

## **EXAMINERS' REPORTS NOVEMBER 2023**

### **CHIEF EXAMINER'S COMMENTS**

#### **Results**

In the main, the results this session were in-line with expectations. The three papers which had disappointing results were the Advanced Technical Human Capital Taxes, IHT Trusts & Estates and Domestic Indirect Tax papers with pass rates between 25% and 34%. These three papers have smaller numbers of candidates and so more fluctuation in rates from session to session is inevitable.

On Human Capital Taxes (HCT), the pass rate was lowered by a significant number of candidates who were clearly not prepared for the paper and scored mid-30s or less with a number scoring less than 20%. On this paper in particular, it seems that candidates are sticking to studying areas they know in practice and are not covering the other areas of the syllabus sufficiently in their studies. The problem is that even if they do well on questions on areas they know well, this may well not be sufficient to compensate for a poor performance on a couple of questions outside their comfort zone.

The IHT Trusts & Estates paper has had a run of relatively low pass rates. The examiners comment each session that candidates are not sufficiently well prepared. The reason for this isn't clear but we suspect that in part it may be because candidates pick this paper as a second paper without having sufficient practical experience. That shouldn't in itself be a barrier to entry as the exam structure expects candidates to have a "home" and an "away" paper. However, it does mean that candidates will need to put more effort into their "away" paper to succeed.

The clear message from the examiners on the Domestic Indirect Tax paper was that there was an issue with exam technique and in particular the basics of reading and answering the question set.

In relation to candidates on the Joint Programmes, it is noticeable that they perform materially better than other candidates with their pass rates generally 10% - 20% better than the average.

#### **How to Pass**

- 1) If candidates only attend lectures and then read the manual they are likely to fail these papers. The clear evidence from the tutorial bodies is that there is a substantial difference in pass rates between those who use their guaranteed pass schemes and those who don't. Those on the scheme are required to adhere to the elements that mean they have a good chance of success such as attending all lectures and completing all tests. We therefore strongly recommend that candidates attend all lectures, study the whole syllabus, take time to revise in their preferred way and complete all tests, taking on learning and improvement points highlighted on in these tests. Doing question practice should be a key element of any candidates' preparation for these exams.
- 2) We also recommend candidates cover the entire syllabus in their studies and in particular the areas not covered in practice. If there is something that is difficult to understand we would recommend asking your tutor or a CTA qualified colleague for help.
- 3) Read the question and answer the question the examiner has set.

## **AWARENESS**

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

#### General comments

Although some candidates did very well, there seemed to be some candidates unprepared for this exam.

#### Question 1

Most candidates did well in the first part, although some stated incorrect dates for the effective date of VAT registration, even after correctly establishing when the threshold had been breached. The most common mistake was calculating the output tax that should have been charged at 20% instead of 1/6<sup>th</sup> of the appropriate supplies. Another common error was assuming that VAT had to be calculated on all supplies since starting, instead of from the date the VAT registration became effective.

#### Question 2

Overall performance on this question was disappointing, although some well-prepared candidates achieved full marks. Many candidates incorrectly tried to calculate the discount on all three months, when the discount only related to September sales. Many also treated the sales as VAT inclusive, despite the question stating they were exclusive. Another mistake was providing information on what should be included on a VAT invoice generally, instead of specifying the information required to ensure that Miguel did not have to issue a credit note if the discount was taken. Most of these mistakes appear to have arisen from candidates not reading the question carefully.

#### Question 3

Most candidates did very well on this question, with many achieving full marks. The most common mistake was some candidates missing the deposit as a separate tax point.

#### Question 4

Common mistakes in this question were candidates apportioning the VAT on the car, which should have been fully blocked and/or apportioning the car repairs, which should have been recoverable in full. Some candidates missed that pre-registration VAT could be claimed on six months of advertising services, with some saying that it couldn't be claimed because the services started more than six months prior, instead of simply only claiming the six months. Of those that did claim the pre-registration input VAT on the advertising services, some then forgot to claim the normal three months for the quarter to 30 September 2023. Some candidates seemed generally unprepared for this question, taking VAT at 20% and then again taking 1/6<sup>th</sup> of the 20%.

#### Question 5

Although some candidates did well, too many candidates got the limits the wrong way round, stating that Aydin could not join the cash accounting scheme (or annual accounting scheme) because he had not yet reached the limit, whereas the limit is the amount that taxable supplies cannot exceed. Many missed the fact that Aydin is up to date with his VAT returns and payments and focussed on the fact these had been late. Some careless mistakes included saying that bad debt relief of £1,000 could be

claimed, instead of 20% of the net invoice, or treating the net amount as gross and calculating VAT as 1/6<sup>th</sup> instead of 20%.

#### Question 6

Most candidates did very well on the amount for simplified invoices and the time records must be retained. However, some candidates simply stated what a VAT invoice should include, instead of the differences between a normal VAT invoice and a simplified invoice. Some candidates wrote about retailer invoices, which were not mentioned in the question.

#### Question 7

Some candidates did very well and achieved full marks, however many seemed confused by the simplified tests. Some candidates did not refer to the simplified tests at all, despite being instructed to only refer to those, which would suggest that they weren't prepared for this question.

#### Question 8

Most doing well with this question, with only some incorrectly stating that Leroy could not be part of the VAT group due to being an individual.

#### Question 9

Most candidates performed well on this question, however some were treating both buildings the same, despite the option to tax resulting in different treatments for each building.

#### Question 10

Most candidates did well on this question, however the most common problem was the fuel scale charge, which many did not know how to treat. Too many candidates spent valuable time writing explanations for this question, when only a calculation was required.

#### Question 11

Most candidates did very well, with the only issue being some forgetting to state the payment date.

#### Question 12

Most candidates did well, however some missed the group exemption, and some forgot to state the payment date. A minority of candidates used incorrect rates for the calculations.

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

#### General Comments

Generally there was a satisfactory performance by most candidates, although often insufficient care was taken in reading the requirements of the question which sometimes lead to marks being lost.

#### Question 13

Some candidates confused the Inheritance Tax and Capital Gains Tax rules, stating that the clock and/or the racehorse were wasting chattels and therefore exempt. Despite the sale at undervalue of the racehorse resulting in a loss to the donor, several candidates stated that there were no IHT implications as there was no gratuitous intent. The quarter-up rule was often applied to the unit trust and some candidates tried to perform a related property calculation on the shares.

#### Question 14

Although the lifetime gift was a PET, several candidates calculated lifetime tax.

#### Question 15

No comments.

#### Question 16

Several candidates omitted to write about the CGT implications of the gift of cash, and/or the IHT implications of the gift of the painting. Some candidates stated that the painting was exempt from CGT as it was a gift. Some thought that a gain arose on the painting on Edith's death, and an attempt at rollover relief or gift relief was made to determine the base cost for Vivienne.

#### Question 17

Performance on this question was mixed. Several candidates deducted the Residence Nil Rate Band (RNRB) in the calculation of the net chargeable estate. Wherever used, the RNRB was often £175,000, despite the value of the property only being £150,000. The charitable legacy was often not deducted in the death estate and IHT was often calculated at 40% instead of 36%.

#### Question 18

Very few candidates correctly stated the due date for the payment of IHT.

### Question 19

This question was often not well done. A worrying number of candidates clearly did not understand that BPR is not given on outright sales and thought the reason that Peter would not qualify for BPR on Derrick's death was because he would not have owned the property for two years. Several candidates wrote about the successive transfer rules, others wrote about the replacement property rules and some wrote about the CGT implications of Peter disposing of the property, none of which were relevant to the question.

### Question 20

Despite the question clearly stating that calculations were not required, several candidates did calculations and very little by way of explanations. Some wasted time discussing whether the shares and/or the investment property would qualify for BPR and others wrote about the potential loss restriction if there were any reinvestment of the proceeds.

### Question 21

No comments.

### Question 22

Some candidates calculated BPR on each of the assets of the company rather than on the value of the shares being gifted.

### Question 23

No comments.

### Question 24

No comments.

## **Module C: Corporation Tax**

### General comments

Although many candidates scored well, there seemed to be some candidates who were not sufficiently prepared for this exam, while others could have read the questions more carefully.

### Question 25

Some of the capital allowances computation tables were difficult to follow and resulted in the candidates missing some allowances. For instance, some candidates forgot about the 130% super deduction and the 50% first year allowances available to companies, and others remembered those but forgot about the annual investment allowance (AIA). Some candidates incorrectly capped the 130% super deduction at £1 million, confusing it with the AIA.

#### Question 26

Most candidates did well, and many scored full marks. Some candidates did not state the £50 limit for the gifts being allowable and/or were confused by the leasing rules, adding back 50% instead of 15%.

#### Question 27

Candidates who split the 15-month period into two accounting periods scored well but unfortunately a minority of candidates failed to do this. Those candidates tended to miss the rate of Corporation Tax changing, incorrectly calculating both periods at the same rate.

#### Question 28

While many candidates scored full marks, some were confused between the filing date and the payment date. The most missed marks were for the tax geared penalty since the return was not filed within 18 months of the end of the accounting period. However, some candidates referred to VAT penalties instead of Corporation Tax penalties.

#### Question 29

The overall performance on this question was not good although a minority of candidates managed to score full marks. Those who performed poorly referred to the PAYE cap, incorrectly taking salaries as PAYE, and calculating a cap that was not required. The loss carried forward was not calculated well, with many candidates deducting the tax credit from the loss, instead of the surrendered loss.

#### Question 30

Most candidates who attempted this question performed well, although some forgot that the rate for s.455 tax for loans made before 6 April 2022 was 32.5%, and some candidates deducted the loan written off from taxable total profits instead of adding it back.

#### Question 31

While many candidates answered this question well, the majority forgot to mention that the offset of property losses in the current period is automatic, and provided a date for this. The most common mistake was carrying back the trading loss without first making the required current year claim.

#### Question 32

Some candidates included the overseas company in the group without clarifying that there are restrictions on whether it can partake in group relief, and some wasted valuable time writing about gains groups which were not required.

#### Question 33

Of those candidates that attempted this question, most did well, although some deducted the degrouping charge instead of adding it to the gain.

#### Question 34

A few candidates missed this question out. Some noted that the employer's NIC figure had not been provided in the question, but did not think to calculate it themselves, as required. Of those that did calculate it, many did so incorrectly, often forgetting to deduct the £9,100 or deducting an incorrect amount, or calculating it at the wrong rate of 3.25%.

#### Question 35

Most candidates understood that the indexed cost was provided in the question, but some wasted valuable time calculating further indexation on the indexed cost.

#### Question 36

While some candidates scored well on this question, many did not attempt it. The most common mistakes were including the net overseas trading profits instead of the gross, and including the overseas dividend income which was exempt. Some candidates wasted time writing detailed explanations when only calculations were required.

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

#### Overall comments

Most candidates showed a good knowledge of the areas tested. When explaining their answers, candidates are encouraged to use the relevant terminology; for example, 'close connection' in respect of Scottish residence.

#### Question 37

Almost all candidates scored highly in this question. Where marks were lost, it was with regard to the personal allowance. Common errors included not tapering the personal allowance and tapering the personal allowance by reference to the wrong amount, often because they deducted interest and dividends taxed at 0% in arriving at adjusted net income.

#### Question 38

Most candidates were comfortable with the calculation of the high income child benefit charge and performed well in this question.

#### Question 39

A significant number of candidates were unaware of the period of grace election or confused it with the averaging election. Although most were comfortable with the conditions for FHL treatment, some did not explain them, merely stating that the property did not qualify.

#### Question 40

Most candidates did well although many struggled with the private use contributions.

#### Question 41

Most candidates displayed a good knowledge of the rules for working out the annual allowance charge.

#### Question 42

Almost all candidates were comfortable with how the EIS relief should be given; however, many struggled to explain how the individual becoming a director of the company would impact on his claim.

#### Question 43

This proved to be the most challenging question on the paper. Quite often marks were lost through a lack of explanation; for example, stating that the individual had taxable income but not explaining how it was calculated, and stating that the company should inform HMRC of the share issue but not explaining how or by when.

#### Question 44

Again, candidates performed better in the calculation element of the question as opposed to the written element.

#### Question 45

A significant minority of candidates attempted to answer this question based on the rules for determining UK residence. Although most candidates were able to identify the key facts, and to come to a conclusion based on those facts, they did not always explain why those facts were important in the context of the rules (i.e. by reference to a close connection and main residence).

#### Question 46

Most candidates struggled on at least one aspect of this question, suggesting a lack of knowledge in respect of Capital Gains Tax rules and calculations.

#### Question 47

Candidates seemed quite well prepared for this question. Common mistakes were to forget the annual exemption and to deduct the SDLT from cost.

#### Question 48

Few candidates seemed confident in recalling and applying the rules for late filing and payment.

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

#### General comments

Generally there was an unsatisfactory performance this session. Candidates need to ensure that they read questions carefully before answering.



#### Question 49

Despite the question stating that the items listed had already been deducted, candidates lost marks by deducting the allowable expenditure of the legal expenses of registering the patent. The allowable amount of the lease premium paid was frequently miscalculated, with many failing to recognise that the annual amount should be scaled up for the 15-month accounting period.

#### Question 50

Many candidates split the accounting period into two notional periods. The WDA was also frequently pro-rated.

#### Question 51

Some candidates only discussed capital allowances rather than total running costs. Candidates rarely made use of the figures given. Other common errors included stating that the rent-a-room exemption could be claimed, and treating the flat rate amount as the allowable expense.

#### Question 52

Most candidates scored well on the first part of the question, but the application of the change of accounting date rules in the second part of the question was rarely correct.

#### Question 53

Most candidates incorrectly deducted the purchase invoice rather than adding it back. The goods for own use was frequently added in at selling price rather than the cost. Candidates also often did not appreciate that there is no disallowance for leasing costs of a high emission car under the cash basis.

#### Question 54

Some candidates split the 14 month period into a 12 month and a 2 month period. WDAs were frequently calculated in addition to or instead of balancing adjustments. The net balancing charge was frequently deducted rather than added to the adjusted profit.

#### Question 55

Several candidates did a single computation including both income and gains. Very few spotted the restriction to the s71 claim for the brought forward capital losses. Where candidates did do a CGT computation, the deductions were often made in the wrong place, with many netting the brought forward capital loss against capital gains first.

#### Question 56

Most candidates dealt well with this question.

#### Question 57

Most candidates incorrectly stated that penalties were based on the amount of income understated. Where a reference was made to potential lost revenue, most candidates correctly calculated the income tax but none considered Class 4 NIC.

Question 58

Some candidates applied incorporation relief incorrectly, deferring the gains against the base cost of the assets in the company rather than against the base cost of the shares.

Questions 59 - 60

Most candidates dealt well with these questions.

## **ADVANCED TECHNICAL**

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

#### General comments

Overall candidates performed relatively poorly on this paper, despite it addressing some core OMB syllabus areas.

Candidates performed well with familiar questions, such as the adjustments to profit in Question 3. However, there were a number areas where candidates struggled (in particular the calculation aspects of Question 2 and the application of the mixed partnership rules in Question 4), indicating a lack of familiarity with the topic. It was also disappointing that many candidates struggled with the associated companies rules in Question 5, despite these being key to the new CT rates regime.

#### Question 1

This question required candidates to consider the incorporation of a sole trade business and identify the appropriate capital gains reliefs, along with IHT and NICs implications.

Candidates' performance was mixed. Most candidates were able to identify that incorporation relief was not available and then identified the appropriate reliefs, being gift relief and BADR. Whilst the application of gift relief was generally correct, there were errors in the application of BADR and only a small percentage of candidates applied both gift relief and BADR together correctly. Marks were also often lost by candidates not including simpler points such as the revised base cost of shares or the annual exempt amount in their answers.

Candidates generally performed well on the IHT and NICs part of the question.

#### Question 2

This question required candidates to discuss the application of IR35 / off-payroll working rules to an arrangement, and calculate the PAYE, employer's NICs and corporation tax payable. The question was generally not answered well.

In the first part of the question, most candidates were able to identify the factors which would be relevant in determining whether the income was from a relevant engagement. However, the calculation of the deemed employment payment and corporation tax liability was very poorly attempted. Candidates should ensure they are familiar not just with when the IR35 / off-payroll working rules might apply, but also how to calculate the relevant payments.

#### Question 3

This was an adjustment of profits computational question with explanations of adjustments, together with discussion of loss relief options.

This question was generally well attempted, especially the adjustments to profit.

The adjustments to profit for stock sold to a brother's business and gifts to family members did cause difficulties, particularly the calculation of the appropriate mark-up. The rent provision was often incorrectly added back as not relating to the period of account. The adjustments to leases and motor expenses caused problems, with candidates calculating the restriction for high emission lease

payments to the running costs as well or not restricting the lease payments for private usage. Many candidates made the error of allowing the cost of the employee as staff entertaining. Only a minority made the correct adjustment for gifts. Capital allowances also caused some confusion, with candidates calculating a balancing charge/allowance on the difference between the sales proceeds and the net book values.

Candidates performed more poorly on the loss relief options than the adjustment to profit. The application of the rules was not always followed through using the figures: e.g. candidates would state that a terminal loss is relieved on a LIFO basis before immediately allowing against March 2020 first. The other common error was not restricting the loss relief to trading profits. Candidates need to make sure that as well as explaining the rules, they can also apply them correctly.

#### Question 4

This question tested understanding of the mixed partnership rules.

Candidates did not perform well on this question.

The majority of candidates did show an understanding of what a mixed partnership is and the outline general implications. However, there was insufficient focus on the detail of the conditions and their implications. Many candidates wasted time detailing the tax and NIC rates and allowances for the individual partners on their profit share without explaining how the profit share itself was impacted by the inclusion of the company.

Many candidates also did not distinguish between the services provided by the company and the services provided by Anil and those provided by Kate. The majority of candidates simply dealt with them as a whole.

#### Question 5

This question tested the new associated company rules, followed by a Corporation Tax computational question with a long accounting period overlapping 1 April 2023.

The first part of the question was answered poorly. Many candidates did not mention how control was defined other than stating '51%' and few showed any understanding of substantial commercial interdependence and how it is linked to associates. Many candidates did not even mention the term and simply stated that shares held by associates were included in the 51% test automatically.

The second part of the question was unfortunately affected by an error in the original question, with a van shown as having been acquired by the company before it was incorporated. Candidates were given due credit for any reasonable treatment of this asset.

Despite this, the second computational part was answered well by most candidates, who produced well-presented capital allowance and Corporation Tax computations. The commonest errors were failing to identify that the super deduction would be adjusted for the 31 May 2023 four-month period, preparing a capital allowance computation for the full 16 month period rather than for a 12 month and 4 month period and the re-wiring costs proved problematic.

The majority of candidates clearly understood the calculation of 'augmented profits' and their significance.

## Question 6

This question required candidates to discuss a range of taxable benefits provided by a company and the corporation tax treatment of different acquisition methods for company vans. Candidates were also asked to explain how the company would report new employees and account for benefits to HMRC.

Most candidates performed well on this question. Although only a minority of candidates was able to quote the relevant case, most were aware that there was an issue if a van was adapted to carry passengers. The contribution to the fuel cost was often deducted in full despite this being a flat rate charge. The main error regarding the loan was explaining the calculation of a s455 charge. The Corporation Tax treatment of each option did present some difficulties. Candidates confused the operating lease with a finance lease and the hire purchase was allowed from the contract date or only on the basis of payments made.

The final part of the question was less well answered as candidates did not seem well aware of the details of payroll administration.

## **Taxation of Individuals**

### General Comments

Overall performance on this paper was mixed. Question 3 had the highest marks with questions 1, 4, 5 and 6 having broadly average marks. Candidates found question 2 by far the hardest question on the paper with average marks less than 25%.

### Question 1

This question addressed the taxation of cryptocurrency held by an individual.

Very few candidates considered that the holding and subsequent disposals could have been treated as a trade and so missed some easy marks in the question. There were a lot of good answers with candidates correctly identifying the disposals and recognising that separate pools should be held for each type of crypto currency.

There were some easy marks in this question too, such as the treatment of a capital loss and transfer between husband and wife. In future candidates should remember to consider some of the more basic aspects to score some 'easy marks' before dealing with the advanced parts of the question.

### Question 2

This question required candidates to advise on any Income Tax or Capital Gains Tax implications of two events. The first event was the demolition of a residential property that would subsequently be replaced by a new residential property on the site. The second was the sale of a piece of land to a property developer with planning permission already obtained for houses to be built on the land.

Unfortunately, candidates struggled with the first part of the question. The key point being that land can never be entirely destroyed, meaning that an election would need to be made if they wished to crystallise a capital loss on the destruction of the house.

Overall, the second event was dealt with well. Most candidates identified that the Transactions in UK Land provisions were likely to apply. The conditions were generally explained well, and most candidates also demonstrated a good understanding of the implications of these rules applying.

Marks were lost for not providing details of the date the tax would be due on the sale. A large number of candidates incorrectly stated that a CGT return would be required within sixty days even though the asset being disposed of was not a UK residential property.

### Question 3

Candidates were asked to calculate the UK Income Tax and Capital Gains Tax liabilities for a non-UK resident individual with rents, savings income, and the disposal of a UK residential property.

The majority of candidates understood the three different methods of calculating the gain and the available Private Residence Relief. A common error in the Private Residence Relief calculation was candidates applying the incorrect ownership period in the calculations under the default and time apportionment methods.

The Income Tax calculations were also dealt with well although the calculation of the maximum liability under s.811 ITA 2007 was not always fully understood.

### Question 4

There was a wide range of answers to the question with candidates typically performing very well or badly depending on the robustness of their knowledge on share options. Some candidates demonstrated excellent knowledge and scored close to full marks.

The main area of difficulty was the treatment of the options awarded whilst the holder was non-resident.

It was pleasing to see that many candidates correctly identified the tax consequences of exercising the CSOP option earlier than three years and sensible simple suggestions were made on how to improve the tax position. Similarly, strong candidates recommended that the sale of the EMI shares should be delayed to secure BADR.

Candidates that performed badly on the question often confused the rules with other schemes such as the share incentive plan. Other common errors were confusion with the option terminology and how to interpret the question, concluding incorrectly, that the exercise price was paid by the holder at the date of grant instead of at the time of exercise.

### Question 5

This question tested the tax treatment of property leases including a long lease, a short lease and a sub-lease. It required candidates to calculate the Income Tax and Capital Gains Tax liabilities of two individuals who had granted leases in the year.

The performance of candidates varied on this question, with some scoring very well and others poorly.

While most candidates were able to correctly identify that differing tax treatments would apply to each type of lease granted, many struggled to apply the correct formulae in their calculations. In a few

cases, candidates applied the correct formula but then confused which element was income and which was capital. This meant that, while these candidates were able to score some theory marks, they were unable to score highly in their calculations.

However, there were some easy marks in the question, such as the calculation of a profit on a long-term rental property and the application of the personal allowance and annual exempt amount in the calculations, which most candidates managed to score.

### Question 6

This question related to the taxation of a termination package received by an individual on leaving her employment as well as the disposal of company shares. It required candidates to calculate the individual's Income Tax, National Insurance and Capital Gains Tax liabilities, while also considering the relevance of her non-UK domiciled status.

Candidates generally performed well on this question. Most candidates identified the correct Income Tax treatment of each element of the termination package and applied this to their calculations. Some marks were lost however as many candidates did not comment on the relevant National Insurance treatment for each element of the package.

The majority of candidates successfully identified that the individual would be eligible to make a claim for the remittance basis of taxation and discussed the relevant implications of doing so, with most concluding that it would reduce the individual's Capital Gains Tax liability. Stronger candidates also discussed reasons why the claim may not be beneficial in the individual's circumstances and made a recommendation.

Most candidates scored very well on the calculations part of this question, though many struggled with calculation of the National Insurance Contributions.

## **Human Capital Taxes**

### General Comments

Overall, most candidates performed poorly on this paper with the final pass rate of just 25% being very disappointing, particularly as this paper was not particularly difficult technically. Whilst there were some candidates who scored extremely well (70%+), the pass rate was lowered by a significant number who clearly were not ready to sit the exam, with some not even scoring 20%.

Questions 1 and 2 were least well answered. Candidates scored well on question 3 and also on question 6.

### Question 1

This question looked at a number of areas such as off payroll working, temporary and permanent workplaces and impact on the provision of accommodation and cash allowances.

Overall candidates performed poorly, which is disappointing given that this has been a hot topic since its introduction. There was no requirement to discuss employment status but some candidates

wasted time outlining employment status indicators when the question already outlined the employment status under CEST.

Most candidates identified that the Welsh workplace was a temporary workplace, but many did not identify that the workplace would not be a temporary workplace for the short-term employees or Daniel given the fixed term rule as there seemed to be the impression that if an individual works for less than 24 months at a workplace then that workplace is automatically deemed to be a temporary workplace.

Most candidates correctly identified that the cash allowance would be taxable, some candidates did mention that the allowance can be paid gross but gave no reference to benchmark or bespoke rates so no marks were awarded as it is not correct to simply state that allowance can be paid free of tax or NIC without outlining the very important caveats.

With respect to the updated legislation on off payroll working, it is important that the full contractual chain is considered. Whilst most candidates correctly identified OIL5 Ltd as the end user of Daniel's services, candidates did not provide any reasons as to why this wasn't Oil Refinery PLC.

Fortunately, most candidates did identify that Welding4U Ltd was deemed to be the fee payer and therefore the party responsible for operating PAYE and Class 1 NIC on payments to Daniel's PSC. However, there was very little depth in the way candidates outlined obligations under the updated legislation with some incorrectly stating that the fee payer needs to consider the rules for calculating the deemed employment payment found under ITEPA 2003 Part 2 Chapter 8, which do not apply if Chapter 10 applies.

## Question 2

This question tested whether the candidates could apply the eligibility criteria for an EMI scheme at the time of a potentially disqualifying event. The question expected candidates to recognise how a takeover affects a scheme, where potential mistakes were being made, the impact of those mistakes and what could be done to avoid them.

Those that set out the relevant test at risk, then commented on whether it was passed or failed did well. The majority of candidates listed the qualifying criteria, however, did not identify clearly whether the proposed arrangements disqualified the existing or new scheme. The requirements for replacement options were particularly muddled. It is not enough for candidates to list the rules of a particular scheme or tax relief. The candidates must demonstrate that they have understood the rules by applying them to the given situation set out in the question. Candidates should also not waste time explaining at the start what an EMI scheme is and why it is used: In the scenario, the companies had already established schemes.

There were no marks awarded for commenting on the capital gains tax position, since this is not of direct concern to the employer.

## Question 3

This question focused on optional remuneration and the provision of cars to employees. It looked at the comparison in costs for the business and net pay for the employees when switching from a traditional petrol car to an electric vehicle.



The majority of candidates were able to explain very well the key concepts of salary sacrifice and the better ones explained the legal requirements needed for a salary sacrifice arrangement. Only the very best candidates identified that tax efficient salary sacrifice could be made for pensions, cycle to work and annual leave.

The majority of candidates were able to identify that different salary sacrifice rules applied to electric company cars but only the better candidates went on to disregard the salary sacrifice when calculating the benefit in kind on the electric car.

The majority of candidates identified the correct benefit in kind rules for work-provided charging points but fewer candidates commented specifically on whether the electric car was an attractive option for employees. A small number of candidates made a suggestion for salary sacrifice to be adjusted to share some of the employer savings with the employees.

#### Question 4

This question tested candidates' understanding of reliefs applicable to non-domiciled individuals where a secondee to the UK becomes a local hire. The question asked the candidates the difference in employer costs and the impact on the employee's net pay when switching from a secondment to a local hire. The question required a number of calculations but more importantly tested the candidates' understanding of the difference between tax calculations and costs for the employer for a commercial approach for what is often a real-life scenario when a secondee is asked to remain in the UK beyond their secondment.

A large majority of the candidates correctly identified the temporary workplace relief but fewer commented specifically on the date from which a decision to remain in the UK longer than 24 months was made. There was a nuance in the question about the accommodation being larger for the employee for his accompanying family compared to the equivalent cost of accommodation provided for a single colleague; a small number of candidates correctly identified that the accommodation would not create a benefit in kind.

The remittance basis and overseas workdays relief was tested in this question and the majority of candidates identified that this was in play and that it continued to apply for a further year even after the local employment. The better candidates commented on the remittance requirements and the need to be paid offshore.

The better candidates prepared calculations comparing the employer cost of the secondment with a local hire arrangement including the correct deductions for overseas workday relief and hypothetical tax from gross pay. A large number of candidates did not deduct hypothetical tax from gross pay when calculating the tax but deducted it after the tax had been calculated. Only the very best candidates commented on the difference in cost for the employer.

The final part of the question was considering the employee's net pay and whilst the model answer anticipated a calculation with and without overseas workday relief in reality very few candidates had time (or saw the need) for two sets of calculations. Most candidates attempted a calculation of the employee's net pay

No marks were awarded to employees around reporting of benefits on P11D or PSA as this was not part of the requirements.

### Question 5

This question tested the application of the Statutory Residence Test (SRT) to a situation where an outbound assignee returned unexpectedly to the UK during the fourth quarter of the tax year. The question expected candidates to identify the residence position and associated 'split year implications', establish the employer compliance requirements as a result of the change in circumstances, and calculate the income reportable for PAYE tax purposes.

A large majority of candidates correctly applied the SRT, and this part of the questions was answered well including the application of the 'sufficient ties' test. The 'exceptional circumstances' rules for day counting were hardly commented upon, though where it was, candidates correctly concluded the position.

Many candidates also correctly identified the need to consider the split year cases, and of these candidates many rightly concluded the two 'cases' that would apply. However, many did confuse which case then took priority and why.

Where candidates were clearly familiar with the SRT, a lot of extra detail was provided in the answers, which was impressive but largely unnecessary. Where candidates were not familiar with the SRT rules or were running out of time, this question was not well answered.

The second requirement for calculations yielded mixed results. Some candidates did not attempt these at all. Where they were attempted, the calculations were either very good or largely incorrect. Where incorrect due to an incorrect tax residence conclusion in the first requirement, follow through marks were awarded.

Only one candidate attempted the gross-up tax calculation though several did comment that a gross-up would be required. Candidates who appeared to have been short on time decided to 'ignore' the hypothetical tax deduction in the calculations and made a note to say they had done so.

### Question 6

This question tested the rules for application of National Insurance Contributions (NICs) to an individual on an assignment to the UK from a country with which the UK does not have a reciprocal agreement. Overall, it was answered well by a majority of candidates.

Most candidates answered this question well and had a clear understanding of the rules in respect of when NICs should apply and the class of NICs to apply to various items of compensation.

The requirement to 'state' the date from when NICs would apply was completed correctly by most candidates, though many provided a detailed explanation which was not required.

In some cases, candidates did not provide the 'amount' of compensation subject to NIC but did provide the correct explanation, and marks were still awarded.

Almost all candidates correctly identified the application of temporary workplace rules, and business expenses rules. Most candidates correctly explained the use of PAYE Settlement Agreements (PSAs) and identified which benefits could be covered by a PSA.

Well prepared candidates identified the application of Appendix 6 and 7 agreements to the relevant items of compensation.

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

### General Comments

The majority of candidates scored poorly on the paper indicating a lack of preparation for the paper overall. Well-prepared candidates scored well with some high scores being achieved. There was a wide spread of marks for each question. There were very few non attempts or zero scores.

Scores were highest on Question 3 and 6 with the lowest marks on questions 1 and 2.

### Question 1

This question tested candidates' knowledge of the formerly domiciled resident rules and their effect for Income Tax, Capital Gains Tax (CGT) and Inheritance Tax (IHT), both on the settlor individual returning to the UK and on the settlement itself.

Candidates' marks were polarised with some scoring highly, others barely passing and others performing extremely poorly. As such it was a differentiating question which distinguished between those candidates that were well prepared, sufficiently prepared and unprepared for the overseas element of the syllabus.

The question directive contained a requirement to include relevant calculations but this was not clearly understood by all candidates who therefore lost valuable marks as a result.

A number of candidates assumed that s.86 TCGA 1992 applied whilst the trust was UK resident despite the settlor interest definition for UK resident trusts being limited to that for income tax i.e., settlor, spouse and minor children only, not the extended definition applicable to non-resident trusts. This then led those candidates to produce answers that were incorrect with a resultant loss of marks.

For IHT purposes, the suspension of the excluded property status of the trust whilst UK resident with the implications of the trust assets becoming relevant property and the incidence of principal and exit charges caused confusion. Despite identifying that the trust assets becoming relevant property on 6/4/24, candidates consistently failed to identify the number of relevant quarters for the principal charge on 30/4/24. Many assumed nil only counting from the date the trust became relevant property but in fact the formula  $x-1$  means that the 39 quarters pre-relevant property is deducted from 40 to give the correct result. Some candidates counted quarters from 1/7/23 as 3 whereas had the relevant property existed on that date (which it didn't) the relevant quarters would have been four using the same formula. Candidates also missed the opportunity to make the capital distribution of £142,000 to daughter pre 6/4/24 before the trust assets became relevant property.

A number of candidates invoked s.720 ITA 2007 despite the trust not being settlor- interested. Payments on account were missed as were their reduction on emigration of the trust.

### Question 2

This question tested candidates' knowledge of a disabled persons interest (DPI), trust for bereaved minors (BMT) and the vulnerable person election (VPE) criteria and well as the effective use of deeds of variation (DOV) for both IHT and CGT purposes. All but one candidate attempted this question but overall the majority of candidates failed although marks were varied with some at the upper and lower ends of the scale.

Those candidates that recognised self-settlement of a DPI generally did well. However, a significant number of candidates failed to do so and so as a result lost valuable marks on the first part of the question. They did however pick up additional marks for applying the VPE rules to the DOV trust for Georgiana which compensated to a degree for the earlier omission to describe this treatment for Missie.

Although recognising Missie's DPI as settlor interested for Income Tax most candidates went on to advise that VPE and special treatment was still available. Better candidates distinguished the treatment for Income Tax and CGT. Candidates also failed to read the question facts carefully and either mixed up or duplicated the assets going into the two trusts or even assuming a single trust for both beneficiaries.

Candidates lost marks for not considering the alternative to the deed of variation i.e. a chargeable lifetime transfer (CLT) by Missie and the consequences thereof.

### Question 3

This question tested candidates' knowledge of agricultural property relief (APR), business property relief (BPR) and the s.39A spreading provisions. A majority of candidates scored well on this question despite a number not recognising the s.39A spreading provision applied to the scenario presented. Some candidates ignored the £20,000 estate liabilities which skewed their resulting calculations.

There was inconsistent application of the charitable donation gross or net of APR/BPR. Some candidates used the wrong baseline amount taking gross rather than net estate before deduction of the charitable donation and therefore failed to recognise the 36% rate was applicable.

Most candidates failed to calculate the residue and net due to the niece on the Villa, not checking that their answers on the estate distribution added to £1,830,000 or ensuring that the figure for the nephew was correct instead shortcutting to a balancing figure which was usually wrong. A handful of candidates considered that double grossing applied and therefore scored poorly on this question as this was not relevant and their opportunity for marks thereafter was lost.

APR was given at 50% by a surprising number of candidates who failed to recognise that a licence gave vacant possession annually. Yet others assumed that APR would not apply at all but this was not in line with the question facts provided.

### Question 4

This question required candidates to identify to which property the instalment basis would apply, calculate the instalments due on three dates and then to identify which instalments would bear interest and to calculate this for two years.

Many candidates wrote lengthy expositions on the conditions for BPR and the conditions for instalment payments to apply. There were no marks available for stating facts unless they applied to the scenario in the question. Many candidates used an interest rate of 2%, being HMRCs official rate of interest. The interest rate should have been 3.5% as stated in the tax tables provided.

A significant number of candidates calculated the principal charge but this was stated in the question and wasted valuable time. The rate of IHT is not needed to apportion the charge between the instalment and non-instalment assets. Further, a surprising number of candidates incorrectly considered the sale of the farmland as an exit from the trust even though there was no indication that

the cash was appointed out and so wasted valuable time calculating an exit charge. Many candidates missed that the sale of the farmland would mean the instalments basis would be immediately forfeit.

There was clearly confusion about what property qualified for instalments and what instalments were chargeable to interest. Condition (b) in section 228(1) IHTA 1984 applies only on a death transfer but many candidates applied this 20% test to the ten year charge in the question.

#### Question 5

This question required candidates to identify that the pre-owned assets (POAT) rules applied, quantify the charge and then calculate the charges arising on the disposal of a conditionally exempt asset.

Most candidates identified that the POAT rules applied however, there was clearly confusion as to how these interacted with the gifts with reservation rules. Many candidates considered the asset would be treated as part of Lady Hannah's estate and went on to consider double charges relief, even when they had identified that the POAT rules applied. Many candidates wrote lengthy expositions about the gifts being PETs and how annual exemptions were allocated between the gifts but this was in the requirement so no marks were available and wasted valuable time.

The charge for chattels is the market value of the chattel multiplied by the official rate of interest however many candidates used the rental value in the calculations. The weakest part of the answer to the POAT element was the application of the de minimis threshold. The total POAT charge should be calculated gross and then the de minimis applied but hardly any candidates applied this correctly.

The sale of the conditionally exempt asset was reasonably well attempted but hardly any candidates deducted the CGT when calculating the recapture charge and in fact many more candidates deducted the IHT from the CGT. The recapture charge should be calculated on the value of the asset when sold, not at the previous death.

#### Question 6

This question required candidates to calculate the IHT refund due from a series of post mortem claims and then calculate the CGT arising in two specified tax years. There was evident confusion between the IHT calculation and CGT calculation and the deductions and calculations required for each. As a result there were some strong answers to part 1 but a very weak response to part 2.

The post mortem reliefs section was completed reasonably well by most candidates though some focussed solely on the sale of the properties and ignored the deed of variation aspects. The most common error was the failure to exclude Cradley Hill where the loss was below £1,000. This was not helped by a surprising number of candidates who deducted sales costs when calculating the loss, deducted the probate costs deduction (which is relevant only for CGT) or deducted both. The calculation is performed on gross values.

Some candidates re-calculated the IHT to establish the estate rate but this was not required and wasted valuable time. The IHT is refunded at the marginal rate but the estate was so large that it was obvious that the refund was at 40%.

Surprisingly, the CGT section was less well completed. There were only two properties where CGT needed to be calculated but very many candidates failed to allocate the disposals to the correct tax year. Few candidates used the revised base cost on Bilston Street or restricted the loss in 2022/23 to preserve the annual exemption. Clocks are not chargeable to CGT which was missed by many

candidates. Some candidates took a deduction only for probate costs, replacing the cost of sale but this is an additional deduction.

## **Taxation of Larger Companies & Groups**

### General Comments

Overall, candidates displayed good basic knowledge of the Corporation Tax Acts. Candidates may have found question 6 (regarding transfer pricing) challenging because the style of the question was different to that of previous sittings, but candidates coped very well with it, and it was question 2 that was the least well answered.

### Question 1

Candidates were required to analyse the residence position of a multinational group's parent entity, comment on Corporation Tax administration rules and explain the potential Controlled Foreign Companies (CFC) charge exposure of a group finance company.

Overall this question was answered well. Most candidates explained the domestic and treaty rules governing corporate residence, and applied the rules to the scenario. Some candidates gave only limited explanations of the reasoning behind their conclusions, which limited their marks. A number of candidates ignored the double tax treaty extract provided in the question and referred instead to the OECD Model Tax Convention, which contains a different residence tie-breaker test. Most candidates dealt well with the administration requirement, displaying good knowledge of reporting and payments requirements and deadlines. The CFC requirement was also answered well, with most candidates correctly identifying the finance company as a CFC and earning credit for explanations of the entity-level exemptions and the application of the non-trading finance profit gateway. A minority of candidates referred to other tax rules that were of limited relevance to the scenario, such as diverted profits tax and the corporate interest restriction.

### Question 2

This was a chargeable gains computation question that required candidates to determine the gains treatment of a series of share disposals. It also asked for an explanation of the Stamp Duty treatment of one of the disposals.

Candidates displayed good knowledge of the basic chargeable gains computational rules and the Substantial Shareholding Exemption. Most candidates earned some credit for commenting on the treatment of the earn-out in the first transaction, although a significant minority incorrectly stated that the disposal computation should be amended when the unascertainable contingent consideration was paid. Most candidates correctly identified that the second disposal involved a "share-for-share" exchange, although relatively few explained the conditions for section 135 TCGA 1992 to apply. Many candidates earned credit for noting the correct rate and payment date for Stamp Duty, although some made incorrect references to Stamp Duty Land Tax.

### Question 3

This question had two requirements. The first asked candidates to explain the tax treatment of a fuel hedging transaction undertaken by an airline. The second was a computational requirement that

asked candidates to determine the capital allowances available in respect of some expenditure incurred by the airline.

Most answers to the first requirement were incomplete, although many candidates earned credit for explaining that the futures contract was subject to the derivatives contracts regime, that accounting fair value movements would be subject to tax, and for calculating those movements. A minority of candidates referred to the disregard regulations and their effect. Candidates generally answered the second requirement well, correctly identifying which expenditure would benefit from plant and machinery allowances, and structures and buildings allowances, respectively. A small number of candidates did not produce a conventional capital allowances computation, however credit was given for their written explanations.

#### Question 4

Candidates were required to calculate, with explanations, the taxable profits/losses for a large retail company assuming the most beneficial claims and elections.

The question was answered very well with most candidates scoring highly in relation to computational add backs and deductions, which included capital gains and capital allowances. Many candidates unnecessarily prepared a capital gains calculation for the share sale even though they correctly concluded that the disposal was covered by the substantial shareholding exemption. The treatment of revenue expenditure capitalised was not particularly well done, with many candidates not claiming a deduction for the depreciation charge on such expenditure or alternatively claiming a full deduction for the expenditure incurred in the period even though it had not been charged to the profit and loss account. A significant number of candidates incorrectly believed that the three-year loss carry back rules still applied.

#### Question 5

Candidates were required to explain the senior accounting officer implications for an international group.

Whilst most candidates correctly identified the turnover and balance sheet limits, they failed to apply these correctly to the stated scenario. In particular many candidates incorrectly included the Greek subsidiary in the analysis or failed to recognise that the 50% owned UK subsidiary needed to be excluded. In many cases, workings were not provided for their analysis – candidates can sometimes be awarded marks for workings even when they get their answer is ultimately incorrect. The requirements as to the senior accounting officer's main duty, certificate and notification requirements and penalty provisions were well answered.

#### Question 6

Candidates were required to explain the application of the transactional transfer pricing methods to the stated scenario.

The legislative requirements and identification of the three methods outlined in the OECD guidelines were answered well. Application of the methods to the stated scenario were, however, not done well with candidates not considering sufficiently the functions and risks of each entity in their recommendations of the preferred methodology. In addition, most candidates were not aware of the OECD's methodology for low value services or that stewardship costs should not be recharged to the subsidiaries.

## **Domestic Indirect Taxation**

### General Comments

Candidates found this paper challenging although the questions examined covered long and well established principles of the tax.

Regrettably far too many candidates failed to read the question carefully and/or restricted themselves to the requirement, thereby losing valuable time and marks. It is vital that candidates read the requirements carefully and understand what is being asked of them, rather than answering the question they wished was set. This led to irrelevant, generic information being included which was not pertinent to the specifics of the question.

A sizeable number of candidates also wasted time summarising the question in the opening paragraphs of their answers.

As a result, the pass rate was a disappointing 28%.

### Question 1

Candidates were asked to advise on the VAT status of the supplies made under an existing 21 year lease granted by a non-profit making body to an unincorporated members' sports club where the beneficiaries of the services supplied were individuals participating in sport and/or physical recreation.

The question was handled very poorly by candidates, particularly given that it was substantially directed at the application of the well-established principles of single/multiple supplies and the limitations of VAT exemption on the letting and leasing of land.

In unambiguous terms, candidates were asked to advise on the nature of the Foundation's supplies under the lease granted by it to the Club. Despite this, many candidates' answers focused on the VAT status of all supplies made by the Foundation covering issues such as business v non- business (supported by HMRC's recently issued public guidance, commentary on the decisions in *Wakefield College* and *Colchester Institute Corporation*, etc).

Candidates were advised that the Foundation's position was VAT exemption did not apply since Club users did not occupy the lake's waters exclusively. This alone should have alerted candidates to the requirement of exclusivity of occupation in respect of the letting of land. Very few identified the point.

Candidates were provided with a summary of the terms of the existing lease; yet surprisingly, many did not identify that the bundle of benefits accruing to the Club necessarily called for an analysis on whether the Foundation was making a single or multiple supplies and the VAT status thereof.

The possibility that the Foundation's supply under the existing lease represented a VAT exempt supply of sporting services by an "eligible body" to persons participating in sport was barely recognised. The factual background in first paragraph of the question was directed at whether the Foundation might meet the criteria of an eligible body.

### Question 2

This question considered whether a University might reclaim VAT incurred on the refurbishment of its student residence, Hermitage Hall, constructed by it in 1970 as a result of granting a 25 year lease to a subsidiary company. In addition, candidates were asked how HMRC might view the transaction.



Even if candidates were unaware of the decision in *Link Housing Association*, it was disappointing that so few candidates appreciated that the University, having constructed Hermitage Hall, was entitled to zero rate the grant of the major interest of the refurbished building to Enterprises, with associated input tax incurred by the University recoverable in full. This relief has been in place for well over 40 years. It is covered extensively in section 4 of Notice 708 which is included in Tolley's Orange Tax Handbook as well as in candidates' training manuals.

The University's entitlement to reclaim related input tax inevitably led to the second limb of the question i.e. whether HMRC could recharacterise the transaction as an abuse of law, again now a well-established principle in UK VAT law. Few candidates dealt with this point definitively.

Where candidates did not identify the University's ability to zero rate its supply, answers covered:

- whether the building services supplied to the University might be subject to the reduced rate (with the relief unlikely to be in point given that the building would be used for a relevant residential purpose both before and following completion of the qualifying services and it would not comprise dwellings as defined post conversion).
- The University should charge VAT, with the subsidiary recovering this by opting to tax the building. However, there was little follow through from candidates, for example, would the option to tax be ineffective where it related to student accommodation?

Credit was given for reasonable and supported answers but it was disappointing that candidates did not apply themselves to the specifics of the question.

### Question 3

The question was directed at the merits of HMRC's assessment and penalty notice issued to a company established in Jersey. It had accounted for, and paid SDLT on the basis that a manor house, with a garden and grounds represented mixed use property, subject to the lower rate of SDLT with the company exempt from the higher SDLT rate of 15% given that at the effective date the property would be occupied as part of trading operation.

Generally, the question was handled well by many candidates. The scope of residential and mixed use property was often superficial.

In assessing whether amenity land falls to be treated as residential property, a sizeable number of candidates adopted the "business" and "reasonable enjoyment of the property" tests applicable to VAT and capital gains tax respectively. They have no application to SDLT in this context.

Surprisingly, candidates did not deal with the penalty aspect well, with just a handful identifying reasonable excuse as a defence; consequently, the easy marks were foregone.

### Question 4

In relation to the activities of a developer, candidates were asked to consider the VAT implications of various property transactions, including a lease surrender and grant of a new lease in a different property, a dilapidation payment and potential mixed supplies.

This question was generally handled well by candidates save for identification of the VAT status of the benefits accruing to leaseholders in return for the annual charge. Detailed analysis of the extent to which the benefits were ancillary to the principal supply of an interest in land, an integral part of a single standard rated supply of facilities or supplies on their own account was absent.

In relation to the disapplication of the option to tax, some candidates concluded that the disapplication extended to the whole building. It does not; it is restricted to the supply caught by the anti-avoidance measure.

#### Question 5

Candidates were provided with details of the interests held by three UK resident entities and were asked to explain which could be included in a VAT group, whether VAT grouping would be beneficial and, in the absence of a VAT group, how might they mitigate non-attributable input tax incurred.

Given the frequency that VAT grouping arises in practice, the absence of detailed knowledge of the eligibility requirements was troubling. Only one candidate identified that Fabby Food was a “specified body”. For it to be incorporated in the proposed VAT group, it had to satisfy both the “benefits” and “consolidated accounts” conditions. It did not, given that 55% of its profits were distributable to Mr Turner.

Very few candidates scored more than half marks, and in general, answers incorporated irrelevant material and/or were non-specific.

#### Question 6

Candidates were asked to consider, by reference to case law, at a tri-partite agreement which was being challenged by HMRC on various alternative arguments, including a single supply; standard rather than zero rating and the treatment of deficit funding between the parties.

Generally, candidates’ performance was poor; perhaps the HMRC’s approach to issuing assessments in the alternative unsettled them. That said, this is not an unusual approach on the part of HMRC.

Very few candidates referred to *Telewest Communications plc* (although some identified the preceding decision in *British Sky Broadcasting Group* which prompted Telewest to adopt the arrangements described in the question).

The failure of candidates to identify the override set out in notes 2 & 3, Group 3, Schedule 8, VATA 1994 was surprising. Given that it effectively imports into law the principles contained in *Card Protection Plan, Levob Verzekeringen BV*, etc resulted in very few candidates addressing this aspect, with valuable marks lost.

While a fair number of candidates identified that Oder’s deficit payments did not represent consideration for a supply pursuant to a legal relationship between the parties, the answer was rarely supported by any analysis nor reference to supporting case law.

Despite the clear requirement not to do so, some 30% of candidates wasted valuable time outlining HMRC’s powers of assessment, the taxpayer’s entitlement to a review of assessments, the appeal process, etc.

### **Cross Border Indirect Taxation**

#### General

There were a number of candidates who were not prepared for this paper due to lack of time committed to studying the material and/or practical experience. A number of scripts showed a basic lack of understanding of VAT and its application to scenarios. Although the papers are called ‘Advanced Technical’ simple regurgitation of rules with no application to the scenario will not score a

pass. There were also a significant number of candidates regurgitating material from the questions themselves, which earns no marks and costs time.

Many candidates wasted time by restating the question; writing about general points relating to the tax tested; addressing the wrong tax (especially writing about VAT implications when the question specifies “Customs Duty implications”) or addressing points that are clearly excluded. Question 6, for example, said Jeff would sell his car before leaving South Africa but candidates still discussed the implications of importing it. Whilst the pressure of an exam situation is understandable, it is fundamental that candidates read the question properly and know what is required of them.

Conversely, and pleasingly, there were scripts that scored highly. Generally these were where the answers were planned out, with headings, and had short, concise sentences. They stuck to the points in the scenarios and avoided the ‘tell me everything you know about this’ scattergun approach.

There is a difference between short concise sentences which convey the necessary information in a clear and sufficiently detailed way (and there are enough of them) and answers which are too brief and focussed only on the basic points to score highly. In a similar way, when questions are left deliberately open so as to allow for discussion of the pros and cons of options, candidates often state that one option is the best, even though there is not enough information to form that opinion. Again, they are not gaining the points available for discussing the other options.

### Question 1

This question concerned a business that operated a fulfilment centre which had not registered for the FHDDS. Candidates needed to identify to which of the clients the FHDDS applied and the consequences of late application by Opfyl Ltd.

This should have been a simple question. However, less than half of the candidates spotted that it was a fulfilment house. This is a reminder to all candidates to read the question carefully. There were hints in the question about the FHDDS. The examiner even mentioned the word ‘fulfil’ in the question which should have alerted candidates to the specific rules about fulfilment centres.

There were a number of answers based on fiscal warehouses, online marketplaces (even though the question was clear that Opfyl merely sent out orders), Customs warehouses, and agency rules. Those that did spot the main issues generally scored highly with well laid out answers that followed the question order. Those that did not spot the FHDDS did gain credit for other relevant points made but generally marks were a lot lower.

Despite the requirement saying ‘Do not discuss the place of supply...’ many candidates still did and scored no marks for this. Despite the question saying that Opfyl did not import any goods on behalf of its sellers, a significant number of candidates went into detail on the import process, PVA, customs duty etc. The question only asked for VAT issues.

Too many candidates still waste time in repeating the question/facts in their answers.

### Question 2

This question concerned a UK company that was going to make supplies of services and goods potentially from both Northern Ireland and Great Britain, to UK and EU individuals. It required candidates to recommend which location to supply the goods and services from. Both VAT and Customs Duties implications were asked for. The question was overall the best answered on the paper.

Credit was given for sensible comments outside of the marking scheme e.g. customs warehousing and general CD importing procedures – but candidates need to watch the ‘tell me everything you know about a subject’ to the detriment of the key points in the question.

Candidates also need to make it obvious, when there are two options, which one they are talking about. Those that split their answer into the two locations, using headings, scored better. A lot of candidates ignored the last bit on recovery of VAT in the EU and this cost a number of easy marks.

Candidates need to read the question carefully. For example, do not talk about B2B supplies if there aren’t any. Like the first question there was a lot of repeating information from the question.

### Question 3

This question was about a lady who was intending to set up a business making customised jewellery and was deciding whether to base her business in the UK or France. Both UK VAT and Customs Duty implications were required. Candidates were expected to explore what constitutes a ‘business establishment’ and conclude where Elordy should set up her business.

Overall the answers to this question were disappointing. Once again a number of candidates failed to read the question and talked about disclosed/undisclosed agents for bringing the press in from China. The press was being imported by the seller and then being sold to Elordy. A lot of time was wasted explaining how Elordy needed to import it (when she wasn’t the one doing the importing).

Overall this was poorly answered where there was no logical flow to many candidates’ answers often flitting from GB to France. Far too many candidates said she should VAT register and then went into consequences of that e.g. MTD, quarterly returns, what can be recovered. Despite the question asking for ‘UK VAT’ implications there were detailed discussions about registering in France, recovering VAT in France, making French domestic supplies, all of which were usually hypothetical.

### Question 4

This question was about a Nigerian company making various supplies of goods/services to farmers, who were based in the UK. Consideration was required on single v multiple supplies and the consequences of the supplies from a UK VAT perspective. Customs/Import duties implications were also required.

Candidates are reminded of the need to think before they write – ‘we do not advise you selling these as you might need to register for VAT in the UK’ shows a lack of commerciality. A number of scripts talked about the education exemption in length when it was a commercial company in the question. Too many candidates talked about Nigerian VAT, which was mostly hypothetical and most of us would know nothing about it. The question asked about ‘UK VAT’. There were also a lot of references to making a ‘13<sup>th</sup> directive claim’ as though Nigeria was in the EU.

A worryingly large number of candidates thought that if you import goods you are automatically making supplies in the UK and therefore talked about UK registration consequences of that. UK registration is not required where the customer is the importer. One of the easiest points of the question seemed to miss most candidates: books are zero rated. As a result there was a lengthy discussion about how to pay the import VAT and how to recover it.

### Question 5

This question asked candidate to identify that Processing (Inward Processing) could lead to Customs Duty savings where components were imported and a proportion of finished products were exported. It was also expected that candidates would discuss the two options for goods released to the UK market; to pay the Customs Duty on the imported components or the full value of the finished product (which if it attracts a lower Customs Duty rate could result in a saving). Figures were not given to encourage a discussion of principles and what must be considered.

Most candidates identified the correct Customs Duty relief but very few could discuss it in detail. Many candidates only discussed one element of the relief. None discussed all the options and few stated that calculations may be needed to work out the best option or that there is the potential with the “finished item” option to pay more Customs Duty than with the components option.

It appears that many candidates only know the EU rules for Customs regimes, most said a guarantee would be required. Under UK law it is only required for simplified IP, for full IP HMRC decide whether a guarantee is needed.

### Question 6

This question asked candidates to identify the Transfer of Residence available to a UK national relocating to the UK after living abroad for 12 years and to identify issues with some of the goods he intended to bring to the UK.

Most candidates who identified the relief scored the easy marks for the basic conditions. Very few appeared able to identify and address the potential prohibition and restriction issues relating to “antiques, artifacts and animal trophies” or thought to consider implications of not separately declaring items, such as the alcohol, which do not qualify for relief.

## **APPLICATION AND PROFESSIONAL SKILLS**

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

#### General Comments

The aim of the question was to provide advice on the most tax efficient structure to undertake a new high tech activity.

The general standard of answers was poor. Whilst most candidates picked up on one element of the question, very few took a broader view and considered all of the issues raised. A material number of candidates merely discussed the possible options without giving any specific advice.

A number of candidates also discussed irrelevant or generic issues at length, for example:

- The possibility of a partnership structure, despite the question making clear that a company structure was required.
- Generic implications of setting up a limited company (corporation tax due dates, PAYE schemes etc.) - of no relevance to the question posed by the client, who in any event already runs a successful company.
- Profit extraction from Newco, despite the fact that it would most likely have substantial losses and no reserves to allow the payment of dividends.

Others spent a great deal of time explaining the difference between the tax implications of a sale of shares and a sale of trade and assets. Whilst this could be relevant if the new activity was included in WA Ltd, there was nothing in the question to suggest that a sale of trade and assets would be likely under a NewCo structure. The significant number of candidates discussing a trade and asset sale followed by a liquidation had the feeling of a generic response, possibly because this has been an important consideration in other recent APS questions.

#### Structure

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

The main issue was failure to produce an appropriate executive summary. These were often much too long and detailed, such that it was difficult to establish what was actually being recommended.

#### Identification and Application

##### *Relevance of R&D tax relief*

Most candidates scored well in this topic, displaying a very good understanding. The main issue was failure to consider how the enhanced relief could be used under the different structures

##### *Roll Over Relief*

Again, most candidates scored well in this section. The better answers applied their technical knowledge in the context of the various operating structures.

##### *Employment related securities*

Very few candidates identified Employment Related Securities as a concern, even when discussing the transfer of valuable shares to the individuals. No candidates identified the risk of post-acquisition benefit charges.

#### *Substantial Shareholding Exemption*

Less than a quarter of candidates identified the possibility of SSE applying on a future disposal. Many explicitly stated that a sale of shares in Newco by WA Ltd would be subject to CT in full.

#### *Non residence*

Most candidates who registered the significance of Kieran and Natasha's possible non-residence raised this in the context of a possible claw back of gift relief if they left within 6 years of a gift, without any reference to the possible CGT mitigation of a sale after becoming non-resident.

#### Relevant Advice and Substantiated Recommendations

##### *Optimum structure*

Candidates generally scored well in this section.

A number of candidates picked one option and failed to mention any of the others. Whilst a reasonable case could be made for all three of the key options, and it would be reasonable to recommend just one, candidates should at least consider the tax implications of the alternatives.

##### *Realising profits on a future sale*

Candidates generally scored well in this section.

However, as noted above a significant number missed the possible SSE exemption.

##### *Optimum shareholding*

Almost all candidates identified the 5% shareholding requirement for BADR but many missed the 75% group loss relief threshold and the 10% SSE threshold.

### **Taxation of Individuals**

#### General comments

This question asked the candidate to optimise the client's UK tax position given two proposed capital disposals and with the proceeds applied to either a UK or German pension scheme (or a combination of both). The solution required an understanding of the capital gain (and loss) arising on the disposals and centred on appropriate claims to the remittance basis, foreign capital loss elections and appropriate application of the proceeds to the pension scheme(s) in a tax-efficient manner.

Overall, candidates made valiant attempts at bringing together to the various aspects of the question in their advice to the client. There was a wide variety in the suggested courses of action, but credit was still given for a substantiated recommendation even if it differed from the model answer and was based on mistaken premises.

However, recommendations were not always clear. For example, candidates would sometimes point out the tax savings from a remittance basis claim but not then go on to make any explicit recommendation on whether to make such a claim. Candidates should ensure they don't lose out on credit because they have not actually made a recommendation but only implied it.

### Structure

The structure of the reports was generally good. There were some minor faults for spelling or grammatical mistakes. All candidates attempted to structure the report into relevant sections with the majority including an executive summary and an appendix for calculations. Although most candidates used an executive summary, the stronger candidates used the executive summary to make key recommendations to the client. Weaker candidates generally used the executive summary to highlight key facts or tax issues.

### Identification and Application

#### *Prior year remittances*

All candidates correctly identified that the client was non-domiciled and thus had access to the remittance basis of taxation, with many giving detailed explanations of how the remittance basis worked in general terms. Some mistakenly thought that a remittance basis claim meant that the personal savings allowance and dividend allowance were no longer available, rather than simply saying that remitted income would be treated as non-savings income.

Disappointingly, only a handful of candidates reviewed prior years to see if there was an opportunity to save tax by claiming the remittance basis in one or more of the prior years. This is a shame, as it was one of the more straightforward parts of the question.

#### *Foreign capital loss election*

Most candidates identified the need for a foreign capital loss election in order to obtain relief for the loss on the share disposal.

#### *CGT analysis*

Most candidates identified the correct UK CGT figure for proceeds and base cost on the inherited property, with many suggesting a 10% tenanted deduction, as well as main residence relief for the initial period the property was lived in. However, only very few referenced the possibility of a period of deemed occupation as a residence during the period the client was working in Frankfurt, and only one candidate highlighted the need for a nomination to get main residence relief for this period.

The majority of candidates were able to correctly calculate the loss on the disposal of shares.

#### *Pension contributions*

Most candidates identified and made an attempt to calculate the available annual allowance for the year (including carry-forward), but only a minority compared the UK tax relief available on the UK and German pension schemes. Some suggested, strangely, that the question of UK tax relief on the German pension scheme should be deferred to a German tax adviser. Those who did sometimes made



the mistaken assertion that UK tax relief would be available on the German scheme on the assumption that it was a Qualifying Recognised Overseas Pension Scheme (QROPS).

Not many candidates identified the limit of relevant earnings as applicable to pensions tax relief, and some of those who did ignored this limit in calculating the maximum tax-relievable contributions which could be made.

Virtually all candidates mistakenly thought that tax relief for the pension contributions would operate as it does under relief at source, rather than for a net pay arrangement – likely a misunderstanding of what was meant by a ‘net pay arrangement’ or otherwise thinking that relief for contributions made personally (albeit to an occupational scheme) would operate as it does under most personal pension schemes. Although this did not generally impact conclusions, some candidates appeared to think the amount of tax relief was different depending on the relief mechanism.

#### *Remittance basis for 23/24*

Most candidates prepared comparison calculations demonstrating the impact of a remittance basis claim for 2023/24, but many ignored the impact of remitted proceeds and/or tax-relievable pension contributions.

#### *IHT*

Most candidates provided a brief overview of the relevant IHT considerations in the client scenario.

#### Advice and recommendations

##### *Prior year remittances*

The advice and recommendations in this area were straightforward where the candidate had spotted that it was possible to make a claim for the remittance basis for earlier years. Unfortunately, those who did not consider the historic position at all did not make any recommendation and therefore did not receive any credit in this area.

##### *CGT elections*

Only one candidate achieved credit for mentioning the benefit of a main residence nomination on the Leipzig property.

Candidates who also did not recommend claiming the remittance basis for any year also missed credit for making a recommendation on the foreign capital loss election, unless the candidate happened to discuss it as a hypothetical recommendation in the event the remittance basis was claimed.

##### *Pension contributions*

It was disappointing that many candidates didn’t consider how the pension contributions would be funded, despite the question clearly stating that these would be funded from the proceeds from both disposals.

Those who suggested funding the contributions up to the maximum level attracting UK tax relief from UK salary, while at the same time keeping proceeds from both disposals offshore and claiming the

remittance basis, needed to think more holistically as there was no obvious way the client would have been able to afford the contributions recommended.

Others thought that, because making a contribution to the UK pension scheme would be a taxable remittance where the remittance basis was claimed, it would be better contribute to the German scheme instead – without considering that the tax relief on a contribution to the UK scheme might exceed the tax payable on the remitted gain.

Only a minority of candidates made a recommendation of whether to make the contributions into the UK or German pension scheme, but for those who did, it was good to see candidates give some thought to the position under the treaty when the pension would be drawn in retirement.

#### *Remittance basis for 2023/24*

Candidates' attempts at this part of the question were mixed. While all candidates gave some recommendation between the remittance basis or the arising basis for 2023/24 (with the majority opting for the remittance basis), many appeared to decide the issue ignoring the impact of the tax relief on the pension contributions.

Some made confused recommendations between claiming or not claiming based purely on the income tax position or the capital gains tax position, rather than considering the overall position once the pensions tax relief had been factored in. In many cases, it was a challenge to pick out the overall recommendation which was being made.

## **Human Capital Taxes**

### General Comments

This question asked candidates to compare two incentive packages being considered for the appointment of a new management team. The question focused on share option/share incentives and pension contributions. The quality of the answers was generally good.

There was a good understanding of the benefits of CSOP and the disadvantages of unapproved share options from an income tax and NIC perspective. Candidates generally made a good attempt to compare this proposal to management's counterproposal of restricted shares. The impact of these two proposals on the corporation tax position of the company was generally not well understood and this prevented most candidates from getting close to the conclusions of the model answer.

The merits of the pension proposal were well considered with good awareness of the annual allowance restrictions on tax relief.

Candidates generally did a good job of considering the wider commercial and practical implications of the options being considered.

### Structure

The structure of the reports was generally good. There were some minor faults awarded for spelling or grammatical mistakes if they were frequently made. All candidates attempted to structure the

report into relevant sections with almost all using an executive summary for their conclusions and recommendations with an Appendix for calculations.

### Identification and Application

#### *CSOP*

Quite a lot of time was spent by candidates explaining the rules for CSOP. While credit was given for advising the client on reporting requirements and qualifying conditions some candidates spend more time than needed telling us everything they knew about CSOP.

#### *Employment related securities*

Some candidates were confused about the difference between share options and restricted shares which hindered their ability to apply the correct tax rules. The tax treatment of unapproved stock options was generally well explained.

There was some confusion over the length of the restrictions on the growth shares and therefore whether a tax charge arose on award or not leading some candidates to discuss s.425 elections rather than s.431. Credit was still given to candidates who explained s.425 elections where they clearly understood and explained the advantages of making these elections to accelerate the tax charge in order to benefit from CGT treatment on the growth.

#### *Readily Convertible Assets*

Most candidates demonstrated good awareness of the rules and the impact on employer compliance and NIC costs.

#### *Corporation tax deduction*

Most candidates picked up on the CT deduction for the costs of running a CSOP but did not give consideration to the much bigger CT deduction available for the cost of the shares themselves. This meant most candidates failed to recognise that unapproved options were more cost effective for shareholders given that a CT deduction is available for the cost of the shares at exercise and no similar CT deduction would have been available for the growth shares.

#### *EFRBS*

The rules for EFRBS were not generally very well understood with most assuming it must be better from a tax and NIC perspective than additional salary.

#### *Auto enrolment rules*

The awareness of the auto-enrolments rules on the options being considered was mixed.

#### *Use of information*

Generally this was fine, however, some candidates answered the question on the basis that the restrictions lasted for less than five years. Despite being told explicitly to ignore all other elements of the incentive package many candidates still decided to write at length about salary, holiday pay, company cars etc.

## Advice and recommendations

### *Management incentive plan*

Candidates generally recommended management's proposal on the basis that CSOP were tax effective but some struggled to explain the reasons why they thought that restricted shares were, or were not, better than unapproved options. Candidates were given credit for suggesting reasonable variations of the two packages proposed. For example some candidates suggested that CSOP options and growth shares would make the best combination which was a reasonable recommendation. Very few candidates arrived at the recommendations arrived at the model answer but that did not prevent many candidates being awarded good marks on the basis of clear recommendations backed up by their analysis of the tax situation.

### *Pension contributions*

Good advice was given on pension contributions generally highlighting the benefits of making contributions to the UK registered scheme up to the annual allowance. The recommendations then varied based on whether the candidate spotted that contributions to the EFRBS would be subject to IT and NIC due to the impact of Part 7A and/or would not obtain a CT deduction. Candidates generally made a good go of calculating the Annual Allowance available to the FD and making pension recommendations based on that. Few candidates gave advice on how to mitigate the impact of auto enrolment rules with the design of the pension package.

### *Commercial and practical considerations*

Candidates generally gave good advice and recommendations on the non-tax aspects of the two incentive packages. Many spotted that share valuations would be important and that lawyers would be needed to draft contracts and amend company articles to implement the arrangements. There was also good awareness of the aspects that CTA should not advise on such as legal and financial advice.

The better candidates recognised the importance of Richard Hutch's request to use an incentive that was simple, avoided complexity and was tax neutral for shareholders.

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

### General Comments

This question was based around a request from a client regarding land that had development potential.

The key decision that the client requested advice on was whether to leave the land to pass into a discretionary trust on her death via her Will or set up a trust in her lifetime. An ancillary question related to general estate tax planning.

The land was appreciating in value and had a significant Capital Gains Tax exposure. The key to the question was the interaction between Inheritance Tax and Capital Gains Tax.

## Structure

Most candidates produced an answer in an appropriate report style with a summary and recommendations.

The flow of a selection of reports was poor and would not have enabled a client without background tax knowledge to easily follow the advice being given. However, most reports were well presented and structured in a way that enabled them to be easily digested.

## Identification and Application

### *Inheritance Tax exposure*

The majority of candidates sought to identify the tax exposure of the estate.

There was a variety of calculations produced with some candidates seeking to calculate the tax on today's valuations and some candidates using the expected future values. In the context of the reports both of these methods were acceptable.

A number of candidates incorrectly calculated the Inheritance Tax on the Self-Invested Pension Plan. Some highlighted the reason they had included it however a significant number made no comment at all.

### *Identify the implications of retaining the land in the estate*

The key point to establish was that the land was increasing in overall value whereas the agricultural value was expected to remain the same.

As Agricultural Property Relief (APR) only relieves the agricultural value of the land the Inheritance Tax exposure was rising.

This point was identified and explained well by most candidates.

### *Identify the implications of creating a lifetime trust*

Most candidates correctly identified the tax charge that would arise from the creation of the trust.

The secondary element being the potential additional tax charge upon death was not answered well by many candidates.

### *Interaction between Inheritance Tax and Capital Gains Tax*

This area was well answered by a significant number of candidates who identified that in the event of the asset being held on death, even though the Inheritance Tax exposure was rising, the potential Capital Gains Tax exposure was falling due to the probate rebasing.

This was a key area to establish to answer the client's questions well. The Capital Gains Tax payable in the various scenarios was generally very well answered.

### *Gifts to friends*

The question contained a request to identify the implications of cash gifts to friends. This was straightforward and answered well in almost all cases.

#### *Residence Nil Rate Band*

Most candidates who commented on this area generally explained the situation clearly and competently.

#### Relevant Advice and Substantiated Conclusions

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

A significant number of candidates did not answer the questions posed by the client. A significant number also rushed to conclude that setting up a trust would be the best option without weighing up the options and implications.

#### *Advice on Inheritance Tax*

This area was generally not well answered. Some answers were undeveloped focusing solely on the trust being potentially created.

#### *Advice on Capital Gains Tax*

This area was not well answered by most. The implications of the probate rebasing was overlooked in many cases leading to a significant error in the overall advice.

#### *Advice on Cash Gifts*

This area answered well by the majority of candidates. The advice was straightforward and various appropriate suggestions were well explained.

#### *Advice regarding RNRB*

Candidates who had identified that the RNRB provisions were not met continued to explain how the relief could be obtained. A small number of candidates did not identify this and therefore offered no advice.

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

#### General comments

The client company in this question was a well-established manufacturer in the food and drink sector. Candidates were required to prepare a report advising on options for structuring a research and development collaboration between the client and a small and medium enterprise (SME) company specialising in the specific area. The collaboration involved two projects aimed at developing a new industrial process and carrying out clinical research to enhance the value of the process.

The question contained a lot of information for candidates to consider. The stronger candidates were able to use all the information effectively to identify the relevant tax issues and commercial

considerations. The weaker candidates failed to make any meaningful recommendations and/or did not recognise the importance of the exit strategy to the choice between the two options.

### Structure

Almost all candidates produced a report in a suitable format that was well structured and well signposted. Most candidates discussed the two options separately, but some included a separate section covering the exit strategy for both options. Either approach worked well.

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

### Identification and Application

Most candidates identified the key topics being tested.

#### *Taxation of royalty income, payments, and losses, including the patent box regime*

This topic was dealt with well by most candidates. The treatment of royalty income, royalty payments and the possible withholding tax issues were covered effectively, as was the Patent Box regime.

The losses in the early years of the projects were not always covered with the same degree of competence. Well prepared candidates recognised that Newco was a consortium company and as such the group could make use of the losses by potentially surrendering them to other profitable companies. Although details of the profit position of other companies was not provided, candidates were able to demonstrate their competence in this area by explaining how consortium relief operates.

#### *Research and Development tax relief*

This area was answered well by most candidates and the explanation of how the two different types of relief operated was very competently dealt with. The key point to identify was that the SME company was able to claim the more generous SME relief under the joint venture option. Under the Newco option, all the expenditure only attracted relief under the Large Business relief.

The question was structured in such a way that it should have been clear that the expenditure qualified for R&D relief, but some candidates wasted time considering this aspect.

Candidates who applied the current rates rather than the rates that apply to this exam sitting were not penalised; both rates were acceptable.

#### *Transfer pricing considerations*

Many candidates recognised that the interest free loans made by the group to Newco would be subject to UK transfer pricing legislation and an adjustment should be made in the company tax return. The transfer pricing rules were generally well explained as was the need to keep appropriate records.

The stronger candidates extended their analysis to other intra group transactions, such as the payment of royalties. They also explained that there would be corresponding adjustments.

#### *Exit strategy*

The calculation of the option cost of acquiring either the shares in Newco or the patent rights from the SME company was a key element in advising the clients on which option to choose. Some of the components of the calculation flowed from candidates' assessment of the R&D reliefs and the financial results.

One of the key elements in this topic was the tax treatment in the hands of the SME company. The option cost was an after tax amount. Under the Newco option, the SME company could claim the substantial shareholdings exemption (SSE), whereas they would be taxed on the sale of the patent rights. The stronger candidates identified this key difference.

#### Relevant Advice and Substantiated Recommendations

The stronger candidates thoroughly reviewed and analysed the information provided in the question and were able to make recommendations based on sound calculations and tax technical knowledge.

The weaker candidates tended to give lots of detail that was unnecessary and cover topics on which no advice had been requested. For example, the question stated that no advice was required on the financial arrangement at this time. A number of candidates went into some depth in this area using time that could have been spent on relevant issues.

#### *The first four years of the project*

Well prepared candidates identified that the consortium relief plus royalty payments were broadly similar to the aggregation of the results under the Joint Venture option. The Newco option created transfer pricing obligations whereas the Joint Venture option did not, and most candidates commented on this.

The R&D relief was more favourable to the SME company in the Joint Venture option. While this did not directly impact the client, many candidates recognised this as being a commercial benefit through which to build better relations with a partner business.

#### *Exit strategy*

Most candidates provided a reasonable computation of the option costs and their recommendations flowed from their analysis. Most candidates identified that although the net amount of the Joint Venture patent option cost was less due to the benefit of the SME R&D relief, the operation of the SSE rules meant that the gross cost was less under the acquisition on the shares in the Newco structure.

### **VAT and Other Indirect Taxes**

#### General Comments

The question sought advice for a charity, Larketon Festival Ltd (“Larketon”), operating in the cultural sector, in respect of a substantial building project at the Courthouse.

The works involved renovation and extension to an existing building. Once completed, the Courthouse would offer a mixture of cultural performances, other live events, free events, and outreach projects to local children. The site would also have a café and bar which would be open every day the site was open.

Two options were provided to candidates for consideration. Option 1 envisaged Larketon carrying out the works itself, and operating the newly-renovated Courthouse building. Option 2 involved Larketon setting up a wholly-owned trading subsidiary which would occupy and operate the Courthouse site, and pay a market rent to Larketon for its occupation. There were also grant funding questions as well as lease restrictions to address.



Overall, candidates engaged with the question well and offered some sensible responses. While the main issues were generally identified well, candidates tended to fall down on the detailed application. The advice and recommendations flowed naturally from this.

### Structure

Most candidates set out the reports in a clear and logical fashion, and virtually all of them included a useful Executive Summary. By and large structure was not a problem.

### Identification and Application

#### *VAT and Cultural Exemption*

Virtually all candidates identified the importance of the cultural exemption to the question of input VAT recovery, and applied the detailed rules to Larketon's proposed activities appropriately. Stronger candidates provided a more detailed analysis of the underlying legislation and carefully reviewed the various streams of income in light of this. Most candidates dealt well with the implications of the trading subsidiary's inability to be an eligible body for exemption purposes. Virtually all candidates handled the VAT registration implications of the two options convincingly.

Virtually all candidates identified the non-business aspect of the scenario, and most applied the rules clearly to the activities in question.

The best candidates acknowledged the commercial implications of the above, and suggested alternatives to the two basic options as stated in the question.

#### *Input VAT Recovery*

This section followed naturally from the one above, and this was recognised by the vast majority of candidates.

Most candidates dealt with the basic input VAT rules well, and identified and applied the implications of non-business activity. However, too few identified the CGS implications, and many failed to apply the detailed input VAT recovery rules properly. This cost candidates marks.

More than one candidate made the mistake of applying the zero-rate on new builds to the project. Well-reasoned suggestions for reorganising the project to potentially avail of zero-rating were, however, given some credit.

A number of candidates concluded that the Department of Culture ("DoC") grant restrictions precluded any input VAT recovery at all, and this affected their answers. Nevertheless, credit was given to well-reasoned answers on those lines.

#### *VAT: Option to Tax and Capital Goods Scheme*

Responses on this topic were disappointing. The obvious route to input VAT recovery for Larketon under Option 2 was the option to tax. Most candidates spotted this, but very few dealt with the impact of the CGS and anti-avoidance rules in this regard, in spite of their importance.

A VAT group was identified as a potential solution by a small number of candidates. Many others did suggest ways of adjusting Option 2 which were relatively convincing, although the practical questions

of joint occupation were not always well-handled. Overall, a failure to identify the key issues for Option 2 inevitably led to a failure to apply them. This affected the marks earned.

#### *Corporation Tax and Charities; SBA Relief*

The project led to Larketon facing a substantial amount of non-primary purpose trading for CT purposes. Option 2 offered the chance to avoid a CT charge by Gift Aiding the profits to the charity. This issue was very well-handled by candidates and virtually all of them applied the rules appropriately.

SBA was not well-handled as a rule, though the vast majority of candidates did discuss capital allowances more broadly appropriately.

#### *SDLT*

The main SDLT point arose in Option 2, but could be relieved by way of group relief. The majority of candidates dealt with this well. Option 1 did not lead to an ultimate SDLT issue and while most candidates realised this, it was less well-handled overall.

#### *Grant Funding and Other Matters*

The DoC grant restricted input VAT recovery without its permission. Virtually all candidates identified this and dealt with it well. As noted above, some concluded that this precluded any input VAT recovery. This was not unreasonable and good answers on these lines received appropriate credit.

Virtually all candidates spotted the Ministry of Justice (“MoJ”) lease’s requirement for a £10,000 plus VAT payment and handled it appropriately.

#### Relevant Advice and Substantiated Recommendations

##### *VAT: Non-Business, Exemption, Input VAT Recovery and CGS*

Candidates generally provided clear advice and recommendations on this topic, with good discussion of input VAT recovery, exemption and the implications of non-business activities. Too few dealt with the CGS and its implications for both Options, however, and failures to identify and/or apply the details referred to above inevitably reduced the quality of advice and recommendations.

##### *VAT: Option to Tax and VAT Grouping*

Since too few candidates spotted the implications of the option to tax and the related anti-avoidance rule, this aspect of this topic was generally not well-handled.

However, even though VAT groups were only referred to by a minority of candidates, many did make sensible and well-reasoned alternative suggestions for revising Option 2 which received credit.

##### *Corporation Tax/Gift Aid/SDLT*

In line with the generally competent handling of this aspect of the question under I&A, the advice here was generally clear and sensible. A few candidates could have been more explicit in their recommendations.

##### *Weighing up Options and Implications of Grant Funding Matters*

Virtually all candidates made a good attempt to weigh up the options and to provide advice and suitable recommendations, and many made confident and sensible alternative suggestions. However, where key VAT points were missed by candidates (see above), this inevitably weakened comparisons of the two Options.

The implications of the DoC grant in particular did feature prominently in the advice, as did such important commercial matters as administrative burdens of the various options and implications for pricing of the loss of exemption, etc.