

MAY 2020 EXAMINERS REPORT (SESSION HELD JUNE/JULY)

APPLICATION AND PROFESSIONAL SKILLS

Chief Examiner's Comments

Firstly, thank you to those candidates who rose to the challenge of sitting these papers remotely. The Institute was in a very difficult position whereby it was clear that it would be impossible to hold exams in test centres as normal. Equally, it was clear that not holding the exams would adversely affect all those candidates who had been on training courses and studied hard in the expectation that they would be able to sit exams and progress their careers. With the short time available, the only viable option available to us was remote invigilation and capacity for this was such that we couldn't run all papers.

Sadly, the promises of the provider proved to be far removed from the real difficulties some candidates suffered when trying to sit the exams. Whilst the problems became apparent on the first day, they didn't affect all candidates and some did have a good experience of remote invigilation. Where we became aware that individual candidates were unable to sit or it had become difficult to complete the paper, they were allowed to submit an answer as a Word document.

Despite these problems, many candidates did perform well on the papers and interestingly the results for those who successfully sat using remote invigilation and those who submitted a Word answer were not significantly different. As part of our normal procedures, we always review the answers of candidates who are just below a pass. Given the problems this session, we extended this to candidates further away from a pass. As a result, we believe that all candidates who could have passed these papers had it been a normal session have had their answers individually reviewed taking account of any specific circumstances alerted to us and an awareness of comments made in the feedback questionnaire sent to all candidates.

Taxation of Owner-Managed Businesses

General comments

This question focussed upon the tax implications of a shareholder (Andrea Atkins) who, following a disagreement with her fellow shareholder (Bob Bass) over the future direction of their company (A & B Footwear Ltd), was looking to realise her shareholding to provide the required funds to start a new graphic design business.

A purchase of own shares by the company was probably the best route to achieve this, although other options were available, and the question of availability of entrepreneurs' relief should have been discussed as the company had significant levels of surplus cash. The high level of capital expenditure which was needed to establish the graphic design business would have given initial losses based on projections and so it is likely that a sole trade initially would be beneficial due to loss reliefs but with the possibility of subsequently incorporating. Discussion of cash basis and VAT registration issues were relevant in this context.

Overall, the question was well answered with candidates identifying the relevant issues and giving applicable advice. As usual, some candidates are still failing to give advice even when all relevant issues have been covered.

Structure

To answer this question, the candidate was required to draft a report. No serious problems were identified with regards the structure of the reports drafted. In all cases they were properly headed and structured including an introduction, appropriate executive summary and appendices.

Identification and application

General options for sale of shares

Most candidates identified that the two main options for Andrea realising her shares were a direct sale (to Bob) or a company share buy-back.

However, quite a few candidates' answers featured largely irrelevant discussion of such capital gains tax reliefs as gift relief (Andrea required maximum cash and could not therefore gift her shares) or rollover relief (shares are not qualifying assets for this relief).

Review of tax implication of purchase of own shares

Most candidates identified the difference between the normal income distribution treatment and the conditions required to create a capital distribution instead. The importance of timing the company buy-back after 9th July 2020 was also recognised. This was to ensure that this would be treated as a capital distribution attracting a marginal tax rate, with business asset disposal relief (formerly entrepreneurs' relief), of only 10% compared to an income distribution with a marginal tax rate of 38.1%. There was good discussion of the specific requirements needed for capital treatment to be applicable.

Basis period and method of calculation of profit

With regards setting up Andrea's new business most candidates identified, based on the forecast figures provided, that the annual investment allowance available would create a large trading loss for the initial period.

Use of losses by the individual

Candidates were expected to consider all options for utilising the identified trading loss and advise on the best route for the client. Unfortunately, in this area too many candidates failed to identify the relevant relieving options and their analysis was often too superficial and lacking in any conclusion. Quite often candidates did not realise that opting for the cash basis of accounting greatly restricted how trading losses could be used.

Very few candidates considered whether the availability of the trading loss impacted in any way the decisions that they had come to regarding how Andrea's shares would be realised.

Other issues including VAT

Candidates were also expected to identify and advise upon such areas as whether Andrea should voluntarily VAT register and that a future incorporation of her sole trade business may be beneficial. Many candidates were able to deal with these matters competently although some did not pick up these points.

Relevant Advice and Substantiated Recommendations

Advice on sale of shares

Most candidates concluded that a purchase of own shares after 9th July was the best option for Andrea. The candidates who were able to demonstrate the greatest competence in this area were those who went onto provide advice regarding linking the share sale with Andrea's aim of producing sufficient post tax funds to start her new business and/or also discussing the fact that a direct purchase by Bob may be difficult for him in terms of having or obtaining sufficient funds. Quite often a discussion of these matters was unfortunately lacking or completely missing.

Advance on use of accrual basis/VAT registration

The candidates who showed the greatest competence in this area were those who realised that a sole utilising accruals accounting (as opposed to cash basis) presented the greatest flexibility regarding how this loss could be relieved and then went on to identify the full range of loss relief options and apply a reasoned analysis to select the preferred relief option. However, it was an area that was not well dealt with overall.

In relation to the VAT registration, many realised that there was no real commercial disincentive to an early VAT registration to permit the recovery of a large amount of input VAT (as Andrea's customers were most likely going to be VAT registered themselves and could therefore recover any VAT that was going to be charged) and in the latter case that this may provide some tax and personal risk protection benefits going forward.

Use of loss

As noted above, this section was not well done with many candidates failing to make a firm recommendation of the best option to take. Although use of early years' loss relief was likely to give the best immediate benefit, credit was given for any recommendation backed up by good reasoning.

Advice on overall strategy

Candidates were expected to recommend starting as a sole trade but identify that going forward that a limited company was potentially going to be a better option. This was on the basis of greater flexibility in terms of utilisation of losses but presenting tax savings and limited liability once profits were generated. Those who recognised these areas dealt with them well but it was an area which was overlooked by many candidates.

Taxation of Individuals

General Comments

The question sought the tax implications of raising funds from two different sources, and the best way of structuring of a married couple's tax affairs going forward following changes in their circumstances.

The option to raise funds from Jason's pension required consideration of the lifetime and annual pension allowances and also the impact on the level of future contributions. The possibility of re-mortgaging a property required consideration of whether raising funds to build an extension to the

main residence would be allowable for the rental business. Candidates then needed to consider how future income after tax and fixed expenses could be maximised in light of the employment offers available to Jason, the additional expense of looking after Irene's parents, and the couple's joint ownership of two rental properties and differing income levels.

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

Reports were laid out clearly and logically, almost all candidates split their reports into three or four sections to cover each area separately, which helped to ensure that all issues were covered. Some candidates included very long disclaimers at the start of their reports; there is no need to go overboard with this.

Identification and Application

Restriction of Jason's Personal Allowance

Candidates realised that Jason would lose the personal if his income was above £100,000, resulting in a 60% marginal rate of tax on the additional income from Absolute plc if the higher salary was taken. Candidates who scored well took this through and calculated the impact of this high tax rate – i.e. that Jason would only receive 38% of any employment income over £100,000, and would pay tax on rental income in this bracket at a rate 40% higher than Irene. Quantifying the possible costs and savings enabled candidates to then go on and give good advice.

Forfeiture of shares

If Jason forfeited his shares, he would receive cash of £2,500 compared to their current market value of £21,000. The key to this part was to compare the possible loss of £18,500 (on the assumption that the share price would be at a similar level in three years' time) with the savings Jason would make by leaving Absolute plc now. The possibility of using the capital loss to reduce tax on the future sale of the rental properties also needed to be taken into account. Other issues, such as the amount of tax already paid when Jason was awarded the shares, were not relevant as they were not going to change under either option.

Taking funds from pension

The fact that Jason's pension was close to the Lifetime Allowance was discussed well. Fewer candidates considered the potential reduction in the Annual Allowance if Jason vested funds in his pension.

Issues relating to PPR relief

The extension being built could potentially have an impact on the availability of PPR relief, as the extension would have its own kitchen and bathroom. This was a grey area which not all candidates discussed, those who did generally concluded that there would be no impact on PPR relief, there were some good points made.

Rental Properties

The restriction of mortgage interest relief was well considered, but the 25% mortgage interest relief currently available was included in calculations by many candidates, which wasn't relevant as the relief will be 0% in the period covered by the planning. Fewer candidates realised that the interest on additional funds raised would not be allowable, as the additional borrowing was not for the rental business and exceeded capital at commencement.

There was good discussion and consideration of transfer of properties from Jason to Irene to reduce tax, including some good points which were not in the model answer, such as whether Irene would be granted the mortgage on the whole property herself, given her level of income, and the possibility of using any additional funds taken from Jason's pension to pay down the mortgage prior to the transfer.

Relevant Advice and Substantiated Recommendations

Jason's employment options

Most candidates concluded that Jason should take the job with Relative. Some made the case that Jason should remain with Absolute; credit was given provided the recommendation was backed up by good reasoning. 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.

Raising funds through pension or mortgage

Most candidates concluded that money should be taken from Jason's pension fund because there was no immediate cost to doing so and because Jason's pension fund was close to reaching the Lifetime Allowance. Good candidates also linked this recommendation with Jason's choice of employment, and the pension contributions available under the two job offers.

Minimising tax on rental income

Various options were possible between transferring both properties to Irene, just one property, or portions of properties. Good candidates considered the future sale of the properties and the opportunity to use both Jason and Irene's annual exempt amounts, Jason's loss on his shares, or the possibility of selling the properties in different tax years.

There was some tendency to get bogged down in consideration of whether the properties were owned as joint tenants or tenants in common, and some misunderstandings over the use of Form 17, which simply informs HMRC of the share each spouse holds in the property, rather than changing their interests in itself.

Human Capital

General Comments

The scenario considered a UK company about to purchase another entity in Switzerland. One of the Swiss employees, Jack, was a UK national working in Switzerland who wanted to relocate to the UK. The UK company was considering the merits of Jack being seconded from the Swiss company whilst his family remained in Switzerland or for Jack's employment to start immediately.

Candidates were required to comment on the secondment versus the immediate employment options and also to consider the impact of where a bonus should be paid. Jack had also raised comments

about the elements of his package and made some requests for housing, social security and where his bonus might be taxed. Details of historic travel patterns were also provided to help the candidates comment on whether there might be any exposure for Jack or his Swiss employer for past periods.

Overall, candidates performed well on this paper and demonstrated that they were able to absorb the facts provided, understand the nuances of the case, identify the issues and provide recommendations.

Structure

Overall, the structure of scripts by candidates was to a high standard including an introduction, background, executive summary and the provision of caveats around the use of the advice.

As the scripts were typed it was clear candidates were able to better format their answers compared to prior years' APS HC papers. There were some candidates who repeated sections of their responses by copying and pasting earlier sections which made analysis of the two options more cumbersome than necessary.

Identification and Application

Residence position for Jack and the income which is liable to UK tax.

Most candidates were easily able to spot the requirement to analyse Jack's residence status and correctly identify his residence position for prior years as well as the current and future based on his travel pattern and connections to the UK. As a result, the majority of candidates were also able to correct explain what income would be liable to UK tax.

PAYE requirements for the business.

Most candidates were also able to accurately assess whether the UK business has an obligation to operate PAYE and how income should be liable to UK tax.

The more capable candidates were able to correctly assess whether the Swiss employer had a PAYE obligation in the UK; Jack continued to work for his Swiss employer in the earlier periods spent in the UK and so had no employer PAYE obligation. Some candidates struggled to understand that the UK PAYE obligations are only relevant where an employee works "for" a UK business. As a result, some incorrectly assessed the Swiss employer had a PAYE obligation for earlier years by considering it to have created a permanent establishment. It was clear from a few scripts that some candidates felt that a modified payroll was needed; in this scenario, a modified payroll was not applicable as Jack was not subject to tax equalisation.

Social security position

Most candidates accurately commented on the social security position and the majority were able to identify the need for an A1 certificate, however, only the very strongest candidates were able to identify all the aspects of the social security intricacies including multi-state working and a multi-state A1 needed after Jack became a full time UK employee.

Treatment of the income items in each scenario including bonus and expenses

The vast majority of candidates were able to accurately identify the benefits in kind and the way these could be provided more efficiently bringing in home leave, temporary workplace relief and relocation exemptions.

Risk of PE in the UK

Most candidates were able to identify that there could be PE and transfer pricing risks and there appeared to be a good awareness of the corporate tax issues that a PE would create. A large number of the better candidates also went on to identify issues relating to group relief, CFCs, VAT implications which was excellent and not areas which had been included in the model answer.

Secondment agreement, intercompany agreement or loan agreement

Only a very small number of candidates identified the need for an inter-company agreement to be put in place to capture the terms of the secondment and how costs would be charged, a formal loan agreement for the loan of the UK or a secondment agreement to ensure all aspects of the arrangements were documented and clear for Jack and the companies.

Relevant Advice and Substantial Recommendations

Employment in the UK v secondment from Switzerland

The majority of candidates were able to weigh up the advantages and disadvantages of the options and provide advice about whether the secondment or immediate employment would be the better route, most giving an opinion as to which route was recommended. The better candidates were more thorough about the reasons why this route was chosen, providing calculations and practical advice about why the secondment was better than the employment.

Expenses and benefits to be provided

Whilst many candidates were good at identifying the alternatives for the benefits in kind, very few made actual recommendations as to what the company should do in this area.

Social Security position

Social security again was handled well with the better candidates being very clear about the need for an A1 certificate. As mentioned in the identification section for social security, employees recommended an A1 for the secondment period but did not necessarily recommend one if Jack was employed in the UK or comment on whether a retrospective A1 could have been applied for earlier periods.

Bonus

The bonus position tended to be discussed well during the identification stage but it was only the better candidates who actually made a recommendation for the bonus to be paid in Switzerland or split between UK and Swiss payrolls. Some poorly performing candidates ignored the bonus element of the question completely.

PE risk and documentation

Whilst the majority of candidates comments on the risk of a PE only the more proficient candidates recommended a review of the PE position for the Swiss business in the UK.

Inheritance Tax, Trusts & Estates

General Comments

This question required candidates to produce a report advising the client on three different issues:

- 1) The proposed transfer of unquoted company shares by the client to her daughter, either personally or from an existing trust.
- 2) The transfer of a residential property or cash to her son from the trust in two years' time.
- 3) The implications of the client selling her main residence and moving into a property owned by her daughter and funded by a gift that the client had made to her several years ago.

It was pleasing to see that most candidates were able to identify the basic Capital Gains Tax (CGT) and Inheritance Tax (IHT) issues and reliefs available on the transfer of shares from the client to her daughter and from the trust. In comparison, many candidates struggled to correctly explain the CGT consequences of the transfer and sale of the trust residential property. Most did however identify the Pre-Owned Asset Tax (POAT) implications of the final issue raised by the client.

The main area in which candidates let themselves down on this question was failure to consider the impact of the advice they provided on the trust's cash fund as stipulated by the client and also failure to take into account that the sale of the trust property would trigger the payment of the remaining IHT instalments by the trustees.

Structure

Nearly every candidate who attempted this question produced their answer in the format of a report and included a suitable introduction, executive summary and dealt with each issue in turn.

Identification and Application

Direct gift of shares in Lewis Timber Supplies Ltd from Jennifer to Laura

Most candidates were able to identify the CGT implications and correctly calculate the capital gain arising on a direct gift to Laura and the majority also were aware that holdover relief was available on the gift. The IHT issues were also covered by most candidates and whilst many correctly stated that 100% BPR could be claimed on Jennifer's shareholding, very few candidates explained the relevant BPR conditions.

Transfer of shares in Lewis Timber Supplies Ltd to Laura from the trust

The CGT and IHT aspects of the transfer of the shares from the trust were also dealt with fairly well by most candidates. However, quite a few did not use the correct base cost for the trust's shareholding in their CGT computations, as they failed to take into account the second claim for holdover relief referred to in the question.

Impact of a transfer of shares to Laura on the trust's dividend income

Despite dealing with the CGT and IHT aspects of a transfer from the trust reasonably well, it was very disappointing to note that nearly half the candidates did not consider that a transfer of half the trust's

shareholding would lead to a loss of half of its dividend income, meaning that the IHT instalments would have to be partially settled from the trust's cash fund. This would have depleted the trust cash reserves against the Trustees wishes.

Appointing 3 Oaklands Avenue to Anthony from the trust

On the whole, most candidates were able to explain and calculate the IHT exit charge that would arise on the appointment of the property to Anthony in two years' time. However, the CGT implications of the appointment from the trustees were not dealt with as well and many candidates appeared confused over the interaction of the main residence exemption and holdover relief. In addition, many candidates also incorrectly claimed letting relief in their computations.

Too few candidates identified that the appointment of the property out of the trust would trigger payment of the remaining IHT instalments, resulting in the cash fund being depleted.

Sale of the property by Anthony in two years' time

There was a similar level of confusion in respect of the CGT implications of Anthony selling the property personally following the transfer from the trustees, particularly the availability of the main residence exemption once more. It was also very surprising to see that only a handful of candidates suggested the simple tax planning idea of Anthony transferring the property into joint names with his wife prior to the sale to utilise her CGT annual exemption.

Sale of 3 Oaklands Avenue by the trustees and appointment of cash funds to Anthony

The explanations provided of the CGT and IHT consequences of a sale of the property by the trustees followed by the appointment of cash to Anthony were quite poor. CGT computations were incorrect in many cases as letting relief had been claimed and the main residence exemption was incorrectly calculated. In addition, when calculating the IHT exit charge on the distribution of cash from the trust to Anthony very few candidates actually worked out how much cash would remain in the trust after the CGT liability and remaining IHT instalments were settled. Instead candidates just used the rounded figure of £750,000 without checking if this figure was in fact viable.

Overall, there was little consideration of the depletion of the trustees' cash fund in conjunction with advice provided by many of the candidates which lead to incorrect recommendations being made.

Sale of Hillfield House and move to Larch Cottage

It was pleasing to see that most candidates correctly identified that Jennifer's proposal to move into Larch Cottage would be caught under the charge to POAT rules. Not all candidates were aware that this would no longer apply if the move into the cottage was delayed until after seven years from the date of the original gift to Laura had passed but still managed to explain the issues that Jennifer needed to be aware of reasonably well.

Relevant Advice and Substantiated Recommendations

Whilst all candidates were aware of the need to provide advice and recommendations in their report, they also needed to understand it is essential to take into account any background concerns and motivations the client may have when requesting the advice, as detailed in the question.

Gifting shares to Laura directly or from the trust

In connection with the gift of shares to Laura from either Jennifer or the trust, a large number of candidates did reach the correct conclusion that Jennifer should gift the shares directly to Laura. However, of these candidates, many stated the reason for this was because Laura would obtain the shares at a higher base cost for CGT purposes. Whilst this is correct, they failed to also address the fact that a gift from Jennifer would enable the trust to maintain the current level of dividend income allowing the trustees to settle the annual IHT instalments without depleting the trust's cash account. This was an important requirement of the trustees which was detailed in the question paper but which many ignored.

Appointment of 3 Oaklands Avenue or cash to Anthony from the trust

Similarly, with the recommendation on 3 Oakland Avenue, many candidates concluded that the trustees should sell the property and appoint the post-tax cash proceeds to Anthony. However, they did not back this up by calculating how much cash would be left in the trust fund or account for the fact that the sale of the property would trigger payment of the remaining IHT instalments.

Jennifer's proposed move to Larch Cottage

Nearly all candidates recommended that Jennifer rethink her move to Larch Cottage in view of the POAT charge and some candidates were aware that if the move was delayed until after 10 January 2021 this charge would not apply.

However, it was clear that some candidates had not read the question paper thoroughly as various other options were suggested by candidates who were not aware of the POAT seven-year rule, including a significant number of candidates who advised that Jennifer should continue living in Hillfield House until her death in order to claim the IHT residence nil-rate band. Whilst this suggestion is technically correct, it goes against what the client had stated in her letter, namely that she wanted to move as she was finding the house too large to manage, so was not a suitable recommendation in this case.

Taxation of Larger Companies and Groups

General comments

The question required candidates to write a report on the proposed construction of a new factory and creation of a food-processing business by a UK based group. Candidates were asked to consider three aspects: how to finance the business, the type of entity and the location.

Most candidates identified the five issues that needed to be addressed, and all candidates addressed the three areas of advice that were required. Unfortunately, many candidates approached the report by directly addressing the three advice areas first, rather than identifying the issues first and then applying those issues to the advice areas. In consequence, issues were sometimes addressed in an ad hoc and incomplete way, or repeated for each advice area, which would have wasted time in the exam. Time was also wasted discussing certain issues that had been ruled out in the question (for example, company residence, rights issues to raise cash).

Candidates should note that where numbers, data and information are provided in the question, this generally indicates that calculations should be undertaken. Conversely, if there is a lack of required numbers, etc., this generally means that detailed calculations should not be attempted.

Structure

Without exception, candidates produced a report in a suitable format, with only occasional lapses into jargon and inappropriate language, and thus all candidates passed on the Structure skill.

The executive summary, however, was sometimes used as the forum to weigh up options and reach conclusions, rather than to present the key findings of the report in an easily digestible format.

Identification and Application

Financing

On financing issue, a large number of candidates considered the Corporate Interest Restriction (CIR) in some detail, and in a few instances to a degree of detail and technical sophistication and calculation that was probably researched before the exam, triggered by the reference to the CIR in the pre-seen material. Candidates were not expected to attempt detailed CIR calculations, indicated by the lack of information that would be required to perform detailed CIR calculations in the question and pre-seen material. However, in this exam, where assumptions, analysis and consequential advice was well formulated and balanced, appropriate credit was given.

Profit repatriation

The issue of profit repatriation could have been better addressed in many cases. The approach, insofar as it was addressed at all, often consisted of a commentary on different withholding tax rates and, in the better answers, tax leakage in the UK. There were few instances of a balanced consideration of different profit repatriation techniques and no candidate identified that nearly all early-year profits could be repatriated by way of tax-free debt repayment.

Other issues

The start-up losses, different tax outcomes in the three territories, and international issues (controlled foreign companies and transfer pricing) were generally addressed well, although some candidates addressed these issues less comprehensively than others. For example, many candidates mentioned “gateways” without properly explaining them. Other candidates went into too much detail on certain tax technical aspects that were not directly relevant, particularly in relation to CFCs and transfer pricing. A few candidates failed to show any calculations of corporate tax liabilities in the three territories, notwithstanding the data in the question, which clearly suggested that some calculation work was required.

Relevant Advice and Substantiated Recommendations

Most candidates addressed each of the three advice areas separately but with little over-arching advice given. This resulted in most candidates failing to weigh up current reliefs against the availability of future reliefs, and thus did not recognise that most available reliefs would be given now or in the future, so they were only timing differences.

Also disappointingly, a large number of candidates ruled out debt investment on the basis that an equity investment would be required to enable dividends to be paid.

Many candidates reached balanced conclusions based on the issues they had discussed, with the best examples successfully drawing on and weighing up, sometimes contradictory, evidence. Thus candidates did not necessarily need to arrive at the same conclusions as in the model answer in order to pass. For example, some candidates identified the possibility of a permanent establishment operation in Commercia, and went on to suggest a permanent establishment election to take future profits out of UK tax. Appropriate credit was given even though this is arguably less tax effective than the incorporation of the permanent establishment into a foreign company.

VAT and Other Indirect Taxes

General Comments

Candidates were required to draft a report in response to an enquiry from a client, Horticulture Technology Ltd (“HTL”), a partly exempt charitable research Institute whose principal activity is to undertake publicly funded research supported by grants, awards and donations, as well as privately funded contract research and consultancy services supplied by the client’s trading subsidiary, Horticulture Technology Enterprises Ltd (“THE”). HTL requested advice on two matters: firstly, the tax implications of the three options identified by an internal working group to fund the construction of a new laboratory and secondly, the acquisition of high specification laboratory equipment (a Triterpene designer) to be either acquired or leased from a US supplier, Stanford Panalytical Inc (“SPI”).

Generally, performance was disappointing. While most candidates handled Structure well, they struggled with the Identification and Application, leading to incomplete Advice and Recommendations (although credit was still given for reasoned arguments based on incomplete Identification and Application).

Structure

Generally, candidates handled this aspect well, although a small minority produced a letter rather than a report as required in the question. Whilst the correct format is a component of considering Structure, we look at the answer more widely. Since the other elements within the letters were satisfactory, candidates writing letters were still able to pass Structure.

Identification and Application

Construction of New Laboratory

Candidates performed well in relation to identification of the extent to which parts of the laboratory might be zero rated on account of non-business use

Lease and Leaseback Arrangement – Peppercorn

Surprisingly, given that the scenario concerned a lease and leaseback arrangement, three quarters of candidates failed to appreciate that the disapplication of the option to tax rules fell to be considered under the second option put forward by the client. No candidate identified that the grant of the long lease to the Fund might render HTL a “development financier”, thereby disapplying both HTL and the Fund’s options to tax.

Lease and Leaseback Arrangement – With Premium

Just one candidate recognised that the third option could overcome the disapplication issue, so performance in this aspect was very poor.

Capital Allowances

Very few candidates identified the benefit of capital allowances which will accrue to the Fund if it, rather than HTL, contracts for and finances the fit out of the laboratory. As HTL is not subject to the incidence of corporation tax, capital allowances are, practically, of little benefit to it.

Importation of Triterpene Designer – VAT & Customs Duties

Most candidates recognised correctly HTL's obligations as importer of the Triterpene Designer and the attendant customs duty aspects.

Importation of Triterpene Designer – Options to Acquire

Performance was quite mixed on this aspect. Generally, candidates provided more detailed responses on the purchase option but less so on the operating lease, with some clearly demonstrating that they did not understand how an operating lease worked in respect of VAT and Customs Duties.

Relevant Advice and Substantiated Recommendations

Zero Rating of Construction

The majority of candidates provided reasonably well argued and presentable advice and recommendations relating to securing partial zero rating on the construction of the laboratory. In general, the practical advice and recommendations provided to HTL in relation to the construction of the laboratory was handled competently.

Recommended Funding Option

As many candidates failed to fully identify and apply the disapplication rules, they did not distinguish properly between Options 2 and 3 and so fail to identify that Option 3 was the preferred choice. Consequently, most candidates choose Option 2 but were given credit for supported reasoning and advice.

Capital Allowances

Given that very few candidates identified the benefit of capital allowances which will accrue to the Fund if it, rather than HTL, undertook the fit out, candidates did not score well on this aspect.

Purchase or Lease

Candidates generally performed well in relation to VAT and Customs Duty on the Triterpene Designer and import obligations to be assumed by HTL, but less so in terms of advice in respect of leasing or buying with few candidates calculating the savings to be made in support of their advice.