

## NOVEMBER 2019 CTA EXAMINERS' REPORTS

### CHIEF EXAMINER'S COMMENTS

#### Advanced Technical

Except for Domestic Indirect Taxation and Taxation of Owner Managed Businesses, pass rates on all Advanced Technical papers were satisfactory.

For the Domestic Indirect Taxation paper, the pass rate was just 26%. Although performance in general was poor, the pass rate was also affected by a number of candidates with extremely low marks who clearly should not have been sitting the paper.

For the Taxation of Owner Managed Businesses paper, a pass rate of 38% was disappointing, particularly as this paper included plenty of core topics. In part this was as a result of problems with exam technique as discussed below. It was however also clear that a number of candidates were insufficiently well prepared and in particular we noted that those sitting under the joint programme achieved lower marks on average than those not in the joint programme.

Across all papers, many of those who failed did so because they were insufficiently prepared. However, a significant number of those who failed were let down by the way in which they tackled the paper. By way of example:

#### *Stick to the requirements of the question*

On the Inheritance Tax, Trusts and Estates paper, question six specifically asked for the Inheritance Tax consequences yet candidates commented on the Income Tax and CGT consequences (for which they will have gained no credit). Similarly, question one of the Taxation of Owner Managed Business paper asked for the Corporation Tax consequences, yet candidates discussed Income Tax and CGT. If the requirement is to comment on "the tax consequences", then candidates should consider all taxes which may be relevant. However, if the requirement is to comment on a particular tax then candidates should only comment on that particular tax as no marks will be available for any other taxes.

#### *Read the question*

On the Taxation of Owner Managed Businesses paper, question three was about a sole trader incorporating his business. The disposal by him was therefore of the assets of his business, yet many candidates assumed that he was disposing of shares: a clear failure to properly read the question.

#### *Provide relevant information*

On the Taxation of Major Corporates paper, question two was about transfer pricing. Whilst candidates generally had the technical knowledge of the rules, the question provided a set of circumstances to which that knowledge needed to be applied. It is not sufficient just to write out a long list of rules: that is of no use to a client. A client wants to know about the implications for them of those rules and expects advice to concentrate on the things that are relevant to them. Areas or tests which are clearly irrelevant can be dismissed with a brief comment and do not need to be set out in detail.

## Application and Professional Skills

Turning to the Application and Professional Skills paper, it was very pleasing to see that in general candidates performed well on all questions.

Only a few candidates got a fail for Structure and those who did fail on this skill also failed on either or both of the other skills.

The primary reason for failed tended to be on Relevant Advice and Substantiated Conclusions where they did not properly draw out of their analysis conclusions and recommendations for their client. On this paper we are looking for a recommendation to the client as to what they should do rather than a set of possibilities for the client to consider. It is also important to note that conclusions and recommendations need to be substantiated: it is not enough to have a single sentence telling the client what to do as they need to understand why they should take the recommended action.

## **AWARENESS**

### **Module A – VAT including Stamp Taxes**

#### General comments

Overall, candidates performed well on this module. Candidates should however read the question thoroughly and apply their knowledge to the scenario set out in the question; in some cases, candidates repeated information given in the question, provided information that was not asked for and set out detailed explanations where calculations were required.

#### Question 1

Most candidates performed well with many scoring full marks. Where marks were lost, it was generally with regard to the tax point for the deposit. Some candidates failed to explain their answers fully.

#### Question 2

This was another high-scoring question. Common errors were to ignore the future test and to include exempt sales when applying the limits.

#### Question 3

This proved to be a challenging question for candidates with many not attempting it. Part 1 of the question seemed to present most problems as many candidates did not/could not explain the implications for Karl of applying the fuel scale charge.

#### Question 4

Many candidates struggled to recall/apply the rules around entertaining and gifts. There was some confusion with the rules applying for direct tax purposes.

#### Question 5

Most candidates did well in this question. However, in part 2 of the question, many candidates lost time writing out information that was given in the question or which, had they read the question fully, they would have realised was not required.

#### Question 6

Almost all candidates were able to allocate the payment to the invoices correctly. Where marks were lost it was for not providing detailed explanations; i.e. not stating how bad debt relief would be given for the final invoice.

#### Question 7

Performance was mixed with the number of candidates scoring full marks broadly the same as the number of candidates that did not attempt to answer it. Many candidates struggled to explain why the reduced rate applied and some did not provide calculations, as required by the question.

#### Question 8

Most candidates performed well in this question. A common error was to fail to adjust for the disposal proceeds. Some candidates lost marks as a result of not providing calculations; for example, stating that the de-minimis test was failed without providing a calculation to show this.

#### Question 9

Many candidates struggled to recall/apply the rules in this area (sale of goods by a UK business to a business in the EU).

#### Question 10

The question asked for calculations but many candidates wasted time providing quite detailed explanations.

#### Question 11

Quite a few candidates did not attempt this question. A significant minority of candidates seemed to be unaware of the rules for penalties, scoring no or low marks on part 2 as a result. It was clear from the question that the form was presented less than 1 year late. However, some candidates gave an answer based on the form being presented both less than 1 year and more than 1 year late.

#### Question 12

Again, quite a few candidates did not attempt this question. The requirement was for candidates to calculate the liability assuming that a claim for multiple dwellings relief was made. Many candidates either ignored this or seemed to misunderstand what was meant by 'multiple dwellings relief'.

### **Module B – Inheritance Tax, Trusts & Estates**

#### General Comments

Overall, performance on this module was satisfactory but not exceptional. Candidates performed better on the computational questions than on the written ones.

#### Question 1

Performance on this question on the transfer of the residence nil rate band was mixed. While most candidates recognised that the husband had not used his RNRB, only a few tapered it. The most common error was to apply quick succession relief on the wife's death, despite the fact that the amount inherited from her husband was covered by the spouse exemption.

#### Question 2

Whilst the question stated that the transfers were made on the same day some candidates assumed that the transfer to the XYZ Trust was made before the transfer to the ABC Trust and calculated the IHT on that basis. It was disappointing to note that the due date for payment was very often stated incorrectly.

#### Question 3

The most common errors in the calculation of the lifetime IHT due on the gift of a house were to apply the RNRB and to use the reduced value of the shares in the calculation of the nil rate band available.

#### Question 4

This question on BPR was generally well done, although several candidates thought that 100% BPR was available on the loan stock.

#### Question 5

This question asked for explanations with supporting calculations, but most candidates simply concentrated on the calculation element. There were a number of errors with the APR.

#### Question 6

Performance on this question on valuation rules was mixed. Some candidates confused the related property rules with the part disposal rules for CGT, and most candidates included the dividend in the valuation of the shares.

#### Question 7

Performance on the question on overseas aspects of IHT was particularly disappointing. Most candidates recognised that the deduction in relation to the overseas administrative expenses was limited to 5% of the market value of the overseas property, but very few correctly calculated the allowable deduction as being the additional costs incurred. Some candidates only calculated the IHT due on the overseas asset rather than on the death estate as a whole. The calculation of the amount that the residual legatee would receive was rarely done correctly.

#### Question 8

This question on the calculation of the Income Tax liability for the trustees of a discretionary trust was generally very well done. The most common error was to gross up the trustee's expenses at the dividend rate, despite there being no dividend income.

#### Question 9

The majority of candidates failed to recognise that this question was on a settlor interested trust and therefore applied gift relief to the gain. Some candidates even calculated indexation on the gain, and others did a calculation of an exit charge on the distribution from the trust.

#### Question 10

The most common error in this question on the calculation of Income Tax payable by personal representatives was to confuse the dividends and the interest, and to apply the dividend and savings allowances in the calculation of the tax.

#### Question 11

The first part of this question, the calculation of IHT on a death estate where the 36% rate applied, was generally well done. The second part on the payment of IHT in instalments was frequently omitted. However, where it was attempted, it was generally done well.

#### Question 12

Performance on this question on the pre-owned asset rules was probably the best on the paper, with several candidates scoring full marks.

### **Module C – Corporation Tax**

#### Overall comments

Generally the performance on this module was very good with some candidates scoring almost 100%.

#### Questions 1-3

All of these questions on core topics were answered very well with many scoring full marks. On question 3, some candidates seemed to have misread the question and treated the chocolates as not bearing a company logo. This highlights the need for candidates to ensure they read questions carefully.

#### Question 4

This question was reasonably well attempted but there was confusion in a number of cases about the application of the rules for when pension contributions should be spread

#### Question 5

This question was answered well.

#### Question 6

This question was generally well answered but it is worth noting that a small number of candidates incorrectly added the employers national insurance to the deemed salary rather than deducting it.

### Question 7

Most candidates were able to demonstrate their understanding of the degrouping position and to calculate the figures correctly. Few candidates remembered that the indexation factor should be rounded to three decimal places.

### Question 8

Answers to this question were mixed: those who knew the topic generally scored at least 4 of the 5 marks available, but a number of candidates discussed the SME relief for R&D and/or seemed to think the company could choose which form of relief to claim

### Questions 9-11

All of these questions were very well answered.

### Question 12

This was the least well answered question on this module. A significant number of candidates answered on the basis of group relief rules rather than capital gains groups.

## **Module D – Taxation of Individuals**

### General Comments

Performance in this module was reasonable. Some candidates had clearly prepared well and had a good grasp of a broad range of topics; however others struggled to answer questions on relatively core areas on which questions should have been anticipated.

### Question 1

Performance on this question on the calculation of the Income Tax liability for an additional rate taxpayer was disappointing. Despite the question giving the amount of taxable income, many candidates either deducted a personal allowance or wasted time with calculations to prove that it was reduced to nil. The savings nil rate band was frequently omitted, the savings allowance was frequently given and tax bands were often applied incorrectly.

### Question 2

The most common error in this question on the married couples allowance was to base the abatement on Maggie's income. Otherwise performance was generally good, although lack of explanation resulted in some candidates losing marks.

### Question 3

Some candidates confused the Capital Gains Tax aspects of lease premiums with the Income Tax aspects being examined in this question, but otherwise this question was generally well done. The most common error was the failure to recognise that the property allowance applied in the case of the rental income in respect of the driveway, or to apply it incorrectly.

### Question 4

This question on benefits in relation to relocation expenses and the provision of a company car was generally well done, although the capital contribution towards the purchase price of the car was frequently incorrectly treated.

#### Question 5

Answers on this question were very good.

#### Question 6

Performance on this question on the high income child benefit charge was disappointing, with a variety of errors with regard to both the child benefit and the childcare vouchers. The child benefit was frequently treated as taxable income and the vouchers were regularly not included in the calculation of adjusted net income. Some candidates calculated the charge and then didn't know what to do with it. Many candidates applied the marriage allowance despite the question stating that Andrea's income was £12,000 and therefore in excess of the personal allowance.

#### Question 7

Performance on the question on overseas aspects of Income Tax was disappointing. Most candidates did not consider the automatic application of the remittance basis and discussed the election for the remittance basis to apply. Candidates are reminded to confine their answers to the context of the question and not to go off on tangents, such as discussing the statutory residency test, deemed domicile and overseas aspects of other taxes that are not relevant to the scenario.

#### Question 8

This question on the withdrawal of EIS relief on the sale of shares within three years produced mixed answers. The most common errors were to withdraw all the EIS Income Tax relief, despite the shares being sold at a loss, and to not appreciate the effect that the withdrawal of the relief would have on the capital loss on the disposal of the shares.

#### Question 9

Some candidates did not attempt to calculate the capital element of the lease premium, which was to be used as proceeds in the CGT computation, and simply used the full amount of the premium.

#### Question 10

The most common error in this question was to do a single computation of the gain instead of applying the matching rules for the disposal of the shares. The bonus issue was often incorrectly treated, with the shares being put into the pool at average cost and/or being given on the March 2019 acquisition.

#### Question 11

Performance on this question was good.

#### Question 12

As with Question 7, some candidates went off on tangents instead of confining their answer to the scenario given. However, most candidates performed well and demonstrated a good understanding of the rules with regard to overseas aspects of CGT and the temporary absence rules.

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

### General comments

This module was well attempted by a good number of candidates, but there were a number of instances where not all questions were attempted, possibly by candidates answering this module last.

### Questions 1 - 4

Generally these questions, which were on core topics, were very well answered with a significant number of candidates scoring full marks.

### Question 4

The only real error on this question seemed to arise where candidates thought a 30 year lease would be classed as short but otherwise this was again well answered.

### Question 5

Some candidates hedged their bets by stating that the losses would be set off on a FIFO basis but then actually set them off on a LIFO basis.

### Questions 6 – 10

Again these questions were answered very well in the majority of cases.

### Question 11

Whilst candidates seemed to understand this core topic, frequently they made silly mistakes as a result of the poor layout of their answers.

### Question 12

Again this was generally very well answered with most candidates appearing to be well prepared on the topic, as would be expected.

## **ADVANCED TECHNICAL**

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

### General comments

Overall performance on this paper was poor. Although the subjects covered were mainly core, the biggest problem seemed to be a failure to correctly read the questions so they clearly understood what was required of them.

### Question 1



This question related to Re-Furb Ltd, which, following a large loss, was ceasing to trade and disposing of its assets. The question required a step by step approach to the Corporation Tax computations for each of the relevant accounting periods from the year ended 30 June 2019 onwards and the use of the trading losses arising.

The biggest problem was that many candidates seemed to immediately view the question as one on terminal losses, even when, following a basic carry back claim, there would be no remaining profits prior to 30 June 2019. A further issue was that candidates lost sight of the requirement in the question for the Corporation Tax implications of the information given. They therefore spent time discussing the Income Tax consequences of the write off of Mr Cotton's loan and the availability or otherwise of entrepreneurs' relief for the two shareholders on the distributions from the liquidator.

### Question 2

This question related to Hyperion Construction Ltd where the sole shareholder was looking to transfer shares to a new employee. The question covered that gift, the procedures the company would have to undertake as a new employer and a final section relating to acquisition of assets. Capital Gains Tax was specifically excluded from the scope.

Part 1 was not answered at all well with many candidates discussing gains, gift relief and entrepreneurs' relief at length despite capital gains tax being explicitly excluded in the requirement.

In part 2 many candidates had a good understanding of obligations of an employer in respect of benefits, and, in the main, the operation of payroll. However, most failed to recognise that full payment submissions are required on or before the salary payment date, often giving instead the date for payment of PAYE and NIC, or stating the rule and then immediately contradicting it. Candidates often omitted to mention how to set up new employees on the payroll system, using the P45 or new starter declaration to ensure the correct tax code is used.

The best answers were often for part 3 in respect of hire purchase and finance leases. There was a lack of confidence in giving clear advice and reluctance to give recommendations, for example candidates suggesting the AIA might be available but not wanting to state definitively that it is. Candidates also discussed cars and the restriction for high emission vehicles, despite this being irrelevant to the question asked. These points, along with various other discussions not covered in the requirements, did not cost marks but candidates lost valuable time.

### Question 3

This question tested entrepreneurs' relief in the context of a sole trader disposing of assets in connection with the cessation of his business. Candidates were asked to explain the CGT implications of the asset disposals taking place, including calculations of any liabilities. They were also asked for the income tax and employer's NIC implications of a termination payment being made.

This question was answered very poorly, and this was disappointing to see, given the crucial importance of ER to the OMB syllabus. The fundamental issue was that more candidates answered this question in the context of legislation applying to a disposal of shares rather than in the context of the sole-trade which was actually in the question. At no point did the question refer to any shares and candidates were fortunate to score some marks for points overlapping both areas of the legislation. Pages and time were wasted substantially addressing points not relevant to capital gains tax (such as capital allowances, or assets on which no gain arises or are not chargeable). The

termination payment section was also poorly addressed, with too much time being spent writing about the employee's income tax and NIC position.

#### Question 4

This tested a corporation tax computation, in the context of a sole trader incorporating into a close company. Candidates were asked to prepare the corporation tax computation for the initial (long) period of account, along with brief explanatory notes. They were also asked for the income tax implications of the owner's salary, testing losses arising prior to incorporation and s.86 ITA 2007.

This question was relatively straightforward and was generally answered well, with some candidates scoring very highly. That said, candidates should note that it is not sufficient to describe expenditure as 'not allowable', when asked for explanations for their adjustments. Candidates should also note the structure of the business, as a number answered in the context of a sole trader, despite being asked for a corporation tax computation in the requirement.

#### Question 5

This question asked for the preparation of training material. Part 1 asked for an explanation of the accruals basis and any alternative basis. Part 2 required a calculation of the Tax and NIC implications of a business operating as a sole trader and alternatively as a limited company. On the whole the question was well answered and the majority of candidates achieved a pass mark.

All candidates identified the cash basis as the alternative and were able to define both. Some struggled with the definition of accruals and wrote two or three pages where a short sentence would have sufficed. Eligibility for the cash basis was explained well. The differences between cash basis and accruals, saw the majority of candidates identifying most of these. There were a couple of points, however, which the vast majority missed namely: leasing costs not restricted for high CO2 vehicles and goods for own use where the adjustment is at cost rather than sales value.

The sole trader Tax/NIC calculation was well handled and the majority of candidates got this entirely correct. On the company side, the results were not quite so good. Candidates had to identify the most tax efficient method of distributing profits. This meant payment of a salary equivalent to the NIC threshold, which reduced the CT payable, leaving the remainder to be paid as a dividend. Errors here included, not paying a salary, neglecting the CT liability, and miscalculating the amount of dividend taxable at the lower rate 7.5%. Some candidates got it all correct, but they were in the minority.

#### Question 6

This question was testing the disguised remuneration provisions for a member of an LLP and then the annual maxima calculation for National Insurance purposes. The general quality of answers to this question was poor. A significant number of candidates appear to have no understanding of the disguised salary anti-avoidance. Those that did often failed to identify the consequences of falling within these provisions such as being subject to a benefit in kind on the car.

The annual maxima calculation was also not well understood since many of those who did identify this point failed to understand how the NIC annual maxima rules work. Since this is outlined clearly in the legislation, this seems disappointing. Those candidates who worked through the annual maxima calculation often then failed to compare this to the NIC that would have been paid and point out that a repayment was due.

## **Taxation of Individuals**

### General comments

A number of candidates did not perform well on this paper particularly on question three.

A significant number of candidates would have benefited from reading the questions properly and ensuring all elements were included in their answers.

As an aside, it would be helpful if candidates could number their answers correctly as it makes marking far easier than if the examiner has to guess/try to work out which question is being answered.

### Question 1

This question required candidates to apply the SRT to a UK domiciled individual who was returning to the UK after a period abroad. It also required basic CGT calculations and advice to be given to the individual.

Many candidates wasted time simply restating the SRT in detail rather than applying the relevant sections of the test to the scenario. Better candidates simply applied the relevant elements of the SRT to the scenario in the question, which is what a client would expect.

Most candidates identified that Janine was UK resident under the "home" test, but many did not understand that more than one split year case can apply and that the SRT identifies which case takes priority (Case 6).

Most candidates were able to perform the basic CGT calculations required in the question and identified correctly that the market value replaces actual proceeds for transactions between connected parties.

Candidates' knowledge of the EIS reinvestment relief was variable. Some candidates answered very well, and some candidates incorrectly applied the income tax reducer to the CGT liability. Many candidates wasted time providing details of PPR even though it was not relevant to the scenario.

### Question 2

This question concerned employment related securities and candidates were required to prepare meeting notes for a colleague in respect of two scenarios.

The first scenario was a straight-forward reward of shares by the employer. Unfortunately, a large number of candidates treated this as if it was a share option scheme of some kind.

The majority of candidates failed to correctly identify that the shares being gifted would be classed as readily convertible assets. However, follow up marks were available if candidates correctly described the tax and reporting requirements for a gift of non-readily convertible shares.

On the whole candidates were more comfortable with the second scenario and scored well, with the main error being not allowing the £1,000 conversion costs against the employment income arising.

### Question 3

In general, this question was poorly answered. It was missed out altogether by several candidates and only partially answered by many more. Whilst there were some complex technical points required to achieve full marks, a well prepared student should have been able to achieve a pass mark quite easily if they worked through the question methodically.

Many candidates are clearly confused about the new rules regarding the restriction of interest for residential property landlords and tried to apply these rules to commercial property.

A number of candidates did not read the question properly and dealt with the new property as if Adam was the landlord and not the tenant.

Whilst candidates should ensure that answers are clear and well laid out to ensure they do not miss out on marks, some wasted time writing down what they are going to do in words and then actually doing it with the numbers, so duplicating work. It is not necessary to explain which formula you are going to use, or write out the standard formula using letters and then write out the formula again with the actual numbers in it as this wastes valuable time and will not gain extra marks.

### Question 4

This question required candidates to reply to a client's letter requesting information about the tax and National Insurance implications of various items of employment income and about his wife Holly's pension and the lifetime allowance.

Most candidates dealt well with the sections concerning late paid wages and relocation expenses and were comfortable with the definition of a temporary workplace. Unfortunately, the majority of candidates failed to appreciate that Daniel's travel from home to the edge of Wales and vice-versa would be classed as ordinary commuting. In addition, most candidates failed to differentiate between Daniel's journey to the edge of Wales and his travel within Wales.

The section regarding gifts at Christmas caused some problems, with candidates confusing the allowance for staff functions with the trivial benefits rules.

A lot of candidates scored well on the section regarding the lifetime allowance. The main point that was overlooked was an explanation of the treatment of the authorised fund.

### Question 5

This question was generally well answered. Although there were some complex areas in the question, the majority of candidates showed that they were aware of these and were able to attempt these areas as well.

Candidates did not always read the question properly which led to them missing out on some of the easier marks. For example, about 10% of the candidates missed the company dividend in the computation and about 30% missed the tax withheld on the UK pension drawdown.

The candidates would have benefited from not re-stating simple points in both the computation and note section and just focusing on the areas that needed to be explained in the note section.

The weakest areas in the answers were where candidates grossed up the tax bands correctly and in relation to the cap on unlimited income tax relief. With the share loss relief point several candidates thought this operated as a tax reducer rather than being deducted from taxable income.

Overall the question was well structured

### Question 6

This question required candidates to produce notes for a partner on the proposed the sale of the client's business.

Candidates performed well on this question and most identified the main areas that needed consideration. Candidates provided good advice on the availability of entrepreneurs' relief and the ability to disapply share-for-share treatment in option two. However, it was clear that even though candidates had a good knowledge of the rules some did not know how to correctly apply the rules to the scenario. In particular, candidates were often unable to identify the difference between ascertainable and unascertainable deferred consideration which lead to the incorrect advice being provided even though it was clear they understood the tax treatment for each type of consideration.

Many candidates wasted time explaining the instalment option at length when it was not available to the client in the scenario. Planning before writing the answer would have prevented this.

## **Human Capital Taxes**

### General comments

Candidates performed well and good general knowledge and understanding of the core areas was demonstrated across the paper. However, candidates often did not advise fully on all aspects of the questions.

### Question 1

Candidates generally made a very good attempt at this question. Despite the scenario being fairly complex, testing international social security in all three cases (EEA rules, bilateral agreement and rest-of-world), candidates who knew the rules did not have much trouble applying them.

Quite a few candidates got confused between residence for National Insurance purposes and residence under the Statutory Residence Test. Others appeared to get confused between the rules on apportioning the stock option gain for tax purposes rather than National Insurance purposes, and some even digressed into Capital Gains Tax.

Marks were available for highlighting the consequence of not meeting the terms of HMRC's concession for non-resident directors with UK board meetings, though this was not made explicit by any candidate.

### Question 2

There was a good understanding of payrolling benefits shown in the answers, but varying degrees of accuracy when it came to explaining how to correct the errors. Very few mentioned amending the FPS and a large number commented on late P11D's where the question made it clear that they had already been submitted. Most suggested voluntary settlement but opted for a PAYE Settlement Agreement (PSA), which was not appropriate. A good knowledge of the OpRA rules was shown, but a small minority mentioned penalty types, behaviours, disclosure and no one mentioned suspended penalties.

### Question 3

This was a question which tested three areas: overseas workday relief, home leave and the 52-week NIC exemption for inbounds from a 'rest-of-world' country. Candidates were asked to apply the rules to three potential assignees and compare the cost implications in each case.

Candidates who structured their answers sensibly tended to be the ones who did better on this question. There was a good general understanding of domicile and overseas workday relief, although a significant number missed the requirement to be non-resident for three consecutive years prior to the first year of residence. The fact that the home leave claim depended on non-domicile status was also missed by a number of candidates, while others erroneously thought the UK would be a temporary workplace. Disappointingly few candidates offered a sensible discussion on whether or not each prospective secondee would be not ordinarily resident in the UK and hence whether they could access the 52-week exemption for NIC.

Some candidates spent an inordinate amount of time discussing domestic payroll matters – as this was not relevant to the tax cost borne by the company, no credit was given.

### Question 4

Candidates generally calculated the NLW/NMW rates correctly. However, little analysis of why the failures had occurred and what actions could be taken to ensure future compliance were offered. Similarly, advice regarding the process for correcting the errors and dealing with penalties was often insufficient. Marks in this question were given for analysing the problems and suggesting solutions and candidates did not do this part very well.

### Question 5

Most candidates made a good attempt at this question and demonstrated a good understanding of the impact of double tax treaties and social security agreements on the UK domestic position and got most of the marks available. Unfortunately, not many differentiated between the US federal and state taxes.

Candidates confused the rules regarding payment of travel costs and few got the answer right.

Not many candidates picked up the change to Scottish tax rates.

### Question 6

All candidates showed knowledge of the staff canteens exemption, though many showed confusion in relation to the reasonable scale point and that different subsidies were acceptable. This led to a large number suggesting a settlement due via a PAYE Settlement Agreement (PSA), which was not

appropriate. Most identified that the canteen rules did not apply to the offsite lunches, but again there was a tendency to suggest a PSA to resolve matters, rather than a voluntary disclosure.

The majority of candidates also felt that staff entertaining could be covered by the trivial benefits rules.

In the main candidates covered apportionment, grossing up and the application of Class 1A and Class 1B NIC, along with penalties for incorrect P11Ds well.

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

### General comments

There was a real mix of scores across the paper: questions 1 and 2 resulted in the highest scores but in contrast questions 3 and 6 resulted in some very low scores. As has often been seen in the past, the offshore scenario tested in question 3 demonstrated a clear lack of understanding of the subject matter and for most this was attempted last with little care or thought. Throughout there was evidence of a failure to read both the question facts and to address the question directive prompting the loss of valuable marks or time wasted not answering the question set.

### Question 1

This question concerned a mixed domicile marriage. It required an analysis of the benefits of making a UK domicile election and the timing of that election.

The question was reasonably answered by most candidates however there were some recurring themes. Most candidates concluded that the election should be made but very few considered when this should be made i.e. it would be more beneficial to make the election on death rather than backdate it in order to give time to do some planning to remove foreign assets from the non-domiciled spouse's estate. Some candidates did suggest creating a trust for the non-domiciled spouse's assets but did not think this through as they then concluded the election should be carried back to cover the PET.

Many candidates failed to take into account the PET when performing the calculations. Some candidates were confused re the non-domiciled spouse IHT exemption and thought this and the nil rate band were the same thing therefore restricting the combined exemption/nil rate band to £325,000 rather than £650,000. The domicile of each spouse was clearly stated but some candidates wasted time analysing each spouse's domicile position and providing advice on how domicile is determined for which no marks were available.

### Question 2

This was an Income Tax and Capital Gains Tax (CGT) computation for a UK resident trust.

The question was well answered by most candidates with a number receiving full marks. However, some candidates were unsure on the treatment of the annuity and the rate at which it would be taxed. For less prepared candidates the tax pool entries created some confusion with some candidates adding the tax suffered on the annuity to the tax pool and some even adding payments on account to the tax pool.

The principal private residence (PPR) calculation was generally well performed but some candidates missed the additional 18 months of PPR available, some still used the old 36 months exemption, and some didn't restrict the lettings relief to the amount of the PPR due.

### Question 3

This question concerned a distribution from an offshore trust which had IHT, Income Tax and CGT consequences. The question, as seen in previous papers, was poorly answered by most candidates and some of the more basic elements of calculating exit and principal charges were missed.

There seemed to be a common misconception that a distribution from an excluded property trust is not taxable unless the settlor is deemed domiciled in the UK, which is not correct.

In the exit charge calculations almost all candidates failed to realise that the property only became relevant property at April 2017 therefore requiring the quarter fraction adjustment and incorrectly calculated both the exit and principal charge as if the property had been relevant property throughout. Some candidates concluded that a distribution immediately after the principal charge would be most beneficial as no IHT would be due but in making this decision they failed to take account of the tax suffered by the trustees on the prior ten year anniversary.

When calculating the s2(2) pool, all but a handful of candidates failed to factor the disposal of the property into the gain pool calculation. Most candidates were able to identify and calculate the supplementary charges and had provided advice in the letter as to the timing of the distribution.

### Question 4

The question concerned post-mortem reliefs and was either very well or very poorly answered.

Most candidates missed out on simple marks by failing to specify the deadline for claiming the reliefs. Some candidates did not recognise that some of the shares did not qualify for the relief. Most candidates could identify the £5,000 loss on Jim's shares however a good number of candidates did not calculate the PET under the loss to donor principles and did not calculate the amount of the revised failed PET after the s131 relief claim losing out on valuable marks.

A surprising number of candidates wasted time calculating the IHT on the full death estate before reliefs and many candidates provided lengthy descriptions of the residence nil rate band and whether it applied to the estate, neither of which were required by the question and no marks were available.

### Question 5

This question concerned IHT planning and the various reliefs which could be used to minimise the tax due on death.

Some candidates fell down on exam technique in this question by failing to state the basic requirements, for example, identifying the shares would qualify for BPR or the potential to make gifts out of surplus income but not explaining the qualifying conditions for each exemption.

There seemed to be a lot of confusion as to whether the pension would form part of his estate on death and very few candidates identified the associated operations point in relation to the City Homes shares.



Some candidates provided wildly impractical advice such as advising the client to gift his home to his daughter and transfer all his assets to her when the question was clearly signposting that he could use gifts of excess income to reduce his estate and gift away the City Homes shares.

### Question 6

This question tested the new returning UK domicile rules and the impact on the individual and the trust.

This is fairly new legislation but even so there seemed to be a lot of confusion as to how this worked and in some cases candidates did not appear to be aware of the new provisions.

There was a common misunderstanding that the trust would remain excluded property even though the individual would be deemed domiciled. Most candidates thought that Mr Red would only need to be non-UK resident for four years for him to lose his deemed domicile status, which is incorrect.

The majority of candidates did not read the question requirement properly and so there was lots of analysis of domicile and whether he had obtained a domicile of choice in New Zealand (although his domicile status was clearly stated in the question). Some candidates provided a full analysis of his residence based on the statutory residence test, which is outside the scope of this paper. Many candidates provided a detailed analysis of the Income Tax and CGT treatment of the trust when the question clearly asked for the IHT consequences only.

## **Taxation of Major Corporates**

### General comments

Overall this was a challenging paper testing a number of technical areas, but with plenty of marks available for explaining basic Corporation Tax rules where directly relevant to the question and applied to the scenario. A number of candidates discussed tax rules at length that were irrelevant to the question and so wasted precious time. Overall, results were good with an unusually large number of very good candidates who gained distinctions.

### Question 1

This question tested candidates' knowledge of the rules for foreign currency. Generally, candidates struggled with this question, with few able to mention the designated currency election or the forex matching rules.

There were, however, marks available for explaining the basics of the loan relationships rules and the treatment of exchange gains and losses. Credit was also awarded for identifying tax issues that could arise from the proposed transactions. As a result, candidates with good exam technique could score reasonably well without any reference to designated currency elections or forex matching rules and the effect of those for the group.

A number of candidates considered that the euro loan was actually a derivative contract, providing explanation as to how it met the relevant conditions and how regulations 7, 8 and 9 of the Disregard Regulations applied to fair value moments. Candidates need to be able to distinguish between a loan relationship and a derivative contract, and between the treatment afforded by regulations 3 and 4 as opposed to regulations 7, 8 and 9 of the Disregard Regulations.

## Question 2

This question asked candidates to write a letter explaining the application of the transfer pricing rules to a number of proposed transactions between group companies. Generally candidates performed well on this question.

The best answers covered (i) the basics of the transfer pricing rules; (ii) the different pricing methods endorsed by the OECD; (iii) application of the transfer pricing principles to the proposed transactions; and (iv) explanation of the practical compliance aspects of the rules.

Some candidates were able to recite the transfer pricing rules and pricing methodologies, but struggled to apply these to the facts. In particular, some failed to look at the functions being performed by the different companies. For example, many candidates regarded the main UK trading company as a limited risk manufacturer, ignoring that this company historically did all of the work, and would be the company taking the significant entrepreneurial risk.

## Question 3

This was a computational question and tested a wide range of issues including the recently reformed patent box legislation.

Some candidates failed to recognise that MS Pharma plc is an investment company and incurring expenses of management. In general, most could correctly identify that legal fees and impairment of the connected party the loan receivable were disallowable costs.

On the whole, the tax consequences of granting a short lease were well understood and most candidates also correctly noted that the dividend income was exempt from Corporation Tax, and correctly identified the tax treatment for depreciation, amortisation, capital allowances and the RDEC credit.

The tax computation for WTC Med Ltd was not dealt with very well with very few candidates able to correctly calculate the relevant IP profits. Most identified the general basis for the calculation but could not correctly outline the relevant steps.

## Question 4

This question covered computational aspects of the Corporate Interest Restriction ("CIR") rules and recent changes to how tax losses can be utilised. The final section tested knowledge of transfer pricing issues relevant to inter-company financing.

The CIR aspects of the question were handled well by most candidates who were able to correctly identify the different stages of the calculation of the interest restriction. Few could identify the need to gross-up the withholding tax credit and factor this into the calculation of tax-EBITDA and Adjusted Net Tax-Interest Expense (ANTIE). The calculation of the fixed and group ratios was dealt with well and most could identify the benefit of electing into the group ratio.

The majority of candidates identified how best to utilise tax losses, stating the different forms of loss relief available and the current restrictions on utilising brought forward losses.

Almost all candidates explained the significance of the transfer pricing rules in relation to inter-company financing, the concept of thin capitalisation and the need for benchmarking. A number of candidates also explained different types of transfer pricing methodologies and the potential for securing Advance Thin Capitalisation Agreements with HMRC.

#### Question 5

This question was set in the context of two restructuring transactions that were designed to be within the scope of the value shifting and depreciable transaction rules. As such, the transactions were contrived.

Generally candidates performed well; they were able to analyse the steps undertaken and explain how the chargeable gain rules applied. The most common mistake was concluding there would be a degrouping charge arising in the first scenario, despite the two companies leaving together. There was also a degree of confusion over how the distribution in liquidation should be treated, with only a few candidates able to explain the resulting chargeable gains calculation.

There was a good level of awareness of the value shifting and depreciable transaction rules, with many candidates identifying that the basic treatment was too good to be true, such that the anti-avoidance rules would be in point, but there was some confusion as to which of the two sets of rules applied in each scenario, which led to slightly muddled answers.

#### Question 6

This question required knowledge of deferred tax and the tax treatment of long-funding leases. Most candidates were able to identify the lease of the industrial machinery as a long-funding lease and explain the relevant conditions. Some candidates missed this issue and outlined the tax issues that applied to operating leases and finance leases.

A minority of candidates correctly identified the correct rate of writing down allowance. Most noted that the interest on the lease rental payments is tax deductible.

The calculation of the deferred tax liability on the lease was dealt with reasonably well by most candidates although almost all excluded the lease liability from the calculation. Some candidates did not apply the relevant Corporation Tax rate to the temporary difference.

Almost all candidates understood in what context a deferred tax asset may arise, but few could explain the circumstances in which such an asset can be recognised on the balance sheet.

### **Domestic Indirect Taxation**

#### General Comments

Overall, this was a disappointing session with a very low pass rate. Many candidates simply weren't prepared missing even very straightforward points.

#### Question 1

This was a question about the VAT implications of the development of new student residences including demolition of a dilapidated building.

On the whole this question was well answered with some good suggestions for planning, for example using a subsidiary company structure to make a zero rated first grant. Few candidates picked up on the dwellings versus RRP point, with the majority assuming the building would qualify as RRP use. Many candidates missed some easier marks stating that the rental income would be exempt and so there would be no input tax recovery. Also few candidates considered the liability of the income from the gym.

### Question 2

The hotel in this question had various income streams to be considered as well as input tax recovery, including in relation to free accommodation provided to employees and coach drivers.

Candidates did not score well on this question, with many not attempting elements of the question at all. Very few candidates picked up on the relevance of the VCS case and the impact on input tax recovery of outside the scope income. Also few candidates commented on the input tax recovery issues raised by any of the income streams discussed in the question. Many candidates discussed the car parking overpayments case law, although overpayments were not raised in the question.

### Question 3

A question about a bank acquiring a banking platform for in-house development, either by acquiring a business or buying shares in a company.

Some candidates answered this question extremely well, but most did not. Many candidates did not raise the comparison with the IMSL case due to supplies being made only within the VAT group after the acquisition. Many candidates focused on VAT recovery on acquisition costs and the associated case law, despite acquisition costs not being raised in the question. There was also a tendency to conclude that VAT on acquisition costs would be recoverable, despite this being a bank with very low recovery rates.

### Question 4

A question about an expanding plumbing business reaching the VAT registration threshold as a result of new contracts for work on “new build” houses and a care home (a relevant residential use building), to be undertaken alongside its existing work for private householders. The question also raised the issue of “pre-registration” input tax.

Most candidates recognised the scope for zero-rating the work on new houses and the fact that washing machines and dishwashers were not “ordinarily installed”. Few recognised the scope for zero-rating installation services when supplying the machines. Many candidates covered the need for certification on work on the care home and the fact the zero rating would not extend to services supplied by sub-contractors.

Disappointingly, some candidates suggested that sub-contractors working on the dwelling would not be able to zero-rate their work.

A significant number of candidates failed to calculate the expected registration date correctly – a wide range of suggested dates were put forward, both before and after the date suggested by the turnover information given in the question. Some candidates suggested immediate (voluntary) registration, but failed to take account of the impact of that on work undertaken for householders.

Many candidates recognised the scope for recovering “pre-registration” input tax, but errors in calculating the expected registration date led to errors on conclusions about the availability of relief for pre-registration services. Most candidates did not recognise that the services related to a pre-registration bad debt would have been “consumed” before registration.

#### Question 5

A question about compliance failures, disaggregation and low mark-ups disclosed by a visiting officer’s scrutiny of a pub’s records. In general, this question was not well answered.

Some candidates recognised the scope for arguing that the death of the publican’s father/book keeper might offer a “reasonable excuse” for some of the failure to file returns and pay VAT due. Many suggested the use of “annual accounting” to assist with the compliance burden but did not point out that this did not remove the need for record keeping to facilitate the completion of the annual return. Despite the fact that the pub’s turnover was well over the threshold for it, some candidates suggested the use of the flat rate scheme.

Some candidates appreciated that an aggregation direction would have only a future effect but, disappointingly, many assumed that it would have effect retrospectively and went on to calculate an assessment and potential penalties on this basis. One or two candidates mentioned “abuse” and “partnership”, but did not really explain how that would affect the position. Quite a few candidates appeared to consider that once HMRC raised the aggregation issue, a retrospective assessment was inevitable and failed to consider any arguments against this.

The majority of candidates appeared not to fully understand the officer’s potential mark-up assessment and many did not address the issue of whether it was a representative period or any potential flaws in the calculation (e.g. increased wastage due to inexperienced temporary staff, probable changes in stock levels, etc. Some suggested that no VAT would be due on stolen takings, while others suggested that it would be due on drinks given away during this period.

#### Question 6

A question about stamp duty, VAT and SDLT issue resulting from a restructuring of a business. Most candidates attempted this question – with mixed results.

Most candidates recognised the prospect of SDLT group relief being available for the intra-group transfers and many identified the risk of the loss of that relief. A number of candidates used SDLT rates for dwellings (including the higher rate charge for certain dwellings), when the question made clear that only commercial properties were involved.

Several candidates considered the SDLT liability of third party purchasers, something that was not relevant to the question.

Some candidates did not identify the opportunity to VAT group all the new companies and while points were given where this strategy was analysed correctly, this complicated the answers given unnecessarily. A number of candidates who assumed that all of the group properties were opted consider the scope for “de-opting”, but did not always address the partial exemption consequences of that.

### **Cross Border Indirect Taxation**

## General Comments

Overall, performance on this paper was reasonable although as is often seen, performance on the Customs Duty question was poor.

### Question 1

This question dealt with importation, restoration and sales as principal and agent of classic cars.

Generally this was well answered with the strongest answers showing clarity between temporary movements for processing (Ireland) and requirements to register for VAT in other member states (France) distinguishing top from average candidates. There was poor coverage of the restoration work before import being required to be included in the valuation.

### Question 2

This question concerned the place of supply of leased equipment and identification of which establishments were making/receiving international construction supplies.

This was a challenging question with many facets around establishment and whether VAT registered or not. Better candidates provided reasons for their advice rather than bland statements such as “no reverse charge”, “registration required in UK” etc. Many candidates were not sufficiently clear in which cases Routaire should become registered in the UK, when they should charge French VAT to their US customer and in which circumstances the value of the supply would count towards the customer’s VAT registration threshold.

### Question 3

This question was about pre-acquisition due diligence on the operation of MOSS and distance selling by target Luxembourg businesses.

As the question was wholly concerned with due diligence, those who offered practical advice to manage risks scored most highly. Many candidates did not recognise the context of the advice and wrote as if to a business capable of changing the past tax treatment. A large proportion of candidates imputed output tax on the 3 months “free” membership incentive and many ignored the fact that 65% of customers went on to purchases on-going supplies without cancellation. Gifts rules were readily recognised, but remedies varied from disallowing input tax/charging output tax through MOSS/separate registration. Distance sales were well handled by most candidates, but the planning point of deferring a small proportion of sales to the following year was missed by most.

### Question 4

This question sought advice on proposals to monetise a photograph image archive held by a de-registered UK business through IT channels engaging EU consumers.

Candidates readily recognised the electronic supply of services rules and requirements for MOSS and better candidates expanded on the ability to continue to not charge UK VAT whilst returning VAT on EC sales. Some candidates appeared to lose sight that the client was not VAT registered and provided answers to reverse charge and TOGC aspects as if registration existed. Surprisingly few candidates referred to rebuttable evidence for electronic supplies nor did they identify the need to treat non-business by an EU business use differently to a B2B business use supply.

## Question 5

This question required candidates to advise their client on which export declaration procedure should be used.

This question was often left until last and scores were generally low. Based on the answers given, any questions on exports would have scored low marks as the candidates are clearly very confused about both exports and the use of Customs agents.

Many candidates talked about the need to apply for an EORI, which British Stuff would clearly already have. Many candidates mixed the terms imports and exports within their answers e.g. talking about exports but describing goods entering the EU.

Many talked about the need for a deferment account and guarantee for export to defer the Duty (or often only the Import VAT). There are no export duties.

Candidates clearly do not understand the different Customs systems and procedures or even what are systems and what are procedures. The terms CFSP, NES, NCTS, EAD were used almost interchangeably. Several candidates thought that NCTS was the export system.

Several talked about the need to keep records as if the Customs agent would previously have kept these (including invoices for the goods sold) on behalf of British Stuff.

Candidates did not understand the difference between Entry / Exit Summary Declarations and Customs Declarations. These may be combined for exports but are not interchangeable.

Candidates did not understand the differences between SDP, EIDR and full declarations from the point of view of the information provided to HMRC. They do not understand that all ultimately require more or less the same information but it is provided at different times.

## Question 6

This question tested the ability of candidates to calculate Customs Duty, Excise Duty and Import VAT due on imports to free circulation and to give advice on some Customs Valuation questions.

The marks were generally high on the calculation part of the questions but not so high on the written part.

Several candidates got full marks for the calculations. Others could have scored more marks by showing their working: follow-through marks can only be awarded where the working is shown. Some candidates simply gave amounts for the Customs Duty, Excise Duty and Import VAT.

A lot of candidates failed to deal with the charge for freight within the EU properly. The Import VAT part of the calculations was a problem for quite a lot of candidates: some omitted the Customs Duty from that part of the calculation; some calculated the Import VAT on the goods and then charged Customs Duty on that.

The hand rolling tobacco calculation caused most problems. Clearly many candidates are confused by the interactions between Customs Duty, Excise Duty and Import VAT. Many did not know how to

calculate the Import VAT. Those who did calculate it often did not include the value of the goods in their calculation. Others omitted the Excise Duty from their value for VAT.



## **APPLICATION AND PROFESSIONAL SKILLS**

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

#### General Comments

The question concerned the structuring of a new business venture between two friends in the property maintenance sector. They were looking to start and develop the new trade and had asked for advice on the best structure particularly in view of their intention to involve their wives and children and the creation of a valuable business for the future.

The question also asked for advice concerning the workers who they intended to use to meet the terms of the contract with the customer, Nutville Properties Ltd.

The topics being examined lay at the core of the OMB syllabus and are an area commonly met in practice on a very regular basis in terms of any new family business.

#### Structure

Candidates were required to draft a report and very few had any problems in this regard and clearly identified the required structure. Generally, reports were well laid out, clearly referenced and were easy to follow from a client's perspective. A handful did however present reports that had no format or clear flow of advice.

#### Identification and Application

There were five clear areas to be identified and to be applied to the question:

- The structure of the new venture
- The tax implications of the structures identified
- The extraction of profits from the preferred structure
- The ownership of the preferred structure
- Advice regarding the status of the workers

As regards the choice of the structure the majority identified that there were three options; a partnership, a limited liability partnership or a company. Many clearly detailed the pros and cons of each option although a significant number focused solely on the limited liability point ignoring everything else. In addition, whilst detailed computations were not required, few gave any form of illustration of the comparison of liabilities under each option simply stating the differences. A client would commonly like to see the potential savings illustrated. Similarly, the funding of the start-up was often not commented on.

Again many summarised the implications of each structure although a common problem area was on the issue of VAT. Most said voluntary registration would be a good idea in order to recover the VAT on inputs on the basis that Nutville would be able to fully recover the VAT charged in any event. This would of course not be the case for the maintenance of the residential properties and the VAT would therefore need to be factored into the cost of the services to be provided.

A few mentioned the possibility of starting as a partnership to utilise any initial losses followed by an incorporation into a limited company. Whilst not wholly unreasonable, few commented on any commercial contractual implications of having two different entities i.e. contracts needed with partnership in first instance and then new contracts subsequently with the company.

Most identified the benefits of spouses and children owning shares and dealt with any CGT and IHT issues or the alternative of commercial rate of salary. A large number did miss the two-year point for Business Property Relief.

The area of the status of the workers was very well answered by all, with the majority of candidates identifying the risks and summarising the various factors to be taken into account. Only a handful however commented on the additional cost that would need to be considered in respect of any employers NIC.

#### Relevant Advice and Substantiated Conclusions

In respect of the best structure most candidates recommended a company with a mix of shareholders from the two families. Virtually no one however advised anything other than a 50:50 split and made no reference to the likely level of input and if this needed to be discussed between the two friends.

Again many candidates suggested the extraction of profits by way of small salary plus balance by way of dividend but few commented on the benefit of retaining funds in the company, at an effective reduced 19% cost, to grow and develop the business.

Many advised that the general workers should be taken onto the payroll and be taxed as employees with employers NIC liability although few mentioned pension or minimum wage issues. A relatively large number however advised that the terms should be changed to avoid employment failing to see the commercial importance of having an available pool of workers to fulfil the terms of the contract.

An overriding general comment would be that whilst the tax issues were dealt with on a reasonable level it would have been really beneficial if the candidates could have also incorporated some commercial issues and comments into their advice.

#### **Taxation of Individuals**

##### General Comments

This scenario revolved around family tax planning. The gift of a commercial property or shares from George and Rachel to their daughter required consideration of the potential Income Tax, Capital Gains Tax, Inheritance Tax and Stamp Duty consequences and their interaction. The changes in George and Rachel's circumstances, and George's desire to invest in his pension, necessitated consideration of their overall tax position going forward and how best to hold their assets.

Overall, the question was answered well. Candidates showed good skills in identifying the relevant issues and gave advice and recommendations based on the issues identified.

##### Structure

Most reports were laid out clearly and logically, following the format of the question, which helped to ensure that no area was missed.

The most common issues with structure were that quite a few candidates set out the report in a similar format to an email, just with 'Report' written at the top, and candidates' writing within the report occasionally strayed into note format.

##### Identification and Application

### *Gift of Property or Shares*

Almost all candidates discussed the CGT and IHT implications of the gift of either asset, weighing up the tax implications of each and then coming up with a recommendation based on their discussion. Stronger candidates additionally considered the income tax implications for both the donor and the donee, and also stamp taxes. Both entrepreneurs' relief and business property relief were dealt with well on the whole. Weaker candidates were often let down by a lack of detailed knowledge of CGT reliefs so were unable to differentiate between the available options. Some candidates tended to include irrelevant information, for example talking about how charging rent on the property in the past would have impacted entrepreneurs' relief, which was irrelevant as rent wasn't charged.

### *Income Tax Planning*

Most candidates considered Rachel and George's overall income tax position as a couple and identified that income could be directed to George in order to make use of his basic rate band. There was also good discussion of the opportunity to make full use of both Rachel and George's dividend and savings allowances.

### *FHL and Pension Contributions*

Candidates were very aware of the rules to be met for a property to qualify as a FHL, and also of the capital gains tax advantages of FHL's, but surprisingly few candidates realised that FHL profits can be split in any way that the parties agree, which resulted in many candidates recommending that the property should be transferred between Rachel and George, which wasn't necessary. Pension issues and restrictions on George's contributions were identified by most candidates, and it was clear that candidates have good knowledge of tax issues relating to pensions.

### Relevant Advice and Substantial Recommendations

#### *Advice on whether to make a lifetime gift of property or shares*

Candidates were clearly aware of the need to produce recommendations and advice. As reports were, on the whole, well laid-out, conclusions followed naturally and all candidates gave recommendations covering this area. Sometimes, though, recommendations were added to the end of the section in one sentence accompanied by very little reasoning. It is important that recommendations given are substantiated.

#### *Advice on the equalisation of income to reduce George and Rachel's overall tax liability*

Although candidates often did not realise that FHL income could be allocated to George without transferring ownership of the property, they were nevertheless able to make good recommendations in this area, with several valid options discussed to back up recommendations.

#### *Advice on the making of pension contributions*

Performance on this element was reasonable.

## Human Capital Taxes

### General Comments

The scenario required candidates to review two options for a new incentive scheme designed to retain and motivate the senior staff of ASU Ltd in the run up to a planned company sale. One option was an EMI share option scheme. The other was a cash-based scheme. The CEO of the company had requested both comments on each scheme and a recommendation as to which he should implement.

Candidates showed good knowledge of the employee income tax and NIC implications for both types of scheme. However, many candidates did not apply that knowledge to the business situation of their client.

### Structure

Candidates were required to produce a report. Most candidates presented their answers in an appropriate format with an introduction, an executive summary and clear headings throughout. Good candidates produced answers which had a logical flow leading the client to understand the rationale for their recommendation.

### Identification and Application

#### *Applicability of each scheme to client objectives*

Very few candidates made a clear attempt to assess the two options presented against the core objectives stated by the client. A surprisingly large number of candidates wasted a lot of time describing other types of remuneration schemes that the business might want to consider despite the client request being for advice on these two schemes specifically.

#### *Dilution of share value under the EMI scheme*

Many candidates did not address this topic at all. Those that did made sensible suggestions about how to limit the impact of share value dilution to the CEO's share holding as requested.

#### *Practical aspects involved in the implementation of an EMI option scheme*

Overall most candidates answered this section well picking out most of the administrative requirements of operating an EMI scheme. It was disappointing that few candidates discussed the challenges of valuing a minority shareholding in a limited company.

#### *Assessment of the eligibility of ASU Ltd and key staff members to EMI option scheme tax benefits both now and in the future*

This topic was well answered. All candidates were able to state the eligibility conditions. Good answers applied these to ASU Ltd and directly referenced information from the question to support their analysis. Many candidates spotted that ASU Ltd may cease to be eligible for the EMI scheme due to growth although a large number incorrectly considered that this would be a disqualifying event.

#### *Tax treatment of each suggested remuneration scheme for employees and ASU Ltd*

All candidates were able to describe the tax and NIC implications for each scheme. However, a high proportion of candidates did not correctly describe the interaction between the EMI rules and Entrepreneur's relief. Additionally, a significant number of candidates spent a long time detailing the

rules for the taxation of restricted securities. This showed a lack of understanding of the difference between an option with restrictions on when it can be exercised and a genuine restricted security.

#### *Interaction of each suggested remuneration scheme with the plan to sell ASU Ltd*

Very few candidates addressed this topic at all.

#### Relevant Advice and Substantiated Recommendations

##### *Recommendation of which remuneration scheme should be adopted*

The best answers contained a clearly signposted recommendations section summing up the pros and cons of each option and making an unambiguous recommendation of which scheme to adopt.

While the model answer recommended the EMI scheme, answers which recommended the cash-based scheme also scored well if the recommendation was accompanied by a clearly explained rationale.

A worrying number of answers failed to make a recommendation at all. A candidate will not be able to pass this section if they do not make a recommendation when asked to by their client.

##### *Recommendations related to practicalities of scheme implementation*

Several candidates made sensible recommendations around setting the option price, supporting employees with cash flow issues on exercise, and ensuring that employees meet the work time requirements for scheme eligibility.

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

##### General Comments

This question related to a trust which primarily held shares in an unquoted trading company. The trading company shares qualified for Business Property Relief (BPR) but due to a future strategy change this relief would soon be lost.

Overall, most candidates identified that the loss of BPR was the main issue. They also successfully identified that the trustees had the power to advance capital to the one remaining beneficiary to ensure his distribution benefitted from BPR.

A concerning number of candidates included a wide array of comments on unrelated areas ranging from Annual Tax on Enveloped Dwellings to Purchase of Own Shares rules. The inclusion of these comments not only wasted valuable time but also makes the report, as a whole, very confusing to read and would not enable a client to easily digest the recommendations even when they were sensible.

##### Structure

The vast majority of candidates, although not all, produced an answer in an appropriate report style with a clear summary, headings and clear recommendations. Most answers were also logically presented and structured enabling them to be easily digested.

It was obvious to see that most candidates had spent time planning and this did generally result in a clear answer.

##### Identification and Application

### *Trust Identification*

The majority of candidates correctly identified that the trust was an 18-25 trust. It was disappointing that some candidates did not explain this concept at all in their report when it was clear from the question that this required explanation as the client believed the trust to be an Accumulation and Maintenance trust.

It was also disappointing to note the range of incorrect taxation implications stated for this type of trust as this was fundamental to the report.

### *Business Property Relief*

This area was generally very well identified with some excellent responses relating to the loss of BPR. Well prepared candidates made detailed comments which set up the rest of the report. Very few candidates considered that the trustees may choose to sell the shares.

### *Trustee powers*

Very few candidates explained in detail under what powers the trustees are able consider advancing distributions to David. A concerning number of candidates incorrectly identified the letter of wishes as the document conferring this power to the trustees.

### *IHT and CGT implications*

These areas were generally well identified. The Capital Gains Tax hold over relief was straightforward but this was well answered. Following on from the generally strong identification of the BPR implications the overall IHT implications were well explained.

Few candidates commented on Chloe and David's respective plans when identifying the tax implications. The majority focused only on taxation considerations alone.

### Relevant Advice and Substantiated Recommendations

Generally, where candidates had identified the issues correctly the associated recommendations were made in a clear and concise manner which is good to see.

In the vast majority of papers these recommendations were appropriate.

A minority of candidates failed to make any recommendations regarding Chloe's distribution and there did seem to be widespread confusion over Chloe's distribution and entitlement in general.

Some candidates did not adhere to the 50:50 asset distribution that the trustees had already agreed upon. This often resulted in very confusing and overcomplicated recommendations. Candidates should ensure that they note all decisions already made to ensure they are answering the question set.

## **Taxation of Larger Companies**

### General comments

This question required candidates to write a report about the proposed acquisition of a trading company in administration. The main purpose of the report was to provide a recommendation for the acquisition structure, which involved weighing up a number of conflicting factors, including the ability to access losses after acquisition and the impact of the HMRC enquiry. The question was intended to test the candidates' ability to provide a balanced and well-reasoned conclusion, rather than to identify the one 'correct' answer.

Although the letter from the client referred to two options, acquisition of shares and acquisition of trade and assets, the letter also specifically stated that the client was open to considering sensible alternatives. Many candidates overlooked this, thereby missing the opportunity to discuss the option of hiving down the trade and assets into a new company before acquisition. However, candidates who failed to identify a third option were still able to secure a pass if their analysis and recommendations were of a sufficiently high quality. Questions are carefully worded and candidates need to read these thoroughly.

### Structure

Almost all candidates produced a report using an appropriate format and language. Most candidates made some sort of plan, and consequently had a structure that clearly identified the key issues and laid them out in a logical order. Candidates should ensure that the executive summary is of a suitable length; it should not be a list of bullet points, nor should it simply copy paragraphs from the main body.

### Identification and Application

The identification of issues around the two main acquisition structures and the brought forward losses, and the technical analysis of those issues, was generally handled well by candidates. Common errors in the technical analysis included stating that trading losses would transfer on a transfer of trade and assets to an unconnected company, errors in the calculation of the SDLT on the disposal of properties and leases, and giving wrong filing or enquiry dates.

Where a third option was identified (for example, hive-down into a Newco followed by share acquisition), it was often not given the same level of technical analysis as the two main options.

A number of candidates did not discuss the HMRC enquiry in much detail, despite the significant impact on not just the losses arising in the period under enquiry but also in other periods. Several candidates referred to the enquiry 'affecting' losses but without explaining how.

Disappointingly, few candidates showed an appreciation of the fact that the company was in administration. Some candidates ignored the point altogether, whereas others made some general points without applying them to the situation.

Candidates should be aware that the inclusion of irrelevant information reduces the quality of the report. For example, candidates that wrote sections on the best way to finance the acquisition, with a consequential discussion on the Corporate Interest Restriction regime, ignored the parameters that had been set by the client.

### Relevant Advice and Substantiated Conclusions

Candidates should be on the lookout throughout for any areas where they can provide a recommendation, and when weighing up two or more options, they should aim to provide suitable recommendations under each option.

A common failing was for candidates to analyse an issue well, but then completely fail to mention any recommendations regarding it. For example, almost all candidates provided a good analysis of the 'change in company ownership' provisions, including how SP 10/91 dealt with certain post-acquisition changes. However, many candidates stopped there, instead of advising the client to consider what other changes may arise and to monitor the position as a whole for five years following the acquisition.

The majority of candidates demonstrated sufficient competence when recommending an acquisition structure. As noted above, many candidates considered two acquisition structures without considering sensible alternatives, despite the hint in the question. Candidates who recommended a share acquisition followed by a hive-up of the Danbridges business into Chanman UK Ltd scored some credit, although this post-acquisition restructuring does not quite fit the brief and still leaves the Chanman group open to the commercial risks involved with acquiring a company under enquiry and in administration.

Although all candidates appreciated the importance of the ability to utilise trading losses after acquisition, most candidates failed to then provide suitable recommendations, in particular regarding the 'change in company ownership' provisions and the ongoing enquiry.

Candidates should be warned against a default comment of 'obtain warranties and indemnities' against any potential problem. They are not always the only recommendation, especially in this scenario where obtaining them from the administrator may not be possible.

Within their recommendations, several candidates stated prices at which the Chanman group should acquire the business under the different acquisition structures. The prices often arose from estimates but were presented as facts, and the wide range of recommended purchase prices shows the danger of making assumptions. Whilst useful for quantifying potential tax charges (for example, 'if consideration is X then stamp duty would be Y'), the report should not have been recommending a price, and it often appeared that recommendations were driven by the purchase price, which should not have been the case.

## **VAT and Other Indirect Taxes**

### Introduction

This question required candidates to advise a US group of companies on the UK tax implications of setting-up business in the UK, including acquisition of a London office building, and to make appropriate recommendations on the optimum structure. Key points included: what constitutes a UK tax presence; the VAT treatment of conferences and distance-teaching and their place of supply; and tax treatment of acquiring the new building and its use.

It was pleasing to see that, overall, candidates identified most of the key area and some produced answers which were well-planned and coherent. Candidates were assessed on their performance in three skill areas: structure; identification and application; advice and recommendations.

### Structure



The requirement was for a report intended to form part of the US partner's advice to his client. Some candidates, however, wasted time and effort writing unnecessary emails and covering letters. The report should have been written in the third person, in a style which would be intelligible to the US client (i.e. not assuming too much knowledge and providing, where necessary, a brief explanation of technical points). It should strike a proper balance between a brief and punchy executive summary and the detail required in the body of the report. Greater use of sub-headings and "fingerposts", indicating the direction of travel, would have helped the flow of answers. The phrase "as such", employed by many candidates and followed by a bald statement, is no substitute for a well-reasoned argument and conclusion.

### Identification and Application

This skill was competently displayed. Most candidates showed a good understanding of the liability to UK corporation tax, although some answers would have benefited from a fuller explanation of tax residence and permanent establishment and the different tests which apply for corporate tax and VAT. The relative advantages of a subsidiary structure over a branch structure were generally well identified. Although the suggested solution considered the former structure more advantageous, candidates who recommended the latter were not marked down provided their conclusion was supported by argument.

Candidates showed good awareness of the need to recover input VAT and claim corporate tax deductions on start-up costs. However, a number allowed themselves to be side-tracked into offering lengthy explanations of the Thirteenth Directive VAT reclaim procedure for Phase 1 costs and the VAT registration obligations of a Non-Established Taxable Persons. This was uncommercial (given the short timescale, the likely purchase of an office and the desirability of forming a subsidiary to avoid exposing the US group to UK tax). On these facts, it is unlikely HMRC would have allowed a VAT13 reclaim. Too few candidates advised on the obvious route of voluntary VAT registration. This was one of a number of examples of failure adequately to consider the question 'in the round'.

The tax treatment of transactions between head office and branch and between parent and subsidiary were generally well-understood, as was the treatment of cross-border loans and payment of dividends. Many candidates also alerted the client to transfer pricing and US/UK Double Tax Agreement issues, which was good to see.

Application of the relevant VAT rules to the conference trade was, in many cases, rather superficial and with inadequate consideration of single composite supply issues and the risk of triggering the TOMS rules. Most candidates, however, identified the separate treatment of the Dublin conferences and the need for Irish tax advice.

Candidates demonstrated a higher level of skill in identifying the VAT issues relevant to distance-teaching. Most addressed the separate elements of the supply (in particular, the interactive webinars and printed course material) before concluding the correct analysis was as a single composite supply of an 'electronically-supplied service', recognising that anti-avoidance legislation prevented any form of splitting or value shifting. Most candidates correctly identified the use of the MOSS facilitation procedure. For both conferences and distance-teaching, the rules governing the place of supply were well-understood.

As regards freehold of the new office building, few candidates identified this as automatically standard rated (and not an option for the vendor). However, most candidates correctly identified the different SDLT/stamp duty treatments of purchasing the freehold, as opposed to purchasing the

shares in the SPV, and provided an illustrative computation. Many candidates favoured the lower-risk route of acquiring the freehold (as in the suggested solution); but candidates who favoured the share purchase route were not marked down, provided their conclusion was supported by argument. Some candidates suggested TOGC treatment. This was uncommercial, as it failed to have regard to the factual scenario (i.e. the building was newly constructed, offered with vacant possession and the client would be fully taxable). Candidates identified that if, initially, part of the building was sub-let the option to tax was an issue, but failed to go on to consider issues arising if, subsequently, part was sub-let to the entity carrying on the distance-teaching. Consideration of the availability of VAT grouping and SDLT grouping was generally lacking, as was identification of the corporate tax treatment of letting income.

#### Relevant Advice and Substantiated Conclusions

The performance of candidates in this third skill set was rather disappointing. Many identified the issues and options but 'sat on the fence'. Where recommendations were made, they were often couched in neutral language, or were too timorous. Clients want positive advice on what/what not to do (e.g. set up two UK subsidiaries, one for conferences, one for distance-teaching; register immediately as an intending trader; do not trigger TOMS by offering travel and accommodation; do not fall foul of anti-avoidance rules by attempting to value shift or split the different elements of distance-teaching; carefully monitor customer status and place of belonging; ensure, if purchasing the SPV, adequate warranties and indemnities are obtained; make appropriate and timely elections for capital allowances and options to tax).