

## **NOVEMBER 2020 CTA EXAMINERS' REPORTS**

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

Given the restricted exam offering in June/July (with Application and Professional Skills only available following the necessary cancellation of the May exam session), November saw record numbers of candidates on many of the papers. That said, candidates numbers were not double the number we would usually see and so it was clear that many candidates who would otherwise have sat in May or November chose to defer their entry.

In part this may have been because they were put off by the difficulties experienced by many candidates in the pilot June/July APS exams. As a result of those difficulties, we changed the system from one where there was remote invigilation via the camera on their computer to open book, uninvigilated exams. This change to use the much more stable software, which had been tried and tested on the CIOT's ADIT exams, meant that there were virtually no software related exam problems this session (with the exception of a slightly later start for the Awareness exam).

Whilst the exams were uninvigilated, sophisticated software was used to detect potential collusion. It was good to see that candidates acted professionally, as should be expected, with only two possible instances identified.

The results on all papers except for the Advanced Technical Human Capital Taxes paper were in line with expectations. Further detail on this paper is set out below.

The formatting available in the exam software was fairly limited and this did cause some time pressure on computation heavy papers such as the Taxation of Owner Managed Business Advanced Technical paper and this was recognised in the marking and moderating. The exams for both sessions of 2021 will use the same software, although it will contain enhancements to make it easier to type calculations, among other features.

### **AWARENESS**

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

##### General Comments

Performance on this module was generally good.

##### Question 1

Answers were generally good but several candidates failed to recognise that children's clothing and footwear is zero-rated and that exemption from registration could be granted on this basis.

##### Question 2

Most candidates were able to state the rules re the recovery of pre-registration input VAT on goods and services, but some struggled with the application of those rules to the items of expenditure given in the question. Some candidates thought that the VAT on capital items was not recoverable.

##### Question 7

This question was frequently omitted or poorly attempted. The main reason that candidates failed to gain marks on this question was due to simply stating the rules without relating their answer to the question. If figures are given in a question then the expectation is that they will be used. Some candidates ignored the simplified tests completely and did a full partial exemption calculation, which was not required.

#### Question 8

Performance on this question was mixed. Most candidates failed to correctly calculate the amount of the net error and arrived at a figure of £26,100. Some candidates did not use the figures given in the question anywhere in their answer and simply stated the rules re the correction of errors.

#### Question 9

Candidates must be clear and specific with their explanations in order to maximise their marks. Stating that there is 'no VAT' instead of 'zero-rated', or 'normal rate of VAT' instead of 'standard-rated' is not good enough to earn the available marks.

#### Question 10

This question was generally well attempted, although the majority of candidates failed to recognise that the ruby could not be sold under the margin scheme.

#### Question 11

Although performance on this question was generally good, some candidates calculated SDLT at the residential property rates and some even added on an extra 3% as they assumed that the company 'owned more than one building'. On the issue of Dose Ltd leaving the group, some candidates discussed degrouping charges in relation to chargeable gains rather than in relation to the withdrawal on SDLT group relief.

#### Question 12

The main error in answering this question was to calculate the maximum penalty applying to the late submission of the stock transfer form rather than the minimum penalty asked for in the requirements.

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

#### Overall comments

Generally, the paper was answered well by most candidates.

#### Question 13

As expected, some candidates clearly knew there should be some difference in the treatment of the two types of expenses but were unsure as to what that was. Other candidates totally misunderstood the relevant income tax rates.

#### Question 14

Answers were generally good. However, a number of candidates clearly wrote down any knowledge they had about APR, some of which was irrelevant to the scenario and therefore wasted time.

#### Question 16

The most common mistake for most was the failure to notice that the June 2019 transfer value was referred to as a gross transfer and therefore did not need to be grossed up.

#### Question 17

A number of the answers to this question started well but then demonstrated some confusion. Almost all candidates identified the relevance of the related property rules but were not always able to correctly apply them to calculate the value of the shares.

#### Question 18

Although well answered on the whole, a surprising number of students failed to refer to how the NRB would initially be determined, being based on the tax year in which death occurs.

#### Question 21

There were a number of candidates who did not score full marks on this question. This was mainly due to either not appreciating that an unused RNRB could be transferred from the spouse as well as the unused NRB, or incorrectly calculating the value of the unused NRB to transfer, by calculating the unused percentage incorrectly or simply taking the unused amount across.

#### Question 22

This was generally very well answered but some candidates lost marks by failing to clearly show the loss brought forward and AEA offset against the residential property gains in preference to other gains.

### **Module C - Corporation Tax**

#### Overall comments

Most candidates performed well, showing a good knowledge of the rules. Candidates should take care to read the scenarios and requirements thoroughly and to take care in performing calculations.

#### Question 25

Many candidates lost marks on the deduction for the period in respect of the premium. Common errors were to omit to spread the relief over the length of the lease and/or to adjust the amount for the fact that the lease was entered into halfway through the year.

#### Question 27

Some candidates calculated a negative figure for total taxable profits, perhaps confusing TTP with trade profit/loss.

#### Question 28

Overall, candidates showed a good knowledge of the loans to participators rules. However, a significant minority used an incorrect rate (19%, 25% and 38.1% were often used).

#### Question 29

Many candidates scored full marks. However, some candidates struggled, perhaps due to gaps in their knowledge. A common error was to carry-back the overseas property business loss.

#### Question 30

A common error was to cap the surrenderable amount by reference to the amount of the trade loss given in the question (£43,000), and not to adjust that amount for the R&D additional deduction and the potential offset against the NTLR profits.

#### Question 31

Quite a few candidates did not attempt this question and of those that did, few scored high marks. A common error was to consider the SME exemption using the figures for Puttle Ltd and not for the group as a whole.

#### Question 32

Although almost all candidates recognised that rollover relief may be claimed, a significant number did not restrict this to take into account that not all of the proceeds had been reinvested. Most candidates struggled to calculate the correct amount of indexation allowance relating to the cost of the building.

#### Question 33

A significant minority of candidates only considered Cullercoats Ltd and Dunstanburgh Ltd in determining whether or not the two companies were part of a group, ignoring the parent company, Alnwick Ltd.

#### Question 34

Most candidates performed well on this question. A small number missed that this question was concerned with the 'major change in nature or conduct of trade' provisions.

#### Question 35

Quite a few candidates did not attempt this question and of those that did, only a relatively small number achieved full marks. A common error was not to restrict the loss by reference to the (correct) overlapping period.

#### Question 36

This was a high-scoring question for most candidates. Some candidates did not take enough care with their answers; for example, the requirement was to state the date of payment but some candidates did not provide all three of date, month and year.

### **Module D - Taxation of individuals**

#### Overall comments

Overall, candidates performed well in this paper. Candidates are advised to read the question, including the requirement, thoroughly, and to ensure that they explain their answers where they are requested to do so.

#### Question 37

Most candidates coped well with part 1 of the question. Where mistakes were made, it was generally with regard to the calculation of the high income child benefit charge.

#### Question 38

A common mistake was to omit to deduct the gross donation in calculating adjusted net income for the purposes of the personal allowance reduction. Otherwise, most candidates performed well in this question.

#### Question 39

This question proved to be quite difficult for some candidates. Many candidates struggled to calculate the excess mileage allowance amount.

#### Question 40

Overall, candidates performed well in this question. However, many made small mistakes, losing marks as a result. A common mistake was not to restrict the benefit in kind to reflect the fact the car was first made available to the taxpayer six months into the tax year.

#### Question 41

Most candidates demonstrated a good knowledge of the rent-a-room scheme; however, some candidates thought that the £7,500 allowance could be deducted in addition to allowable expenses.

#### Question 42

This was a relatively low-scoring question, in part because some candidates did not provide adequate explanations for their answers. For example, explaining that the travel costs relating to York were allowable because York was a temporary workplace, and explaining why York was classed as a temporary workplace.

#### Question 43

Quite a few candidates did not attempt this question and of those that did, many struggled with the tapering of the annual allowance. The requirement asked for the amount of the annual allowance charge but most candidates stopped once they had calculated the annual allowance. A significant minority of candidates grossed-up the pension contributions.

#### Question 44

The requirement was for brief explanations with supporting calculations but most candidates provided only calculations. Few candidates explained why part of the premium was taxed as income and part as capital.

#### Question 46

Common errors on this question included deducting the loss on shares sold to a connected person and omitting to state the due date of payment.

#### Question 47

Many candidates struggled with this question, showing a lack of knowledge of the rules applying with regard to chattels.

#### Question 48

Most candidates dealt well with the part of the question relating to payments on account. However, only a small number of candidates seemed to be confident with regard to the rules relating to collecting a tax liability through PAYE.

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

#### General Comments

Performance in this module was reasonable. Most candidates had clearly prepared well and had a good grasp of a broad range of topics, however others struggled to answer questions on relatively core areas of the syllabus.

#### Question 49

Performance on this question on partnerships was generally well done, but a common error was to split the profit before the deduction of capital allowances, which were often only calculated on Alice's car.

#### Question 50

This question on the cash basis was not well done and was the most omitted question on the paper. Despite the question stating that Esther claimed flat rate expenses wherever possible, candidates frequently claimed capital allowances on the car or even deducted the full cost. For the second part on loss relief, most candidates were unaware that the only option was to carry forward against future trading profits.

#### Question 51

Common errors were to split the 16-month accounting period into two periods of 12 months and 4 months, to put the car in the general pool and to miss the hybrid rate of writing-down allowance on the pool. A disappointing performance on a core area of the syllabus.

#### Question 52

Performance on this question on basis periods was disappointing. The basis period for the second year was frequently incorrect and several candidates thought the year of cessation was 2020/21. Overlap profits were frequently calculated incorrectly. As overlap profits are profits assessed twice, candidates would do well to perform a sense check on the amount that they calculate.

#### Question 54

Most candidates failed to appreciate the effect of reaching retirement age on NICs. For those that recognised that this was relevant, quite often inadequate explanations and/or application of the rules were given.

### Question 55

Income Tax Self Assessment is another core area of the syllabus that candidates should be familiar with, and most answered this question well. A common error was to discuss payments on account, despite the fact that this was irrelevant as Freya had only just started trading and the question asked for the date of her first payment.

### Question 56

This question on partnerships was generally poorly answered. The most common errors were to split the loss of £50,000 before deducting salaries, to treat losses as profits and the failure to recognise that Katie had a notional profit which needed to be reallocated to the other partners.

### Question 58

Performance on this question was generally very poor. Although most candidates appreciated that a claim against income under s.64 must be made before a s.261B claim, most candidates did not realise that the maximum s.261B claim was the lower of two figures, and simply netted off the current year capital gains against the brought forward capital losses before then offsetting the remaining trading loss.

### Question 59

Performance on this question was very mixed. Those candidates who did well often scored full marks, whereas others failed to recognise that only the proportion of the gain relating to the business use could possibly be deferred and therefore did not recognise that the partial reinvestment rules needed to be considered. Some candidates managed to rollover a gain of £130,000, despite the gain, which was given in the question, only being £90,000. The calculation of the base cost of the replacement warehouse was frequently omitted.

## **ADVANCED TECHNICAL**

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

#### General comments

This paper was written before the current Covid crisis and was expected to be sat in exam centres. It was clear that the switch to the new software meant that the relatively computation heavy paper was difficult to complete in the time available. Marking therefore took this into account. Excluding this, performance was slightly disappointing with knowledge of some core area of the syllabus lacking.

#### Question 1

The question involved the cessation of a business and covered 3 separate areas: capital allowances on cessation; losses including terminal losses and post cessation receipts and expenses. 60% of the marks were allocated to the losses section.

Most candidates scored well on the capital allowances section. The main stumbling block was recognising the different treatment of assets in the period of cessation with the most common mistake being not dealing properly with an asset which would normally qualify for 100% FYA, but in view of the cessation was an acquisition and disposal from the main pool.

The losses section required candidates to recognise that maximising the use of losses involved a combination of in year, 12 month carry back and terminal loss rules. The final period was a short period which meant part of the terminal loss was in the penultimate year and required apportionment. The vast majority calculated the terminal loss correctly, however, a significant number of candidates then focused on the terminal loss and neglected the bulk of the losses which were not covered by the terminal loss rules. Almost the entire cohort recognised that the terminal loss rules extended the carry back to 36 months rather than the usual 12, however, many failed to realise that the 2 terminal loss figures were relieved independently and had different carry back periods.

The final section representing the remaining 15% of the marks covered post cessation receipts and expenses. Most candidates dealt with this competently gaining the majority of the marks on this section.

#### Question 2

The question involved a series of capital disposals with candidates needing to identify where entrepreneurs' relief (now Business Asset Disposal Relief) was available.

Disappointing, there was a displayed lack of knowledge of the relief, which is a mainstream part of the OMB world but where candidates understood entrepreneurs' relief, this question was typically answered with a passing mark.

Common errors included not dealing with the disposal of the outbuildings correctly due to misunderstanding the treatment of the post-cessation letting; stating that the disposal of the partnership share did not qualify for entrepreneurs' relief; not considering implications of appropriating land to trading stock and incorrect calculation of restrictions applying to associated disposals.

Many candidates spent time considering rollover relief, either against the cost of the land for development, the planning permission cost or the cost of the further development of houses. Further



candidates spent considerable time considering the badges of trade as applicable to the development land and other land sales stock or the transactions in land provisions.

### Question 3

This question tested share option schemes in the context of an HMRC enquiry into the company's valuation of shares previously under option. Candidates were asked to explain the tax implications for the company if HMRC's valuation of the options was correct. They were also asked for the potential penalty position for the company should HMRC identify any additional liabilities.

This question was answered extremely poorly, and this was disappointing to see, given share options are a core area in relation to owner-managed businesses. Candidates should refresh their knowledge of share options and employer compliance. Candidates are once again reminded that no marks are available for technical material, however much is provided, on issues not relevant to what is asked for in the requirement.

Specifically, most candidates failed to correctly identify the impact of the option value exceeding £250,000 or correctly identify the corporation tax position. Candidates spent material amounts of time discussing issues which were not relevant such as capital gains tax implications which had not relevance to the company. Candidates also lost marks by repeating large tranches of notes on penalties without any attempt to analyse the position as it applied to this company, which was what was required.

### Question 4

This was a standard profit computation with capital allowances schedule.

The general quality of answers to this question was very good although there were clearly issues with layout, possibly due to the software.

Specific points:

- The allowable element of the lease premium caused most problems. Many candidates simply time apportioned the premium and claimed tax relief on this basis. Alternatively, candidates correctly calculated the allowable element but did not disallow the premium as a whole in the computation.
- Many candidates disallowed the whole of the gym membership whilst acknowledging that the expenditure in relation to employees would attract a benefit in kind charge.
- The question states that the P/L does not include any element of private motor costs yet many candidates attempted to show a private use adjustment.
- A number of candidates struggled with the disposal of fixed assets at under-value.

### Question 5

This question was in two requirements but had three key parts:

1. Explaining the process by which a PAYE settlement is agreed with HMRC;
2. Identifying whether benefits in kind arose in respect of an anniversary staff party, shopping vouchers and a long service award; and
3. Calculating and stating the due date for the PAYE Settlement Agreement on the benefits in kind.

The question was well answered although there was time wasted by a significant number of candidates who included details of PSAs or PAYE generally, often at great length. Some discussed the type of benefits which could be included without referring to the actual benefits in the question.

Specific issues causing problems included not knowing that staff events must be annual to be exempt, treating shopping vouchers as cash (so then missing that these fell to be treated as trivial benefits) and not calculating NI in the PSA.

### Question 6

This question was in main two parts:

1. The computation of trading profits and losses for the members of a new LLP, including the commencement of a notional trade and a change of accounting date; and
2. The calculation of maximum Class 2 and Class 4 NIC liabilities.

The question was reasonably well answered. Candidates demonstrated a sound knowledge of the rules for a change of accounting date, continuation of an existing notional trade and commencement rules for a new partner/member. Workings to allocate profits and treatment of the deduction of overlap relief were well presented. The basis periods were not always clearly stated.

In relation to the second part, the majority of candidates identified that Rhea had no NIC liability for 2019/20 and the computations of Carol's maximum Class 2 and Class 4 NIC were also dealt with effectively. The main issue was omission of the carry forward of losses against 2019/20 profits to compute profits for NIC.

A significant number of candidates calculated the income tax liabilities and the NIC liabilities, neither of which were required.

## **Taxation of Individuals**

### General comments

Overall, candidates demonstrated a good level of knowledge on this paper and candidates performed well in most questions.

### Question 1

This question tested the advantages and disadvantages of making a foreign capital loss election for a remittance basis taxpayer. It also tested the rules regarding non-resident Capital Gains Tax.

This question produced a somewhat mixed response. Overall the first part of this question was answered well by most candidates.

Candidates generally understood that the foreign losses would not be allowable unless an election were made. However, some candidates did not take a rational approach by working through both scenarios of election being made and not being made. As such, they did not score some easy marks on offer. Many candidates did not offer a conclusion.

There were some easy marks to be scored on the second part of the question. However, a significant minority of candidates failed to identify that the share disposal was subject to Non Resident Capital Gains Tax.

A number of candidates who identified that the gain was taxable calculated the taxable gain but failed to go on to calculate the capital gains tax due.

### Question 2

This was a computation question which required candidates to calculate the Income Tax payable by an individual with various sources of income during the year. The second part of the question required candidates to calculate the annual maximum Class 1 National Insurance Contributions for an individual with two employments.

Most candidates performed well on this question and produced a complete income tax calculation. Missing elements of the calculation included candidates failing to deduct the personal allowance or failing to deduct tax paid at source.

In previous examination sittings, many candidates did not accurately gross up charitable contributions, or they did not adjust the basic rate band and the personal allowance for the charitable contributions. In this sitting, there was an improvement in this area but a minority of candidates were unable to gross up either charitable contributions or dividends correctly.

In the question, the individual received a redundancy payment. Most candidates correctly identified that the redundancy payment should be split into two parts and correctly calculated the Post Employment Notice Pay. However, there were many candidates who incorrectly stated that the whole payment was exempt.

The annual maximum Class 1 National Insurance Contributions calculation was for an easily achievable 4 marks. Some candidates completed the calculation with ease, but many did not. Some did not attempt this element of the question.

Many candidates provided the National Insurance Contributions paid and calculated the refund due even though this was not a requirement of the question.

### Question 3

This question required the candidates to write a letter to a client, outlining her 2019/20 Capital Gains Tax liability.

Candidates dealt well with the property transfer, with many picking up on the fact that Principal Private Residence Relief could be claimed for the whole period of ownership if certain conditions were met. Unfortunately, few candidates went on to advise the client of the impact on any future sale of her new house.

Candidates also dealt well with the share sale, with most correctly calculating the base cost of the shares sold.

Most candidates correctly identified that rollover relief would be available in respect of the gain on the business premises. However, a high number of answers incorrectly stated that £78,000 could be rolled over rather than £22,650.

The fact that the rolled over gain would be frozen rather than deducted from the base cost of the new asset was picked up in a lot of answers.

A surprising number of candidates calculated the taxable amounts but then did not actually go on to calculate the capital gains tax due, which led to them losing marks.

#### Question 4

This question required candidates to write a letter advising on the tax implications of benefits being offered as part of an employment package and the client wanted advice as to which option to take with respect to company car vs car allowance.

Candidates calculated the car and fuel benefits accurately and were able to calculate the tax due on these. Many explained that Class 1A was due by the employer but failed to state that there would be no NI due from the client. It is important to remember who the advice relates to.

The treatment of fuel in respect of the car options was poor as most candidates failed to clearly distinguish between the company car and leased car options.

Very few candidates produced any meaningful conclusion as to which option was best for the client as generally only the tax liabilities were compared.

The provision of the gym membership was addressed well by most.

The advice in relation to the marketing qualification was often muddled as candidates failed to read the question. It is important to deal with each part in turn.

It was apparent in some of the answers that the open book nature of the exam meant that candidates typed out a lot of general information rather than focusing on reading the question carefully and then providing an answer with only relevant points.

#### Question 5

This question tested the Income Tax and National Insurance rules in respect of the restricted securities regime. It was designed to also test candidates on the elections available.

Most candidates scored poorly on this question, with a number of candidates not attempting to answer it fully. Only a handful of exceptional candidates calculated the tax liabilities arising correctly.

A significant number of candidates were confused by the two restrictions on the shares in the question. As such, they worked on the assumption that there was no impact of the forfeiture restriction on the tax position on the shares being awarded.

Many candidates copied out irrelevant or general parts of the study manuals and made no attempt to apply this to the question, which was very disappointing. In particular, many candidates started to write about the company's tax position, rather than the individuals.

There were some very easy marks to be enjoyed by explaining the elections available and the consequences of making those elections, as well as explaining the National Insurance position. However, numerous candidates did not write about these basic points.

#### Question 6

Generally, candidates did well on this question although many were confused by the loan interest restriction –many failing to restrict the deduction to 20% of the property income and some deducting the whole amount of the unrelieved interest from the tax due.

Very few candidates mentioned that Ted’s income tax liability could be coded out in his 2021/22 tax code.

Candidates did not perform so well in the second part of the question.

A significant number tried to claim gift relief on the gift from Ted to Jessie, and quite a few included the cost of the washing machine as part of the cost of the building in the capital gains tax calculation.

## **Human Capital Taxes**

### General Comments

Performance on this paper was very disappointing with a pass rate of just 17%. This was not expected as the paper was not considered to be particularly difficult nor did it cover fringe topics (although it did have a spread of topics across the syllabus).

Unusually, there was only one question on the paper which candidates performed well on and that was question 1 where the average mark was 64%. The next highest scoring question was question 4 with an average mark of 42% with the lowest performing question being question 3 with an average mark of just 26%.

As a general comment, candidates failed to advise fully on all aspects of the questions and where they had started analysis, they didn’t follow through to consider all implications. In general, candidates appeared to be insufficiently prepared for this exam and lacking knowledge across the entire syllabus. Whilst in the workplace an HC specialist may well focus on only a small part of the syllabus such as share schemes or employee mobility, for success in the exam they need to be comfortable with the whole of the syllabus. This is particularly the case for this paper which has possibly the smallest syllabus of any Advanced Technical paper.

### Question 1

This question tested the candidate’s ability to advise on agency worker regulations as well as the off-payroll worker rules for the public sector and in general answers were good on this highly topical question.

The majority of candidates were able to identify the need to assess an individual’s employment status and it was clear the open-book policy created a “standard” approach to this as wording was consistency similar across the majority of scripts.

The majority of candidates identified the agency rules although only the more able candidates were able to explain the intricacies of the off-payroll rules for public sector employers.

Only the very capable candidates were able to go into more detail about the consequences of the agency not carrying out their fee-payer obligations and the risk to the public sector body of not ensuring the timely communication of the individual’s status to the rest of the chain.

### Question 2

This question tested the candidates' ability to advise a third party provider of its obligations under a Taxed Award Scheme and also the obligations arising for the employer.

A significant minority of candidates were able to identify that a Taxed Award Scheme was relevant to the arrangements in place.

Most candidates recognised that the cash item was not suitable for a TAS (or PSA) and was due to be taxed via payroll by Toriq Inc but subject to Class 1 NIC by Best Motors World Ltd. However, only one candidate mentioned the economic impact of this and discussed ways in which Toriq Inc could reimburse the cost to Best Motors World Ltd.

Only one candidate suggested that an alternative to cash may produce a better outcome for Toriq Inc, Best Motors World Ltd and the recipients themselves.

A number of candidates mentioned grossing up the awards, either under a TAS or PSA, but of those, a number failed to reflect this in the computations undertaken, so underestimating the overall cost of the arrangements.

Where a TAS was recognised, most candidates went on to advise the appropriate deadlines, forms to be completed and the option between a basic rate or higher rate scheme, although most did not provide advice in this respect or undertake the computations using a recommended approach.

### Question 3

This question tested the candidates' knowledge of how dual contract arrangements may be scrutinised and the consequences for the two employing companies. Performance on this question was extremely poor with few candidates discussing the nature of the duties in any depth. Too many candidates answered the question from the employees' perspective, explaining remittance basis and self-assessment filing. A lot of time was also wasted describing overseas workday relief, which was not relevant for someone who had already been in the UK for five years.

Candidates were expected to discuss the PAYE and NIC requirements from the employer view point. Candidates did not demonstrate an understanding of the difference of there being one employment or two and how the responsibilities of the overseas and UK employers varied as a result.

Many candidates did not comment on the NIC position despite the reciprocal agreement being included in the question.

### Question 4

This question tested the candidates' knowledge of the salaried member legislation and their ability to apply these rules in practice.

Almost all of the candidates were able to outline the rules and explain the effect of meeting the three conditions from an employer compliance perspective.

The application of the rules in practice were a little mixed:

- A minority of candidates having described the salaried member rules as requiring ALL of the conditions to be met to take effect in their introduction, produced an answer that was inconsistent with this.
- Most recognised the correct application of the capital contribution test to all populations and the application of the significant influence test to the Leadership group. However, a number of candidates struggled with to understand the way the Significant Influence test applied to

Divisional Heads and the difference between the discretionary allocations to the Junior members when compared with the other populations;

- Some candidates thought that for salaried members the discretionary allocations could remain taxed as partnership income.

Whilst a majority of candidates recognised the potential double tax and social security charge, hardly any showed any understanding of how that process would work in law. Instead of references to direction notices, there was suggestions such as employees being required to reclaim the tax and social security, or annual maxima rules being invoked.

A good number of candidates also recognised the availability of a deduction against the LLP's profits chargeable to tax – a number of these candidates incorrectly considered that the LLP would be liable to corporation tax.

Finally. A number of candidates wasted time with content on penalties and interest despite the question being clear that this was not required.

#### Question 5

Candidates were expected to show that they understood how payroll worked and, in particular, how PAYE codes are created and the effect on the PAYE. Sadly, despite this being such a basic area of the syllabus answers were very poor.

The coding errors in the question were common ones. Candidates were expected to discuss starter checklists, the process for requesting amendments and how the refund could be obtained quickly in the payroll and how much the refund would be.

Most candidates did well on the National Insurance elements.

#### Question 6

This question tested the candidate's ability to advise on Employee Ownership Trust's as well as suggesting alternative methods for transferring the business to the employees. Answers were again poor.

Too many candidates approached the response in terms of general tax advantaged and non-tax advantaged share scheme arrangements and missed the key factors specific to Employee Ownership Trust's and their features and structure.

The few candidates that structured their response to directly answer the requirement did well but many missed marks on elements relating to structuring of the facilities to improve the position for employees and the owners of the business.

Only the most able candidates kept away from providing a general response on all aspects of share schemes and focus on the specific technicalities and provide advice in their answer.

It appeared that a few had not either not allocated specific time to all questions and so rushed their response to this the final question on the paper or they simply didn't have any real knowledge of this area.

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

#### General Comments

There was a mix of scores across all questions although candidates scored relatively consistently across the paper with the exception of question 5 which scored poorly with only a small minority achieving 50% of the marks available.

Some exceptional marks were achieved on various questions across the paper, with full marks awarded to one candidate for question 3 which most found relatively challenging, with a further candidate achieving an exceptionally high mark for question 5.

Some questions were either only partly completed or not attempted but it is not known if this was due to lack of knowledge or lack of time.

### Question 1

This question tested Income Tax and CGT during estate administration. The majority of candidates scored at least 50% of the marks but there was a broad range of scores from nil upwards. In too many cases the answers demonstrated a lack of basic knowledge.

A majority of candidates failed to take account of payments on account. Of those that did, a significant number failed to carry these through to the following year whilst better prepared candidates included the planning point of reducing excess payments on account. However, most candidates failed to exclude the property income attributable to Shaun personally after the properties were distributed to him and a disappointing number of candidates included ISA income and gains within their calculations despite these being exempt.

Some candidates used the wrong CGT annual exemption and rate and a considerable number failed to calculate correctly or simply ignored the probate expenses under SP2/04.

R185s were either completed perfectly or very badly with no middle ground. A disappointing number of candidates included the grandchildren in their R185s despite them not being entitled to estate income as pecuniary legatees.

Some candidates tried to calculate the estate IHT position despite this not being within the question remit.

### Question 2

This was a straightforward IHT calculation for two separate estates involving quick succession relief for the liability arising on a failed PET and a QIIP on second death.

Most candidates were able to identify the failed PET on first death and calculate the liability arising. However, some concluded that this liability would still be outstanding at the time of the second death two years later and this resulted in lengthy information about late payment interest which was not relevant. The first estate attracted the reduced IHT rate by reason of charity legacy and whilst most candidates identified this, its application was ignored in calculating the estate liability.

There was some confusion as to whether the QIIP on second death was to be included in the estate or not.



The majority of candidates correctly stated that the respective estates were too large for the Residential Nil Rate Band (RNRB), however, in some calculations this was then deducted. There was also some debate as to whether the daughters were in fact lineal descendants.

The small number of candidates who identified and correctly calculated the QSR due on both the failed PET and the estate inheritance, achieved good marks. Some candidates identified only one occasion for QSR, and several of those that did so then were unable to apply the formula correctly. The majority of candidates failed to consider QSR at all and directed their answers to IHT payment in instalments, providing extensive narrative and calculations on the rules of when instalments can be used.

### Question 3

This question required candidates to consider whether a form IHT100 was required for a given Trust scenario and to set out the pro-forma calculation whilst commenting on the late payment/filing implications.

Although most candidates scored well on the ten year anniversary (TYA) charge pro forma (although a rare few were unable to set this out even in basic format) a considerable number failed to consider the excepted settlement rules in forming an opinion on the requirement to file form IHT100 and therefore lost valuable marks. Most candidates were able to cite the interest and penalties due for late payment/filing, but some glossed over this and lost easy marks. A surprising number were not able to state the correct date of submission. Some candidates suggested that Gerald's illness constituted a reasonable excuse for which they were awarded additional credit.

A majority of candidates wasted time and lost valuable marks by explaining why the Trust fell within the relevant property regime despite this being provided in the question and considering the availability of BPR when the question clearly stated that the company was an investment company. There was significant confusion over the five-year undistributed income rule and most candidates lost marks here as well as for the incorrect pro-rata of the actual rate to exclude the complete quarters that the trust property fell outside the relevant property regime, being one. The better prepared candidates received additional credit for considering that accumulation of the income prior to the TYA would have resulted in a lower charge due to pro-rata.

Disappointingly, a minority of candidates did not even attempt this question and a few did not set out their answer in the required letter format losing the presentation and higher skills mark.

### Question 4

This question required candidates to calculate the IHT on lifetime transfers as well as on the death estate. This involved 14-year cumulation by reason of settlor payment of trust tax liabilities and single grossing due to a tax-free legacy with a wholly exempt residue within the death estate.

Generally the question was well attempted but the 14-year cumulation did cause some issues with all but the better prepared candidates. Most candidates were able to correctly identify the appropriate exemptions, although easy marks were missed for failing to identify the holiday costs, allowance and the accountancy fees as falling within the normal expenditure out of income rule. Some candidates attempted to double gross the death estate, others thought that a political party was a charity and attempted to gross up the estate. A minority failed to gross up any lifetime or death liability despite clear indicators for doing so.

Some candidates thought that there was a requirement to spread BPR across the estate and this caused confusion with the calculations. The majority of candidates lost easy marks for deducting the funeral expenses and debts from the tax-free specific legacy to Edward and from failing to account for these at all in the distribution of the estate.

### Question 5

Overall, this question was very poorly answered with only a very small number of candidates scoring well. The focus of the question was tax planning in light of the client's terminal illness requiring consideration of reliefs and exemptions that may be available to reduce the IHT exposure on death.

A reasonable number of candidates identified the exemption from the GWROB rules on the gift of the house given the unforeseen circumstances of the terminal illness. Those that did not gave detailed explanations on the impact of the GWROB provisions and the measures that could be put in place to avoid this which ranged from gifting the property back to donor or telling him he couldn't move in with his daughter, none of which were relevant and did not earn any marks.

The three shareholdings had different criteria: standing at a loss, standing at a large gain and qualifying for BPR. Very few candidates were aware of the ability to carry back CGT losses three years from the year of death but since the object was to release some cash to gift to the daughter without creating large tax liabilities, the use of the losses in this way was pivotal. Many candidates suggested selling all the shares but to create a large CGT charge so near to the potential death would have resulted in a double charge with an IHT liability either on the cash in the estate or on the failed PET. Given the client's terminal prognosis, investing in qualifying AIM stock or in the daughter's business to convert the assets to those qualifying for BPR, would be difficult to achieve.

There was confusion as to the nature of the Trust interest held by the client and whether not it was a chargeable asset in his estate. A surprising number of candidates considered that it would be beneficial in reducing the IHT liability on the estate by terminating the life interest, resulting in a PET that would clearly fail.

### Question 6

This was a short question focussed on the position of an estate qualifying for the residence nil rate band and the ability to secure the downsizing addition.

Those that answered the question did so reasonably well identifying the rules and applying them to the facts of the question. Those that did not score well did not complete the question possibly due to lack of time to present a complete answer.

## **Taxation of Major Corporates**

### General Comments

The typed scripts were generally well presented and much easier to read than handwritten scripts in previous sittings. Candidates found questions three, four and five harder than questions one, two and six but the well-prepared candidates scored highly across all the questions. Question three was the least well answered, perhaps because the topics have been rarely tested. Question six was a gift given that the legislation could be put to good use. It was noticeable that some candidates made the same

point more than once in their answers across all questions, which wasted time because candidates only received credit once.

### Question 1

Generally a well-answered question, which required the calculation of taxable total profits and losses to be carried forward. The capital allowances section was dealt with well with many candidates getting full marks for that topic. The treatment of the losses to be brought forward and surrendered as group relief proved a challenge. Pre 1 April 2017 trading losses should be carried forward and set off against the first available trading profits. This increases the amount available for group relief. Pre-acquisition losses cannot be carried forward and group relieved in the five years following the end of the account period the company joined the group.

### Question 2

This question required an explanation of how the Corporate Interest Restriction (CIR) legislation applied to a particular company and the administration of the regime. Provided candidates identified that the company may satisfy the conditions to benefit from the public Infrastructure election, candidates scored highly. The administrative requirements for CIR were well explained with the better candidates going on to discuss HMRC's powers to enquire into Interest Restriction Returns and impose penalties.

### Question 3

This was a two-part question, which required candidates to identify which companies were in the same capital gains group and where individuals and/or companies were connected with each other. The computation of the gain on the lease was well done. However, having established the correct capital gains group, many candidates advised electing to transfer the gain to a group company that did have losses to carry forward but could not utilise these losses against this gain.

Most candidates identified the second transaction was between connected parties and market value had to be used for the proceeds. Some candidates also identified that the transaction was part of a series of transactions. Few candidates, however, used the correct market value and fewer still used a share pool to calculate the cost and indexation allowance.

### Question 4

This question had a computational component and two separate parts dealing with Diverted Profits Tax (DPT) and incorporation relief.

Marks were picked up around identifying required adjustments to expenses of management. Most candidates identified that the Disregard Regulations applied to the net investment hedge and the forex gain was taxable on a future disposal of the shares. A number of candidates referenced the potential applicability of the substantial shareholding exemption.

Many candidates incorrectly stated that the dividend exemption applied to the dividend and many did not realise that the disguised interest rules were in point. Most highlighted the availability of double tax relief and the ability of Cabbot plc to credit the withholding tax suffered on the loan interest.

The utilisation of tax losses was correctly dealt with. Even where a detailed loss computation was not included, correct concepts were discussed.

Most candidates outlined the circumstances in which DPT can arise and put this into context. Many mentioned it was a separate tax (to Corporation Tax) and stated the applicable rate and other compliance aspects.

The availability of incorporation relief was generally picked up, including outlining the relevant conditions. Very few realised it would have been advantageous to defer the transaction briefly and make use of the permanent establishment exemption election.

#### Question 5

This question tested knowledge of the controlled foreign company (CFC) rules, transfer pricing of debt and the tax implications of a UK tax resident company migrating residence overseas.

Most candidates could outline the basic framework of the CFC regime including available exemptions and the gateway for non-trading finance profits but only a few were able to correctly identify that the finance company partial exemption could not apply due to ANCL Water being a UK resident company or identify that the offset of tax losses was prohibited in the relevant periods. Some candidates were able to identify that the tax exemption should apply to exempt profits of ANCL Electrics. A minority raised this issue but came to a different conclusion on the basis Jersey is subject to the “Designer Tax Rate” provisions - candidates were not penalised for this.

Many candidates could identify that transfer pricing of debt including thin capitalisation is a relevant consideration but some did not expand on this to outline a possible approach to benchmarking and the need for an appropriately documented transfer pricing policy.

Most candidates identified the temporary migration of tax residency of ANCL Water to the Netherlands and were able to explain the risk of company being dual resident and outline the treaty tie breaker test / place of effective management concepts. Few candidates went on to explain the tax consequences of the migration, requirements around notifying HMRC and the potential to defer payment of Corporation Tax related to the chargeable gain.

A minority of candidates referenced the applicability of the International Movement of Capital regulations and related reporting requirements.

#### Question 6

This question tested knowledge of the procedural aspects of HMRC compliance checks, discovery assessments and the self-assessment penalty regime relating to Company Tax Returns. It was relatively easy for candidates to make use of the tax legislation to score highly.

Almost all candidates were able to explain the procedures relating to a compliance check and most could explain the circumstances in which a discovery assessment could arise and the relevant time limits. Many candidates were able to state the range of penalties and make relevant points regarding the penalty regime and potential mitigation.

### **Domestic Indirect Tax**

## General Comments

This is both the first typed and first open book exam, which made reading scripts easier, although with quite a large number of candidates, much of the spelling was very poor. The performance on this paper was very mixed with a few candidates scoring very highly and some that were clearly not ready to sit the exam and did not attempt a number of the questions. Overall, it was a disappointing set of answers. Most candidates missed comparatively straightforward points and reached incorrect conclusions.

### Question 1

A question about agent/principal and employed vs self-employed centred around a taxi business.

With a few notable exceptions, the question was not well answered. Many candidates focussed on the employed vs self-employed issue and did not fully address the question of whether drivers supplied their services direct to passengers or to the cab firm. Whilst some correctly identified the CPP/Wheels point in relation to supplies of insurance to the drivers, many candidates did not do so. Many candidates failed to identify the taxis and hire cars were “qualifying cars” and focussed instead on excluding private use as a basis for input tax claims.

### Question 2

A question about input tax recovery and Stamp Duty based around a corporate restructuring and refinancing.

Disappointingly, the question was not well answered. Despite the fact that the question stated that “... you are NOT required to discuss the Transfer of a Going Concern provisions ...”, many candidates wasted time by doing so. Surprisingly, many candidates did not mention the Supreme Court judgment in the case of *Airtours Holiday Transport* in the context of the recovery of VAT on the viability study, and some did not mention the *Redrow* case. Some candidates said that the recovery of VAT on acquisition costs depended on the activities of the target, rather than the company that bought the shares. Many candidates correctly identified the scope for SDLT group relief on the warehouse transfer but some thought that it would be clawed back when the transferor left the stamp duty group, even though the property remained in the group.

### Question 3

A question about a small property development business and its “DIY builder” sole director and shareholder.

Few candidates identified the opportunity for the company to use the option to tax to minimise its costs on commercial developments. Many focused on the treatment of the company’s inputs, to the exclusion of consideration of its outputs. Few candidates dealt with the importance of rejecting invoices with incorrect VAT charges.

One or two candidates identified the opportunity to use “design and build” and “sale to an associated company” as means of minimising irrecoverable input tax and were rewarded for doing so. Most candidates correctly described the forthcoming construction services reverse charge arrangements (albeit not always citing the correct starting date) but many incorrectly thought that the company was not an “end user”. Most candidates identified the opportunity for a “DIY builders” claim and the

processes involved. However, some thought that the VAT on materials used to construct the swimming pool and extensions could not be claimed. Many candidates recognised that lower rating could apply to services and materials supplied by contractors working on the project but few dealt with the need to reject incorrect VAT charges.

#### Question 4

A question about a captive insurer providing indemnity to group entities involved in a construction project.

Most candidates were able to list the characteristics of an insurance contract, but few applied it to the details of the scenario to demonstrate their conclusion. The place of supply and tax point for insurance were generally correctly identified. Some candidates noticed that the insurer was late registering and talked about penalties based on lost revenue failing to notice that no IPT was chargeable during the relevant period. Most candidates were able to calculate the premiums and discuss the misdeclaration penalties, but few quantified them to be able to conclude an error disclosure was required.

#### Question 5

A question concerning the sale of an opted building to a non-registered buyer.

This question allowed candidates to consider a number of ways of avoiding VAT on the disposal of a property including TOGC, revocation of the option to tax, and possible charitable use by the purchaser. Accordingly, this was marked very flexibly but overall performance was still poor. Most candidates concentrated on the revocation of the OTT, with most correctly listing the conditions but not all applying them to the scenario details to demonstrate how the conditions were met. Some candidates also considered the disapplication resulting from charitable use by the purchaser, but many incorrectly assumed that this purchaser can demonstrate residential use.

Disappointingly, only a small number of candidates considered TOGC and even fewer correctly analysed the conditions even though TOGC would have been the cheapest option avoiding blocked input tax. Candidates were able to correctly identify that the electricity discount constituted additional rental with many deciding that the roof lease constituted a rental business.

#### Question 6

A question concerning liability of food products and a transaction with the characteristics of MTIC.

The majority of candidates correctly concluded that the sausage rolls were standard rated and quantified the error but many wasted time on listing out the criteria of catering even though it was clear which of the conditions was met. All candidates identified the promotional honey pack being a mixed supply, but few were aware of the linked supplies concession. A high number of candidates decided that mobile data cards fall within the domestic reverse charge provisions and spent time on describing the mechanics of it. A small number of candidates correctly spotted that the proposed transaction was 'too good to be true' and discussed the risks of getting involved in an MTIC supply chain. Disappointingly, most candidates were not able to explain the indicators of fraud and apply them to the scenario.

### **Cross Border Indirect Tax**

## General Comments

This is both the first typed and first open book exam. The answers seemed both shorter and generally more focused than normal. There seemed to be less repetition and less tendency to take the “scatter gun” approach to answering the question – covering many possible topics. Many answers were still light on practical recommendations, though overall performance was fairly good on this paper.

### Question 1

This question examined the “use and enjoyment” principle and its application to a series of supplies involving UK, EU and non-EU counterparties and the temporary movement of leased equipment.

Candidates generally performed well and identified the key element of the question as well as the recent case law defining leased goods and services. Better candidates highlighted the requirement for apportionment of the single fee charged by the lessor, tax point and the possibility that customers had fixed establishments in the member states. A proportion of candidates wasted time by going into detail on the supplies made by Cleanbean who was not the client.

### Question 2

This question examined the options available for a French entity with a UK branch about to change its operating model to on-line ordering and delivery channels.

Candidates performed very well on this question and the majority recognised the requirements for distance selling and electronic services supplied to UK and EC consumers (B2C). The better candidates identified that options were limited under Union MOSS to the place of business establishment in France and distance selling was impacted by existing VAT registrations. Candidates who failed to recognise the existing VAT registrations described in the question performed less well. Candidates who recognised that their recommendation for addressing distance selling would impact arrangements for electronic services scored highest, in contrast to those who viewed the two issues as unconnected. Recent changes to the UK liability of on-line publishing were recognised by many candidates but only a minority identified the potential de-minimis for cross border electronic services.

### Question 3

This question was about a construction of a windfarm in the North Sea undertaken by a Dutch company.

Most candidates correctly spotted that two of the turbines would be installed outside the UK territory but not many followed with the implications for VAT on purchases. The windfarm was a civil engineering work and a land-related transaction, but some candidates believed this was a simple delivery of goods and an onward supply subject to acquisition accounting when sold.

Many candidates identified the supply and fit simplification available for the installation of gearboxes, but some believed it could be applied to the entire project and the future purchaser of the farm could account for all UK VAT on goods and services. Some candidates incorrectly believed that UK VAT would apply on the PR services simply because the Dutch company had obtained a UK VAT registration.

Very few candidates considered the totality of what the PR agency was supplying and that all elements of it fell within the general rule for place of supply of services.

### Question 4

This question was about MTIC in a supply chain of games consoles, the application of s.77A and HMRC's ability to hold other suppliers in the chain jointly and severally liable for the missing tax.

Most candidates correctly spotted the MTIC issues, although there was a mix of those identifying s.77A or Kittel (equal credit was given for either approach if correct criteria identified).

Most candidates were however able to address questions of whether Consoles'R'Us Ltd knew or had reasonable grounds to know of the fraud, identifying relevant checks that should have been made, and information required in order to respond to HMRC. Many were also able to spot and discuss the implications of the price disparity from the previous supplier, although not all of these came to a view on this. Almost all of the candidates were able to set out in some form the implications of being held jointly and severally liable.

A number of candidates mistook the HMRC letter for a liability notice, and so addressed appealing this instead of responding to HMRC. Credit was given for this as it could have been clearer in the question.

Many candidates struggled to identify that the transfer of the consoles to the Irish branch for works would be a temporary movement of own goods and so not a deemed supply. A significant number did not mention the transfer to the Irish branch at all, and some even thought this would be a transfer out of the EU.

Many candidates did not identify that there was a calculation to be done, and of those that did, not all of them did this correctly. Credit was given for elements of the calculation.

#### Question 5

The question asked for a general overview on how to classify goods and what approach to take where a business may have been overly cautious in its approach to classification.

Most candidates covered the General Interpretative Rules well as would be expected. A lot of candidates were able to suggest options sources of information to assist with classification such as the Explanatory Notes and the Binding Tariff Information database, often pointing out the pitfalls to avoid. Unfortunately, many demonstrated their lack of practical experience by suggesting the supplier should classify the goods. The supplier would have its own different tariff which could easily lead to further errors.

Very few candidates set out a clear approach to take once new classifications were arrived at to ensure that the risk of penalties (for underdeclarations) were minimised and the amounts saved (for overdeclarations) were maximised. They often simply said, you can claim overpaid duty and should advise HMRC of underpayments.

Worryingly, quite a few candidates had the same incorrect view on the maximum level of penalty that can be applied for errors, confusing criminal sanctions with Civil Penalties and quoting the wrong amount as the maximum penalty. Quite a lot of candidates recommended getting the imported products redesigned so that they attracted a lower rate of duty; this does not seem to be a generally useful or practical piece of advice.

#### Question 6

The scenario asked a relatively simple question in Returned Goods Relief (RGR) with the more complicated twist on the question of whether both entities could benefit from the VAT relief at import.



This question attracted more suggestions that offered no particular benefit in the scenario such as the use of Outward Processing, Customs Warehousing and Onward Supply Relief. This may have been as a result of the fact that, despite having their books available, many candidates clearly did not understand the Customs rules relating to RGR. This basic failing mean that many did not address the VAT issue as they had already incorrectly stated that RGR for Customs Duty purposes is only available to the original exporter of the goods.

The scores were quite low for this question.

## **APPLICATION AND PROFESSIONAL SKILLS**

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

#### General Comments

The basis for the question was a letter from an existing client, Colin Dust, asking for advice on the best structure for a new business venture involving an innovative new product. His letter asked for only two possible structures to be considered, a partnership or a limited company, with the terms of profit share and capital ownership clearly specified. Colin was concerned to ensure that tax liabilities were minimised both over the course of the product development and on the future sale of the business. Colin also specifically asked if it would be worth involving his wife Estelle in the structure.

The funding for the venture was to be provided partly by a company in which he was a shareholder, Dust & Flow Products Limited, and partly by Colin personally.

Key tax areas to consider, depending on the choice of structure, included loans to participators, income tax loss relief, research and development tax credits and entrepreneurs relief.

The question was generally well answered in terms of identifying the key issues and that the corporate route was preferable but many answers often lacked detail particularly in terms of the involvement of Estelle and risk of loss. The finer details of R&D was also not always covered.

#### Structure

The candidates were required to draft a report to Colin and no particular issues were identified in this regard. In all cases the answers were properly structured as a report, included an executive summary and incorporated headings and appendices.

#### Identification and application

##### *Identifying issues relating to use of a partnership or a company*

Reasonably well answered particularly as regards the partnership and problems regarding the loans to participator rules, loss of annual investment allowance, loss relief restrictions and rate of relief. The issue of pre-trading expenditure was very rarely mentioned in terms of the timing of the reliefs and loan benefits. On the corporate route issues of funding and interest relief were often not referred to and comments were more general in nature. A number of candidates commented on LLP to restrict liabilities and the mixed partnership rules as a potential issue for loss relief.

##### *Identifying the availability of R&D Tax relief*

Candidates showed a good understanding of the R&D rules and conditions although very few even considered using advance assurance to gain certainty. Whilst the coverage was good few specifically mentioned that the extra R&D relief would help fund the project.

##### *Identifying tax treatment of future sale and available reliefs*

Candidates showed a good understanding of entrepreneur's relief rules but it was surprising how many candidates failed to mention the Substantial Shareholding Exemption. In addition virtually no

one mentioned the implications of the product failing other than in the general sense of limited liability.

#### *Identifying other issues*

Whilst it was good to see that many candidates mentioned having a partnership agreement, few mentioned having a shareholders agreement. Few candidates considered revenue v capital cost implications but good that most mentioned voluntary registration for VAT and trading status.

#### Relevant Advice and Substantiated Recommendations

##### *Advice as to best structure*

This was the key part of the question and it was good to see that the majority of candidates advised that the corporate structure should be used and recommended this route. A limited number considered starting as a partnership with a subsequent incorporation potentially creating the worst of all worlds.

##### *Advice on claiming R&D*

Generally well answered but advance assurance was rarely mentioned nor was the fundamental point that it would help fund the project.

##### *Advice regarding wife Estelle*

This was a poorly answered part of the question often with no comment re: profit extraction or to make her an officer if she was to benefit from entrepreneurs' relief (although it is acknowledged that using a lifetime limit of £10m for this relief meant that having her ER was less important).

##### *Advice regarding other issues and in particular profit extraction*

There was good coverage of issues relating to dividends but it was surprising that very few mentioned pension contributions or that dividends couldn't be paid without reserves. These areas were generally overlooked.

#### **Taxation of Individuals**

##### General Comments

This question invited candidates to consider the tax implications of raising funds from a number of different assets (a shareholding, a deferred state pension lump sum, a UK property and a French property) for two separate purposes: a world cruise and an Italian property. The clients (Julian and Olivia) were leaving the UK for an indefinite period (potentially temporarily non-resident) and one of them was non-domiciled.

Candidates therefore had to consider the timing of the fund-raising – not only so that the clients would have the funds in time for the intended purpose, but also to minimise the UK tax payable in light of the different tax years and change in residence position. Asset disposals and transfers would also have an impact on the income tax position, which in turn could affect the tax on the deferred state pension lump sum.

While the scenario was not straightforward, there were also several possible different solutions. There was almost as many suggestions as there were exam scripts. However, candidates who passed this paper were able to competently analyse the tax implications of raising funds from the different sources and make sensible recommendations to minimise the tax exposure, even if it was not 'optimum' from a UK perspective.

### Structure

In general, reports were laid out clearly and candidates handled the online system well. Almost every candidate set out the report with a clear executive summary, a main report with sensible sections and a number of appendices. It was helpful for candidates to set out the headings of each section to provide an overview of the structure of the report.

### Identification and Application

#### *Residence*

Most candidates (sensibly) started by analysing the change in UK tax residence position over the various tax years as a result of the clients' plans. However, some candidates spent an inordinate amount of time explaining irrelevant parts of the Statutory Residence Test – or otherwise, too much time on 'Identification' and not enough on 'Application'.

Most correctly identified that the clients would be UK resident in 2021/22 (even though there was disagreement over whether the 183-day test was met for that year), but a disappointingly low proportion then went on to correctly discount Case 3 split-year treatment on the basis that a sufficient link had not been established in an overseas country. For those who identified that the clients would remain UK resident until 5 April 2022, it was also disappointing that the question of treaty residence was almost entirely ignored.

#### *Income tax issues*

Candidates generally scored well on this section, especially those who considered the sources of income in turn and then correctly applied the double tax treaty.

#### *Deferred state pension lump sum*

A fair number of candidates did not appreciate how the lump sum would be taxed, despite it being set out clearly as an exhibit and the fact that the tax treatment was fairly straightforward. These candidates tended to just treat the lump sum as if it were normal pension income. This was disappointing, but at the same time it is acknowledged that candidates may have been put off by an unfamiliar technical topic.

#### *Capital gains tax issues*

Candidates demonstrated a good understanding of the relevant capital gains tax issues in point, including annual exemptions, capital gains tax rates and temporary non-residence. Most also highlighted the ability to transfer assets between husband and wife at no-gain-no-loss, which opened up key opportunities to minimise capital gains tax exposure on the sale of the assets (as well as income tax on the deferred state pension lump sum).

#### *Disposal of UK property*

Again, candidates generally fared well discussing the relevant capital gains tax considerations on a potential disposal of the UK property, including private residence relief and non-resident compliance obligations. Some incorrectly applied Extra-Statutory Concession D49 by stating that it would give an additional two years' relief, and only a minority of candidates pointed out that private residence relief would act to disallow part of the loss.

#### *Disposal of French property*

Candidates who had correctly identified that Olivia had access to the remittance basis as a non-domiciled individual, and who had pointed out the ability to transfer assets at no-gain-no-loss, generally were able to put two and two together to identify that if the French property were transferred to Olivia, there would be scope to exclude the gain from UK tax under the remittance basis.

#### Relevant Advice and Substantiated Conclusions

##### *Disposal of shares*

Candidates who had clearly set out the relevant capital gains tax issues generally went on to recommend that a no-gain-no-loss transfer should be made to take advantage of two annual exemptions and two basic-rate bands. It would have been nice to see more candidates recommend that the clients could double the relevant tax saving by doing this over two tax years.

##### *Timing of state pension lump sum*

Those who did not understand the exhibit were generally unable to make a sensible recommendation on the timing of the lump sum.

However, others appeared to find it fairly straightforward to make a sensible recommendation such that the applicable tax rate would be 0% - either because of sensibly timed disposals of the shareholding or otherwise by reference to non-residence status (then applying the double tax treaty).

##### *Disposal of property*

With regard to the French property, most candidates who had correctly identified the relevant issues recommended that the sale happened in the current tax year before the remittance basis charge applied in 2021/22 (with some candidates going on to consider whether the proceeds used for the world cruise would be a remittance). This might have been a broadly sensible recommendation in the context of the candidate's overall answer, but candidates generally failed to point out that if the clients had then returned to the UK and needed to remit the funds, a liability would have been triggered at that point. On the other hand, if the sale had happened while the clients were non-resident, it would have left open the possibility of the gain escaping UK capital gains tax entirely if they remained outside the UK for more than five years.

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

### General Comments

This question related to a trust which was nearing the end of its lifespan. The trust was due to end in seven months but was due a final principal charge only six months before its winding up. The trustees

had discretion to advance capital before the end date and the question made clear that the trustees would consider advancements.

The majority of candidates identified that advancing the capital to the beneficiaries before the principal charge date would save Inheritance Tax (IHT) as the asset values had risen since the 2010 principal charge valuation.

Most candidates approached the question in a logical way resulting in easy to read reports that a client would be able to follow and generally understand.

### Structure

All candidates produced an answer in an appropriate report style with a summary and recommendations. The majority were well presented and structured in a way that enabled them to be easily digested.

### Identification and Application

#### *Trust Identification*

Almost all candidates correctly identified that the trust was a discretionary trust. Most candidates explained this briefly in the report to set the scene for the detailed tax commentary.

#### *Principal Charge*

Most candidates correctly identified that the forthcoming principal charge would result in a significant tax liability.

A high proportion of candidates incorrectly denied Business Property Relief or incorrectly calculated the tax after accounting for Business Property Relief.

#### *Hold Over Relief in first quarter following a principal charge*

Some candidates correctly identified that a distribution to Oliver in January was not a good idea due to the unavailability of hold over relief. A few candidates ignored this completely even though the question raised the dates specifically.

#### *Income Distributions*

The majority of candidates identified that distributing income from the trust would be a sensible step to take prior to winding up the trust.

Very few candidates correctly identified that only the trust's income balance could be distributed as income and instead explained how an amount should be distributed to fully utilise the tax pool which would not be possible.

#### *Trustee powers*

Very few candidates adequately explained in detail under what powers the trustees are able consider advancing distributions. Most candidates remained silent on this or made very vague comments.

#### *IHT implications*

This area was generally well understood and explained. The vast majority of candidates were able to explain the implications of distributions and the impact of specific dates.

The accuracy of calculations varied with an array of methods used to calculate exit charges but in the main the principles were correct even if the calculations methods were incorrect.

#### *CGT implications*

This area was well understood by almost all candidates. The chargeable gain arising following the appointment of assets and the availability of hold over relief was well explained.

#### Relevant Advice and Substantiated Recommendations

In most cases, where candidates had identified the issues correctly the associated recommendations were made in a clear and concise manner. The recommendations made were mostly appropriate.

#### *Advice regarding early termination of trust*

Most candidates correctly advised that an early termination of the trust would be tax efficient. In almost all cases this was a clear recommendation, and a client would be able to follow the principals.

#### *Advice regarding income distributions*

This was a confused area of many reports. The confusion seemed to be based upon the desire to fully utilise the tax pool and resulted in unclear and often inaccurate advice. A small minority of candidates also distributed income unequally which was not in line with the trustees' request.

#### *Advice regarding Susan's distribution*

A significant proportion of candidates made only brief recommendations regarding Susan. Although this distribution is straightforward to a tax adviser it should still be explained fully to a client.

#### *Advice regarding Oliver's distribution*

This section was well answered in the main being the focal point of many reports. Some candidates did not adhere to the equal asset distribution that the trustees had requested. This resulted in complicated recommendations that were often inappropriate. Candidates should ensure that they note all decisions already made to ensure they are answering the question set.

### **Human Capital Taxes**

#### General Comments

The scenario focussed on a graduate trainee programme for the Greenson Group. Candidates were required to assess the current scheme to identify and advise on the rectification of any PAYE under withholding. They were also required to review two proposals for a revised graduate programme and make a recommendation of which the company should adopt considering their key criteria of cost and administrative burden.

Many candidates showed good knowledge of the Income Tax and NIC implications for the given scenario. However, a number of candidates struggled to organise their answer in a clear and logical manner.

### Structure

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

### Identification and Application

#### *Existing programme – Identification and explanation of non-compliance*

Generally, well answered. Stronger candidates highlighted the distinction between PAYE treatment and treatment on a tax return. Many candidates wrote about the statutory residency test in great detail which was not necessary.

#### *Proposals for revised programme – Income tax and PAYE for UK inbound graduate rotators*

Most candidates were able to highlight the difference that having a local contract would make to the availability of treaty exemption and Detached Duty Relief. Weaker candidates did not explore the topics in sufficient depth losing the opportunity to gain more credit.

#### *Proposals for revised programme – Social security for UK inbound graduate rotators*

This topic was well covered by many candidates. However, a number candidates did not identify that a local contract would change the NIC treatment.

#### *Proposals for revised programme – Tax treatment of all employer provided items*

Most candidates showed a good understanding of the technical issues. The strongest answers made clear reference to the specific items detailed in the question materials. The item that caused the most difficulties for candidates was the payment of per diems.

#### *Proposals for revised programme – Income tax, social security and PAYE for UK outbound graduate rotators*

A large number of candidates did not discuss issues for UK outbound cases at all. Very few candidates were able to provide a clear discussion of the employer obligations under each proposal.

#### *Proposals for revised programme – Other topics (Corporation tax, Pension auto-enrolment)*

A large number of candidates did not discuss any of these topics. Stronger candidates identified the requirement for pension auto-enrolment if Proposal B was to be adopted.

### Relevant Advice and Substantiated Recommendations

#### *Advice on the approach for rectification of PAYE non-compliance for the current programme*



All candidates advised that the company should rectify the non-compliance. However, many candidates did not go into further detail of how this should be done and simply stated that the company should make a disclosure to HMRC.

#### *Advice on options to simplify the PAYE and NIC obligations*

Several candidates made sensible recommendations around the use of an Appendix 6 modified payroll and an Appendix 4 short term business visitor agreement. A variety of approaches were suggested around improving the PAYE position for the provision of per diems. Credit was given for any approach suggested where it was technically accurate and clearly explained.

#### *Recommendation of which proposal the business should adopt with supporting reasons*

It was pleasing to see that almost all answers made a recommendation with a supporting rationale. The best answers contained a clear discussion of the pros and cons of each option referring to the criteria set out by the client. Credit was given for a substantiated recommendation regardless of which proposal was chosen.

### **Taxation of Larger Companies**

#### General comments

The question required candidates to write a report about the proposed acquisition of a company that had recently commenced trading. Candidates were asked to consider three main areas: a) what form the consideration for the acquisition should take; b) the impact of both the acquisition and the ongoing HMRC enquiry on both the submitted tax returns and the forecast tax position; and c) dealing with the existing share options. Although not specifically requested, a wider discussion on the tax implications of the acquisition, such as the “change in ownership” provisions was expected.

Candidates tended to deal well with the form of consideration, in both the Identification and Application and Advice and Recommendation sections, but many struggled with the other areas of the report; analysis was often too brief and generic, or a particular area was analysed well but no recommendations were made.

Candidates should avoid stating, “we require further information” and moving on unless there is genuinely no analysis that can be done. This was particularly an issue when considering the HMRC enquiry and the existing share options.

#### Structure

Almost all candidates produced a report using appropriate format and language. Most candidates had clearly made some sort of plan, and consequently had a structure that clearly identified the key issues and laid them out in a logical order. In some cases the executive summary was not of a suitable length and style; it should not be a list of bullet points, nor should copy and paste be used to repeat whole paragraphs from the analysis.

#### Identification and Application

##### *Form of consideration*

Most candidates provided a good analysis of the tax implications of using either shares or cash for both the acquirer and the sellers. The main issue for the directors was in respect of Business Asset Disposal Relief (previously Entrepreneurs' Relief). Many candidates were confident that relief would be available to the directors despite the complication that Stormback Ltd had not been trading for at least two years.

Several candidates stated that no funding would need to be raised for a cash acquisition because of the cash balance in Burrey plc even though it was made clear in the pre-seen material that the cash balance was required for trading purposes, and so could not be used for the acquisition.

The amount of Stamp Duty payable was often incorrectly calculated, with a surprising number of candidates stating that 0.5% of £20 million was £1 million.

The majority of candidates mentioned QCBs as an alternative acquisition method (as hinted in the question) and the tax analysis that went with it was good.

#### *HMRC enquiry*

Sufficient information was provided for candidates to calculate the expected reduction in brought forward losses, and yet many candidates simply wrote about HMRC enquiries in general terms.

Many candidates who correctly identified the errors that had been made did not calculate the potential reduction in brought forward losses once the errors had been corrected.

Regarding the shareholder loan, some candidates mentioned the impact of either transfer pricing rules or late paid interest rules, both of which were irrelevant. Only one candidate noted that penalties were still possible for errors even if the company is loss making.

#### *Impact of acquisition on R&D etc*

Many important points were missed. Although Stormback Ltd was currently a SME for R&D purposes, it would become a large company in the accounting period in which the acquisition took place. The impact of this was that the forecast tax computation for the year ended 31 March 2021 needed to be redone under the rules of the RDEC regime. Few candidates did this recalculation; even fewer followed it up with the consequence on Stormback Ltd's brought forward trading losses.

Credit was also available for comments on the corporate interest restriction implications of acquiring a company with net tax-interest expense.

#### *Brought forward losses*

Candidates who explained how the brought forward losses could be utilised following acquisition and analysed the potential applicability of the "change in ownership" provisions scored highly. However, many candidates gave an analysis that was too generic or simplistic.

#### *Share options*

The treatment of the share options held by the two employees was handled well by only a few candidates. Many candidates missed the point, getting confused between the dilution of Burrey plc's shareholding in Stormback Ltd (which was a problem) and the dilution of the existing shareholdings in Burrey plc (which was not); this led to discussions regarding bonus schemes instead of a share option

scheme run by Burrey plc. Many candidates discussed the legal and commercial aspects of share option schemes but failed to discuss the Corporation Tax and Income Tax consequences of closing a share option scheme in one company and setting one up in another.

### Relevant Advice and Substantiated Conclusions

Many candidates provided a well-considered tax analysis but failed to go on to make recommendations.

However, the main recommendation in the report, being the form of consideration for the acquisition, was addressed well by most candidates. The better candidates understood that their conclusion should focus on what is best for the Burrey group but also include the fact that this may not be what the sellers will readily agree to.

Suitable recommendations regarding the HMRC enquiry were made by most candidates, but the other areas of recommendation were not dealt with quite as well. There were relevant recommendations available in respect of R&D, the “change in ownership” provisions, and corporate interest restriction, but almost all candidates failed to provide recommendations in at least one of these areas.

## **VAT AND OTHER INDIRECT TAXES**

### Introduction

This question required candidates to advise on the tax implications of the proposed occupational lease of offices and of certain fitting-out works. It did not require detailed advice on the formalities of incorporation, companies limited by guarantee, or charity law (although, if the client decided to incorporate and seek charitable status, these aspects were relevant to the tax implications). At the heart of the question lay the issues of deductibility of VAT, chargeability to SDLT and availability of corporate tax relief on the works.

The pre-seen information enabled candidates to recognise that FTA was an unincorporated association, whose activities were divided between business and non-business (and therefore partly exempt), with a subsidiary, Props (a dormant property holding company not registered for VAT). Some candidates did not adequately distinguish the various parties or appreciate that the Heads of Terms were only in draft, which unfortunately led them into error.

### Structure

It was pleasing to see that most candidates structured their answers appropriately, with good use of an Executive Summary, headings and sub-headings. There was, however, a wide divergence in the length of answers. Some were too short, with insufficient discussion to support their reasoning and recommendations. Other answers were over-long and sometimes padded-out with facts already known to the client, compliance issues, and matters which were not of central relevance to the question (e.g. newly constructed buildings and ‘relevant charitable purpose’; ESC 3.35; MTD; and the legal features of a company limited by guarantee).

### Identification and Application

Candidates readily identified that, under the proposed structure, VAT on rent and fitting-out works could be a sticking cost. Few, however, focused with sufficient clarity on the issue of ‘person supplied’ and deductibility, having regard to the proposed contracts and the principles enunciated in cases such

as *Airtours*. A number of candidates got carried away with the recommendation of a hive-down without rigorously identifying where this might lead (see below). A few candidates identified the simpler expedient of incorporating FTA and amending the draft Heads of Terms to substitute it as tenant and thereby to achieve VAT deduction at its residual rate. Few mentioned VAT grouping as a further possibility.

The treatment of the rent-free period and the landlord's contribution were identified as an issue by all candidates. Many argued, however, that they were consideration for supply. Where this was well-argued, credit was given (even though the Suggested Solution reached a different conclusion). However, where candidates saw them as consideration, they then got into difficulties in analysing the implications of a mutual supply.

As regards the fit-out costs, many candidates adopted the client's idea of re-invoicing. Such a 'quick fix' is often suggested by clients (as in *Airtours*) and one to be wary of! Most candidates, therefore, failed to identify that Solutions were contracting with Props for a single composite supply. Some candidates thought these could be treated as landlord's disbursements, but application of those rules was misunderstood.

Most candidates identified that the works would trigger the CGS rules. Some produced a computation (although without more information this could be of only limited value).

Sadly, few candidates made a good effort on SDLT. Most identified that chargeability must be calculated using an NPV of rent calculation, but then forgot the 'nil' rate band, or else applied the residential rates, thereby resulting in an incorrect computation. Some candidates treated the rent-free/contribution as part of the chargeable consideration for SDLT. Many did not consider whether SDLT mitigation was possible (although most spotted the charity exemption).

Disappointingly, only one candidate answered the client's specific question as to whether the landlord's contribution was liable to Corporation Tax.

Answers on Corporation Tax were, in general, rather mixed. Some candidates were confused about who could claim capital allowances on the ventilation works (and how much) and some thought the landlord should undertake the new toilet works, in order to claim capital allowances, without sufficient regard to the commercial realities of the overall deal. It was pleasing, however, to see a number of candidates identifying and applying the availability of SBA.

### Advice and recommendations

Quite correctly, candidates gave this skill greater emphasis than in last November's sitting. This was encouraging.

Recommendations need to be practical and commercial. Some of candidates' recommendations were bold but with inadequate reasoning. A number of candidates enthusiastically recommended a radical restructuring, whereby FTA hived-down its trading activities to Props. However, they did not consider if this was consistent with the client's strategy, whether it could be achieved in the negotiating timetable and whether Props was a suitable vehicle able to carry on such trading activities. The difficulty with the hive-down recommendation was that nearly every candidate who suggested it did not follow through the logic. In order to continue carrying on its non-trading activities, FTA would require staff and infrastructure and, self-evidently, would occupy part of the building. Many candidates seemed to think that if Props became VAT-registered and opted to tax the building, it could recover input VAT in full. One candidate suggested a management charge. Most seemed content to

put in place a sub-lease or licence between Props and FTA without, however, addressing whether an option to tax by Props would fall to be disapplied. This was a serious omission. Moreover, it was unclear how a complex restructuring could achieve a demonstrably better VAT recovery. Candidates making this recommendation, however, were allowed appropriate credit, although the Suggested Solution adopted the simpler expedient of substituting FTA as tenant.

As noted above, recommending one or other of the re-invoicing routes, was not supportable and could have been challenged and penalised by HMRC.

A few candidates recommended a saving of SDLT by putting in place a small premium.

As regards Corporation Tax, most of the recommendations were for FTA to incorporate as a company limited by guarantee. The incidence of Corporation Tax (and, in particular, if there was a hive-down) were generally adequately addressed. Candidates were divided on whether seeking charitable status was a good thing. This, however, could not be seen as a proper recommendation for which credit could be awarded because, as already noted, the question did not seek advice on charity law. But even if it had, there was insufficient information in the Pre-Seen to form a view on whether FTA would satisfy the necessary criteria. As regards capital allowances, some of the recommendations (e.g. making the landlord responsible for all the works, including the toilets) lacked commerciality.

### Conclusion

Candidates have a wide syllabus to cover. It is unsurprising, therefore, that they perform less well in some areas than others, especially under examination pressures. If there is one clear factor to emerge from this year's papers, however, it is this. Candidates should devote more of their preparation time to what may be termed 'examination technique.' This involves careful reading of the question, identifying the parties and their contractual relationships, answering what is specifically asked in the question and testing the effect of recommendations having regard to the wider picture.

The candidate should always allocate sufficient time to write an Executive Summary which is consistent with, and follows the order of, the letter/report. This is better done last and inserted in the appropriate place. Candidates should also include, at the end, a Summary of Conclusions consistent with what has been said in the letter/report. They should also make time to read through and edit their scripts. If these tips are followed, it is likely many errors will be avoided and higher marks achieved.