

## EXAMINERS' REPORTS NOVEMBER 2022

### CHIEF EXAMINER'S COMMENTS

#### Overall Comments

Across almost all papers the results were in line with expectations.

On the Application and Professional Skills papers, almost all candidates are now producing answers in a suitable format and taken as a whole, the results this session were good.

It was good to see that Indirect tax candidates have continued to perform well on their two Advanced Technical papers having had a number of years with poor results.

The results for the IHT paper (36% pass rate) were slightly disappointing and perhaps reflect this being the "away" paper for many of the candidates sitting it. This is perhaps why there were some very high marks (presumably candidates who deal with this in practice) and some very low marks. It is however a slight improvement on the result for May 2022.

The 13% pass rate for the Human Capital paper was surprising and is therefore discussed below in more detail.

#### Human Capital Taxes (HCT)

There are two things that are particularly noticeable about the results for the Advanced Technical paper. The first is obviously that in comparison to the other Advanced Technical papers, the 13% pass rate was extremely low. The second is that the pass rate of 54% for the Application and Professional Skills paper was significantly higher than that for the Advanced Technical paper.

This pattern of a poor results on the HCT Advanced Technical paper and good results on the HCT Application and Professional Skills paper is not however unusual with the same pattern in the last four sittings:

	<i>Advanced Technical</i>	<i>Application &amp; Professional Skills</i>
May 2022	29%	65%
November 2021	41%	47%
May 2021	35%	50%
November 2020	17%	39%

At first sight it is odd that there should be such a pattern when in many ways the Application and Professional Skills paper is considered to be harder. However, the key to the discrepancy seems to be down to the fact that the focus of the Application and Professional Skills paper is not on technical knowledge but rather on analysing and discussing a technically simpler situation and then presenting findings appropriately. Thus, the HCT candidates appear to be quite capable of demonstrating the skills of producing a report, but struggle with the more detailed technical content of the Advanced Technical paper.

It is also frequently the case that candidates who fail the HCT paper comfortably pass the Taxation of Individuals Advanced Technical paper. This may also seem odd because of the significant overlap in syllabus. The syllabus for the HCT paper is materially shorter than for the Individuals paper and to a large extent the content of this paper may appear to be a subset of the Individuals paper. However, the crux of the issue is that because of these two points, the expected depth of knowledge on this overlap material (for example benefits in kind or termination payments) is much greater: it would

clearly be pointless having a specialist paper examining the same material to the same depth. Candidates have struggled with this additional depth of knowledge yet without that additional depth, they will struggle to pass this paper.

The knowledge issues also seem to be related to the practical experience of candidates. Thus, candidates specialising in Individuals will typically have worked on tax returns covering a broad range of syllabus content. In contrast, HCT candidates primarily come from large firms where their specialism is far narrower than the HCT syllabus, for example focussing purely on global mobility. This is particularly apparent when, for example, there is a share schemes question. In order to be successful, candidates therefore need to have the depth of knowledge across all areas of the syllabus and not just those they work on in practice.

Whilst the pass rate was hugely disappointing for us and for those candidates who were unsuccessful, there has been an extensive process, as described [here](#) to ensure that the results were correct.

## **AWARENESS**

### **Module A: VAT including Stamp Duties**

#### Overall comments

Candidates showed a good knowledge of the core areas. Candidates are encouraged to keep the facts set out in the question in mind when writing their answers.

#### Questions 1-3

Most candidates performed well in questions 1-3, showing a good knowledge of the rules around VAT registration and tax points. A small number of candidates set out the correct rules but did not apply them to the facts in the questions, losing marks.

#### Question 4

All parts of this question on motoring expenses proved to be challenging for candidates, especially the recovery of VAT on fuel.

#### Question 5

Most candidates that attempted this question scored high marks, showing a good knowledge of the capital goods scheme. A significant minority of candidates either did not attempt this question or did not seem to be aware of the capital goods scheme.

#### Question 6

Common errors were as follows: including the rent and the computer as relevant goods; applying the tests by reference to the VAT element of the relevant goods, not the VAT-inclusive amount; and to misinterpret the second test as less than £1,000 for the quarter, not for the year.

#### Question 7

A significant number of candidates wasted time by describing the three circumstances in which an option tax is revoked/will lapse, rather than fully exploring the implications of the one circumstance relevant to the facts in the question.

### Question 8

Similar to question 7, some candidates lost time explaining why the sale met the conditions for TOGC; this was not necessary as it was stated in the question that the conditions were met.

### Question 9

Most candidates were aware of the main conditions for VAT group registration. Where errors were made, it was with regard to the partnership and the dormant company.

### Question 10

Most candidates performed well in this question. A significant number of candidates correctly identified the financial tests, which apply by reference to the amount of the error, but did not calculate the amount of the error. Again, time was wasted in providing information that was not required, this time in connection with penalties.

### Questions 11 and 12

Almost all candidates who attempted these questions showed a good knowledge of Stamp Duty and SDLT.

## **Module B: Inheritance Tax, Trusts and Estates**

### General Comments

Overall the performance on this module was good, although there were a reasonable number of candidates who did not attempt all 12 questions. There were no obvious signs that this was time related as often these were scattered among the 12 questions, rather than routinely being the later questions in the paper.

### Question 13

This was generally well attempted, although some candidates just prepared a normal IHT calculation rather than answering the actual question set and focusing on the net chargeable estate.

### Question 14

This was again attempted by most candidates and generally to a high standard.

### Question 15

Where marks were lost, it was due to the use of the wrong rate of tax (25%) or the wrong quarter fraction (not 21/40).

### Question 16

Most candidates who answered the question produced good answers, which were logical and well presented.

### Question 17

A reasonable number of candidates failed to give the explanation asked for, instead including a calculation with little or no narrative.

### Question 18

As BPR is a core area of IHT, it was good to see this question being answered well by most candidates and with full explanations of the key points.

#### Question 19

On the whole this was answered well, but some candidates discussed the possibility of the reservation being lifted and a second PET being created, rather than working within the scope of how the scenario was set and explaining the option of treating the asset as still being within the estate.

#### Question 20

The calculation of how much IHT could be paid in instalments varied in accuracy but a good number of candidates were able to identify the qualifying assets. Candidates should remember that where dates are asked for they should include the day, month and year to gain the mark.

#### Question 21

This was well answered in most cases. A few made mistakes in relation to deducting the expenses and others used the additional rates of tax in error.

#### Question 22

Candidates are reminded that in CGT questions there will often be gains which are taxable at different rates and in that case, their answer must clearly show how losses and the AEA are offset to gain full marks. This question was reasonably attempted but very few candidates scored full marks.

#### Question 23

This question was answered well, which would suggest that candidates have spent a good amount of time studying the admin parts of the syllabus, which is very pleasing to note.

#### Question 24

Although not attempted by all candidates, where this question was attempted it was answered reasonably well. Most were able to identify that the formerly domiciled rules may apply. Some candidates were less sure and just gave a general answer of how domicile would be determined, which often scored little or no marks.

### **Module C: Corporation Tax**

#### General Comments

Generally, there was a satisfactory performance by most candidates, although improvement could be made in the clarity of written answers.

#### Question 25

Some candidates wrote at length about penalties in general but did not actually calculate them.

#### Question 26

A large number of candidates did not split the long period of account into two chargeable accounting periods, although some did do two separate capital allowances computations for the first 12 months and then the remaining 6 months.

### Question 27

Most candidates knew that the dividend received was not taxable, but very few mentioned the effect of dividends received on augmented profits.

### Question 28

Although the requirement of the question was to calculate the taxable total profits, several candidates wrote about the treatment of the losses instead. Some candidates simply focused on the trading loss and ignored the property and/or the capital loss. Where these were dealt with, the property loss was often carried forward against future property income and the capital loss was often offset against total profits.

### Question 30

Most candidates missed the fact that it would be more beneficial to claim the 4% writing down allowance for tax purposes rather than the accounting treatment of writing off the copyright over 50 years. Several candidates treated the assets as capital assets and calculated the gain and rollover relief on that basis.

### Question 31

Common errors were not excluding the capital expenditure from the RDEC and/or treating the company as an SME.

### Question 32

Some candidates did not gross up the overseas income or grossed it up incorrectly. Other than that, this question was generally well done.

### Question 33

The most common error was the failure to realise that Beltte Ltd had left the group partway through the period.

### Question 34

Several candidates seem to think that being in a gains group is a matter of election rather than fact. Some candidates forgot to calculate indexation on the intragroup transfer while others deducted it from the cost of the asset rather than adding it. A few candidates wrote about degrouping charges and/or rollover relief, despite neither of those being relevant to the scenario.

## **Module D: Taxation of Individuals**

### General Comments

Generally there was a satisfactory performance by most candidates.

### Question 37

Some candidates thought that one, or both, of the income from pensions was exempt. Several candidates thought that the only reason the child benefit wasn't taxable was because Michael's income was less than £50,000. The personal allowance was often omitted.

#### Question 38

Some candidates time apportioned the £160,000 property income, despite it being clear in the question that the amount related to the period of letting. The buildings insurance was often deducted in full due to a failure to realise that the accruals basis had to apply due to the level of receipts. The deduction for the window was often restricted to £500 and some candidates didn't calculate the flat rate allowable deduction in respect of the car.

#### Question 39

The most common mistake was not including the car benefit (or if included, was often not time apportioned) in the calculation of the amount that qualified for the £30,000 exemption. Other than that, this question was generally well done.

#### Question 40

Several candidates thought that both properties qualified as FHLs as they did not realise that the period of longer term occupation does not count towards the 210 and 105 day conditions. Others thought that because there was a period of longer term occupation then Primrose Place could not qualify as a FHL.

#### Question 41

Common errors included using discounted price instead of list price and not restricting the deduction of the capital contribution to £5,000.

#### Question 42

No comments.

#### Question 43

No comments.

#### Question 44

This question was often omitted, however it was generally well done by those candidates that attempted it.

#### Question 45

No comments.

#### Question 46

This question was often omitted, however it was generally well done by those candidates that attempted it.

#### Question 47

Answers to this question were generally satisfactory, but common errors included the omission of the AEA, BADR given on the shares and the UK tax for the DTR working was frequently calculated by averaging the overall CGT.

#### Question 48

No comments.

### **Module E: Taxation of Unincorporated Businesses**

#### General Comments

Candidates generally performed well. A small number of candidates did not attempt all 12 questions. However, as the questions not attempted varied this appears to be due more to unfamiliarity with certain topics rather than time issues.

#### Question 49

This question was generally well answered, with most candidates correctly applying the basis period rules and recognising the effect on the NIC calculations of ceasing to trade. The most common mistake was to pro-rata the Class 4 limit.

#### Question 50

A generally well answered question, suggesting candidates were well prepared for a cash basis scenario.

#### Question 51

Compared with similar loss relief questions in the past, it was pleasing to see candidates able to recognise the options applicable to the scenario. Most were able to give sensible suggestions regarding the advantages of claiming relief early.

#### Question 52

Candidates generally performed well, which was pleasing to see as often partnerships are not approached correctly. Some candidates incorrectly allowed all three partners to deduct the overlap profits.

#### Question 53

Candidates generally performed well on this question, although some made their answers overly complicated by dealing with each tax/national insurance liability separately.

#### Question 54

Candidates performed well on this question.

#### Question 55

Candidates generally perform less well on written questions such as this one, but there were a number of good attempts, with sensible comments made.

#### Question 56

Most candidates produced excellent calculations, with the only real errors being how much gain is deferred/left in charge, and the rate of CGT which applied.

#### Question 57

Candidates performed well on this question, being clear on the “earlier of” rule and remembering to state that the 10 years runs from the date of acquisition.

#### Question 58

Candidates generally performed well on this question. Some candidates forgot to state that no adjustment was needed for the private use of the car by the employee and therefore missed out on a mark.

#### Question 59

This question was the one most frequently not attempted by candidates, indicating a lack of familiarity with the topic. However, those candidates that did attempt it, performed well.

#### Question 60

Most candidates who attempted this question performed well, giving precise answers on how terminal loss relief operates. However, some candidates performed less well in the calculation of the actual terminal loss.



## **ADVANCED TECHNICAL**

### **Taxation of Owner Managed Businesses**

#### General comments

Overall candidates performed poorly on this paper, which is disappointing given that it spanned some core OMB syllabus areas.

Candidates performed well on computational aspects of questions, such as the adjustment of profit in question 4. However, they appeared to struggle more with those questions requiring explanations, in particular question 6. Across many of the questions, candidates wasted time reproducing generic information without applying it to the scenario in question, or discussing points which were not relevant to the requirement.

#### Question 1

This question required candidates to explain the relief available as either repairs or plant and machinery allowances for planned expenditure by a caravan park.

The question was generally well attempted.

Some candidates wasted time by writing generic material on the difference between repairs and plant and the rates available, or discussing non-relevant case law. Credit was given where case law was specifically identified and correctly applied to the situation: merely naming the case was not enough. Otherwise the principles had to be clearly understood and applied to the situation.

Areas where a number of candidates made errors included the repair to the grass pitches and the warder's caravan. However, credit was given for sensible discussion. On the warder's caravan, some candidates wasted time discussing taxable benefit aspects, or incorrectly concluded that, as it related to an employee, it was allowable without considering the nature of the asset itself.

Many of the upgrade work costs were correctly treated. There was some confusion about the tiling in toilet areas, which was thought added to the ambience of the property and the sloping tiled floor in the cold storage, which was considered part of the setting.

The animals and the buildings caused some confusion, with a number of candidates missing these points out altogether.

#### Question 2

This question required candidates to explain the corporation tax issues arising from a potential purchase of shares in a company (Besail Ltd) by an individual (Mike) and the treatment of loans made to finance the acquisition.

In the first part of the question, major change in nature or conduct of trade was dealt with very well by most candidates. Many candidates also recognised the issue with client entertaining but were often unable to differentiate a free summer party compared to a ski trip paid for in full by the clients.

The most significant issue was the time spent by some candidates discussing irrelevant issues. For example, many candidates discussed acquisition by Mike's existing company (Safety Ltd) despite the question stating that this was not an option. Most also discussed availability of BADR for the current owners of Besail Ltd, and a significant minority discussed purchase of own shares as an alternative

means for Mike to acquire the shares. Many candidates also wrote several pages on penalties and errors including copying out tables of all potential penalty amounts.

In the second part of the question, the bank loan to Mike was generally dealt with very well.

The loan from Safety Ltd to Mike was also dealt with very well with most candidates identifying that s455 penalty tax would apply. However, many candidates failed to appreciate there would be no taxable benefit for Mike due to this being a loan for a qualifying purpose.

The loan from Safety Ltd to Besail Ltd was ignored by many candidates and those that did attempt it, often wasted time discussing irrelevant issues such as transfer pricing.

### Question 3

This was a question testing understanding of the income tax and capital gains tax implications of partnership changes. There were three partners; one leaving (Ross), one joining (Yousef) and one continuing (Abby). The question included a change of accounting date and a property disposal.

The first part in respect of the leaver and joiner and the cessation and commencement bases of assessment was reasonably well answered. A large number of candidates however failed to identify the basis period on a change of accounting date for Abby. However, even if candidates could not deal with the more complicated change of accounting date aspect they should have been able to achieve more than half marks on this part with good exam technique.

The second part of the question in respect of capital gains tax was less well answered. In particular, a large majority did not state the base cost correctly for the new partner, Yousef, or had a total base cost for the remaining partners at an amount greater than the total market value.

### Question 4

This was an adjustment of profits computational question with explanations of adjustments, together with the calculation of income tax and self-employed NICs.

This question was generally well attempted, with some very high marks obtained.

The most commonly omitted area was the annual maxima calculations. However, it was still very much possible to achieve a pass mark in the question without addressing these.

As always, candidates should take note of the type of business structure in the question. This was not a company and therefore discussion of non-trade loan relationships, qualifying charitable donations and the super-deduction was not appropriate.

### Question 5

This was a question testing understanding of the tax compliance/penalty issues relating to a recently formed company and the failure of the directors to make the necessary notifications.

A good number of candidates understood and stated the penalty regime for late notification and the likely level of penalties. The majority of candidates did not seem to be aware however that where failure to notify penalties were charged that any other tax liability based penalties would be reduced accordingly.

Many candidates also did not identify that the corporation tax filing deadline would be linked to the end of the accounts date nor that payment dates would be linked to accounting periods. Few dealt with amendment or enquiry dates.

The PAYE section was dealt with reasonably well apart from a large number of candidates failing to deal with Class 1A or due dates for P11Ds. The CT61 section was also well answered apart from some confusion by candidates as regards quarter dates for filing.

### Question 6

This question required candidates to explain the PAYE and NIC implications for a company (Umber Printing Ltd) of proposed arrangements with the personal service company of a specialist technician (part 1) and a new non-executive director (part 2)

This question was very poorly attempted. The vast majority of candidates wrote very short answers, which could reflect either lack of familiarity with the subject matter or time pressure.

Part 1 was generally well attempted, with many identifying the potential application of the off-payroll working rules. However, many candidates reproduced generic content without sufficient application to the scenario in question. Some candidates discussed irrelevant information such as the possibility of an R&D relief claim, and candidates also wasted time talking about the tax implications for the personal service company and contractor themselves despite the requirement clearly referring to Umber Printing Ltd only.

Part 2 was very poorly attempted, with most candidates seemingly unaware of the employment status of a non-executive director and struggling to gain any marks at all.

It was noted that many candidates, despite being asked to 'explain' the PAYE and NIC implications, did not provide an opinion. Instead, discussion often focused on "if" something was the case or "it should be considered whether". Candidates should present their opinion of the situation and not try to cover all the bases.

## **Taxation of Individuals**

### General

Most candidates did not perform well on this paper with a lot of candidates failing significantly short of the pass mark. Questions two and five had the worst performance and question 6 had the best performance.

### Question 1

Candidates were asked to calculate the Capital Gains Tax liability for a wealthy individual who had gifted some shares and granted a lease during the tax year. The individual had also received an insurance pay out for a commercial property damaged in a fire.

Candidates generally dealt well with all three gains and remembered to make use of the individual's annual exempt amount and brought forward losses.

The main area where candidates lost marks was the required restriction of the gift aid claim due to the company owning non-business chargeable assets.

A lot of candidates spent time outlining the rules for Business Asset Disposal Relief, even though the question advised that the individual had previously used their lifetime allowance.

### Question 2

This question involved the sale of a non-UK property by a non-UK company and required candidates to consider the tax implications for a UK resident shareholder. Candidates were required to identify the relevance of s.3 TCGA 1992 and demonstrate that the legislation applied to the transaction. The question also required candidates to consider the potential use of the remittance basis and to discuss how the shareholder could extract the sale proceeds for personal use in the UK.

Overall, this question was poorly answered. A surprising number of candidates did not attempt the question. Of the candidates that did, a significant proportion failed to identify the relevance of anti-avoidance legislation, with many ignoring the existence of the company and instead discussing a sale of property by the individual thereby failing to score some easy marks.

Some candidates did raise tax avoidance as a relevant issue but discussed areas of the legislation such as Transfer of Assets Abroad or the General Anti Abuse Rule, which did not fit with the scenario presented.

Candidates generally performed better on the second part of the question in relation to applying the remittance basis rules to the shareholder's circumstances and discussing the options for extracting funds either by dividend or by liquidation of the company.

### Question 3

This was a question testing candidate's knowledge of Business Investment relief for non-domiciled individuals. A number of investments in the UK were detailed and a disposal of a previously qualifying investment was also considered.

Candidates stated the relevant conditions well in terms of trading status, time frames and abnormal benefits with the majority correctly dealing with the loan to an unquoted trading company.

Similarly, the investment with combined EIS relief was dealt with well although a relatively large number stated that becoming a non-executive would disqualify EIS relief. Also, the fact that a loan to a partnership would not qualify was well dealt with.

The problems however began with the investment in the AIM company. The majority of the candidates stated that AIM companies are treated as quoted and therefore investment would not qualify when the real test was the failure to invest within 45 days.

Another badly answered section was the final part in respect of the disposal of the investment and how the funds would be taxed. Few identified that the original investment had been from a mixed fund of income and gains with the effect that the funds out would be similarly dealt with. Many candidates then referred to BADR being available on the sale even though the shares were held for less than 2 years.

Finally, a relatively large minority of candidates totally misunderstood the question and dealt with investors' relief even though the question gave clear direction as to the area being tested.

### Question 4

This question required the candidates to calculate an individual's taxable employment income for the year, taking into account benefits in kind, pension contributions and potential allowable expenses.

On the whole, candidates dealt well with the car benefits, although the correct treatment of the personalised number plate was less well known. Most candidates were aware of how to correctly

treat the asset transferred, but a common mistake was to omit the benefit in kind for the use of the asset up to the date of transfer.

Candidates also dealt well with the share options, professional subscriptions and training costs, but less well with the treatment of the parking fine.

### Question 5

This question related to the pension contributions of three individuals, including one member of a money purchase pension scheme and one of a final salary pension scheme. Candidates were required to consider the annual allowance rules and calculate any tax charges arising as a result of excess pension contributions.

Whilst some elements of the question were handled well, overall performance was poor because candidates did not follow up on their basic descriptions.

Candidates generally did well in describing the basic principles of the annual allowance, the tapering rules, and the calculation of an excess contribution tax charge. However, many candidates struggled to apply these rules to each individual's circumstances.

Most candidates demonstrated an understanding of the threshold income and adjusted income levels required for tapering of the annual allowance but failed to correctly calculate these for the individuals in question. In addition, most candidates were unable to accurately calculate the pension input and resulting tax charge for the individual in the final salary pension scheme. Despite this, most candidates were able to reach the correct conclusions (e.g. the allowance being tapered to the £4,000 minimum in one individual's case) meaning they were still able to obtain some of the marks available.

Unfortunately, a large number of candidates wasted time calculating the tax liability, even though this was not part of the requirement.

### Question 6

This question required the candidates to calculate an individual's income tax liabilities for the year and primarily focused on the rules regarding the calculation of rental profits. The individual also received a benefit from an offshore trust and was a beneficiary of an estate.

Overall, most candidates identified which expenditure was allowable and which expenditure was capital to a satisfactory standard, although there were some candidates who wrote down the rules and did not apply them to the situation at hand. A surprising number of candidates failed to correctly calculate the allowable finance expenses for the residential property. In consequence, they failed to score some relatively easy marks.

A significant number of candidates didn't answer the elements of the question regarding the benefits received from the trust and from the estate. Unfortunately, many of those who attempted to answer these parts of the questions did not have a firm grasp of the rules as to how the taxable amounts should be calculated, and on the whole struggled with answering these parts of the question correctly.

## **Human Capital Taxes**

### General Comments

Overall candidates performed poorly on this paper with low marks scored on all six questions. Comparatively, the marks were highest on question six but even here the mean mark was well below 50%. The final pass rate of just 13% was extremely disappointing.

There was some evidence of time pressure and this was taken into account during the moderation process. However, the fundamental problem was simply that candidates were not sufficiently well acquainted with the specialist aspects of the syllabus to score well.

### Question 1

This question looked at a termination scenario and covered a number of technical areas including the operation of the PENP rules and discrimination during the course of the employment.

A large number of candidates correctly recognised that the employee's age meant that there should be some consideration of the EFRBS rule, but ultimately a Part 6 Chapter 3 filing position was defensible given the fact pattern.

Consideration of the discrimination element was more patchy. A number of candidates immediately placed the payment under s403 ITEPA 2003 without any clear explanation. Some others referred to s406 ITEPA 2003 and the exclusion from injury to feelings from "injury". Only a few identified that the discriminatory act arising during the course of the employment means that the corresponding compensatory payment fell outside ITEPA 2003.

A small number of candidates didn't recognise that PENP was in point. Of those that did, there was some inconsistency over what should be included in the amount of Basic Pay.

### Question 2

This question was split into two parts: applying the seafarer's deduction and then calculating the employer's costs. Most candidates recognised this to be a question on seafarer's deduction and were able to calculate that it applied. The first part was generally answered well.

Not many candidates remembered the exemption for overseas medical insurance. A lot of candidates muddled up whether the pension contribution was made by the company or the employee and included it in calculating the employee's liability. No candidate remembered the 12-month NIC exemption for ex-military personnel. Consequently, the second part of the question was executed poorly.

### Question 3

This question concerned the treatment of different expenses and benefits for home, hybrid and office workers.

A large number of candidates recognised that the home office equipment shouldn't be taxable. A number attributed this to s336 ITEPA 2003 whilst others looked to s316A ITEPA 2003. These candidates were unable to obtain the full marks for this section compared to those who identified s316 ITEPA 2003 as the applicable exemption as they were unable to comment on the steps required to secure tax free status.

Most candidates scored well on the question about broadband - recognising the limited capacity for s316A ITEPA 2003 to exempt the benefit in a very narrow scenario.

A large number of candidates recognised the principal rules connected with determining whether a deduction for travel expenditure was available. Of these most were aware of the 40% rule. A much

smaller number recognised the presence of the qualitative nature of the “limited duration” or “temporary purpose” tests.

The CIS aspects of the question were relatively well answered with the position of the employer as a deemed contractor (and the reg 22 exemption applying) being well recognised.

#### Question 4

This question aimed to test candidates’ knowledge of the shares acquired at an undervalue and convertible securities regime. Whilst the part of the question that addressed the convertible bonds was reasonably well answered, candidates struggled with the rest of the question.

In particular, all candidates considered that Part 7 Chapter 2 ITEPA 2003 (restricted securities legislation) should be in point rather than Part 7 Chapter 3C ITEPA 2003 (securities acquired at an undervalue), despite the latter having priority over the former. Whilst follow through marks were awarded, this initial analysis inhibited candidates’ ability to score well. Only one candidate identified the potential for a Chapter 3C charge but concluded that this wouldn’t be in point.

#### Question 5

This question aimed to test the candidates’ ability to compare the position of two options. The calculations were complicated by grossing up and hypothetical tax. The candidates who took a methodical approach to working out first the UK SMP due and then the Mexican equivalent fared best. Almost all the candidates failed to gross up the net pay at the start to subsequently work out the SMP due.

Candidates also tried to annualise the income to work out the tax and NIC due, which added to the confusion. SMP is worked out on a weekly basis and keeping to weekly amounts would have made the calculations much easier.

#### Question 6

The first part of this question tested the application of the SRT and the interaction with Article 4 of the double tax treaty. It was important to get the UK domestic rules correct at the start. Most candidates established the ties test would be the relevant test in each year. However, not enough candidates got the details of each tie correct, particularly the family tie and the accommodation tie. The split year requirements were also often very muddled.

Candidates did not demonstrate a good understanding of the definitions of the treaty tie-breaker tests and their practical application.

The second part of the question was examining the elements of the remuneration package. It was not as complicated as many candidates made it. Too many candidates believed that temporary workplace relief would cover all the flight and accommodation costs without any restrictions on the daughter’s costs.

Many candidates referred to the 52-week exemption from NIC, despite the reciprocal agreement being given in the question.

## **Inheritance Tax, Trusts and Estates**

### General comments

The majority of candidates scored poorly on the paper with a low pass rate (36%) indicating a lack of preparation for the paper overall. Well-prepared candidates scored well with some very high scores being achieved.

Candidates generally favoured questions 3 and 5 scoring well on these. Questions 1, 2 and 4 had some extremely polarised results.

Question 6 was the least popular questions with the most non attempts and some very low scores with a majority failing to score over 25%. However, this did not appear to be due to time pressure but rather candidates simply failed to grasp the question facts and respond appropriately.

### Question 1

This question required candidates to explain how BPR would apply to a shareholding in a holding company of a group of primarily trading companies and recommend where a new furnished holiday let investment should be held.

A large number of candidates wrote a page or more detailing everything they knew about BPR whereas the question required 'an explanation of the application' of BPR to the facts. This wasted a lot of time that could have been spent answering the question. Being caught up with the lengthy preamble meant that candidates often forgot to apply these basic requirements to Zennie's shareholding – for instance the shares were in an unquoted company and had been held for two years.

The main problems that candidates had with this question were:

- with the application of the two year period to Diamond Ltd with the majority saying that no relief was available on the value of Diamond Ltd, losing sight of the fact that the shares being tested were those in Zennie Group Limited;
- concluding that the portfolio held in Emerald Ltd would be an excepted asset with no further discussion. Credit was given either way as long as a relevant argument was put forward but the test that should have been applied was 'is this asset used in the business of the company';
- not identifying that Citrine Ltd was a 40% holding and so treated as an investment of the holding company not a subsidiary. Only one candidate noted that BPR would be available if it was used in the business of holding company.

Part two was badly dealt with. Most candidates noted that FHLs would be unlikely to qualify for BPR but most decided it would be better in a new subsidiary so as not to (further) taint BPR in Emerald Ltd. Better prepared candidates noted that if the FHLs were used in the business of Emerald full relief would be available. Only one candidate explicitly spelt out the difference between a trade and a business which is key to understanding the treatment of the portfolio in Emerald Ltd and the potential treatment of the FHLs.

### Question 2

This question required candidates to consider three potential courses of action in respect of an IPDI held by a widow about to remarry. The requirement was an explanation with calculations of the IHT and CGT consequences of each course of action.



It is vital that when answering this type of question candidates are entirely clear about which part of the question they are addressing and indeed which tax they are discussing. This was not always evident.

Very many answers started with a long narrative preamble and whilst most candidates mentioned TNRBs few of them went on to apply this to the scenario and explain how it was relevant.

Option 1 (termination and absolute appointment) most often had the requirement for notice and time limit for use of annual exemptions omitted. Option 2 (termination and remains in trust) was badly dealt with and many candidates missed the point that the transfer was a CLT so did not calculate the IHT arising. Many candidates said holdover would be available, missing the point that there was no CGT disposal. Option 3 (termination on death) was mostly done well.

Only a handful of candidates mentioned that a withdrawal of BPR when retested would mean that the trustees would have a further IHT liability under options 1 and 2. No candidate mentioned that the PET made before the CLT could mean more IHT due if the widow died with the PET still on her seven year clock. There was clearly a lot of confusion under all options of who would pay various charges arising. In particular, on the termination of an IPDI trustees would pay the tax on death, not the beneficiaries.

### Question 3

This question involved the creation of a settlor interested settlement and the death of the settlor within seven years.

Part one required CGT and IHT calculations on the set up of the trust and this part was generally well answered. A surprising number of candidates entirely missed that any 'real-time' reporting would apply, stating that it would be due on 31 January under normal self-assessment. Most candidates were unable to advise the exact date when the IHT on creation was due – often stating the rule and either failing to apply it or choosing the wrong option.

Part two required candidates to identify the key problem namely that the gift is charged twice to IHT. Once they had done this they would have a clear route through the question. However, most candidates did not do this and many presented several IHT calculations without saying what they were or why they were doing them. Thinking appeared muddled and it is difficult to give credit if several potential answers are given.

### Question 4

This question tested candidates' knowledge of estate administration with a continuing trust. This was a telling question that differentiated those candidates that were well prepared from those that were less so. Less than half scored 50% or more.

Weaker candidates failed to differentiate the treatment between the period of administration and the continuing trust. Easy marks were lost for treating the ISA dividends incorrectly either both during the period of administration and in the hands of the trustees or post period of administration in the hands of the trustees.

Those that answered the question well shortcut the income tax calculation for the period of administration as an informal settlement with no distributions during the first year. They also correctly identified that the trustees were taxable on the residue via form R185 (estate) during 2020/21. Most however went the long route and calculated each year separately which was unnecessary and gained no extra marks. In doing so, they also assumed that the trust had no liability as the estate

administration period ended on 5 April 2021 and only computed the liability for the trust for 2021/22 losing valuable marks for the payments on account for 2021/22, due dates of payment etc.

The interest on the pecuniary legacy was either dealt with well or very poorly with nothing in between. Most candidates calculated the interest correctly, but a majority tried to deduct tax, others failed to deduct this from the distributable estate, whilst others deducted this as though it were interest on a loan to pay IHT i.e. before the income tax was calculated.

The R185s were poorly attempted with many candidates mixing the estate distribution with that of the trust thereby applying the wrong rates. Many failed to prepare an R185 of residue for the trust.

The majority were able to state the initial value of the trust.

### Question 5

This question tested candidate's knowledge of double grossing. Given that this hasn't been tested for some time candidates scored well.

Poorly prepared candidates failed to recognise the need to double gross and either single grossed or ignored grossing altogether losing valuable marks. Better candidates performed the double grossing steps logically and methodically achieving close to full marks as a result.

A few calculation errors lost marks but follow through marks were subsequently awarded so that candidates were not penalised. Other simple errors such as grossing up the tax free legacy by adding the taxable amount to the IHT rather than the legacy amount also lost easy marks. Again follow through marks were subsequently awarded.

Failure to mention that the residence nil rate band was not available due to Mabel (niece) being the legatee also lost easy marks.

Part 2 of the question considered the estate distribution and this produced very mixed results. Some candidates got themselves in a mess trying to work out the distribution to Harold and the political party. Most correctly calculated Mabel's tax-free distribution and the total IHT the amount due to HMRC (although failing to give the date that payment was due lost them a half mark).

Additional credit was awarded to those candidates mentioning the possibility of instalments for IHT on Windy Ridge however the majority of candidates mentioning this had already achieved full marks.

### Question 6

This question tested candidates' knowledge of Will trusts – one an immediate post death interest (Qualifying Interest in Possession) and the other a Discretionary Will Trust. Candidates were asked to consider the trusts' being wound up in favour of selected beneficiaries either within two years of death or following the sale of a trust asset after that date.

The majority of candidates failed to identify the IPDI/QIIP and its treatment. Similarly, a majority failed to identify the application of s.144 IHTA 1984 instead going down the rabbit hole of discussing a deed of variation being required for winding up of the trusts during the period of administration within two years of death.

For what should have been a relatively straight forward question, easy marks were missed by candidates failing to read the question facts and/or requirements. Failure to approach this question logically meant that the majority of candidates failed to score well having either confused the relevant

points or missing them entirely. Those candidates that approached the question methodically scored well and were able to identify the relevant steps to the scenarios presented.

Those candidates attempting the exit calculation for the second part of the question scored well although a good portion calculated the initial value of the trust incorrectly as well as the 'loss to the trust' failing in most cases to deduct the CGT incurred on the sale of the car park by the trustees. A majority also failed to calculate nine quarters to exit with one quarter being assumed in the majority of cases i.e. calculating this from 31 December 2022 instead of from 31 December 2020.

Overall this question demonstrated candidates' lack of preparation for the paper as a whole highlighting candidates need to revise the entire syllabus and not rely wholly on the most commonly examined elements to achieve a pass mark.

## **Taxation of Major Corporates**

### General Comments

At first glance, this paper might have appeared challenging but the candidates who did not panic were able to score well. There were easy marks available, particularly across questions 2 to 6 and therefore the majority of candidates obtained more than half marks for those questions. Although the subject matter of question 1 is in the syllabus and of relevance to major corporates, most candidates appeared not to have studied the subject particularly well.

### Question 1

This question considered a multinational group in which a UK-resident company made payments of royalties and interest to affiliates in the US and a low-tax jurisdiction. It asked about the group's exposure to UK source-based taxation in respect of the payments.

Most answers to this question were incomplete. Candidates generally earned credit for explaining the UK rules for withholding of tax, including the relevant administrative rules, and the interaction with Double Tax Treaties. Candidates suggested a range of possible ways to mitigate the interest withholding tax for which credit was given, however, relatively few mentioned the Quoted Eurobond exemption. Only a minority of candidates identified the relevance of the tax charge on Offshore Receipts in Respect of Intangible Property; those who did typically correctly explained the conditions for the charge to apply and one or more of the possible exemptions. Credit was given to candidates who made other relevant points, for example mentioning the possible relevance of Diverted Profits Tax or for more developed explanations of the withholding tax administrative rules.

### Question 2

This was a computational question that required candidates to address a number of technical issues in the corporation tax computation of a retail business, and explain the relevant administrative rules.

Overall, this question was answered well, with candidates typically earning credit for their answers to most of the technical issues. Some candidates misunderstood the insurance and/or short lease points, treating the relevant amounts as deductions rather than receipts. Candidates scored less well in relation to the loan release, where many correctly identified the debits and credits but only a minority referred to the exemption for debt-for-equity swaps. Relatively few candidates identified that, when claiming double tax relief, a company is required to adjust their foreign tax for all available reductions in the foreign territory.

### Question 3

This was a capital allowances question that required candidates to produce a computation dealing with a number of items of expenditure and disposals, and comment on the availability of loss relief.

Most candidates scored well on this question. The majority of candidates earned credit for correctly stating the treatment of most of the items, for sensible suggestions regarding loss relief, and for preparing a conventional computation. A few candidates did not prepare a conventional allowances computation, although credit was given for their written explanations. Most candidates correctly explained the rules for the 130% and 50% “super deduction” first year allowances, although many did not apply a balancing charge on the disposal of items for which the 130% first year allowance had been claimed and instead deducted the proceeds from the main pool. Most candidates correctly explained the relevant rules for loss carry-back and carry-forward.

### Question 4

The question concerned a group of UK tax-registered companies, each of which went into administration and /or liquidation over a period of 18 months. Candidates were required to identify the various accounting periods arising, the taxable profits and losses of those accounting periods and how losses could most advantageously be utilised.

Generally, this question was answered to a reasonably high standard. A candidate could score more than half of the available marks by answering the basics of the question fully and correctly, even if the more advanced requirements were not well answered. Most candidates scored well on correctly identifying accounting periods and many also did well in identifying taxable profits and losses pertaining to those accounting periods. Some candidates would have performed better if they had answered the question by identifying every accounting period rather than using shorthand presentations. Some candidates failed to identify that winding-up dividends gave rise to capital gains and thus did not go on to discuss the tax treatment of those gains. Most candidates did not demonstrate a full awareness of how post-cessation gains and losses interacted. Very few candidates provided a comprehensive analysis of the optimum loss relief position, though many scored some of the available marks by correctly identifying some of the available reliefs and applying them correctly, albeit without a fully correct overview.

### Question 5

Candidates were presented with seven separate scenarios under each of which a UK tax-registered company had undertaken transactions in various financial instruments and equities. The question required the candidates to calculate and explain the capital gains tax treatment of each scenario.

Most candidates were able to provide partly correct answers to some of the seven scenarios, with the stronger candidates correctly answering all seven. Easy marks were available for identifying that four of the scenarios were outside the scope of capital gains. While many candidates correctly identified one or more such scenarios, some candidates incorrectly dealt with them as being with the capital gains regime and wasted time in undertaking unnecessary calculations. Even where a transaction was correctly identified as outside the scope of capital gains, some candidates then went on to calculate and discuss the tax treatment of the transactions under, for example, the loan relationships legislation. This was outside the scope of the question and therefore no marks were available for doing this analysis.

The other three scenarios were dealt with as follows:

- a) The one involving share pools and identifying shares sold with acquisitions was well answered by many candidates, with many obtaining all the available marks.
- b) The scenario involving a share-for-share/ cash transaction and subsequent disposal was often well-answered although many candidates lost marks by incorrectly undertaking the part-disposal calculation.
- c) The scenario involving quoted share options was generally not well answered. Most candidates failed to demonstrate that they understood how lapsed options and options taken up were treated for tax purposes.

Some candidates wasted time under one or more of these scenarios by speculating whether substantial shareholding exemption might be available and then discussing its application to the scenario.

### Question 6

This question concerned the taxation of a group of UK and non-UK tax registered companies carrying on trading operations through permanent establishments in several fictitious overseas jurisdictions. Candidates were required to calculate the group's UK Corporation Tax liabilities for three years and to provide explanations.

Most candidates were able to demonstrate a knowledge of how profit/losses of permanent establishments are taxed in the UK, including the application of double tax relief, where an election to exempt them from UK taxation had not been made. However, only a minority of candidates mentioned the election and many of those assumed it would not have been made. Only a few candidates undertook calculations on the basis a permanent establishment election would be made, and those who set out calculations and reasons properly scored well. Several candidates mentioned streaming elections although such an election would have had no impact on the outcome.

## **Domestic Indirect Taxation**

### General

A number of candidates wasted time by repeating the requirement or repeating what is happening in the question. Candidates need to focus more on getting to the points in their answers, quicker. There are no marks for repeating the question or requirement.

There are still too many candidates that do not spend time reading through and understanding the scenarios. For example, in question 2, it said Ffion was going to become self-employed. This should be taken at face value and a lengthy discussion of 'is she really self employed or still an employee?' is not going to score marks.

As with recent past papers there is a worrying trend of candidates spending a lot of time dealing with peripheral areas such as MTD and other administrative issues rather than focussing on the main subject area of the question. Whilst such points may receive a modicum of credit where relevant they are not at the heart of what the client or examiner is seeking.

### Question 1

This question concerned an unregistered charitable organisation making both business and non-business supplies, requiring candidates to discuss the consequences of VAT registration alongside the opportunities for maximising input VAT. The question was generally answered to a reasonable standard, though for a number of candidates, the layout of their answer resulted in them repeating themselves.

Generally, candidates were comfortable with and well versed in the principles around business/non-business supplies and partial exemption, with many candidates able to complement their understanding with relevant case law. Most candidates were also able to explain the benefits and procedure for obtaining a partial exemption special method, comparing it to the standard method of calculation. Very few candidates identified the potential for the three projects to be considered a single project for the purposes of the capital goods scheme, and therefore were unable to comment on relevant planning surrounding this point. However, a few candidates identified other viable planning opportunities for which appropriate credit has been awarded.

### Question 2

This question concerned a qualified Physiotherapist, who was looking to become self-employed. Her intention was to provide a range of services to both private and business clients. She did not want to become VAT registered and wanted to understand if she could structure her business so that she did not need to.

This question should have been straightforward as it covered key VAT principles, but there is a tendency for many candidates to 'write all they know about a topic' rather than targeting the key points of the scenario. Producing six pages of typed script might cover the main points by the end but this is to the detriment of having enough time to complete the remaining questions on the paper.

A large proportion of candidates answered the question they would have liked, and despite being told that Ffion did not want to VAT register, if she did not need to, answered on the basis of her becoming registered and all the consequences that follow. This led into discussions of pre-registration VAT, MTD, partial exemption methods, even DIY housebuilders and using various schemes, but missed out on the main points of the types of supplies being made and whether she could structure her business so that she did not need to register.

The single v multiple supplies point was generally well answered but some candidates still have a tendency to hedge their bets and contradict themselves by giving conflicting advice.

No candidates picked up on points about artificial arrangements and economic reality, although marks were awarded for other sensible suggestions on how to (legally) avoid having to VAT register with splitting the business.

Some candidates made sweeping statements such as 'She should turn down work so she doesn't have to register for VAT', or 'She should only work for private clients, so her supplies are exempt.' This shows a lack of commerciality and practical experience and not focusing on the scenario given.

### Question 3

This question concerned SDLT and two options for the purchase of a property – either through a company for use in its business or an individual to live in. There were a number of areas to discuss from whether the property was residential or not and whether MDR was available. A calculation of the liability under both options was required.

Generally there was a pleasing standard of answers to this question that covered the key areas and calculations were provided. The case law on what amounts to a residential property and what counts for MDR were covered well. It was also noticeable that there was good application of the cases to the scenario, rather than simply regurgitating the facts of them. Where the calculation was carried out on the basis of the wrong conclusion being made, follow through marks were given.

There is still the minority that either do not read the requirement or want it to cover something else. Some answers talked solely about VAT including discussions on options to tax, zero rating for new dwellings, and tax points on deposits. None of these scored marks (and in some cases were incorrect VAT answers to the scenario anyway). Others answered about both VAT and SDLT. The requirement only asked about SDLT, so marks are not going to be available for discussing a tax that is not requested in the requirement.

There is still a tendency for many candidates to write too much detail about administrative points to the detriment of other key points.

#### Question 4

This question required candidates to review the VAT treatment of an incentive scheme using vouchers, and to consider arguments which might be put against HMRC assessments made on the basis that the VAT treatment adopted by the supplier of the scheme had been incorrect.

A good answer required some original thought. There were indeed some excellent and well thought-out answers. On the other hand, some candidates were unfamiliar with this sort of analysis and never really got into the question.

To provide a satisfactory answer, candidates had to be familiar with the definition of voucher, the distinction between single use and multi-purpose vouchers, the different VAT treatment accorded to each and the reason for this difference in treatment. The standard of knowledge displayed was pleasing.

The question also required an outline knowledge of the appeal process, and almost all candidates were able to deal with this competently.

#### Question 5

This question required candidates to compare special partial exemption methods to be used for a bank, making supplies to UK and non-UK customers.

Though it did not affect the answers, there was some confusion about exempt/outside the scope supplies. Though the question informed candidates that HMRC had directed that a special partial exemption method should be adopted, a few simply provided a standard method calculation. Most candidates who avoided this distraction were familiar with the choice between floor space/employees/turnover based methods of calculation. Some candidates simply presented a result without showing workings. Of those who showed workings, few seemed to have any idea about how to set out such a calculation in tabular form.

Hence while most answers were adequate, there was a dearth of really good answers. It may be that candidates thought that the question was simpler than it was.

Some candidates did raise the question, whether a sectorised partial exemption method should be regarded as an application of a standard method or a special method. This was a significant point to raise and showed an overall grasp of the topic.

### Question 6

Two identical food-related products were differently marketed and in one case a special container was used. Candidates were asked to say what the VAT treatment of these two products should be. It required a basic knowledge of zero-rating of food, and of composite and multiple supplies, with apt reference to case law.

The question was, perhaps, too simple for its own good, because some candidates struggled to say the obvious things, detecting a trap where there was none. The case-law discussion was on the whole disappointing.

The container/multiple supply point was something which candidates felt comfortable with, and this part of the question was well answered. On the other hand, some candidates discussed correction of VAT returns (assuming that the supplier here had made a classification error), but this was an area of some uncertainty.

## **Cross-Border Indirect Taxation**

### General Comments

The disappointing trend of short answers continues. Whilst marks are not deducted for short answers, it is difficult to score well with very short answers. Candidates have a tendency to write short factual statements (or statements based on presumed facts) about the scenario without entering into discussions about possibilities or considerations. Questions are deliberately written to allow for discussion and advice, they will often include areas where definitive statements cannot be made but candidates still often write e.g. it will be cheaper or beneficial to do X rather than Y, when they cannot be in possession of the detailed costings involved to make such a judgement; the most that can be said is that it may be beneficial to do X. Again, marks are not deducted for this, but it means they do not discuss different possibilities, such as using a public or private Customs Warehouse in Q6.

The candidates also continue to make incorrect assumptions, which if they read the question carefully, they would not and to write about areas that the question has excluded.

### Question 1

This question examined the EU VAT rules post-Brexit, with particular reference to Northern Ireland.

Although this was quite an involved question, most candidates handled it pretty well, although some responses were extremely poor. Two overarching points come out of this:

First, candidates taking a methodical approach to the question issues performed much better than those who simply “ran at it”. The latter approach tended to lead to confusion in answers and lower marks as a result.

Secondly, while most candidates did grasp the outlines of EU VAT rules post-Brexit, some of the practical workings of the rules were missed. In particular, a surprising number of candidates failed to properly understand or explain the implications of transfer of own goods.



Most candidates spotted the call-off stock point, but a number failed to outline the conditions adequately. Too many candidates failed to handle the consignment stock issue adequately and understand its implications for B2C sales in France, as well as the implications for triangulation.

Some candidates did little to engage with the issues, often repeating the question material in their answers, or offering short bullet-point answers of little substance.

### Question 2

This question dealt with the place of supply of construction services and included issues to do with related supplies of materials. It was the least well-handled of the four VAT questions.

Relatively few candidates considered the implications of the Domestic Reverse Charge (DRC) for construction works in the UK, although we recognise that this was not covered widely in the course material. It should be said that one group of candidates made more of it than the general run. This omission was dealt with by giving credit by way of follow-through marks where the DRC point was missed. It should also be noted that some candidates scored highly on the question even though they missed the DRC point.

Even so, too few candidates dealt with this question in a systematic fashion, and quite a few seemed not to grasp what the key issues were. In particular, the central issue of fixed establishment for **both** supplier and customer was not dealt with as fully as it should have been, meaning easy marks were missed.

The majority of candidates dealt with the practical point of incorrectly charged VAT by Kate Wong well.

### Question 3

This question dealt with the post-Brexit overseas seller VAT rules, including OMPs and both B2B and B2C supplies. It also covered basic customs issues post-Brexit. It was quite easy and most candidates, even some of the weakest ones, performed well here. In general the low value consignment rules and the interaction with OMP rules were well understood, and explained clearly. Some candidates addressed the right points, but again not in a very systematic fashion. Those candidates who broke the question down into its constituent parts performed best.

The position of Northern Ireland post-Brexit was generally well understood, both from a customs and a VAT angle. Indeed, some answers on this aspect were very detailed, although the marks available were low.

### Question 4

This question dealt with the place of supply of education and related organisation services, together with related supplies and purchases of goods and services.

Most candidates made a good attempt at the key points in the question, with relatively little evidence of time-pressure.

The majority of candidates showed good awareness of case law in this area, with many spotting the link to *St George's University* and explaining its implications well. A few gave excellent summaries of the case law. With respect to the overall issue of the supply of education/organising education, too many candidates either "hedged their bets" and argued both sides of the question without concluding, or changed their answers halfway through. Once again, a more considered and systematic approach would lead to better answers and higher marks.

The practical implications of avoiding a fixed establishment and also handling UK VAT obligations as an NETP were missed by a number of candidates, meaning their overall advice was less good than it should have been.

### Question 5

This question tested the candidates' knowledge of the UK Advanced Tariff Ruling process which is similar to (but different from) the EU's Binding Tariff Information by presenting a business that had knowledge of the GIRs but did not know what to do when there was disagreement over interpretation.

Most candidates seemed to have a basic understanding of the process but as always happens when Binding Tariff / or Binding Origin are tested (to use the old EU terms) it is clear that many candidates do not fully understand the difference between these and often confuse them. This is disappointing as although the systems for applying for Advance and Binding rulings are similar, the fundamentals of classification and origin are different and very important.

Many candidates acknowledged that it could take 120 days to get an Advance Tariff Ruling from HMRC but very few gave Jumfles any advice on how to approach the issue of whether the correct classification attracted a 0% or 4% Customs Duty until they had that ruling from HMRC.

#### Question 6

This question tested the candidates' knowledge of Customs Warehousing which may have been beneficial to a business that held seasonal stock for a long time and regularly needed to destroy or revalue stock.

Few candidates adequately discussed the options of using a public Customs Warehouse or applying to operate a private Customs Warehouse or indeed discussed the possibility that the costs involved in either of these must be considered against the savings to be made. Most who discussed Customs Warehousing simply stated that savings would be made.

Quite a few candidates said that Fiblem would already have a deferment account, even though the question stated they use their Agent's, and no candidate picked up that HMRC would expect Fiblem to have their own deferment account if they operated a Customs Warehouse. This was a small point in terms of marks but demonstrates again the lack of practical knowledge.

No candidate picked up that under UK law, HMRC will rarely ask for a guarantee to operate a Customs Warehouse (as they were required to do under EU law), all who mentioned guarantees in detail quoted the EU rules which still apply in Northern Ireland. Few mentioned one of the key benefits of Customs Warehousing; the ability to split consignments and release goods in any quantity. A significant proportion of candidates said that Fiblem could use the "application by declaration rules" (which apply for Inward Processing etc) until they were authorised for Customs Warehousing; this is incorrect.

## **APPLICATION AND PROFESSIONAL SKILLS**

### **Taxation of Owner Managed businesses**

#### General Comments

This question focused on the concerns of an established trading partnership regarding their personal liability risk and high marginal tax rates. There was also a secondary issue regarding a likely future sale of the business premises to a third party.

The general standard of answers was very good. Most candidates showed sound technical understanding of the alternative operating structures and the implications of incorporation either into an LLP or limited company. The main weakness was a failure to expand on the planning opportunities offered by a large directors' loan account.

Almost all candidates included arithmetical examples and appendices. However, these were at times very difficult to follow and not well referenced in the main body of the report

#### Structure

Candidates were required to prepare a draft report.

The quality of the structure of the answers was extremely high. Almost all candidates showed a good understanding of the required format of a report.

The main issue seen in some candidates was a tendency to simply list options as bullet points with little explanation.

#### Identification and Application

##### *Tax treatment of LLP*

Most candidates scored well in this section.

##### *Operating as a limited company*

Again, most candidates scored well in this section.

##### *Capital gains and SDLT on incorporation*

Many candidates scored well on this section.

Nearly all identified that incorporation would be a deemed market value disposal and apportioned gains to the partners correctly. Those who did not score well failed to appreciate that Business Asset Disposal Relief ('BADR') would not be available in respect of the goodwill, or that amortisation would not be available to the company. Some candidates also did not identify that SDLT relief was available.

##### *Capital allowances on incorporation*

Candidates generally either performed very well in this section, or did not address capital allowances at all in their answer.

##### *Use of Directors' loan accounts*

Most candidates identified the benefits of a directors' loan account and the fact that this can be drawn tax free. However, very few went on to discuss the opportunity that this gives to control the marginal

tax rate of the directors by keeping their taxable income below certain thresholds and supplementing their income by draw-down on the loan account, potentially over many years

#### Relevant Advice and Substantiated Recommendations

##### *Advice on personal risk mitigation comparing LLP or limited company*

Candidates generally scored well in this section.

A material number of candidates stated that the only risk exposure for the shareholders in a limited company is to the extent of 'unpaid share capital'. There was little mention of the original share price, personal guarantees, wrongful trading etc.

##### *Advice on tax efficient operating structures*

Most candidates identified that there was no tax advantage to an LLP over a partnership.

Candidates who performed well went on to discuss the potential advantages of the company structure, despite the double layer of taxation.

However, a number of candidates assumed that operating as a limited company was bound to be significantly more tax efficient than an unincorporated business. Where, as in this case, all of the profits are to be extracted then the difference was actually marginal.

##### *Advice on possible methods of incorporation*

Those candidates who identified the possibility of claiming incorporation relief or gift relief performed well, displaying a good understanding of the rules and relative merits of each.

However, very few candidates noted that the base cost of assets transferred into a company through incorporation relief would be uplifted to market value.

##### *Advice and recommendation on personal or company ownership for the business premises*

Candidates who addressed the issue of personal versus company ownership generally scored well. However, it was disappointing to see that some candidates did not address this issue at all in their answers, despite the upcoming sale being clearly sign posted in the question.

Those candidates who did address this issue displayed a good understanding of the tax implications on the future disposal and the possibility of charging the company rent. However, candidates performed less well when discussing the application of BADR. In particular, most candidates failed to note that BADR would be available on a sale of the retained property for three years after cessation of the partnership.

Few candidates identified that only 50% Business Property Relief would be available in the event the property was retained in personal ownership. Fewer still identified that the relief would only be available to Teresa Ryan as a controlling shareholder

## **Taxation of Individuals**

### General Comments

This question asked candidates to consider how to optimise a client's position given a number of different transactions occurring across two years. The timing of some of the transactions was fixed, but for the others there was an element of choice as to which tax year they should occur in.

Candidates needed to consider how to maximise net income from the exercise of the share award, as well as how to maximise tax relief from the additional pension contribution and charitable donation.

For the share award, candidates were asked to model the effect of an anticipated reduction in share price over time. In addition, not only was there a question of *when* to exercise the award, but also *how*: the shares could be received as shares with the tax and NIC liability funded separately, or sufficient shares could be sold to cover that liability, or the share award could be received in cash.

In determining the optimum timing of the pension contribution and charitable donation, candidates needed to understand the mechanism of relief in each case, including the effect on the phase-out of a personal allowance, to get to the optimum outcome.

Candidates were also asked to compare the relative merits of an Enterprise Investment Scheme investment as against a Venture Capital Trust investment, and make a suggestion between the two considering the client's circumstances.

Given that there was also an excess of cash after making all the proposed investments, sensible comments from a tax perspective on the remaining funds were also in point, as well as high level advice on Inheritance Tax given that the client's wealth exceeded the nil-rate band.

Candidates who passed this paper were able to competently analyse the tax implications the relevant payments and make sensible recommendations to maximise net income.

### Structure

In general, reports were laid out clearly. Almost every candidate set out the report with a clear executive summary, a main report with sensible sections and a number of appendices.

### Identification and Application

#### *Termination package*

Practically every candidate was able to correctly identify the tax treatment of the payment in lieu of notice and the ex-gratia payment, highlighting that £30,000 of the latter amount would be exempt. A minority also commented (mostly correctly) on the National Insurance treatment.

Many candidates mistakenly thought that the bonus would be taxable in 2022/23 on the basis that the client became legally entitled to the amount upon termination of employment.

A great deal of candidates felt that it would be sensible to redirect part of the ex-gratia payment into the pension, on the basis that it would save tax and NIC. However, any saving would have been for the employer – not the client – given that the ex-gratia payment was not liable to employee NIC in any case, and that tax relief would have been available on a pension contribution made personally anyway.

For the share award, the tax treatment was handled reasonably well – though a limited number of candidates did not appreciate that despite the name this was in fact a nil-cost share option, and

therefore the tax point was when the client chooses to exercise the award. Others felt stamp duty was payable, even though the consideration was nil.

#### *Identification of gross taxable income in 2022/23 and 2023/24*

Most candidates who correctly identified the tax treatment of each element of the termination package then went on to identify gross taxable income in each of the relevant tax years, depending on the year in which the share award was exercised. This was a critical step in understanding how to minimise tax liabilities/maximise net income across both tax years.

#### *Pension contribution and charitable donation*

It was disappointing that a majority of candidates incorrectly described the mechanism of tax relief for the pension contribution, stating that the basic rate band (and higher rate band) would be extended. However, the question clearly stated that basic rate tax relief would *not* be reclaimed for the pension provider – so in fact the tax relief should be by way of deduction from gross taxable income instead (perhaps candidates were misled by the fact it was a contribution made directly to the pension scheme). However, this did not have much impact on the recommendations – given that the ultimate position was the same.

More able candidates commented on the annual allowance, including tapering in the year of the share award exercise and available carry-forward, though minimal credit was given for this given that the question also clearly stated that there was no annual allowance charge on the pension contribution.

The charitable donation – if made under Gift Aid – was slightly better handled. Though for both payments, many overlooked the effect on the phase-out of the personal allowance in the year in which the share award was not exercised.

#### *EIS vs. VCT investment*

Almost all candidates competently handled this part of the question, describing the key differences between the two schemes. Credit was weighted towards the comparison, rather than simply stating the conditions and rules for each investment.

#### *Balance of funds and Inheritance Tax*

Very few candidates gave much, if any, thought to how the balance of funds might be applied tax-effectively, nor pointed out that Inheritance Tax may be in point.

#### Relevant Advice and Substantiated Conclusions

##### *Share award*

A fair proportion of candidates correctly identified that it would be best to exercise the share award as soon as possible given the falling share price, and that any tax saving by delaying the exercise would not be worthwhile. A handful of candidates suggested that the client might exercise the award in tranches in order to minimise exposure to the additional rate of tax.

Some candidates spent an inordinate amount of time describing the tax impact of the three options as to *how* the share award might be exercised – even though the most appropriate answer was fairly straightforward (there was no sense in holding on the shares if it was expected that their value would

fall). Some candidates spent so long on this that they overlooked the more critical part in advising on *when* the share award should be exercised.

A minority of candidates who advised purely on minimising tax liabilities without considering the fact that net income would also be lower did not achieve a 3+ mark in this assessment area.

#### *Pension contribution*

Candidates who correctly understood the mechanism of tax relief on the pension contribution, including the phase-out of the personal allowance, were then able to make a sensible recommendation on when to make it.

Those who did not comment on the personal allowance phase-out generally gave sub-optimum recommendations.

#### *Charitable donation*

Similarly, sensible recommendations were generally made on the charitable donation where the tax relief mechanisms were correctly grasped.

#### *EIS vs. VCT*

Candidates performed well in this area, generally making a recommendation one way or the other and giving reasons for it. There was no right answer – in fact, too strong a recommendation would not have been appropriate (given that it the choice was primarily an invest

## **Human Capital Taxes**

### General Comments

The question was designed to address the consequences of a potential failure to consider the off-payroll working rules (OPW) and their impact on RDJ, Peter Wong and his company. Information was given in a way to create some subjectivity to the historical position even though the new responsibilities are going to result in a deemed employment. HMRC had written about whether RDJ had complied with the new rules and clearly they had not as no Status Determination Statements (SDS) had been issued. A disclosure will be necessary and RDJ would need to approach it with full facts. Set against this Peter and his company had already paid significant amounts of tax leaving potential exposure to double taxation. Some work would be required to mitigate this, by working with Peter and HMRC to reach a satisfactory outcome for all parties.

Going forward as the arrangements are caught by the rules it would clearly be sensible to consider entering into an employment agreement with Peter. There was an opportunity here to weigh up the variety of considerations for that discussion. Some may be better for RDJ and others better for Peter.

Overall candidates demonstrated a good grasp of the basics of the OPW rules using the information provided and presented their answers well. As a result, this was one of the higher scoring APS papers this session with 54% of candidates passing. Some candidates though focussed on this and the disclosure and paid little attention to the wider impact and recommendations.

## Structure

The structure of reports was good, with appropriate introductions, sections and flow. However, some candidates made a lot of spelling mistakes

## Identification and Application

### *Scope of off-payroll working rules*

Most candidates provided some background to the OPW rules in their reports and a lot of candidates analysed the information provided in the question to explain the application (size and group). Many candidates, however, did not explain that failure to issue an SDS meant that the rules deem PAYE to apply effectively putting RDJ in a difficult position. A couple of candidates missed the point about the group and went into an analysis of the rules as applied to Peter's company. Some credit was nevertheless given for consideration of that outcome.

### *Employment Status*

All candidates attempted this setting out an analysis of the key components and coming to a view on employment v self-employment. A lot of information was given in the question including an analysis of CEST. But many candidates did not address the evolution of the arrangements to date. The proposed new arrangements would tip the balance in favour of employment but the arrangements at the outset were self-employment. The position over time was a factor here and the aim of the question was to consider this aspect with a view to positioning a disclosure with HMRC. Some candidates were right to pick up on the need to assess additional facts with Peter – this would provide more strength to any response to HMRC.

### *Consideration of worst-case scenario for the company*

This element was about quantifying any potential exposure and costs related to the failure to operate PAYE which is RDJ's liability. This is important for the RDJ, it will want to know this as could impact budgeting and other aspects. The new rules came in April 2021 but there may be arguments that they affected Peter after that. In addition, there could be exposure to PAYE in respect of others. Some candidates did pick up on this and provided calculations but many candidates did not.

### *Impact of disclosure on Peter Wong's company*

This was a supplemental point to the worst case. Information was provided in the question about Peter's earnings, dividend income and corporation tax and the idea was for candidates to consider this and how to work with Peter to claim refunds to offset the potential costs associated with PAYE failure. For self-employed individuals not using a company there are rules where you can offset the PAYE and NICs due with payments made by the individual through self-assessment. However the introduction of OPW rules did not come with an equivalent offset and this may need to be highlighted in the disclosure and addressed with Peter to come to a fair outcome for the company. But many candidates did not even consider this important aspect. A few candidates rightly highlighted a potential conflict but there is potential here for all parties to work together to get to a practical outcome and it may be the case the company would consider paying for Peter to adjust any returns or working with HMRC with Peter's agreement.

### *Identifying deemed employment*



Most candidates did cover this reasonably well in the sense of including Peter in payroll or looking at processes more generally including the application to other contractors

#### *Consideration to employing Peter*

Many candidates did recommend an employment contract going forward but most were quite light in the detail although most looked at some of the employment rights. Not many addressed the easement of administration burdens or the impact of Peter's net pay. Some candidates discussed shares options and some aspects of seconding someone from the US. Only one of two considered the deduction for R&D costs.

#### Advice and Recommendations

##### *HMRC disclosure*

Nearly all candidates did well if they considered the elements of any disclosure, such as extending it to other contractors, the approach to penalties etc. But many approached in from a black and white position rather than seeking an alternative taking into account the passage of time or any offset for Peter's personal and his company's positions. Some candidates were very light in advice here.

##### *Offset position*

As highlighted above this was an important point to address in the advice. It could ultimately significantly reduce RDJ's net exposure if managed well and may help facilitate a swifter conclusion with HMRC. Unfortunately, nearly all candidates missed an opportunity here.

##### *Recommendations going forward*

Generally, most candidates recommended an employment contract for Peter but lacked a comprehensive analysis of why. Some candidates explored the use of a secondee instead and whilst that had been broadly already ruled out by RDJ, credit was given for the discussion. A lot of candidates discussed the type of share plan to set up but this question was about the impact of the OPW rules. The aspect of the share option was about the practical aspects of awarding to a company (taxed at grant) versus an employee (taxed at exercise). R&D was only considered by a couple of candidates: candidates need to be alert to non-core awareness material in this paper.

## **Inheritance Tax, Trusts & Estates**

### General Comments

This question was based around a request from a client for suggestions for a suitable Will structure and estate planning opportunities.

One of the key areas to identify was that the intestacy provisions would not result in the clients wishes being met. The advice followed on from this.

Most candidates produced reports that a client would be able to follow and generally understand.

### Structure

All candidates produced an answer in an appropriate report style with a summary and

recommendations. The reports were well presented and structured in a way that enabled them to be easily digested.

### Identification and Application

#### *Inheritance Tax exposure*

The majority of candidates identified the tax exposure of the estate.

There was a variety of calculations produced ranging from Julia alone to presenting Julia's and Jonathan's figures together. In the context of the reports any of these methods were acceptable.

A number of candidates incorrectly calculated the Inheritance Tax on the Self-Invested Pension Plan.

#### *Intestacy provisions*

Most candidates correctly identified that the distribution of assets under the intestacy provisions would not achieve Julia's wishes. Most candidates explained this clearly. However, a number of candidates did ignore the intestacy provisions completely.

#### *Need for Trust structures*

The question contained two children who had different needs and the wish to provide for the husband initially and then the children afterwards. Both situations would benefit from the protection trusts offer.

The majority of candidates identified that Will trusts would be a suitable suggestion in the circumstances.

#### *Directors Loan Account*

This area was answered well by most candidates who correctly identified that the loan would not qualify for Inheritance Tax relief.

A small number of candidates either incorrectly granted Inheritance Tax relief or believed the loan to be due from Julia to the company.

#### *Capital Gains Tax on sale*

The question contained a straightforward CGT calculation which was well understood and well explained by the majority of candidates.

#### *Residence Nil Rate Band*

The candidates who did comment on this area generally explained the situation clearly and competently. A significant number of candidates did not comment at all.

### Relevant Advice and Substantiated Conclusions

This element of the report was not answered well by the majority of candidates.

A significant number of candidates explained, in detail, options for lifetime gifting. The options

presented were usually with regard to the shares in the limited company or the gifting of cash. The client had specifically highlighted in her email that she did not want to consider cash gifts or selling the company.

Often, the recommendations were not fully developed. Trust structures were suggested but the client was offered no explanation as to the taxation implications of these structures.

The non-tax considerations that were key to the client were often ignored as the candidates made tax saving suggestions.

#### *Advice on a suitable structure*

This area was answered either well or very poorly.

Some candidates ignored suggesting a Will completely and advised upon gifting of assets during Julia's lifetime.

Other candidates made a variety of suggestions that achieved the aim of securing the assets regardless of whether the spouse made a Will. All sensible suggestions received credit.

#### *Advice regarding trust structures*

Candidates who had made a suitable suggestion generally explained their suggestion in sufficient detail to ensure a client understood the implications.

A disappointing number of candidates offered no taxation advice regarding the taxation implications of setting up the trusts suggested.

#### *Advice regarding loan*

Very few candidates made suitable suggestions in this area.

A number of candidates suggested that the loan was simply repaid. This would not assist with the IHT exposure, and the company balance sheet provided also shows it would be difficult for the company to repay.

#### *Advice regarding RNRB*

Candidates who had identified that the RNRB provisions were beneficial to the estate continued to explain how the downsizing would not be detrimental to the estate position overall.

### **Taxation of Larger Companies and Groups**

#### General comments

This question required candidates to prepare a report advising on the two potential business acquisitions; a UK headed group whose principal activity is automotive repair.

The first acquisition was of a UK resident company and was to be through the purchase of shares. A purchase of the trade and assets was not an option to be covered in the report. Advice was requested on whether the consideration should be in the form of cash, loan notes or a share exchange.

The second acquisition was of an unincorporated business carried on the Republic of Ireland. This was to be a purchase of the trade and assets, and the only option for the type of consideration was cash. Advice was requested on how to structure the new business within the existing group.

Overall, the question was generally well answered. There were a number of topics to be covered and the stronger candidates linked the tax and commercial topics to the facts of the question.

### Structure

Nearly all candidates produced a report in a suitable format that was well structured and well signposted. The most common structure was to have two main sections looking at each acquisition, although some candidates covered financing in a separate section. Both approaches worked well.

Some executive summaries were overly long because rather than just containing key findings, conclusions and recommendations, they were used for a discussion of topics more appropriate for the main body of a report.

The weaker candidates tended to identify the correct topics but then provided a generic explanation of the topic area, including detailed technical material that was irrelevant to the facts and of little use to the intended recipients of the report.

Furthermore, the two acquisitions posed different questions, but some candidates needlessly repeated the same detail in both sections; they did not seem to understand that there were two acquisitions because there were significant differences between them.

### Identification and Application

The majority of candidates identified the key topics being tested.

#### *Types of consideration*

Most candidates identified the impact of the different types of consideration on the vendors in addition to the client, and recognised that this was useful background information for the Board. Most candidates noted that the issue of new shares would dilute the shareholding of the founders, but few commented on the implications of this if the result was that the founders held less than 75% control. Some candidates used the nominal par cost of shares, rather than the market value, to calculate the number of shares required to be issued for the exchange.

#### *Corporate Interest Restriction (CIR)*

All candidates identified that the CIR position meant that any further interest expense would be disallowed in the near term. Most made the point that there was the possibility that such a disallowance could be reactivated in the future. The stronger candidates identified that when Beneke Orr Ltd's results improved, the increased earnings would improve the CIR position; these candidates also realised that the potential benefit of this improvement could be calculated from the information provided in the question.

#### *Acquired losses*

The losses within Beneke Orr Ltd were identified by most candidates as a significant issue and in general this topic was handled well. The most common error was to conflate the major change in the conduct or nature of the trade provisions with the restriction of group relief surrender for the first five years. The stronger candidates set out the effective use of the losses against the predicted profits of Beneke Orr Ltd.

### *Overseas acquisition*

The acquisition of the business in Ireland was dealt with very well by many candidates but there were also some poor answers. Such answers included treating the unincorporated business as if it were a company, lengthy discussion of various types of consideration even though the vendors would only accept cash, and made generic points based on the premise that the business and vendors were subject to UK tax rather than Irish tax.

### Relevant Advice and Substantiated Recommendations

The stronger candidates considered the information provided in the question carefully and used that information to provide useful advice and recommendations. The weaker candidates suggested that further information would be required when this was not necessarily the case.

The stronger candidates weighed up all the options and recognised the competing interests of the various parties. The weaker candidates only provided a superficial analysis of the topics and therefore failed to identify the full significance of all the topics combined.

### *UK resident business*

While the initial disallowance of the interest costs was a factor in the choice of consideration in the Beneke Orr Ltd acquisition, the stronger candidates identified that in later periods this would not be the case and the disallowed interest could be later reactivated, meaning that disallowable interest costs was not of key significance.

While many candidates correctly identified the dilution of the shareholding of Simon Green and his family and went on to recommend the share-for-share exchange, only a few went on to further consider the full impact.

### *Losses*

The loss brought forward with Beneke Orr Ltd was dealt with very well, with most candidates advising of the significant change factors and recommending the monitoring of such factors for an appropriate time period.

### *Overseas business*

For the second acquisition, where candidates had identified and applied the pertinent topics, they almost always went on to provide very good advice and recommendations. The choice between incorporating the PE or making an exemption election at the point the business moved into profit was finally balanced and either approach scored well provided the candidate's justification was reasonable.

## **VAT and Other Indirect Taxes**

### General Comments

Robin and Maureen Knight and Naomi Knight-Day (the family members) have a leasehold interest in four self-contained within Marandellas House which was extensively damaged by fire in December 2021. The freehold interest in the House is held by a company controlled by the family members, JW Knight Ltd; as such, it owns the common areas of the House.

Prior to the fire, the flats had been let on the open market by the family members as furnished holiday accommodation, with some personal use during the holiday season. The family members were not VAT registered on account of these activities, with the letting income accruing to them being less than the VAT registration limits

The reinstatement of the House will cost £5.7m (inclusive of VAT at the standard rate - £950,000), of which £4.98m (including VAT) is apportionable to the flats, with the balance of £720,000 to be met by the company in restoring the common parts of the House. The reinstatement works will be undertaken in two phases - the first phase will commence in February 2023, with the second phase to start in January 2023. The parties will jointly appoint the contractor and consultants.

The family members were under-insured. Their insurer has agreed to settle their claim for £4m. They will have to fund the balance of the projected cost of £980,000 from their own resources. The company was fully insured; accordingly, its costs will be met in full.

Candidates were asked to advise and make recommendations on the relative merits of the following proposals:

1) The family members and the company jointly undertake the works; with the family members' shortfall of £980,000 to be met from VAT savings, alternative funding sources, etc identified by candidates.

2) Family members assign their leases to the company in return for shares, the company reinstate the House utilising the family members' agreed compensation and its own resources. Once the property is reinstated, the flats will be let by the company as furnished holiday accommodation, with family members permitted to use the flats free of charge for up to 4 weeks annually.

### Structure

Candidates handled this aspect well. To the extent that deficiencies were identified, they related to the style of answers.

### Identification and Application

1) *VAT registration of family members.* Generally, this section was handled well by candidates, with over 60% scoring 3 or 4. Most candidates recommended that the family members register for VAT as a partnership, identifying the CGT and SDLT implications of doing so. A high proportion of candidates failed to consider the restriction on recovery of VAT incurred attributable to non-business use of the reinstated flats by family members.

2) *VAT reliefs.* Surprisingly, candidates failed to meaningfully consider how VAT savings might be secured through the reduced rates. Very, very few identified that the empty homes relief could be an option, with no-one addressing the proposition that the Phase 2 works could qualify. The marks awarded reflected to this absence of detailed consideration, with just 20% of candidates scoring a 3.

3) *Capital allowances.* As already alluded to, candidates performed well, with credit given where candidates considered that part of the costs could constitute tax deductible repair expenditure.

4) *Capital gains tax.* Allowing for the failure on the part of most candidates to adopt market value as the consideration, generally candidates' answers were sound with many scoring 3, with some 4's

5) *Stamp duty, SDLT, ATED and Income tax/NIC.* Candidates' performance in relation to these matters was very poor. The incidence of stamp duty occasioned by the issue of new shares was considered by

less than 20% of candidates, all of whom failed to recognise that the transaction did not constitute an agreement to transfer securities. In relation to SDLT chargeable on the transfer of the unexpired leases, generally candidates failed to take account of the connected party rules, with no candidate identifying that the transaction could represent mixed use land. Finally, ATED and the benefit-in kind implications of free use of the flats by the directors were barely addressed.

#### Relevant Advice and Substantiated Recommendations

Across all assessment areas, candidates' marks were well below those allocated to related identification and application matters. It was evident from candidates' scripts that very many simply allocated insufficient time to this aspect to their detriment.

At the outset, candidates are advised that they will be assessed on their competence in relation to advice and substantive recommendations – these must be expressed in a coherent manner readily compressible to the client, with sufficient time allowed to evidence the expected level of competence.