cases that could have applied to an arriver. Many candidates only focused on a single split year case and therefore did not give themselves the opportunity to receive maximum marks.

Where candidates considered the remittance basis, most dealt with this topic well.

Question 3

This question required candidates to calculate an individual's Capital Gains Tax liability on the sale of an individual's share of a UK property to his brother.

The individual had lived in the property during the ownership period with occasional periods of absence for various reasons. This required candidates to consider the Principle Private Residence

Relief rules and determine whether each absence qualified for relief as a period of deemed occupation.

Most candidates demonstrated awareness of the reasons eligible for deemed occupation, but many did not correctly apply these to the individual's circumstances, thus missing out on easy marks. This also led to relief being applied to an incorrect proportion of the capital gain, though the majority of candidates were able to still obtain some marks by applying the correct formula to the calculation.

This question also examined the Capital Gains Tax rules around the inheritance of assets and disposals to connected persons. Most candidates correctly applied the probate value as base cost of the property and also identified that the proceeds should be replaced by market value with the possibility of a tenanted deduction, rather than the amount paid.

Candidates were also required to explain the individual's reporting obligations in connection with the disposal. The majority of candidates correctly identified the 60 day requirement for both reporting and payment where their calculation resulted in a Capital Gains Tax liability.

Overall, most candidates scored well on this question.

Question 4

This question required candidates to comment on whether a number of properties qualified as Furnished Holiday Lets and the tax implications associated with the properties.

The question was generally well answered with candidates stating the relevant conditions well regarding availability and occupations conditions. However, most candidates did not provide sufficient detail on the beneficial tax implications of qualifying as a furnished holiday let.

The majority of candidates also did not give sufficient analysis as to whether the disposal of Riverside House would qualify as a disposal of a 'whole or part of the business' for the purposes of Business Asset Disposal Relief.

Question 5

Candidates were asked to explain the tax and National Insurance implications of a company car and an award of restricted securities to an employee. They were also asked to explain the mechanism for reporting and paying these amounts to HMRC.

A lot of candidates demonstrated a good understanding of the restricted securities rules and were able to discuss the advantages and disadvantages of making an election under s.431 ITEPA 2003. The rules regarding Readily Convertible Assets were also well understood by some candidates.

Overall, candidates were able to correctly explain the method of calculating the cash equivalent of a company car. Unfortunately, candidates were less clear on the implications of the resulting figure being payrolled.

A large proportion of candidates incorrectly advised that the individual could claim for their business miles using the 45p/25p per mile rates as opposed to the lower fuel only figures.

Question 6

Candidates were asked to calculate the Capital Gains Tax liability for an individual who had sold their business premises and invested in various new business assets. The focus of the question being rollover relief. There was also a small section on irrecoverable loans to traders.

Candidates generally remembered to make use of the individual's annual exempt amount and brought forward losses.

On the whole, candidates dealt well with the treatment of a gain being rolled over into a depreciating asset.

The basic calculation of the gain on disposal of the premises was straightforward and candidates dealt with this well. To arrive at the amount of rollover relief available required candidates to apportion the sale proceeds by usage of the property, which caused confusion in some cases.

Unfortunately, a lot of candidates applied the apportionment to the net gain and deducted the amount reinvested from that amount rather than from the relevant proportion of the sale proceeds. A lot of candidates also applied Business Asset Disposal Relief even though the gain did not qualify.

A lot of candidates confused the irrecoverable loan to trader rules with the negligible value claim rules.

Human Capital Taxes

General comments

In general candidates did well on this paper with a good improvement in performance compared with the previous session.

Question 1

This question tested the treatment of payments to an employee changing jobs. The payments included a 'golden hello', school fees, and application of the exemption for qualifying removal expenses.

Performance was generally good. Candidates dealt well with the inducement payment and showed awareness of the £8,000 exemption, though they were sometimes uncertain of the range of expenses qualifying. Credit was given to those discussing alternative treatments of the school fees, depending on how the arrangement was structured. Candidates did not always appreciate the relationship between relocation and the fact that the new location would not be a temporary workplace.

Attention is needed when discussing NICs payable by an employer to be precise, particularly where Class 1 and/or Class 1A contributions apply in one scenario.

Question 2

The question sought to examine the candidates' knowledge of beneficial loans combined with foreign tax credits where two UK residents also were liable to overseas taxes. One of the individuals was a director of a close company so loans to participators rules were also being examined.

Candidates generally were able to identify that loan interest needed to be calculated, commenting on the £10,000 rule and the calculation of beneficial loan interest using the average and strict methods. Whilst candidates then went on to calculate the beneficial loan interest using the

average method and calculating the balance outstanding at the beginning and end of the year, only the most successful candidates went on to calculate the beneficial loan interest using the strict method.

Most candidates confirmed the P11D deadline but many could have scored more points if they had concluded with a summary of the amounts to enter onto the P11D.

Several candidates suggested a voluntary settlement for non-reporting of the prior year benefits in kind and were awarded a bonus mark.

Most candidates identified that a loan to the employee's husband should be included but fewer candidates identified the housekeeper loan as exempt as made to a member of the employee's household staff and not a family member. In addition candidates could have gained marks by ensuring that the interest paid by the employee's husband was deducted when calculating the beneficial loan interest.

The more successful candidates were able to identify the amount of the foreign tax credit and the resulting refund due to the employer and whilst most of those knew that the excess loan being waived would be liable to PAYE, candidates could have scored more marks had they considered and calculated the gross-up.

Only the more successful candidates identified that one of the employees was a director of a close company but they generally went on to gain additional marks in explaining the rules for when a corporation tax charge would be made and what action is taken when the loan was repaid. Only a very small number recommended early submission of the director's self assessment tax return to attempt to claim an early repayment of the tax to avoid a corporate tax charge.

Question 3

This question looked at a UK employer employing a French resident individual to work across the EU and the UK. Candidates were expected to comment on the UK employer's obligations for tax and social security including any potential reliefs.

Most candidates performed well with this question, with most identifying that Pierre would be covered under the TCA as a Multi-State worker and subject to UK NIC only given he did not work a substantial amount of time in his country of residence.

Whilst most candidates also correctly identified that Pierre was likely to be non-tax resident, many candidates wrote out the SRT in full and wasted time when the position was clear and only one mark was given for stating that Pierre was likely non-resident under the 2nd Automatic Overseas Test. It was noted that stronger candidates were more pragmatic in their answer.

Most candidates correctly identified that a s690 would be appropriate with some raising a practical point that if the agreement was operated on 10% of salary, no PAYE would likely arise. However, a significant number of candidates did not advise that a tax return requirement would still arise as a result of the agreement with some incorrectly stating that the s690 would absolve the requirement altogether. A significant number of candidates also incorrectly advised that an Appendix 4 - 8 agreement would be applicable when the scenario would not have allowed for any such relaxation.

Question 4

This question required candidates to assess the Double Tax Agreement (DTA) residence position for an individual who is employed by a UK company and also appointed as a Director of a UK subsidiary of the UK company. The question also required candidates to establish the PAYE tax and NIC reporting positions for the companies. The second requirement was a calculation of the amounts due to be reported.

A number of candidates explained the domestic tax residence position under the Statutory Residence Test which was not required as the question stated Anna is UK tax resident. Most candidates correctly concluded the DTA residence position, and correctly commented on social and economic ties, including the individual's son. Stronger candidates correctly explained the positions under the employment income and director's articles of the DTA. Where candidates incorrectly concluded the DTA residence position, follow up marks were still awarded for the rest of the requirement.

Almost every candidate picked up on the s690 application. A number of candidates commented on Overseas Workdays Relief (OWR), either to hedge bets or because they genuinely don't understand how DTA non-residence positions interact with OWR. That said, follow through marks still given where relevant.

Most candidates correctly concluded the social security position which was pleasing to see given the Trade & Cooperation Agreement (TCA) is still relatively new. Several candidates also identified the need for the UK companies to register in Germany.

Most candidates worked out the UK taxable percentages correctly. Stronger candidates identified the correct tax and NIC treatment of the accommodation and travel costs and worked out the amounts subject to tax and NIC. Where appropriate, follow through marks were awarded for the calculations even where candidates may have incorrectly concluded the DTA residence position in part 1 of the requirement.

Overall, where candidates understood the concepts and were well prepared, this question was answered well.

Question 5

This question required candidates to consider and rule out a potential job-related exemption for accommodation provided to an employee, and tested the treatment of the accommodation and other related benefits. Payments were being made by the employer in respect of the employee's use of their own mobile phone.

This was well attempted. Most candidates considered the possibility of the accommodation being exempt. Calculations of the additional value were mostly well handled. Credit was given to those discussing alternative treatments of council tax and utility payments, if these followed from a conclusion that the accommodation was exempt, though some candidates thought the council tax and utility payments were reduced in every case. Most understood that a phone could be provided in a more tax-efficient way, though the recommendation was not always clearly set out.

Care was needed not to bundle all the additional costs together as 'running costs', and assume one treatment applied to all: each expense such as council tax, insurance and power required separate consideration here. A large number of candidates gave two sets of alternative treatments, with or without the qualifying accommodation exemption, which would likely have taken them over time on this question.

Question 6

This question focused on the tax implications arising over a defined period with respect to a number of non-advantaged share options in a UK unlisted company that had restrictions imposed along with some IME aspects.

Candidates performed relatively poorly on this question with a surprisingly significant number of candidates incorrectly stating that there was a chargeable event on grant as the shares had restrictions imposed.

Many candidates took the position that the shares were RCAs given they could sell the shares back to the company on certain events. Stronger candidates identified that as this was a common requirement across the whole class of share then this itself would not constitute a trading arrangement for RCA purposes. Many others however simply focused on the fact that the company was unlisted and stumbled upon the conclusion that the shares were not an RCA.

All candidates attempted this question last so it may be a case of fatigue, however it was noted that many candidates clearly did not read the question in detail as there were cases where candidates wrote paragraphs analyzing the tax residence position in great detail despite the fact the position was already outlined in the question. Others outlined all the tax advantaged schemes available even though the question clearly stated the scheme was a non-tax advantaged one. As such many marks were not given as they had no relevance to the question.

Inheritance Tax, Trusts and Estates

General comments

The majority of candidates scored poorly on this paper with a relatively low pass rate indicating a lack of preparation for the paper overall. Well-prepared candidates scored well but there were no exceptionally high scores achieved.

Candidates generally favoured questions 1 and 2. Questions 3 and 4 had some extremely polarised results whilst question 6 was answered least well.

Question 1

This required the calculation of Income Tax, Capital Gains Tax (CGT) and an Inheritance Tax (IHT) exit charge for a UK trust. There was a change of trust residence during a tax year and the tax implications for the trustees had to be considered.

This was generally well answered by most candidates. Most well prepared candidates could confidently calculate the Income Tax liabilities for the trust but a few candidates did not understand that trust expenses should be grossed up.

Most candidates did not understand the impact of the change of trustee and that split year does not apply to trusts. Many candidates did not understand the share pooling rules and in particular the 30 day forward matching rules. This meant that these candidates lumped all gains together and just did one calculation of total proceeds minus costs.

A small number of candidates identified that there would be a deemed disposal on sale which they described at length but did not do the calculations - this did not appear to be a time issue since they then continued to answer the next part of the question.

Question 2

This was a question about the tax implications of a distribution from a non- UK resident trust to a UK resident beneficiary.

It was pleasing to note that many candidates were well prepared and were confident at explaining the Income Tax and CGT matching rules. However most candidates could not correctly calculate the

supplementary charges with many merely multiplying the capital gain by the relevant percentage.

A significant number of candidates wrote almost a page on the tax implications for the settlor if he was to become UK resident. There was no suggestion in the question that the settlor intended to move to the UK and therefore this was not required for the question. This would have wasted valuable time and there were no marks were available for this.

Question 3

This required the candidate to recalculate the IHT due on a chargeable lifetime transfer where the settlor had died within seven years of the gift. Business Property Relief (BPR) had been withdrawn and there was an opportunity for the trustees to reinvest the proceeds to prevent the BPR being clawed back on death.

Most candidates identified that BPR would be withdrawn on the Candle Ltd shares. However, very few candidates realised that BPR on the office building would also be withdrawn since the trustees were not partners in the business.

Many candidates could not correctly calculate the gross chargeable transfer amount of the lifetime gift into trust.

The second part of the question was very poorly answered with some candidates suggesting that the trustees should be advised not to sell the Candle Ltd shares as this would have saved IHT. This is not an appropriate answer since the shares were sold almost a year before death. Many candidates did suggest that reinvestment relief may be available but most did not explain the conditions required for this to apply and made no attempt at calculating what the tax saving would be if this route was taken.

Question 4

This required the calculation of the IHT liability arising on death for an estate that included a settled component. Overall, the standard of answers for this question was poor but better prepared candidates scored well.

Several candidates spent too much time calculating the IHT position of Peter's estate and giving full explanations for the assets in his estate. This was not required as all except the specified gifts were covered by spouse exemption. All that was needed was to calculate Peter's unused nil rate band. Many candidates did not calculate this correctly because they wrongly concluded that the life interest trust in favour of his wife Sally was not covered by spouse exemption but used the available nil rate band.

Most candidates identified that the unquoted shares would qualify for BPR, however, not all calculated the values correctly by aggregating the two shareholdings whilst some omitted the settled component completely. Many referred to the relevant property rules rather than related property. There was some confusion with respect to the premium bonds with several candidates believing them to be IHT exempt. The Victoria Cross was not heritage property and therefore lengthy descriptions of the qualifying conditions were not required.

Although it was necessary to calculate the baseline for the charity donation there were many that did not calculate this at all or did so but then still used the 40% rate rather than 36%. It was

necessary to calculate across the settled components in order to calculate the correct allocation of the available nil rate band. This was done in only a small number of answers.

Question 5

The focus of this question was on the inheritance of a large UK intestate estate by a non-domiciled spouse. A good proportion of the answers gave a reasonable analysis of the position.

Time was lost by some who provided a full description of the intestacy rules for all the different relationships, which were not relevant as there was only a spouse to consider. Others then gave a very detailed account of how to appoint administrators and apply for a grant of letters of administration. It is very important that the question directive is read fully as long essay style answers, which, may have been correct, do not earn any marks if not relevant.

Most candidates identified that as the surviving spouse was non-domiciled there was a restriction to the spouse exemption available. A number also stated that this was a lifetime limit. Only a very small number brought the 2014 gift into the calculation, with most stated that it could be disregarded because it was made more than seven years pre death. This was the case even when in the previous paragraph they had said it was a lifetime limit where by reason of the limit it used a proportion of thereof regardless of when made.

The second half of the question was answered well by those that identified that the election for UK domicile was an option and in comparison, would be more beneficial due to the size of the combined UK estate.

Question 6

Candidates were asked to prepare the IHT calculations for an old-style A & M trust post 22 March 2006. This included the exit charges and ten-year anniversary between two given dates together with CGT implications on the distribution of property.

Due to the age of the beneficiaries and the date of creation of the trust this was a mixed trust containing both relevant and non-relevant property. However, only a small number of candidates identified this, and those that did then did not apply this in their calculations. Only a couple of candidates calculated the non-relevant property correctly and then followed this through. Detailed explanations of how the trust was taxed prior to 2006 were not required and gained no marks.

All assets and distribution relating to Adriana were non-relevant and as such excluded from the IHT calculations but few recognised this. Whilst most candidates identified that distributions in the first quarter after a ten-year anniversary did not result in an exit charge, many still went on to calculate the tax arising and included the distributions in their total calculations for the ten year charge.

With regards to the distribution in-specie of the industrial units, whilst s260 general hold over relief was identified as being available, this was not the case for the distribution to Adriana as there was no IHT event in this case. Therefore, the CGT charge needed to be calculated and included. Several candidates believed that there was no CGT as the distributions were caught by the rule in *Crowe v Appleby* which applies to indivisible assets. These units had been distributed in-specie and were therefore clearly not indivisible.

Very few calculated the ten-year principal charge correctly and the resulting marks were therefore disappointingly low.

Taxation of Larger Companies & Groups

General Comments

This paper covered the main areas of the syllabus and the well-prepared candidates were able to score high marks, particularly for questions 1 and 6. Question 3 proved the most challenging because candidates had to identify the relevant tax issues themselves but this is something that a tax adviser would be expected to do.

Question 1

Candidates were required to calculate, with explanations, the Corporation Tax payable by a large company manufacturing and selling sports equipment. The question was generally well answered with candidates identifying and adjusting for most of the technical points.

Most candidates calculated the required pension spreading correctly. The capital allowances section was also well answered apart from one area: most candidates missed the point that the disposal of the plant resulted in a balancing charge rather than a deduction from the capital allowance pool.

The most common error concerned the debt provision. Where candidates assumed the debt provision was calculated in accordance with UK GAAP and therefore no adjustment was required, they were awarded the marks. Where candidates made the correct adjustment on the assumption that the provision was general and not in accordance with UK GAAP, they were also awarded the marks. However, a large number of candidates did not identify that the adjustment in the accounts was a credit not a debit, and therefore made an incorrect adjustment.

Question 2

This question involved a UK resident company which, in addition to its UK activities, also traded through permanent establishments (PE) in two other territories. Candidates were asked to identify the implications of making a PE exemption or incorporating the PE as compared to the current non-exempt scenario and to make a recommendation.

The question was answered well in many cases. The best answers included an explanation of the transitional rules if the exemption was made, and an explanation of the exit charges, together with the possibility of deferring payment of those charges that may arise on the incorporation of a foreign PE.

Unfortunately, a number of candidates, having set out the implications of the various scenarios, failed to give a recommendation, which lost marks.

Question 3

Candidates were presented with a scenario under which a US corporate was considering acquiring a controlling stake in a UK company. The US company had previously made a substantial loan to the UK company and the key issue to be addressed was how the acquisition of the controlling interest would impact on the tax treatment of the loan.

The question was reasonably well answered by candidates who correctly identified that the two main issues were Transfer Pricing and Corporate Interest Restriction. The better candidates also discussed a number of other relevant aspects, but a number of candidates wasted time covering Diverted Profits Tax, which does not apply to loan relationship situations.

Question 4

This question detailed a number of property transactions and candidates were asked to calculate the associated chargeable gains and capital allowances. They were also asked to consider any opportunities to mitigate any tax liabilities arising.

The first transaction was the grant of a short lease and whilst many candidates answered this well, there was some confusion with some candidates using lease percentages and others confusing the capital and income elements of the lease premium, or failing to apply the part disposal formula correctly.

Many candidates calculated the chargeable gains on the two property disposals well, but a number failed to identify that an intra-group transfer from a development company would be at market value as a result of the appropriation from stock to fixed assets prior to the transfer.

Although candidates were given details of the agreed amounts to be allocated to fixtures in each transaction, many missed these or indeed added the amounts relating to the disposals to the pool. Similarly, many candidates deducted these amounts from the proceeds in the chargeable gains calculations, failing to appreciate that an adjustment would only have been necessary in the case of a chargeable loss.

Whilst most candidates discussed rollover relief – although many failed to appreciate the trade requirement or the group wide context – few mentioned other ways to mitigate the tax such as the use of brought forward capital or other losses across the group.

Question 5

Candidates were presented with two alternative scenarios – one with a 75% shareholding in another company and one with a 65% holding – and asked to explain the Corporation Tax implications of these. Whilst most appreciated the existence of a chargeable gains group and group relief group in the first scenario, there was more confusion about the second scenario, with some suggesting that one or other group structure would still be in place.

Most candidates attempted to calculate the chargeable gain associated with the transfer of a property to the new entity, but a number added the previously rolled over gain to the cost rather than deducting it. Some erroneously suggested that the previous no gain no loss transfer would have been at market value.

Some candidates failed to identify the existence of a consortium in scenario two and hence were restricted on their discussion of loss utilisation.

Candidates generally concluded that option one was more tax efficient but very few appreciated that the benefit of no chargeable gain arising on the transfer of the warehouse would in part be offset by the lower base cost of the property going forward.

Question 6

The question required candidates to discuss the tax treatment of certain expenses associated with a corporate acquisition.

Whilst candidates generally performed well, there was some confusion about the nature of expenditure and in particular some candidates failed to appreciate that the loan arrangement fee fell within the loan relationship rules.

Domestic Indirect Taxation

General

The answers were generally laid out in a logical and easy-to-follow manner, but increasingly, many candidates are wasting time repeating content included within the question for which no credit is awarded.

Candidates should ensure that they remember what they are being asked to advise on, as well as the wider context of the question when making suggestions, to ensure that all comments are relevant and appropriate to the requirement.

Candidates should avoid giving two possible contradicting answers, and wherever possible, use the information in the question to reach a conclusive answer.

Question 1

The question concerned a clinic charging customers for both travel vaccinations, self-administered vaccination medications and covid testing.

Most candidates were able to identify that healthcare is VAT exempt when provided by a registered healthcare professional, but fewer candidates discussed the 'purpose' test for medical care.

Some students were able to identify the zero-rate available for medicine prescribed by an appropriate professional and were able to clearly differentiate self-administered supplied from those which are wholly performed or directly supervised by a registered healthcare professional.

Few candidates were able to recognise biomedical scientists as registered healthcare professionals. Most candidates were able to provide good analysis in respect of the IPT consequences of the supply.

Question 2

This question centred around supplies between a charity and its trading subsidiary, as well as third-party agreements.

Many candidates provided good commentary and understanding in respect of the need for the charity to register immediately, but fewer were able to identify and discuss the potential VAT implications in the absence of agreements between the parties.

Candidates generally demonstrated a good understanding of the topical issues in this question surrounding supplies of land for boot fairs, and many were able to identify relevant case law.

Question 3

This question tested a scenario in which a company making a single supply is approached by an adviser to value shift into a more favourable position for VAT.

Many candidates took the opportunity to discuss single and multiple supplies at length, and most were able to identify the value-shifting opportunity in respect of zero rating for course material.

Most candidates were also comfortable that HMRC may consider the arrangement abusive and were able to discuss the consequences of such. Candidates surprisingly appeared less comfortable with the practical application of DASVOIT to the scenario, particularly when considering who has the main duty to disclose the scheme. It was considered that this was one of the easier aspects of the question.

Question 4

This question concerned a retiring sole trader looking to dispose of property to a charity and included both Transfer of a Going Concern and Option to Tax considerations.

There was a wide range of responses to this question. Most candidates identified that the transfer of Unit A may qualify as a Transfer of a Going Concern, and the impacts of retaining Unit C, however, analysis was generally limited regarding the conditions and implications of these conclusions. The best answers made clear the recommended course of action for Rupert and included relevant practical advice such as contractual negotiations with the customer. On the other hand, some candidates provided a variety of potential treatments without concluding.

Fewer candidates identified the potential revocation of the Option to Tax on Unit B, and where included, commentary on this was often at a high level. Many candidates also spent too much time advising the customer on its potential options and implications when the question referred to considering Rupert's position.

Question 5

This question concerned an energy provider making supplies to new types of customers, as well as looking to recover compensation payments from customers.

Generally, candidates identified the topical issue regarding the VAT treatment of compensation payments, making reference to relevant case law and changes in HMRC policy. Candidates also handled the supplies to the student accommodation well, identifying the need for apportionment. Stronger answers took this further to advise Cellman Ltd on its obligations in this regard, such as the need to regularly revisit apportionments provided by the customer.

Few candidates handled the acquisition of the debt books well. Generally, too much time was spent discussing the treatment of the acquisition itself, rather than the future-looking impact as requested by the question.

Question 6

This question examined the Stamp Duty Land Tax implications of an overseas individual purchasing a main residence and a corner shop in the UK.

This question was generally answered well by candidates. Most candidates identified that Sally was a non-resident and so would be subject to the additional rate, but that the second property mark-up wouldn't apply. Fewer candidates went on to consider that Sally is likely to meet the residency conditions after purchase and so could request a refund. Most candidates also correctly picked up on the various administrative considerations and performed calculations accurately.

Many candidates discussed the various components of chargeable consideration in respect of the corner shop. However, few correctly applied the rules regarding works carried out, either misunderstanding how the rule applies to the vendor's obligations, or incorrectly determining the effective date of the transaction.

Cross-Border Indirect Taxation

General Comments

Generally, most candidates demonstrated a good understanding of basic VAT principles in the VAT-focused questions 1-4. A recurring theme however was that the candidates did not link/demonstrate the consequence of a response they had given earlier in the question to a later response eg stating that a VAT registration was necessary but then later going on to say that the 13th Directive refund mechanism could be used to reclaim VAT. In isolation both are correct, but candidates need to understand the latter falls away as an option if they have determined earlier in their response that VAT registration is needed. This is a critical part of the analysis for advisors.

Candidates continue to spend time detailing VAT registration options that are simply not used or mandatory in practice in the UK e.g. appointing a tax representative. This wastes time and the level of detail provided suggests an area of comfort in comparison to other more complex technical areas.

A good knowledge of the impact of EU-origin goods was demonstrated.

In respect of the more Customs Duty focussed questions, candidates still confuse VAT and Customs Duty principles, and answer Customs issues based on VAT legislation.

Question 1

This question required candidates to explain the VAT and Customs Duty consequences of a cross-border scenario involving the B2B leasing of goods.

Candidates showed a good understanding of the VAT implications of a lease where legal title does not transfer and also of the VAT consequences of the disposal of the goods at the end of the lease. Virtually all candidates made reference to the use of Temporary Admission Customs Duty relief. This is irrelevant and demonstrates that candidates do not fully understand the spirit behind Customs Duty reliefs, which essentially ensure import taxes are suspended only when the goods are not being used/consumed in a particular country. They clearly are used in a lease so relief would not be available. In addition, the goods were of EU origin so there wouldn't be any duty to relieve (and the VAT would be recoverable).

Candidates did not show a methodical approach to commenting on the Customs Duty element of the question – they generally did not comment on the basic cornerstones of classification, valuation and origin although were stronger on import processes. PIVA was routinely mentioned by candidates as a mechanism to pay and reclaim import VAT but this cannot be used where the supplier is not VAT registered – this did not appear to be understood.

Question 2

This question focused on a supply and installation contract for an overseas main contractor using overseas sub-contractors for installation work. It tested the complexity around the VAT registration position where there is a mix of established/VAT registered B2B customers and the requirement to VAT register in the UK.

As with question 1, candidates often failed to link their responses to one point eg the requirement of the main contractor to VAT register, with the impact of this on the sub-contractor – they tended to look at each element in isolation which led to incorrect responses in many cases, although follow on marks were given where appropriate.

Question 3

This question focused on an insurance group with transactions between branches and the UK HQ of the business which was VAT grouped with fully taxable group companies, creating a partly exempt VAT group.

On the whole candidates demonstrated a good awareness of the key VAT points relevant in such scenarios including reference to key litigation. Very few candidates were aware of the Section 43(2)(a) reverse charge and the fact it applies to only part of the value of the charge between the branch and the UK HQ. However many were aware there was a reverse charge and a deemed supply between branch and HQ.

Very few candidates commented on direct attribution in relation to the VAT group's partial exemption calculation. Many candidates stated that the 13th Directive overseas refund mechanisms could be used to reclaim VAT incurred by the overseas branches – this is incorrect as a basic condition of overseas refund claims is that the business is not established in the country in question and it is not possible to choose between claiming VAT on costs through a VAT registration and an overseas refund claim – only one of these will be appropriate in any given scenario.

Question 4

The place of supply of intermediary services and the tour operator's margin scheme (TOMS) were tested in this question.

Candidates showed a very good awareness of the detailed aspects of TOMS but some were weaker in relation to the place of supply rules for intermediary services and did not necessarily recognise this was the appropriate place of supply rule for this scenario, detailing the general VAT rule instead.

Question 5

This question was framed to bring out the discussion about use of buying commission in Method 1 Customs Valuation, the valuation of design and production of labels, the obligations to use Duty Stamps and a calculation.

Many candidates talked almost exclusively about VAT law and disclosed and undisclosed agents or talked about these and then said that these determined who the "importer" would be, many deciding that if Joycelyn acted as an agent she would be the "importer". The term "importer" is not relevant in Customs law, "declarant" is and for free circulation entries there is flexibility on who may be the declarant, but a person who is not resident in the UK may not be the declarant.

Those candidates who did discuss buying and selling commission seemed confused between the two, for example saying buying commission could be excluded from the Customs Value and then saying that any commission Joycelyn charged would have to be added to the Customs Value. Many candidates determined that there was one answer and did not discuss options.

The Customs Valuation implications of whether the design of the label takes place was only addressed by a couple of candidates and very few wrote much about the obligations relating to Duty Stamps.

Most candidates struggled with the calculations, even to the extent of not including either the Customs Duty or Excise Duty in the value for VAT.

Question 6

This question tested the Review and Appeals process where a business had made incorrect declarations and a Civil Penalty had been issued.

The answers candidates gave did not demonstrate that they had read and understood the scenario correctly. Candidates misstated how many times the error had been made in the past, said that £3,000 was more than the maximum allowed for one error (there were 12, each penalised at £250) or discussed whether the penalty to be issued (which had in fact been issued) would be civil or

criminal in nature. Many discussed how T'Wheels could use good faith relief to challenge the origin decisions, the question stated that T'Wheels had acknowledged that the declared origin was wrong in both cases.

Candidates seem confused about the difference between a Right To Be Heard and a Decision Letter. Many who discussed the errors on the declarations said they were classification errors, they were related to origin or preferential origin and talked (incorrectly) about whether it was UK or EU VAT (rather than Customs) law that was relevant as the business was based in Northern Ireland.

APPLICATION AND PROFESSIONAL SKILLS

Taxation of Owner-Managed Businesses

General Comments

Candidates were required to consider how a new business, The Creative Touch ('TCT'), could be structured using the proceeds from the recent trade and asset sale of a company, AA Construction Ltd ('AACL') and also to provide an overall recommendation as to how TCT should proceed. This question required a consideration of the tax implications for AACL of the sale of its trade and assets and then how the net of tax funds generated could be used either by their extraction itself or within AACL

Structure

Candidates were required to prepare a draft report. No serious problems were identified with regards the structure of the reports drafted.

Identification & Application

To demonstrate competence candidates were required to identify and explain:

- (1) The net of tax funds available within AACL following its trade and asset sale.
- (2) The funds required to purchase TCT, including a consideration of any VAT implications.
- (3) How, using those funds, the new business could be structured, including a consideration of any available reliefs.
- (4) The initial forecast trading loss and how the business structure adopted would impact upon its use.

Looking at these in turn:

1 Most candidates were able to identify and explain the corporation tax implications arising from AACL's asset sale. However, common errors here included failing to recognise that the goodwill needed to be treated under the intangible fixed asset regime (as opposed to a chargeable gain) and incorrectly calculating the balancing charge on the main capital allowances pool (eg not restricting the proceeds for the lorry to cost and in some cases ending up with balancing allowances rather than charges). A few candidates used the gains etc themselves rather than gross proceeds as the starting point in determining the available funds.

2 Again this was reasonably competently addressed by the majority of candidates. Some, however, based their comparisons on the cost of buying TCT itself, failing also to include the fairly substantial additional funding required to undertake the required refurbishment (occasionally this in itself led to inappropriate final recommendations being made). Stamp duty land tax was poorly dealt with - some candidates thought that it would not apply and its calculation was often very poor. Most candidates also failed to identify the compulsory VAT registration requirements arising from the transfer of going concern provisions.

3 Here a mixture of competency was demonstrated. Very nearly all candidates identified that TCT could be run on a sole trader basis and that this involved the need to extract AACL's funds. Fewer (but still a sizeable majority) of candidates considered setting up a new company to run TCT. Many candidates, however, either ignored or simply did not identify the possibility of using AACL as

the vehicle for the new business (and therefore the possibility of using rollover relief to defer some of the corporation tax liability arising from AACL's asset sale).

4 The majority of candidates identified that a loss was forecast and that this would be substantially increased by the availability of capital allowances and revenue costs (decorating and marketing) included within the refurbishment expenditure. The determination of that loss was often, however, poor. Common errors included not claiming an annual investment allowance on the fixtures within the freehold property acquired and the failure to identify the availability of structures and buildings allowances on a sizeable portion of the gallery refurbishment expenditure. Some candidates also thought that the entire amount of refurbishment would be deductible as a revenue cost.

Advice & Recommendations

To demonstrate competence candidates were required to provide advice and recommendations in the following areas:

- (1) Extracting AACL's available funds and setting up TCT on a sole trader basis or via a new limited company.
- (2) Not extracting AACL's available funds and continuing to use AACL.
- (3) Overall recommendation.

Looking at these in turn:

1&2 The extraction of funds was generally competently dealt with by most candidates who realised that the best extraction route was via a formal liquidation (to access business asset disposal relief ('BADR')). A lot of candidates also advised that using a limited company provided the possibility for an ongoing tax-efficient remuneration strategy. Advice regarding the opening trade loss was also generally competently addressed. Most recommended early years' loss relief if TCT was structured on a sole trader basis and realised that the loss would need to be carried forward if structured via a limited company.

A surprisingly large number of candidates didn't consider the continuing use of AACL at all. This was despite this option being, in many ways, the most obvious one (the company existed and therefore nothing needed to be set up; no extraction of funds was required (so no initial CGT tax and liquidation costs); and, this was the only option to provide all the required purchase/refurbishment funds). This was also the only option offering the possibility of rollover relief to reduce AACL's corporation tax costs following its asset sale. Quite often this possibility was not identified/discussed. Those candidates who did not discuss the continuing use of AACL often tended to struggle to achieve an overall pass grade.

With all the options, very few candidates commented upon how the structure chosen would impact upon an eventual sale of the business (eg impact upon base cost, availability of BADR etc.).

3 To achieve an overall pass standard candidates needed to fully appraise at least two of the options, preferably with one of them being the continued use of AACL. A lot of candidates concluded that carrying on TCT on a sole trader basis was the best option simply because of the availability of early years' loss relief. Their analysis, however, often lacked sufficient depth to achieve an overall pass grade. Those that realised that TCT could simply be run through AACL, particularly if other options were also considered, however, often scored well.

Taxation of Individuals

General Comments

The scenario involved a UK resident unmarried individual seeking advice in relation to his business, his employment, and his rental property. It was divided clearly into three sections, and most candidates followed this layout in their answers, although issues relating to the high income child benefit charge and tax relief on pension contributions needed consideration across all three sections, which most candidates did do.

There was a wide range in the length of answers, from approximately 1,500 words through to 5,500. The best answers were towards the shorter end of this range – when candidates know the tax issues well, they are able to communicate them far more concisely.

Overall, the question was answered well. Candidates showed good knowledge of anti-avoidance rules in particular.

Structure

Structure was reasonable, with reports split into logical sections.

Identification and Application

Issues relating to Hooper Ltd

Candidates showed very good knowledge of anti-avoidance rules, with the phoenixing provisions and their impact almost universally identified. It's possible this may have been predicted from the pre-seen information and candidates were well prepared, with many scoring high marks in this section.

Issues relating to King Enterprises Plc

The issues in this section were relatively straightforward, relating to travel and company car benefits. However, they showed up some fundamental misunderstandings among weaker candidates. Common errors included treating the benefit value as additional income, failing to consider whether travel to and from the Sheffield sites would be allowable (or simply saying it was either allowable or not allowable, with very little reasoning), or giving a mileage deduction for commuting after saying that it would not count as business travel.

There was some good discussion around lower tax rates on electric cars, and the possibility of Stephen reimbursing his employer for fuel costs.

Issues relating to Valerie Close

Most candidates picked up the main issues to consider in this section, being which elements of Stephen's borrowing related to the rental business, the restriction of relief for finance costs, and CGT and SDLT costs if the property was transferred to a company.

Other issues

Most candidates discussed the high income child benefit charge, and the possibility of making pension contributions to avoid it.

Relevant Advice and Substantial Recommendations

Recommendations relating to Hooper Ltd

Most candidates either recommended that Stephen should not go ahead with the new project, or should delay starting for two years, which amounted to the same thing.

A significant minority of candidates recommended that Stephen's partner should front the new company to avoid the phoenixing rules. This wouldn't work, as Stephen would still be controlling the company through his partner. In relation to the assessment of these skills, it is less important that the knowledge is correct more that the reasoning is good. However, it's generally not going to be a good idea to try to find ways around anti-avoidance legislation, and marks were lost here.

Recommendations relating to King Enterprises Plc

This section was fairly straightforward – candidates generally calculated the tax cost of either taking the benefit or the salary, and made a recommendation based on their calculations. Where there was confusion over how tax is applied to benefits it fed through to confused recommendations.

Recommendations relating to Valerie Close

This section was again fairly straightforward; what was needed was simply a recommendation to either incorporate the property business or not, based on the relevant issues that candidates identified. There were two common weaknesses – one was to recommend that Stephen should move back into the property to increase Primary Residence Relief, and the other was to recommend that the property should be turned into a Furnished Holiday Let. There was nothing wrong with considering either of these, but the related discussion was weak. In relation to PRR, candidates failed to realise that simply moving back into the house for tax reasons while selling it would not make the property Stephen's main residence for PRR purposes. In relation to the FHL recommendation, there was a lack of recognition that in practice not every house can easily be turned into a FHL. There was no indication in the question that Valerie Close may be suitable as a holiday let and it seems unlikely that Stephen would want to turf out his current tenants and take on the additional work and costs of running a holiday let.

Other recommendations

Credit was given for recommendations relating to HICBC and pension contributions.

Human Capital Taxes

General Comments

The question focussed on whether Tony, who is a UK national, working for the majority of his time overseas, but with some UK duties, should be employed by the Canadian company or the UK company. The situation was complicated by a potential new project, which would see more UK working, and internal politics between the two companies.

The question was ideally broken down into three parts: who should employ Tony, whether that changes with the UK project and what are the other wider issues arising.

Overall, the question was answered well. Candidates did well in identifying the relevant issues and gave their recommendations based on the issues identified.

Structure

The reports were laid out clearly. The strongest candidates dealt with the first question about which company should employ Tony and then considered if the UK project would change their advice. The candidates who tried to answer both of these questions all together tended to confuse themselves in some places and, as a consequence, the advice was not always clearly weighed up and supported.

It was important for candidates to pitch advice at an appropriate level for a foreign company with no experience of UK tax matters.

Identification and Application

Residence and Tax Position of Tony

All candidates realised that Tony would continue to be UK tax resident and liable to UK tax on worldwide income with a credit for the Canadian tax paid. However, the application of the SRT rules was often incorrect. A serviced apartment at different locations for only 2-3 months would not be regarded as a home abroad. Candidates wrote far too much about each individual SRT test. The client would not want all this detail and candidates at this level should be able to cut through the rules quickly to the obvious solution. Candidates missed many of the clues in Exhibit B.

Employment by Havarn CA Ltd

Candidates were expected to identify and discuss whether the Canadian company would have a presence for PAYE purposes by merely employing Tony. Most candidates identified this but did not expand on the key factors and often confused it with having a formal permanent establishment.

The liability, or not, to secondary NIC contributions and need for Tony to set up his own direct payment scheme with HMRC was too often overlooked. HC questions are as much about NI as IT and PAYE. Candidates did well in identifying the corporate compliance requirements.

Employment by Milvarn UK Ltd

Most candidates identified that employment by the UK company would make the administration easier and cheaper. Incorporating the FTC into the payroll calculations was dealt with well and cash flow issues were also well noted. The main disadvantage, however, was that this was not Havarn CA Ltd's ideal solution due to internal politics, which was a key part of the question.

Candidates did well in identifying potential transfer pricing issues and the need to document any agreement between the two companies over the use of Tony.

Bid Proposal

The candidates who had dealt with the first two parts clearly and logically had no difficulty in identifying the impact of the project on the PE status for Havarn CA Ltd. In turn, they then discussed the change to the payroll reporting requirements.

Quite a few candidates forgot to deal with the other Canadian employees who would be required to work on the project.

Other Taxes and Compliance

Overall, candidates did very well in identifying that there would be VAT issues arising from the UK project and that the place of supply would be different between goods and services. Nevertheless, not many candidates got the VAT place of supply or the import VAT correct.

The corporate reporting, deduction of costs and employment law issues were generally picked up well.

Proposed Remuneration Package

Given this was very much focused on core HC elements, candidates did not demonstrate a good understanding of the UK travel and subsistence, per diem and home leave rules or how they could be applied. No candidates discussed the scale rates for employees working abroad.

Candidates did better with the provision of the medical and pension elements, although no candidate discussed the ordinarily working in the UK requirements for auto-enrolment.

Relevant Advice and Substantiated Recommendations

Which company should employ Tony?

Credit was given whichever company the candidates suggested, provided the recommendation was backed up by good reasoning (the skill we are testing here). There were several conflicting factors and it was important that recommendations were weighed against the company's objectives.

Impact of the bid proposal

The impact was wide reaching affecting not just HC issues but also VAT, PE and corporate reporting. The strongest candidates considered all the aspects and made good suggestions as to how to structure an employment by Havarn CA Ltd but using Milvarn UK Ltd to assist. The additional costs of Havarn CA Ltd creating a PE were likely outweighed by the income from the long-term servicing contract, which many candidates did not pick up on from the question.

Contractual aspects and documentation

Most candidates recommended getting employment law and transfer pricing advice. However, too many candidates simply suggested introducing colleagues, without demonstrating they had any awareness of the specific issues or substantiating why advice was required.

Remuneration package

Candidates did well recommending solutions to the pension issues. The advice regarding the travel, accommodation and per diem elements was limited by candidates' poor grasp of the tax treatment and available reliefs.

Inheritance Tax, Trusts & Estates

General Comments

The question required a report to be prepared to advise the clients, Priya Watson and Ravi Chandra, on the sale of shares held within a trust and the timing of winding up that trust, as well as their proposal to transfer shares in the family trading company held in another family trust to Priya's son.

Candidates dealt with the second part of the question far better than the first and most were able to provide an adequate explanation why it would be better for the shares in Traditional Storage Ltd to be transferred out of the Chandra Discretionary Trust to Priya's son from a tax point of view.

The advice on the first part of the question relating to the sale of shares in Coastal Retreats Ltd was poor in comparison and many candidates were unable to correctly explain and calculate some of the basic CGT and IHT implications of a trust disposal compared to an advancement of the shares to the beneficiaries followed by a personal sale. However, it was pleasing to see that in both parts of the question, more candidates attempted to quantify the tax savings that could be achieved by choosing one option over another, providing a basis for their recommendation to the client.

Structure

All candidates produced their answer in an appropriate report format and most included an introduction, an executive summary plus supporting computations as appendices.

As in previous exam sittings, many candidates provided a summary of the trusts in the question as an introduction to their report. It was clear in many cases that this had been prepared in advance based on the pre-seen information, which is acceptable, but candidates also need to ensure they adjust any pre-prepared narrative to include the additional information and requirements of the question provided on the exam day. Many candidates continued to include details such as the trustees' requirement to complete the Trust Registration Service online, register for self-assessment and full details of the income tax rules and rates applicable to different types of trusts, none of which were particularly relevant to this question.

Identification and Application

Identify and calculate the CGT liability that will arise if the trustees sell the shares in Coastal Retreats Ltd

A good number of candidates were able to correctly calculate the trustees' capital gain on a sale of shares in Coastal Retreats Ltd and many were aware that the base cost of the shares was uplifted to the value on 20 April 2020 when Jayesh's life interest ended.

Some candidates incorrectly claimed Investor's Relief on the trust's disposal, so applied a 10% CGT rate, but this does not apply as the qualifying conditions were not met. In addition, not all candidates explained why Business Asset Disposal Relief (BADR) was unavailable to the trustees or claimed the trust annual exemption in their calculation.

Identify and calculate the IHT exit charge that will arise on the advancement of cash funds from the Avani Chandra Will Trust to Ravi and Priya following the share sale.

Again, most candidates were aware that when Jayesh's life interest ended, the continuing trust with Priya and Ravi as life tenants fell in the relevant property trust (RPT) regime, so an IHT exit charge would arise on the advancement of the cash funds to them. A number of candidates also correctly stated that the provisions of Section 80 IHTA 1984 applied to the trust but few were able to fully explain the consequences of this and its impact on the exit charge computation. As a result, very few candidates produced a correct calculation.

A common error was stating that Jayesh was the settlor of the RPT for IHT purposes but then using the initial value of the trust assets on 15 January 2016 in the exit charge calculation instead of the

value on 20 April 2020 when it became an RPT. Many candidates also failed to include the value of Chandra Discretionary Trust on 20 April 2020 as a related settlement as part of their calculation and were unable to correctly calculate the number of quarters between 20 April 2020 and the exit date.

Identify and calculate the CGT liability that will arise for the trust if the shares in Coastal Retreats Ltd are advanced to Ravi and Priya, including awareness of the availability of CGT holdover relief and Ravi & Priya's personal CGT positions when the shares are sold.

It was apparent many candidates understood that an appointment of the shares in Coastal Retreats Ltd to Priya and Ravi was a deemed disposal for CGT purposes and the same CGT liability as previously calculated would arise if a claim for holdover relief was not made. However, very few candidates actually stated this and no candidates considered calculating Priya and Ravi's CGT position in this scenario.

A large proportion of candidates stated that CGT holdover relief would be available on the advancement of the shares and explained the impact of this on Priya and Ravi's base cost for CGT purposes. However, only a handful then applied the basic CGT share pooling rules and pooled the revised base cost with Priya and Ravi's inherited shareholdings in Coastal Retreats Ltd. As a result, most of the personal CGT computations prepared for Priya and Ravi's personal sale of the shares were incorrect.

Identifying that an exit of the shares from the Avani Chandra Will Trust to the beneficiaries will qualify for 100% BPR for IHT purposes.

Candidates were aware that an IHT exit charge would arise on the advancement of the shares to Priya and Ravi. Some stated that 100% Business property Relief (BPR) would be available, so no IHT would become payable, although not everyone explained the qualifying conditions for BPR.

There were a sizeable number of candidates who stated that BPR would not be available or that this would be a grey area purely based on the fact that the company's trade was connected to property. It was disappointing to see that these candidates had not read the details provided in the question properly, which clearly stated that the company did not own any properties itself but provided letting and management services to owners of investment properties. In several cases candidates appear to have jumped on the fact that furnished holiday lets were referred to in Exhibit B, which led to them unnecessarily explaining the facts of various tax cases relating to this area, concluding that no BPR could be claimed and preparing an additional unrequired exit charge calculation.

Identify the IHT and CGT implications of the trustees of the Chandra Discretionary Trust appointing five shares in Traditional Storage Ltd to Sunil.

This part of the question was dealt with far better by most candidates as they were aware that an exit charge would arise on the appointment of shares out of the trust to Sunil and that the shares in Traditional Storage Ltd met the criteria for 100% BPR, so no IHT would be payable.

The trust's CGT computation on the advancement of the shares was fairly straight-forward and was dealt with quite well by most candidates. Approximately half of the candidates were aware the gain could normally be deferred by claiming CGT holdover relief, but correctly observed this would not be available in this case due to Sunil's non-UK residence status.

Identify and calculate the CGT implications of Priya gifting five shares in Traditional Storage Ltd to Sunil.

Priya's CGT computation on a gift of shares to Sunil was not dealt with as well as the trust's calculation, mainly because a large number of candidates were unable to correctly calculate the base cost of her shares. Most candidates did however recognise that BADR would be available and explained the qualifying conditions.

Some candidates who were not aware that holdover relief was unavailable because of Sunil's residence status, unfortunately wasted time explaining the CGT temporary non-resident rules and excluded income rules in this section of their report.

Identifying that a gift of shares from Priya to Sunil is a PET for IHT purposes. Recognising that Priya will no longer control the company post gift, so will not be entitled to BPR in relation to the new commercial property she is about to purchase.

Candidates were aware that the gift to Sunil was a PET for IHT purposes. However, not all considered the availability of 100% BPR on that PET and a handful even suggested that Priya should taking out an insurance policy to cover the potential IHT consequences if she did not survive seven years from making the gift. Furthermore, a very large number of candidates did not consider the impact of Priya losing control of the company as a result of making the gift to Sunil and did not link this with the fact that she would lose the entitlement to BPR on the new commercial property she was planning to purchase.

Relevant Advice and Substantiated Recommendations

Advice and recommendations on whether the Avani Chandra Will Trust should sell its shareholding in Coastal Retreats Ltd or if the shares should be appointed to Ravi and Priya to sell in their own names. To include consideration of the base cost attached to Ravi and Priya's personal shareholdings in the company.

Unfortunately, a large number of candidates concluded that the shares in the company should be appointed out to Ravi and Priya to sell personally on the basis that there would be no IHT exit charge payable due to the availability of 100% BPR and no CGT payable by the trustees as holdover relief could be claimed. However, this conclusion was based on flawed CGT computations prepared for Priya and Ravi on their personal sale of the shares due to a failure to apply the basic CGT share pooling principles.

Unlike previous exam sittings, most candidates who attempted this question did attempt to quantify the net proceeds available to Priya and Ravi in both scenarios, so even though some of the backing figures were incorrect, there was at the very least a basis for their recommendation in most cases.

We would point out that candidates should always consider the commercial viability of some of their suggestions when preparing their reports. For example, a good number of candidates suggested that Priya should be appointed as a director of Coastal Retreats Ltd in order for her to claim BADR on the eventual sale of her personal shares. However, they did not consider the fact that she already has a full-time employment and directorship with Traditional Storage Ltd and that, to date, her connection with that company is as an investor.

Advice on the implications of the Chandra Discretionary Trust appointing five shares to Sunil including timing of the transfer in consideration of Jayesh's Letter of Wishes.

As referred to above, this part of the question was dealt with reasonably well and overall, most candidates were able to conclude that a transfer of shares from the trust was a better option from a purely tax point of view.

Not all candidates considered Jayesh's Letter of Wishes and more disappointingly, many candidates just dismissed this as not binding on the trustees without considering that waiting until Sunil's 25th birthday in less than a year's time would abide by his wishes, which was clearly of importance to Priya and Ravi.

Several candidates who incorrectly calculated Priya's CGT base cost suggested that she should transfer three shares to Sunil personally and the trust transfer two shares to him. However, whilst this allows the trustees to adhere by the Letter of Wishes, this would create a sizeable CGT liability for Priya using her correct CGT base cost and is also a messier solution than waiting until April 2024.

Advice and recommendations on the implications of Priya gifting five shares to Sunil instead of the trust.

Despite many candidates making errors in Priya's CGT computations, most were able to conclude that Priya's gift would have adverse CGT implications for her.

Recommendations to Priya in relation to her BPR position in connection with her holding of shares in Traditional Storage Ltd and the proposed purchase of the new commercial property with her husband.

Candidates either dealt with this aspect of the question quite well or were completely unaware of the impact of Priya's shareholding falling below 51%. Of those who were aware of the effect on the purchase of the new commercial property only a few also considered Priya's husband's position by suggesting a transfer the shares in joint names.

Taxation of Larger Companies and Groups

General comments

The question set a scenario of a multi-national group faced with possible increases in corporate income taxes under the OECD proposed minimum 15% tax rate. Candidates were not required to have any knowledge of the OECD proposal beyond that which was set out in the question. Details of large unutilised tax reliefs in the UK and possible grants for capital expenditure were provided. Candidates were required to write a report on the actions to be taken to move the tax residences of subsidiary companies and/or to move physical locations of trades to the UK to keep the overall group corporate tax liability to a minimum. Candidates were not asked to consider specific areas, but some areas were explicitly excluded (VAT, deferred tax and the details of the financial transactions required to effect moves).

Most candidates made a reasonable attempt at answering the question and covered most of the essential elements. In nearly all cases, the key consideration of the need to move corporate residences and/or trades if UK tax reliefs were to be accessed was addressed. Variations in the quality of answers arose from the extent that information in the question was used and whether an answer addressed all the issues and relevant possibilities, rather than any paucity of basic tax technical knowledge.

Few candidates explained the basis on which company residence determines the extent to which the company is liable to UK Corporation Tax. Instead, most candidates proceeded on the assumption that the reader of the report would understand that UK corporate residence was coterminous with UK taxation.

A sizeable minority of candidates strayed into areas which were not relevant (for example, dividend routes, controlled foreign companies, stamp duties) but only a small number wasted significant amounts of time and space on such areas.

Structure

Nearly all candidates produced a report in a suitable format that was well structured and well sign-posted with appropriate headings. Most candidates avoided the use of tax-technical jargon. Introductions varied in quality, particularly in terms of mentioning (or not mentioning) the sources of the information on which the report was based. Most candidates used the Executive Summary to discuss and weigh up the options and make recommendations. Candidates who do this should not repeat this discussion in the body of the report. Some Executive Summaries were overly long, running to four or more pages.

Most candidates approached the question by discussing each of the three overseas entities separately. As most of the issues were common to all of them, this often led to unnecessary and time-consuming repetition. Those that adopted an issues-based approach of discussing specific areas, for example, the availability of UK tax relief, as applicable to each overseas entity, produced a report that flowed better. However, either approach was acceptable.

Identification and Application

Most candidates identified the same four of the five issues being tested, but many overlooked the Corporate Interest Restriction (CIR) issue.

The areas tested were:

Availability of losses and capital allowances in the UK

This issue was correctly identified by almost all candidates and was generally dealt with appropriately. Some candidates mis-read the information in the question and therefore undertook laborious and incorrect calculations of capital allowances writing down allowances on reducing balances, when in fact the amount of capital allowances (£50 million per annum per qualifying company) was given in the question so that no calculations were required.

Disallowances under the UK Corporate Interest Restriction (CIR) rules

Large numbers of candidates either overlooked this issue completely or failed to undertake any calculations to assess the possibility of disallowance. Only a minority of candidates correctly identified that £30 million of relief per annum was available for each imported company/trade. There were many instances of all the potentially available relief being allocated across the UK group without any consideration of possible restrictions.

How to bring trading profits into the UK tax regime

Most candidates identified that the profits of a trade could be exposed to UK taxation, and thus qualify for capital allowances and interest deductions by way of group relief, either by making the trading company resident or by siting the trade in the UK. However, some candidates failed to apply the tests comprehensively across the three overseas subsidiary companies.

Projected group tax liabilities of different scenarios

Nearly all candidates undertook calculations of corporate income tax liabilities. These calculations varied significantly in quality, depending on whether each possible residence/trade situs scenario was properly explored, and whether the correct treatments of capital allowances and interest deductions were adopted. Many candidates produced calculations for each company for each of the four years when one year would suffice as they were all the same. Only a minority of candidates looked at the aggregate position across the group. The treatment of the tax-free grant in Benignland was often incorrectly treated as part of the reported pre-tax profits, which distorted calculations and conclusions.

Impact of grant availability in Benignland

This area was identified by most candidates though few undertook a quantitative analysis of its impact compared to available capital allowances and interest deductions. Some candidates sought to obtain UK deductions as well as the grants by making Broadton Ltd UK resident but leaving the trade in Benignland. This was acceptable so long as the after-tax impact across both territories was analysed.

Relevant Advice and Substantiated Recommendations

Most candidates discussed the evidence elicited from consideration of the identified issues, reached conclusions, and made recommendations in response to the client's questions. The weaker candidates reached a conclusion based purely on tax analyses but overlooked commercial issues, even to the extent of favouring solutions because they utilised the available UK tax reliefs but exposed the group to higher tax liabilities overall. Some candidates made multiple suggestions but failed to arrive at a clear conclusion and recommendation.

Which trades to move to UK

Some candidates arrived at the recommended solution by a correct analysis of the issues, while others arrived at the correct solutions even with incomplete or incorrect tax analysis. There were also instances of the wrong conclusions being reached, largely due to solely considering the objective of utilising available UK tax reliefs, and failing to consider the wider after-tax impact and wider commercial considerations (especially in connection the Broadton Ltd's trade).

Whether to move residences of existing companies or transfer trades to other (including new) companies

Where a proper analysis of the options had been undertaken, candidates were able to address this area and make appropriate and supported recommendations. Where the original analysis was incomplete, the ability to give correct advice was compromised.

Advice on if, and when, to move the Benignland trade

Nearly all candidates discussed this area and made a recommendation. The best answers weighed up the after-tax effect of moving to the UK, the availability of grant aid and the commercial impact on the trade of moving, while others based their recommendations on only one or two of those considerations. Very few candidates discussed the ethical issues and risks/rewards of claiming the available grants and subsequently moving the trade from Benignland.

VAT and Other Indirect Taxes

General Comments

This question concerned two possible options for disposal of a sculpture by Amari Adoyo (“Amari”), its creator, who wished to raise funds for a charitable appeal. Candidates were required to write a report for Amari (the firm’s client), a sole trader established in the UK, advising him on the tax implications. The lead charity in the appeal was the Caloseni Foundation (“CF”), established in Belgium. The sculpture was to be auctioned in London, through Billings LLP (“Billings”). Neither Caloseni, nor Billings were clients.

The main tax involved was VAT; but income tax, NICs and capital gains tax were also relevant. The technical content was not particularly difficult but candidates were expected to review the evidence critically, assess the options, advise, make recommendations and support their conclusions. A key point was whether, under either option, Amari’s transaction was business or non-business, since this would affect its tax treatment.

Option 1) – Amari selling the sculpture through the auction as a business transaction – would probably provide a better result. However, Option 2) – donation of the sculpture by Amari to CF for sale through the auction – was also a tenable conclusion. Accordingly, candidates were given appropriate credit for either solution, or for other solutions, provided they were realistic and commercial (but see Relevant Advice etc. below).

In order to pass the paper, candidates were required to demonstrate competence in all three skills: Structure; Identification and Application; Relevant Advice and Substantiated Recommendations.

Structure

A disappointing number of candidates failed on structure (but not on structure alone), primarily because they adopted letter/memo format when a report was required. Some answers were significantly jumbled, or advanced propositions which were inconsistent or conflicted with what they had already stated in their Executive Summary. Competent candidates, however, produced orderly answers with an appropriate Introduction, Executive Summary, headings and subheadings and added illustrative calculations. Some Executive Summaries contained too much detail and in some cases, it was not always clear where the main body of the report began.

Most candidates prefaced their report with a formulaic disclosure. This should have been modified, however, given that Amari intended to discuss the report with CF and Billings. The disclaimer should simply have stated that CF and Billings, who were not clients, could not rely on the advice and should consult their own advisers.

In this paper a full answer is likely to be in the range of 2,500 to 3,500 words. A number of candidates fell significantly short of this, so risked doing themselves less than justice.

Application and Interaction

Some candidates highlighted the key issue of whether the sculpture was a business or private asset and supported their conclusions. This was pleasing. Unfortunately, others took at face value Amari’s comment that, historically, he regarded the sculpture as outside his business and failed to address the contrary evidence. Another example of this type of failing concerned the second-hand schemes. Billings stated they were able to use the margin scheme or auctioneer’s scheme *for eligible items*. Some candidates took this at face value and did not consider whether the sale satisfied the conditions of either scheme (which it did not). It cannot be emphasised enough that candidates

must rigorously examine the material provided and also test their own conclusions in order to avoid inconsistencies. If assumptions are made, these should be well-founded and clearly stated.

The deduction rules (for VAT and direct tax) were generally well-understood. It was inappropriate, however, for candidates to revisit the historic tax treatment of e.g., recovery of VAT on the cost of creating, cleaning, and protecting the sculpture. These factors were merely indicative of the treatment of the asset. Even if incorrect, this matter was academic as assessments were already time-barred.

The impact of income tax and CGT was also well understood, though few candidates mentioned NICs which, in this case, would be chargeable at the top rate of 3.25% on trading profits. It was pleasing to see most candidates spotting the availability of Gift Aid under Option 1), though only a few considered the benefit to CF. As an EU-established charity, CF would also be entitled to claim a refund of basic rate tax from HMRC.

Some candidates referred to the tax exemption for disposal of trading stock to a charity as “gift relief” but were not penalised for this. Gift Aid Relief (for income tax purposes), of course, is not available for gift of a chattel.

Most candidates addressed the availability of VAT zero-rating in each Option. Many, however, included irrelevant material about customs duties, compliance, contractual terms and international trade. This was not part of the Question; moreover, neither CF nor the successful bidder at the auction were clients. Some candidates were unclear about the place of supply and when title in the sculpture passed.

Relevant Advice and Substantiated Recommendations

A majority of candidates favoured Option 1) – Amari selling the sculpture through the auction and donating the net proceeds to CF under Gift Aid. Some candidates favoured Option 2). Each were given appropriate credit, provided their recommendations were adequately substantiated. It was noticed, however, that some candidates’ conclusions were inconsistent, in that they advised that Option 1) would involve a business transaction, whereas Option 2) could be treated as a private transaction. This underlines the need for candidates to check their conclusions for rationality and consistency.

Other options were offered by candidates. Some were unrealistic and uncommercial in this scenario and went beyond the reach of the Question. The unreality of these suggestions underlined the need for candidates to take account of the Question, the supporting material and the commercial realities.