

CHIEF EXAMINER'S COMMENTS

General Comments

Overall, this session was very pleasing because the pass rates were fairly consistent and at the levels we would expect across all papers. We had no papers with a pass rate below 40%. It was also a good session for the best performing candidates, with 36 gaining a distinction in one of their papers.

Open Book Papers

A number of examiners commented that candidates had copied chunks of material from their study manuals. Whilst the papers are currently open book and candidates can therefore use material from their manuals when writing their answers, it has been interesting to see that this hasn't resulted in a general improvement in the quality of answers.

It seems that the better candidates are generally not using their manuals, except perhaps as a quicker way of checking a small point than going to the legislation. Weaker candidates however appear to think that open book means there is less need to revise because they can pull out the information during the exam. Generally this has not worked because they have often failed to apply it to the question or have wasted time coping more material than is required for the answer.

Application and Professional Skills

It is important for candidates to be aware that the requirement will not always be for a report from the external tax adviser to their client. This session the OMB question required a letter and the TOLC question required an internal report. It was noticeable this session that a number of candidates did not read the requirement. Thus:

- On the OMB question some produced reports rather than letters as required.
- On the TOLC question, candidates included a disclaimer, which would clearly not be appropriate for an internal report.
- On the VAT question some candidates produced letters rather than reports as required.

Whilst these mistakes will not automatically result in a candidate failing on structure (as we assess the answer as a whole), it will make it significantly harder to pass. This is a simple point and candidates must be alert to the required form of output and the target audience.

Beyond the basic point as to whether a letter or report is required, candidates need to ensure that the style of what they produce is appropriate. Therefore, if an internal report is required, as for the TOLC question, it is not appropriate to include disclaimers of liability.

Turning to a couple of presentational points:

- 1) If abbreviations are used we would expect them to be defined either when the term being abbreviated is first used, for example "... Business Asset Disposal Relief ("BADR")....." or in a list of abbreviations. The examiner on the Individuals question noted that some candidates were using non-standard definitions which they had not defined: clearly this would not be suitable for a client.
- 2) We have been asked about whether a table of contents is required; it isn't required.

Finally, it is important that candidates appreciate that this paper isn't simply about providing technically correct advice. It is also about providing advice that is commercially sound (don't let the

tax tail wag the commercial dog!) and meets any wider objectives that may be set out in the question. It requires candidates to step back and look at the entire scenario to assess whether their advice really is appropriate

AWARENESS

Module A - VAT including Stamp Taxes

Overall comments

Overall, candidates performed well in this paper, showing a good knowledge of the key areas.

Question 1

Most candidates displayed a good knowledge of the rules for recovering pre-incorporation VAT. Although the question related to services, some candidates wasted time in referring to the rules for goods.

Question 2

A common error was to include the full fuel scale charge as output VAT, not 1/6th. Many candidates struggled with the adjustment in respect of the gifts.

Question 3

Most candidates performed well in this question.

Question 4

This was a high-scoring question with many candidates gaining full marks. Where marks were lost, it was generally with regard to the rules applying to the continuous services.

Question 5

A significant number of candidates seemed to confuse the VAT rules with the income tax rules, restricting the input VAT recovered by reference to the business use of the vehicle.

Question 6

Most candidates performed well in this question with almost all candidates scoring full marks for part 1.

Question 7

Most candidates displayed a good knowledge of the default surcharge regime. Where marks were lost, it was often due to a lack of explanation; eg stating that the surcharge period lasted 12 months without explaining when the period started or ended.

Question 8

Many candidates did not attempt this question and for those that did, a common error was to state that the option to tax applied with regard to the building as a whole, including the part let as residential accommodation.

Question 9

Although some candidates did not attempt this question, those that did generally performed well.

Question 10

Most candidates were comfortable with the areas examined in this question.

Question 11

A significant number of candidates calculated the stamp duty due at the rate of 5%, rather than 0.5%.

Question 12

Approximately $\frac{1}{4}$ of candidates did not attempt this question. Of those that did, many showed a good knowledge of SDLT, scoring high marks.

Module B – Inheritance Tax, Trusts & Estates

General Comments

Overall, performance was generally poor, although there did seem to be an improvement in the answers to the written questions compared to previous sittings.

Question 13

No comments.

Question 14

Several candidates applied the RNRB to John's chargeable estate despite the value of the estate being far too high, however the most common error was in the calculation of QSR, which is often examined but usually badly done. Some candidates stated that there was no QSR as the asset was inherited tax-free.

Question 15

This question on fall in value relief was generally badly done. Some candidates deducted annual exemptions twice, first on the gift during lifetime and again when the gift became chargeable as a result of Alice's death within 7 years. The starting point for the death calculation was often £620,000 rather than the gross CLT, demonstrating a lack of knowledge of the rules regarding fall in value relief.

Question 16

Performance on this question was generally good, although some candidates thought that the shares held by the children were related property. Some candidates did not answer the question set and wrote about whether the conditions for BPR were satisfied.

Question 17

No comments.

Question 18

Common errors were failure to deduct the charitable legacy in the death estate and to deduct the RNRB in the calculation of the net chargeable estate.

Question 19

Performance on this written question was generally satisfactory, although several candidates seem to think that domicile of choice is an election. Some candidates discussed the domicile of the company and others stated that dividends from the company would be taxed on Daniella on the remittance basis as she was UK resident but not domiciled.

Questions 20 to 23

No comments.

Question 24

Performance on this question was disappointing, with most candidates completely ignoring any Inheritance Tax aspects and simply focusing on the Capital Gains Tax aspects, which limited them to a maximum of 2 marks.

Module C - Corporation Tax

Overall comments

This paper was generally well answered. Some questions were not attempted but there was little indication that this was due to time pressure, rather some candidates seemed less well prepared for some topics.

Questions 25 to 27

All of these questions were very well answered by most candidates.

Question 28

Whilst generally well answered, some candidates failed to apply the key conditions for rollover relief and therefore did not recognise that the shareholding was not a qualifying asset and the second building would be purchased outside of the relevant period.

Question 29

Only a few candidates answered this question entirely correctly. Many candidates calculated the property income on the cash basis in error and/or failed to recognise that the interest paid would be a non-trading loan relationship debit rather than an expense to reduce the property income.

Question 30

Although generally well answered, many candidates did not correctly calculate the indexation allowance.

Question 31

This question was not well answered. In most cases, references to the group relationship was not clear, with a number of candidates suggesting that the capital loss could be surrendered as group relief. Some candidates also erroneously thought capital losses could be relieved against total profits.

Questions 32 to 34

All of these questions were very well answered by most candidates.

Question 35

Although generally well answered, some candidates failed to show the order in which the loss relief claims should be made, that is, current year before carry back. A number of candidates thought carry back/carry forward claims could only be offset against trade profits.

Question 36

This question well answered in the majority of cases.

Module D – Taxation of Individuals

General Comments

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

Question 37

Some candidates treated the interest paid on the two loans as income rather than expenses, which lost them 2 marks in addition to the time wasted in calculating the Income Tax liability on savings income.

Question 38

The most common error in this question was to include the cost of the furniture when calculating the additional benefit with regard to the accommodation. The fact that the benefits needed to be time apportioned was often missed or done incorrectly.

Questions 39 and 40

No comments.

Question 41

Common errors in this question on personal pension contributions were to include the employer's contribution as part of Elijah's net income and confusion over what constituted 'net income', 'threshold income' and 'adjusted income'.

Questions 42 and 43

No comments.

Question 44

This question on National Insurance Contributions was surprisingly badly done, considering that NIC is examined every sitting. Several candidates did not recognise that Glenn was not subject to Class 1 Primary due to his age. Other errors included the calculation of Class 1 Primary for Diandra on a

monthly basis, despite her being a director, and the inclusion of benefits when calculating Class 1 Primary and Secondary NICs.

Question 45

Poor explanations on this written question were common. Several candidates simply wrote about the Statutory Residence Tests without relating their answer to the question, and others wrote about whether Helen should claim the remittance basis and some discussed the availability of double tax relief.

Question 46

Several candidates thought that as QCBs are exempt assets for Capital Gains Tax purposes, then no gain was chargeable on takeover on the QCB consideration received.

Questions 47 and 48

No comments.

Module E - Taxation of Unincorporated Business

Overall comments

Candidates generally performed well on this module.

Question 49

Candidates performed well on this question.

Question 50

Candidates generally performed well. Where marks were lost, this was mainly due to not answering the second part of the question regarding when the payment should be made.

Question 51

Some candidates discussed the VAT rules on claiming pre-registration input VAT rather than the pre-trading expense rules. Others failed to mention anything about the timing of the expenditure but were still awarded marks for recognising, for example, the use of mileage rates.

Question 52

Candidates generally performed well. Those scoring less well would be advised to improve the layout of how they calculate the allocation of profits, but this was not often a problem.

Question 53

The main error on this question was failing to recognise that each private use asset must appear in its own column, such that the disposal of the original asset should have resulted in a balancing adjustment. A significant number of candidates left the balance netted against the cost of the new vehicle.

Question 54

A significant number of candidates did not realise that there were two different loss calculations to prepare, despite the split of the requirement. Many calculated the terminal loss (with varying success) but only a few calculated the loss applying normal closing year basis period rules.

Question 55

Candidates not scoring well on this question did not read the question properly – there were a number of answers which calculated the gain which would have arisen for Zac on the original sale to Archie, rather than recognising that the question actually wanted the gain arising for Archie on 1 January 2022.

Questions 56 and 57

Candidates generally performed well on these questions.

Question 58

Candidates generally performed well, although again some misread the question and included in their answer comparisons between current year and carry back claims with carry forward of losses.

Question 59

Candidates performed well in most cases.

Question 60

Candidates generally performed well. The most common mistake was to include the sewerage and drainage systems in the capital allowance computation.

ADVANCED TECHNICAL

Taxation of Owner Managed Businesses

General comments

Candidates performed well on the earlier questions on this paper, in particular the computational aspects. They also appeared comfortable with the allocation of partnership profits. Candidates performed particularly poorly on question 4, struggling with the application of the termination payment rules and calculation of PAYE.

Question 1

This question required the calculation of capital allowances on plant and machinery and structures and buildings allowance, with brief explanations.

Candidates demonstrated a sound knowledge of capital allowances on plant and machinery. Common errors included giving the mixed partnership an Annual Investment Allowance (AIA), treatment of the machinery personally owned by Guprit, not picking up on the implications of assets being used for entertainment and adjusting for private use on the Production Manager's car.

Candidates performed less well on the structures and buildings allowances (SBAs), which were often ignored entirely, or calculated on the wrong costs. Students also frequently apportioned the SBA for 11 months, rather than 7.

Many students wrote significantly more than would be expected on this question often repeating the content of the computation in their notes. Many gave a detailed analysis of function vs setting and the qualification criteria for SBA rather than applying their knowledge to the specific requirements of the question.

Question 2

This was an adjustment of profits and capital allowance computational question with brief explanations required of adjustments. The question was generally well answered with most candidates gaining a pass mark.

Most of the adjustments to profits were correctly made. The main problem area was the capital allowances calculation. In particular, the treatment of the hire trucks returned, transferred to stock and later sold. The fixed asset disposal was often missed from the capital allowance calculation, or incorrectly calculated. Some candidates also incorrectly applied the rules for the AIA, stating no relief was given on the fleet additions because they were second hand.

Candidates were also unclear about the treatment of interest, with interest on late paid PAYE and bank overdraft interest frequently considered a non-trade loan relationship debit.

Question 3

The question looked at the implications, for both the companies and individuals involved, of three loans made by a close company. Overall, candidates showed a reasonable general understanding of the areas examined, but lacked knowledge in specific areas. Many candidates still carried out calculations of the benefit in kind and s455 tax due despite being told there was no need for these.

On the first loan, the majority of candidates correctly identified that the daughter was an associate of the shareholder for s455 purposes and showed a good understanding of the legislation in this area.

Many went on to refer to the beneficial loan rules, but only a handful identified that the loan would be for a qualifying purpose, being a loan to a trading partnership.

On the second loan the majority of candidates failed to identify that loans from a company to another company are not caught by the s455 legislation. A large number also referred to CT61 deduction of tax at source that was not relevant and to the old 12-month rule for connected party interest.

Candidates dealt well with the final loan to a recently recruited employee. However, the interaction of the loan write-off and the relocation exemption was handled less well, with many candidates becoming confused between operating PAYE on the excess and dealing with it via a P11D.

In the second part of the question, many candidates showed a good understanding of the basic rules surrounding trading status and 'substantial'.

Question 4

This question looked at the PAYE and NIC implications of an employee's termination package. Overall, this was the question where candidates performed least well.

The explanations given by candidates in the first part of the question were of a reasonable standard.

Candidates however performed extremely poorly on part two of the question. Many candidates struggled with the calculation of the PAYE, using a cumulative basis or simply applying a rate of 40% without any specific consideration. Similarly, many candidates continued to use annual thresholds to calculate the NIC contributions or use blanket rates of 2% or 13.8% without any thresholds.

Question 5

This question looked at the CGT implications for shareholders disposing of different classes of shares.

Candidates generally handled the supporting calculations well. However, the written explanations provided were often of a lower quality. The question asked for the CGT implications for each shareholder - no marks were therefore awarded for generic comments about Business Asset Disposal Relief (BADR).

Most candidates who identified the issue with Mrs C's shareholding dilution scored well in the question. However, those who didn't tended to score poorly.

Question 6

This question focused on the allocation of partnership profits where there were changes in the partners, as well as the treatment of partnership rental and dividend income and NICs applicable to partners.

The majority of candidates performed well on the partnership profit allocation. However, there were problems with the calculation of the assessable profits. The profits for Anton for the year ended 30 April 2020 were frequently missed from his assessable profits for 2020/21, or noted as assessable as 2020/21 and the rest of the profits to cessation assessed in 2021/22.

Natasha's basis period for 2020/21 was generally correctly identified, but then incorrectly calculated. The basis period for 2021/22 was not always identified correctly, with the tax year to 5 April 2022 being used instead. The overlap profits for the period to 5 April 2021 were usually identified, but not those for the 5 months to September 2021

Candidates performed less well on the treatment of rental income and dividend income, in particular the issue of overlap profits for rental income.

The rules for National Insurance contributions were generally handled well, the main problem area being the rules for partners reaching state retirement age.

Taxation of Individuals

General comments

There was a variation of marks across this paper with candidates generally performing well on questions one, four and five but achieving lower scores on questions two and three.

Question 1

This question was an Income Tax computation for an individual with employment income and a pension lump sum. The question also included the High Income Child Benefit Charge, the accrued income scheme, and the rules for dealing with interest received by a minor.

Most candidates scored highly on this question and were able to deal with many of the areas correctly. On the whole, candidates were able to apply the Optional Remuneration rules correctly to the scenario and also dealt well with the sections on Employment Related Securities, pension contributions and lump sum withdrawal, and the interest received on the minor's bank accounts.

Candidates were also comfortable with calculating the High Income Child Benefit Charge, although many failed to deduct the grossed up gift aid to arrive at the correct adjusted net income figure.

One of the areas where candidates lost marks was the accrued income section, with a common error being to tax the accrued income calculated rather than deducting it from the interest received.

Question 2

This question was on penalties which could be applied for an individual failing to declare non-UK income on her tax return.

This question was, on the whole, answered poorly by most candidates. A large number of candidates failed to identify that the Failure To Correct regime applied in the scenario.

Candidates often failed to address key points in sufficient detail to pick up marks. Time and marks were also lost by candidates deviating from the point and providing detailed information which was not relevant to the question.

The vast majority failed to mention the behaviours required to mitigate the penalty charges and in consequence missed some easy marks. Many candidates copied the table from their study manuals which detailed a range of penalties that HMRC can issue, without applying this knowledge to the scenario in the question.

A number of candidates listed the penalties that can apply when there has been a failure by a taxpayer to notify HMRC that a tax return is required. However, the question clearly stated that Sarah had already been completing tax returns.

Question 3

This question outlined two share disposals that were being considered by the individual concerned and asked candidates to provide details of the advice they would offer. This was the lowest scoring question on the paper.

One of the disposals was likely to be caught by the transactions in securities anti avoidance rules. The candidates who identified that these rules were relevant, were mostly able to explain them well and apply them to the individual's circumstances. Unfortunately, a large number of candidates failed to mention these rules at all. A surprising number of candidates also thought that the proposed transaction would meet the definition of a company purchase of own shares.

The second disposal was more straightforward, with a lot of candidates picking up the marks available for explaining why the gain was unlikely to be caught by the anti-avoidance rules applying to the other proposed disposal.

Question 4

This question required candidates to advise an individual whether the remittance basis should be claimed and from which account a remittance should be made. Responses to this question were of an adequate standard.

The first half of the question was generally answered well, with most candidates being able to calculate the two tax liabilities arising if Oscar were taxed on the arising basis and if Oscar claimed to be taxed on the remittance basis. Most candidates correctly concluded that a claim for the remittance basis would be worthwhile, despite the remittance basis charge which would apply.

There were some candidates who struggled with whether the rebasing provisions should apply for capital gains tax purposes. Some failed to correctly calculate the adjusted net income for the calculation of the personal allowance. However, generally most candidates were comfortable in putting together a standard tax computation.

The second half of the question proved to be more challenging for candidates. Many candidates did not provide sufficient detail to score well. Some candidates simply copied out their study materials without applying the information to the question. A number of candidates did not identify the offshore transfer rules, but those that did managed to score some high marks on this question.

Question 5

This question required candidates to calculate the CGT liability on the disposal of a property. This was owned as tenants in common by two people (50% each). They were neither married nor in a civil partnership. This was the highest scoring question on the paper with average marks of 65%.

The main areas to deal with were the PPR eligibility and how the gain would differ depending on whether Dorothy were UK resident or non-resident.

The majority of candidates calculated Henry's CGT liability correctly. They could correctly identify deemed periods of ownership and thus apply the correct PPR relief. The CGT was calculated at the correct rate of 28% after deducting the AEA. A few candidates gave tenanted deductions and a minority applied PPR relief at the wrong point (to the gain after deducting the AEA).

Candidates often failed to appreciate that Henry and Dorothy were unmarried and not in a civil partnership and as such some of the periods of deemed occupation were different for Dorothy as compared to Henry. Often the comment was simply that the gain was the same. Many then just applied a CGT rate of 18% to Dorothy's gain rather than realising that only the first £37,700 was taxable at 18% and then thereafter 28% should be used.

Many candidates failed to properly distinguish between how Dorothy's gain would be computed if she were UK resident as opposed to if she were non-resident. However the majority did attempt to compute the gain if she were non-resident. They realised that there were three different calculations to be compared. The default rule was well understood. Some failed to correctly time apportion the gain either using the wrong fraction or applying it to the wrong figure. A significant number thought that it was the 12/19 that was taxable rather than the 7/19. The PPR proportion was correctly calculated by many candidates.

Overall the question was well answered.

Question 6

This question required candidates to consider the Furnished Holiday Lettings conditions and apply them to five properties owned by the individual concerned. The position was straightforward for four of the properties, whereas candidates were required to consider whether the period of grace or averaging elections would be beneficial on the fifth property. The question also included the receipt of compensation proceeds, the application of the cash or accruals basis and the treatment of UK and non-UK property losses.

Most candidates scored highly on this question and were able to identify the FHL conditions and apply them correctly to the properties. Many candidates identified at least one election available for the fifth property but very few considered both options and recommended which would be most beneficial.

Many candidates identified that the compensation payment might be treated as a capital receipt, however in most cases candidates failed to conclude that the proceeds were income due to being spent in full on revenue repairs.

Most candidates correctly identified the threshold for cash basis to apply by default, however a common mistake was applying the threshold to the combined profits of UK and non-UK properties.

Human Capital Taxes

General Comments

There was a wide spread of marks awarded on this paper. Some well-prepared candidates passed comfortably, whilst a number of candidates were a long way from achieving the required marks to gain a pass.

Question 1

This question was about the consequences of someone working abroad but remaining tax resident in the UK.

Most candidates covered the basics of tax residence, identification of tax residence for the purposes of the tax treaty between Luxembourg and the UK, and the multi-state worker provision of the EU social security agreement. Candidates that did very well in the question set out the consequences and went through the package to identify the tax treatment of the various elements of the remuneration package, identifying double taxation relief and how compliance would be achieved.

There were a number of marks available for analysing the international travel rules. Most candidates recognised that Luxembourg was a permanent workplace but struggled with the potential exemptions of s370 and s376.

Question 2

This question was testing candidates' knowledge of the company car, company van and private fuel benefit in kind rules in detail, as well as the calculations required to determine the underpaid tax, National Insurance Contributions and Apprenticeship Levy costs where an Employer settles such liabilities on behalf of their employee.

The majority of candidates scored marks in the first part of the question relating to the directors' benefit in kind, although there was confusion around the treatment of the £3,000 payment made by the directors with a number of candidates incorrectly reducing the benefit in kind value by this payment.

The majority of candidates correctly advised that the double cab pick-up vehicle was classified as a company car for 50 engineers and correctly explained that for those engineers with a van, no benefit in kind arose due to the restricted private use condition being met. Further, the majority of candidates correctly advised that the company had calculated the car benefit in kind for the sales team correctly and identified that the two employees had private fuel benefits.

Candidates scored poorly in the calculations, with very few correctly grossing up the benefit and applying Class 1 National Insurance Contributions and Apprenticeship Levy deductions to the grossed up tax. In particular, very few candidates appeared to understand why the Apprenticeship Levy formed part of this calculation.

Question 3

This question was testing candidates' understanding of the tax reliefs and funding options available for training and the application of those exemptions to pre-employment scenarios.

Candidates all recognised the correct treatment of a sign on bonus and had some understanding of the scholarship rules. Very few considered whether s250 et seq ITEPA 2003 could apply to pre-employment scenarios, let alone the (non-binding) precedent of *Silva v Charnock* or HMRC's approach to the subject. The few who made reference to the applicability of s250 ITEPA 2003 were awarded some marks regardless of their conclusion. On the scholarships exemption most were able to roughly describe the conditions, although there were a couple of points of confusion that occurred frequently. Firstly, many candidates thought that the exemption is capped at £15,480 per academic year, however, this figure, referred to in SP4/86 excludes tuition fees - a prima facie small point - but one which can change the complexion of the advice. Secondly, many candidates did not recognise that the purpose of the conditions in s213 ITEPA 2003 was to prevent a charge to tax on fortuitous scholarships of the family or household of employees/directors.

On the Apprenticeship Levy, most candidates were aware that the Apprenticeship Levy fund could be drawn down and that a 10% top up was available. Almost all candidates thought that the levy funds expire after 18 months rather than 24 months.

Question 4

The question had two elements to it; a calculation of the tax liability and advice about claiming overseas workdays relief.

Some candidates wrote a detailed narrative about tax residence and the remittance basis but this was not required as details were provided in the question. A lot of candidates struggled with the calculation of the individual components of the package, particularly overseas workdays relief and identifying and setting out the travel exemptions available for Jeffrey and his family under s373-375 ITEPA 2003.

A handful of candidates recognised the remittances of earnings for non-UK workdays early on in the assignment and used this to justify the establishment of the special mixed fund account.

Candidates who did not undertake this analysis missed out on a number of marks. In addition, many candidates did not set out the conditions for the special mixed fund.

Question 5

Overall candidates did not perform well in his question, which addressed the PAYE succession rules. The majority of candidates recognised that this was the situation being described. However, there were a small number who seemed completely unaware of the provisions in their responses or who decided to hedge their bets in their answers.

A large number of candidates seemed to understand at a high level what a succession meant in the context of PAYE compliance, including the need for a new PAYE reference and new agreements etc. Very few understood the implications from a P11D reporting, Class 1A NIC or a PSA perspective. A handful spotted the implications of the “all employee” test on the employer provided cycles exemption.

Question 6

Most candidates handled the basics of the question, set out the requirements to claim Migrant Member Relief for overseas pension schemes and concluded the availability of relief for the Belgian scheme and that no relief was available for the Jersey scheme. This provided most students with some basic marks. Potential relief under s307 was not raised by any candidates. The analysis of the US scheme was mixed and generally lacking in detail.

The conditions for relief under the UK/US tax treaty were provided to test candidates on analysing these conditions and reaching a conclusion. But very few candidates did this. Some candidates did very well with the calculation of the annual allowance charge.

Inheritance Tax, Trusts and Estates

General Comments

Candidates generally favoured questions 3, 4 and 6 scoring well on these questions overall with a majority of candidates scoring at least 50% and some scoring over 75% with some very high scores indeed on question 6.

Conversely questions 1 and ,2 and 5 were less popular with a majority of candidates failing to score at least 50% on these questions and some very low scores being recorded on questions 2 and 5 in particular. Better candidates scored between 50% and 75%.

There were very few non attempts or zero scores and there was no indication that time was an issue.

Question 1

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

Those that answered the question well were able to identify the correct residence of the trust, domicile and residence of the settlor and various beneficiaries, and state what this meant in practice regarding their respective liabilities to both Income and Capital Gains Tax. Of that group, a few went on to also correctly identify the loan to Gordon as representing a UK-situs asset and the Inheritance Tax (IHT) implications of this but in the main. Overall, most candidates missed this point and lost valuable marks as a result.

Most were able to identify that the settlement by Tom was excepted and not subject to IHT. However, easy marks were lost for not considering the interaction between s.731 ITA 2007 and s.86 TCGA 1992 and for failing to consider the income distributions and "benefits" separately.

Overall candidates lost marks for not approaching the question logically and covering all salient points.

Question 2

This question tested the candidates' knowledge of Business Asset Disposal Relief (BADR) and the tax treatment on division of a trust in the life tenant's lifetime. It prompted a mixed response.

Candidates scored well on the first part of the question although some lost easy marks for not stating the full qualification criteria for BADR to apply e.g., that AB Ltd was a trading company. Some candidates missed the requirement for a joint claim to be made by the life tenant and the trustees although most identified that it was life tenant's lifetime limit that was used. Poorer candidates failed to identify the trustees' entitlement to BADR and calculated their CGT at 20%.

The second part of the question was answered particularly poorly and resulted in most candidates scoring less than 50% overall. Some failed to identify that the trust was a qualifying interest In possession (QIIP), attempting to calculate exit charges and allowing s.260 TCGA 1992 gift relief as a result on the distributions. Others, whilst correctly identifying the QIIP, considered that the distribution of the commercial property to the life tenant was not a chargeable event for CGT purposes (presumably considering that she was disposing of her life interest which was not the case). Those that did treat the life tenant's distribution correctly gained the best marks for this question.

Easy marks were lost for not considering withholding of cash by the trustees to pay the CGT liabilities. Other methods of trustee protection such as beneficiary indemnity and legal charges over property were not addressed. Better candidates identified that the trustees were primarily liable for the IHT,

and that James only had secondary liability. A good proportion of these recommended that James and/or the trustees and/or Barbara took out life insurance to cover the potential failure of the PET to James.

Appropriation was dealt with poorly by all candidates, mainly due to their failure to consider the deduction of CGT liabilities in accordance with the division of the assets. Those that did consider the deduction of CGT at all tried to allocate this wholly against James thereby indicating a shortfall and going into great detail about how this could be dealt with.

Question 3

This question involved the inclusion of a free of tax annuity in IHT calculations on death. Most candidates were able to score at least 50% on this question. Better candidates scored considerably more while a few rare candidates scored very poorly: a clear indication of general lack of preparation for the exam. Overall, this was a well answered question.

Most were able to identify the qualifying interest in possession (QIIP) and calculate the annuity slice although a fair proportion missed the initial step of grossing up the annuity. Many candidates referred to executors rather than administrators as those responsible for the free estate liability, but most identified the trustees' liability correctly. A number of candidates failed to identify that only the free estate after tax would pass to Debbie, with her life tenancy continuing over the entire trust fund instead stating that everything after tax would pass to her.

Some candidates lost easy marks for failing to mention intestacy and not going through the logical order of entitlement under those rules. A few identified pre-deceased as the appropriate beneficiary or missed Debbie out entirely giving Jonty's estate to the Crown. Most candidates failed to explicitly discount the transferable NRB/RNRB as Jonty had no spouse although the better candidates did cover this off. A good number of candidates identified the possibility of instalments on the main residence.

Question 4

This question required the calculation of IHT arising on a death with six lifetime gifts to consider. Candidates scored well on this question and the lifetime gift analysis was generally well done. The most successful candidates took a methodical and well-presented route through the question, presenting and establishing the lifetime position first and then moving on to consider the position on death.

The most frequent mistakes stemmed from mis-allocating annual allowances against the relevant tax year and taking the wrong value for the marriage. In addition, in too many cases the gift to the donkey sanctuary (a charity) was labelled as a PET attracting BPR rather than an exempt transfer. A minority of candidates set off annual exemptions before BPR. Nearly all candidates used the loss to donor principle when calculating the transfer value for the shares but many ignored BPR on the transfer of the share to the trust.

There were simple errors: incorrect tax payment date, with some candidates giving the date the IHT was due as 31 March 2021 and some 30 April 2022; many candidates said the IHT on the residue was payable by Flora (the residuary legatee) rather than borne by Flora; some candidates included cash in the death estate even though the shares had not been sold at death – only a binding contract for sale.

Only two candidates identified the need to apply the related property rules to take account of the shares gifted to the donkey sanctuary when valuing the shares held by the estate. Candidates were

generally confused when dealing with nil rate bands and grasping the principle of cumulation. Some candidates entirely ignored nil rate bands, some kept deducting the same one, and some deducted a 'lifetime NRB' and also a 'death NRB'. Many candidates failed to spot that the Feb 2011 gift fell out of cumulation by the time of the fifth gift. Only a few candidates identified that CLTs falling into charge because of the withdrawn BPR do not affect the cumulative nil rate band and of those a few did not apply the principle.

Many candidates said that the instalment option would be available for paying the IHT arising on the shares in the trust, the shares in the death estate or the land. However, as all of this property was sold the instalment option was not be available.

Question 5

This question was in two parts and required candidates to calculate the IHT and CGT arising on the entitlement of the final beneficiary on the termination of an 18-25 (s71D) trust when the beneficiary reached 25. The trust held residential and commercial property and so candidates needed to identify that *Crowe v Appleby* was in point and to apply it. The second part required candidates to explain the CGT position should the residential property be sold three years hence after occupation by both beneficiaries. Overall the question was badly answered and throughout there was evidence of significant and often repeated errors which arose through not reading the question carefully and/or picking up the wrong figures which in turn led to a loss of easy marks.

From an IHT perspective, many candidates wrote at length on the nature of the trust, the changes it underwent in 2008, the nature of the beneficiaries' interests in the trust and in some cases even the extensive calculations of charges suffered when the assets went into the trust. None of this was asked for and consequently no marks were available. When calculating the exit charge, the majority of candidates used the value at the last ten year anniversary (as they believed that a ten year charge had arisen) with consequential deduction for the distribution made to the older beneficiary.

From a CGT perspective, whilst most candidates identified that *Crowe v Appleby* was in point they either failed to apply this or applied it incorrectly. The shares were not subject to *Crowe v Appleby* and so half was disposed of on 1 September 2021 with the gain heldover. The balance of the gain attributable to the disposal to Lily had the benefit of half of the trustees exemption set against the residential gain and the balance taxed at 20%/28% but very few candidates managed this. Many answers were very confused. Most candidates noted that holdover was available but did not carry this through into their calculations or claimed the relief after the annual exemption or simply stated that they assumed no elections were made. The requirement was clear that appropriate elections should be made.

The second requirement was very badly done and no candidate scored the full four marks available. Failure to grapple with the *Crowe v Appleby* rule meant that many candidates were unable to identify with any accuracy the base cost for Lily. Many candidates wasted time and effort by opining at length on PPR relief generally, occupation requirements, lettings relief and the last nine months ownership. However, the key point that holdover relief denied access to PPR on disposal was universally ignored.

Question 6

The question was in two parts and required candidates to identify and explain applicable post mortem reliefs, calculating their value and the IHT refund due in respect of each of them. The second part required a calculation of two R185s for residuary beneficiaries, one of whom received a capital asset and the other a payment of income and to show the income position carried forward. Generally the

question was well answered with good marks achieved but many candidates failed to 'read the requirement carefully' and lost easy marks from not answering the whole question.

Most candidates dealt well with the s179 claim for loss on sale of quoted shares but the s176 claim for related property was much less well done and often omitted entirely. It was clear that a significant number of candidates had copied the relevant section of their study manual with the same phrases appearing regularly and as a consequence, many candidates scored well on the descriptive marks. However, the application of the facts to the scenario was much less well done. There was some confusion over the two different claims and some candidates seemed unable to separate these mixing the elements in their calculations whilst some candidates wasted valuable time detailing the third post mortem relief in respect of the sale of land though this was not relevant to the requirement. A surprising number of candidates wasted time recalculating the IHT position on the whole estate when it should have been clear that simply applying 40% to the claim amount would calculate the IHT refund quickly and easily.

Most candidates got as far as distributable income without error, though some calculated the tax due and then repeated the calculation again before deducting the expenses rather than simply deducting the expenses underneath the first computation. Many candidates calculated the tax liability for the estate and detailed when the tax was due for payment but this was not asked for and wasted time. The biggest error on this part of the question by far was the failure to divide each part of the residue equally between Girish and Annie before deducting the distributions; many candidates deducted the distributions in date order instead.

Taxation of Major Corporates

General Comments

This was a relatively straightforward paper that was generally well answered, although many candidates found questions 3 and 6 difficult. Some candidates wasted time producing a lot of material explaining Corporation Tax rules that were not germane to the question and could have been relevant to any scenario, requiring speculation about information that was not provided in the question.

Question 1

This question required the calculation of the Corporation Tax payable after making the most beneficial claims and elections. It was generally well answered, in particular, the capital allowances section. The most challenging area was the RDEC aspect. There were two potentially correct calculations depending on whether an election was made and candidates were given full marks for either. However, a significant number of candidates incorrectly calculated the amount, some candidates failed to make the correct adjustment in the computations, and many did not utilise the credit in the appropriate way.

Question 2

This question required an explanation of how the UK transfer pricing legislation applied to a particular company. Most candidates identified the first period when the legislation became applicable and explained why. Many candidates then covered the various methodologies for determining the arm's length price and recommending an appropriate method. Candidates were given credit for choosing any method (that is, not necessarily the method identified in the model answer) so long as they set out a reasonable justification for their choice.

Question 3

This was a two-part question which required an explanation of how a non-resident company which carried on a UK property business is taxed in the UK and then a calculation of the gain on the disposal of a property by the same company. The question was not answered well with many candidates unaware of recent legislation bringing such companies within the charge to Corporation Tax (rather than Income Tax). The correct calculation of the gain depended on identifying the appropriate date on which to rebase the cost of the property. Having done so, candidates needed to be aware that there was an option to opt out of the rebasing, use original cost and then time apportion the gain to the period when the company was within the charge to Capital Gains Tax. This latter result was the best option for the company but very few candidates identified this as the case.

Question 4

This question required candidates to calculate the chargeable gain on sale of a building and to determine the capital allowances available following the purchase of various assets. It was generally well answered. Most candidates produced a chargeable gain calculation that was accurate or mostly accurate, although some missed the need to include the option proceeds. Most candidates identified that rollover relief was available and described the conditions accurately. Quantification of the relief was mixed – many candidates either compared the amount reinvested to the gain, rather than the proceeds, or said that the amount of relief should equal the amount reinvested (not that the gain should equal the proceeds not reinvested). Most candidates answered the capital allowances section well, including producing a clear computation explaining the treatment of the expenditure with narrative notes. Most candidates identified that the fixtures were potentially able to attract allowances and explained the conditions. A minority of candidates seemed unclear about types of expenditure, for example, mixing up fixtures and fixed plant and machinery. A small number of candidates did not fully calculate the allowances and only explained the treatment in narrative form, which limited the available marks.

Question 5

This question required candidates to explain a group's obligations under the Senior Accounting Officer and International Movement of Capital rules. It was well answered, with most candidates gaining credit for explaining the nature of the obligations, the procedural requirements that the group needed to fulfil and the possible penalties for non-compliance. Many candidates were unclear about the deadline for filing SAO certificates, and some incorrectly stated that such certificates needed to be filed with Companies House rather than HMRC.

Question 6

This question involved a UK company acquiring a foreign-headed group and required candidates to identify a range of relevant UK tax considerations, including the CFC rules, treatment of dividends received and the availability of relief for the brought-forward losses of a UK company in the acquired group. Answers were inconsistent. Most candidates identified the relevance of the CFC rules and most of those that did explained the basis of the charge and the exemptions and received some credit for applying the exemptions to the scenario in the question. Many stated that the high tax exemption was available when the CFC paid more than 75% of the UK tax that would have been charged, but few noted that this was not simply a nominal rate test but required looking at cash tax paid. Most candidates noted that dividends were exempt from UK tax if received from a controlled company. Many explained relevant points about the brought forward losses of the acquired UK company, although many of the answers were incomplete. For example, many explained that pre-entry losses could not be group-relieved for five years, or that the MCINOCOT rules applied, but few referred to

both. Few candidates explained what would be considered a major change in the nature or conduct of a trade. Some candidates made detailed comments about transfer pricing, despite the question noting that intra-group transactions were on arm's length terms. A number of candidates also made points about DTR that showed a misunderstanding of the basis on which the foreign companies would be taxed: having noted they were exempt from the CFC charge candidates then explained that DTR would be available as if the foreign companies' profits would be charged to UK Corporation Tax anyway, which they would not.

Domestic Indirect Taxation

General Comments

Generally candidates responded well to the questions set and a number of answers were very good. There was good coverage of relevant case law in most answers and most candidates made a good attempt to engage with the question. Answers were generally well set out and structured with appropriate headings.

Some candidates went into a lot of detail about procedures and processes; more focus could have been given to the implications of the given scenario. This demonstrates a continuing trend of candidates to provide generic broad-brush answers rather than focussing on the specific requirements of the scenario. Whilst such an approach will gain an amount of credit, it is not demonstrating the key skills of addressing and advising on the fundamental issues.

Question 1

This question covered the VAT exemption for medical care; supply of staff versus supply of services; zero-rating for pharmaceutical goods; single and multiple supplies. Much of the question related to case law.

Most candidates performed well on the medical exemption element of the question, with relevant references to case law, including a good number referring directly to *Skin Rich Ltd*. Many candidates handled the supply of staff versus supply of services element well, with references to relevant case law, though a small number did not address the point at all, or only very superficially. The zero-rating for pharmaceutical products was recognised by most candidates, but many did not apply the statute in detail. The single and multiple supply aspect was noted by the vast majority of candidates, though most referred to CPP rather than to more specific cases such as *Dr Beynon* and *Healthcare at Home*.

Question 2

This question addressed the Flat Rate Scheme for small businesses. There were three main points: the input VAT recovery rules under the FRS; the application of the FRS to all of a trader's income; and the interaction of the CGS rules with the FRS. Significant financial information was provided to allow candidates to conclude on the correct course of action for the partnership.

Generally, most candidates were able to identify the input VAT restrictions under the FRS and explain them. Some, however, failed to apply the rules properly to the facts in the question and did not reach the correct conclusion. Most candidates tried to engage with the figures included in the question to reach a view on whether the partnership should remain in the FRS. Few candidates fully explained the process of leaving the FRS and the immediate consequences such as the stock charge, etc.

Question 3

This question was a mixed SDLT and VAT question. It covered the transfer of properties within a VAT group from a partnership into a limited company. It also addressed a new build mixed property of commercial and residential elements, as well as a CGS item which would now enter a partially-exempt business.

The SDLT aspects were generally well attempted. Most candidates recognised the availability of MDR, and the vast majority recognised that commercial SDLT rates apply to a transfer of mixed property. Some candidates missed the SLP aspect, and others did not apply the correct rates to the transactions.

Very few candidates addressed the VAT grouping aspect of the question properly, though the majority made a good attempt to consider the impact of partial exemption and the CGS, and the implications of the mixed property were generally well covered.

Question 4

This question covered the VAT exemption for private tuition, single and multiple supplies and the Tour Operators' Margin Scheme (TOMS). Most candidates demonstrated a good understanding of the criteria for exemption and the case law concerning subjects 'ordinarily taught in schools'. A good number of candidates identified the TOMS issue, whilst others focussed on exemption for closely related supplies, which is not relevant to private tuition. The single and multiple supply aspects were generally covered well, although there was a tendency to refer to CPP, at the exclusion of other relevant case law.

Question 5

This question examined Law of Property Act (LPA) receivers, option to tax disapplication and barter. Some candidates did well on the LPA aspects, including many picking up on the use of the VAT 833. However, many candidates commented, sometimes at some length, about procedures for formal insolvencies. The option to tax disapplication was identified by many, but the standard of answers varied greatly. Some candidates confused the 'certification' requirements with the rules concerning the VAT1614D. Many identified the barter transaction involving the sale of office furniture. Generally, candidates seemed to struggle with this question.

Question 6

This question examined issues concerning VAT and penalty assessments, including time limits, best judgment and personal liability of a director. Candidates generally did well, although some focussed more on stating penalty rates and describing appeal processes, rather than covering the implications for Mr Peel and recommending actions.

Cross Border Indirect Taxation

General

The trend that started with the move to online exams of well-ordered but short answers continues. Many however are too short, even if all the information is correct, to score high marks, as they simply do not include sufficient explanation or analysis. The tendency to make definite statements about

aspects of the question which are deliberately left open continues; such as telling the business that they would or would not be successful in an application for AEO in question 5.

Whilst candidates showed a good knowledge of procedural issues such as VAT registration and MTD, there was a tendency to seize on these areas and pad out their answers by writing all they know on these more minor areas, at the expense of focussing on the key aspects of the question.

Answers often failed to follow a logical flow in terms of technical analysis, and many lost out on basic PHS marks.

Question 1

The scenario was about call-off stock and the impact of certain events on the availability of this simplification.

Most candidates were able to list the conditions for the call-off stock simplification, but few were able to correctly identify that the stock deterioration was a chargeable event and triggered the UK VAT registration obligation for Mazzel. Those who did, missed out on easy marks available for discussing belated notification and any penalties, which may be due. Where decision was made that VAT registration was required, candidates often struggled to carry this through to the other parts of the answer and the responses continued as if registration obligation hadn't been identified. The triangulation simplification for the dispatch to a German customer was rarely identified and some candidates didn't provide any analysis as to how it would apply.

Question 2

This question was about a non-established business intending to offer transportation services in the UK through a local agent.

The majority of candidates concluded that BWAY either was, or was not, established in the UK but very few supported this with an analysis. Candidates generally knew the rules for the place of supply of passenger transport and short-term hire but not many were able to identify qualifying ships and comment on the zero-rating of supplies related to them. Equally, candidates assumed import VAT would be due on the boats but the fact that the importation of qualifying ships would be zero-rated was known by the best prepared candidates only. Candidates were able to describe both types of VAT agency but the implications for BWAY and the UK VAT registration obligations were rarely discussed, and no conclusions were drawn about the approach, which should be favoured by BWAY.

Question 3

This question concerned a Spanish not-for-profit organisation planning supplies of education services in the UK.

The scenario included different types of education related services and tested how the liability of supplies of education changes depending on the mode of delivery. Most candidates recognised that the on-line services fell within the definition of electronically supplied services and had a UK place of supply. Some correctly considered the availability of MOSS although many candidates concluded UK VAT registration would be required despite UNIEDU already being registered in the EU. Most candidates were not able consider how the face-to-face lectures fit into the education exemption, and those who attempted it, often dismissed it by concluding that Uniedu was not a university and so it could not be a qualifying body. Candidates who correctly identified the supplies of lectures as exempt

were able to discuss the implication for partial exemption and recoverability of input tax either in the UK or in Spain.

Question 4

This was a question about the VAT and Customs Duty implications of cross border sales of goods by a US company, initially shipping from the US and then from a UK warehouse.

This question tested the candidates' ability to show the interaction between the VAT and Customs rules.

Overall, the candidates at times showed a lack of conviction regarding the basic VAT principles applying to the transactions in question, namely the difficulty in applying the place of supply rules for goods to the commercial fact pattern where the Incoterms are DDP.

There was lots of focus on the supplier being a NETP and then the registration options including tax representatives etc; this was not strictly relevant as HMRC do not require overseas businesses to appoint tax representatives in practice and therefore there is no point in a business appointing one and incurring needless cost to no advantage. Similarly, there was lots of detail on indirect versus direct representatives from a Customs perspective. HMRC do not require an overseas business to appoint an indirect representative and very few if any freight forwarders in the UK and EU are prepared to act in this capacity given the joint and several liability impact on them. It is important that candidates are aware of the commercial backdrop to these provisions – they are typically prohibitively costly to protect the freight forwarder/indirect representative's risk where they are required.

The VAT reliefs for medical products such as these were not well understood and many candidates did not cover this point at all in their response, meaning marks were missed.

Candidates mentioning customs warehouses generally did a good job of pointing out that this would not likely be a viable option commercially pre Brexit given the small number of non EU countries the supplier was selling to.

Question 5

This question asked about the benefits of a Deferment Account and Authorised Economic Operator – Customs (AEOC) status for a Customs Agent.

Candidates generally did not score very well. Candidates struggled to frame the answer around GraDecs being an agent, instead answering as if GraDecs was the principal and would be importing its own goods. Many candidates addressed the types of representation that GraDecs could act in or opened their answer by referring to GraDecs as an agent but then answered as if it were the importer suggesting they identified that GraDecs was an agent but could not apply their knowledge to this scenario. This allowed them to score some of the easier marks but not to bring out the benefits (and factors to consider to determine whether the benefit was worth the cost) to an agent.

Many students struggled with the proposal that the transport mark-up be invoiced separately, often just saying that this would or would not be acceptable without clear reasoning. Others summarised the Method 1 and "additions" rules without giving a view.

Question 6

This question asked the candidate to identify that the appropriate relief was Shipwork End Use and to explain the basic conditions of the relief. The question was deliberately drafted so that detailed knowledge that was specific to Shipwork End Use was not required, so a well prepared candidate who was aware that End Use is available for ships should have been able to answer the question.

Candidates who identified the correct relief tended to score well. A surprising number of students did not mention End Use at all, or only mentioned it in passing in a list of most Customs regimes that exist. Many of these regimes would not have given anything more than a cashflow advantage which was excluded from the question.

Often, students suggested classification or changing supplier (to one from a preference attracting country or withing the EU) as the best solution. Worryingly, a number of students do not seem to understand classification, suggesting that the importer find another commodity code that would fit the goods but have a lower duty rate: there is only ever one correct commodity code.

Note: "End Use" is now called "Authorised Use" in GB but the terms were marked as interchangeable.

APPLICATION AND PROFESSIONAL SKILLS

Taxation of Owner Managed businesses

General Comments

The question aimed to bring out an analysis of the relative merits of a trade and assets sale compared to a share sale. This generated a secondary issue around the most tax efficient and appropriate mechanism to extract an investment property from a limited company.

The general standard of answers was very good with strong technical elements that were well used to set out a logical argument addressing the above points.

Structure

The question asked for a letter rather than the more usual report format, which almost all candidates took on board.

A number of candidates failed to make proper use of an executive summary or conclusion. In many cases the letter started with a long list of all of the issues considered in the rest of the document. The executive summary or conclusions should briefly set out the absolutely core issues and advice given.

In addition some candidates simply listed the options available without making any recommendations

Identification and Application

Differential tax base costs

Most candidates scored well in this section. The principal failing was the assumption that the probate value would be the same as the EMI share option value agreed for Dean Mark's shares. Whilst this would be a useful starting point the actual value would be materially different, particularly as the EMI options are a small minority holding compared to the probate and associated shares would give a controlling holding. Very few candidates noted that it was unlikely that the probate value would have been "ascertained" at the time of death.

Application of BADR and associated disposals

This was well answered although some candidates failed to identify the fact that an EMI shareholding did not have a 5% threshold.

Non residence of Phil Hack

The key issues were identified well by most candidates, although very few made the point that any capital gains that did fall back into charge would be taxable in the year of Phil's return to the UK if before 11 October 2022

Dean Mark's EMI options

Simply stating the words "readily convertible assets" would not be sufficient - a brief explanation of what this means and its implications was required.

The weakest element of this topic was the level of corporation tax deduction available. Many candidates stated that this deduction would be the sum subject to income tax rather than the difference between market value and the price paid.

Distribution on liquidation

This was either ignored or answered poorly by many candidates. Simply stating the words “Anti-Phoenixing” or “TAAR” was not sufficient. In the absence of a formal HMRC clearance procedure clients will want to have some idea of the basic rules and their risk exposure, particularly as Dean Marks would be excluded because of his small shareholding

Relevant Advice and Substantiated Recommendations

Implications of share sale and trade and asset sale

In general, this topic was very well answered. As noted above, a number of candidates failed to make an actual recommendation.

Several candidates recommended a sale of trade and assets but this was usually a result of poor arithmetic. In several cases this conclusion was made on the basis that the total CGT charges for the trade and asset sale were lower than for the share sale but without registering that this was a consequence of the higher headline consideration for the share sale

Also a number of arithmetical errors were noted on the calculation of the capital gain on Rose Road, including the treatment of the rolled-over gain and application of indexation.

Extracting value following a trade and asset sale

This topic was also well answered, though again some candidates failed to make a specific recommendation

Extraction of Le Mabelle prior to sale

A large number of candidates recommended a dividend in specie without any recognition of the impact this would have on the other shareholders.

The capital gain in the company was consistently applied but there were suggestions that the company and Phoebe could enter into a gift hold over relief election.

Taxation of Individuals

General Comments

This question asked candidates to consider two options for the funding of a marital home for Jack and Beth. The scenario had Jack and Beth currently living in a property (The Old Rectory) which Jack had bought with his ex-partner, Rebecca. Jack and Rebecca had a contract under which Jack would be liable for 50% of Rebecca’s capital gains tax liability upon sale of the property. Beth’s former home is let. The first option was to fund the new marital home from the sale of The Old Rectory. The second option was to fund it from the sale of Beth’s property, and replace the rental income stream by buying a new buy-to-let.

Candidates had to consider how each option might be implemented tax-efficiently, taking into account Capital Gains Tax (CGT) and Stamp Duty Land Tax (SDLT), and the timing of the transactions (pre/post marriage). Candidates also had to consider how Jack and Beth’s income tax position might be optimised by reducing exposure to the high income child benefit charge (HICBC) and higher rate of tax, as well as provide relevant comment on Inheritance Tax (IHT).

The candidates who passed this paper provided a clear recommendation of which option reduced the clients' overall exposure to tax, explaining how that option should be implemented. The SDLT considerations were critical to the overall assessment and some candidates missed this. Other candidates failed because, although the two options were competently discussed, there was no clear recommendation on which option the clients should choose. These two points account for the relatively low pass rate.

Structure

All candidates achieved a pass on this skill. However, non-standard abbreviations made some scripts difficult to follow. If abbreviations are used, before their first use, the full term should be given. If an experienced tax practitioner struggles with the abbreviations used, a client would certainly struggle.

Identification and Application

Capital Gains Tax

Most candidates performed strongly in this area. Despite some arithmetic errors in counting months, in general candidates correctly explained and analysed the Capital Gains Tax position for each of the three parties on the sale of each of the two properties. Candidates understood private residence relief (PRR) well and handled the indemnity between Jack and Rebecca without issue.

Some candidates appeared to be confused about the rule whereby spouses/civil partners may have only one main residence between them for PRR purposes – thinking that, once married, Beth would no longer be eligible for any PRR on Westland Road. Others thought that Beth might be able to nominate Westland Road as her main residence even though it was let out and not used by her as a residence.

Stamp Duty Land Tax

There was a wide range of competence demonstrated in this area. Some did not comment on it at all. While most appreciated that higher rates of SDLT were sometimes applicable, very few were able to accurately describe when they would apply. Many thought that higher rates of SDLT would apply on the purchase of the buy-to-let property simply because it was not a main residence. Others applied a simplified rule under which higher rates would apply if you are buying a property in addition to one you already own – but without appreciating the exception if you are replacing a main residence. However, many did correctly appreciate the significance of marriage on SDLT, and the fact that the higher rates would apply to the whole transaction if it applies to one joint purchaser.

A disappointing number of candidates did not spot the fairly obvious point that Option 2 involved the purchase of two properties rather than one, and therefore the SDLT exposure in that scenario was bound to be higher.

Income Tax

Candidates appeared very comfortable discussing the Income Tax issues, with most spotting that Beth would be liable to the HICBC as she was co-habiting with Jack, and that the rental income pushed her into the higher rate of tax.

Inheritance Tax

Inheritance Tax only accounted for a small proportion of the credit available, given that Jack and Beth's combined estate was within their combined available nil-rate bands (though not many actually pointed this out). Much of the advice given on PETs and available exemptions was somewhat moot.

Relevant Advice and Substantiated Conclusions

Capital Gains Tax

Most candidates were able to give sensible recommendations from a CGT perspective. However, some gave advice based on an incomplete sequence of events (e.g. advising to sell Westland Road simply because it generated a lower CGT liability than The Old Rectory), unfunded suggestions (e.g. advising that Rebecca should transfer her share of The Old Rectory to Jack), or on maximising the immediate net cash position rather than minimising the overall tax exposure.

Stamp Duty Land Tax

The strength of the advice on SDLT generally followed candidate's understanding of the rules around where the higher rate of SDLT applies. Nevertheless, if candidates were able to correctly advise how higher rates might be avoided on the marital home, credit was given. Very few candidates spotted how the higher rates might be avoided on the buy-to-let purchase under Option 2.

Income Tax

Most candidates gave sensible advice on how exposure to the HICBC and the higher rate of tax might be avoided, for example, by making pension contributions, Gift Aid donations, or a no-gain-no-loss transfer of part of Westland Road to Jack after marriage.

Human Capital Taxes

General Comments

The scenario focussed on the acquisition of a small IT company. Candidates were required to recommend whether their client should buy the shares or the trade and assets of the company. To do so candidates needed to assess the information available and identify any tax issues relevant to the client under each option.

Most candidates showed good knowledge of the employment tax issues raised in the scenario. However, a disappointing number of candidates did not attempt to comment on any points other than these.

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

Identify the legal and practical differences between a trade and assets purchase and a share purchase.

Many candidates were able to highlight the difference in responsibility for past non-compliance. The best answers commented on the practical differences around ongoing running of the business and the legal agreements needed in each option. Weaker answers showed a lack of understanding of the practical aspects of buying a business.

Identify relevant Corporation Tax aspects to consider.

A large number of candidates did not include any Corporation Tax comments at all. Stronger candidates included a simple discussion of Corporation Tax deductibility under each option and the relevance of the group formation if shares were to be acquired.

Identify issues caused by the French working pattern undertaken by Francois Du Plessis including French PE risk and potential payroll obligations.

This topic was well covered. Many candidates identified all relevant issues and clearly applied the technical points to the situation given.

Identify relevant indirect tax aspects.

Many candidates covered the Stamp Duty and SDLT aspects adequately. However, few candidates discussed the VAT aspects at all.

Identify relevant employment tax aspects.

Generally, well answered. Most candidates were able to identify the issues and provide relevant technical analysis. Stronger answers clearly linked the technical points being made to the advice requested by the client in this scenario.

Relevant Advice and Substantiated Recommendations

Recommendation as to whether the acquisition should proceed as a trade and assets or a share purchase. Supporting rationale to be given for recommendation made.

Almost all answers made a recommendation with a supporting rationale. However, the quality of the rationale varied across different answers. Credit was given for a substantiated recommendation regardless of which acquisition method was recommended.

Relevant recommendations about managing the position going forward depending on the approach taken.

Most candidates made sensible recommendations about dealing with the different issues identified in the report.

Inheritance Tax, Trusts & Estates

General Comments

This question revolved around estate planning for an individual with limited life expectancy.

Tax planning opportunities were present, but the question also stated non-tax considerations such as maintaining equality and Susan's hesitation in accepting gifts which needed to be respected.

Most candidates approached the question in a logical way resulting in readable 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.

Almost all were well presented and structured in a way that enabled them to be easily digested. A small minority presented computations without the necessary explanations that a client would need to understand the points raised.

Identification and Application

Inheritance Tax exposure

Almost all candidates identified the Inheritance Tax exposure. Some candidates simply stated a figure as the exposure. However, the majority of candidates did show the client how the exposure was calculated by utilising an appendix.

Capital Gains Tax implications of FHL disposal

Most candidates correctly identified that the disposal of the FHL whether by way of a sale or gift would trigger Capital Gains Tax. A significant proportion of candidates incorrectly applied 28% tax to the gain rather than explain that it would be possible to make a claim to benefit from Business Asset Disposal Relief. Only a minority of candidates identified that the property would benefit from a Capital Gains Tax free uplift on death. This was an important factor in the overall estate planning.

Inheritance Tax implications of lifetime gifting

Most candidates identified the tax implications of lifetime gifting and explained them well. A significant number of candidates explained Taper Relief at length even though Emily's life expectancy was such that this was not a factor.

Identify the inequality of proposed distributions

Very few candidates did well on this topic. A significant number of candidates ignored the inequality of the proposals and also ignored Susan's reluctance to accept gifts.

Identify restriction to RNRB

This area was well understood and well explained by the majority of candidates. A small number of candidates did not understand the Will and suggested that the trust present was a discretionary trust / life interest trust and it was this blocking the availability RNRB.

Charitable Gifting

This area was generally well understood and explained. The majority of candidates explained the IHT, CGT and Income Tax implications correctly.

Relevant Advice and Substantiated Conclusions

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

Often, the recommendations were unsuitable and not practical. Significant numbers of candidates recommended Emily take out life insurance and also suggested that significant amounts be invested in the AIM market.

The non-tax considerations that were key to the client, being equality and Susan's reluctance to accept gifts were often ignored completely as the candidates made tax saving suggestions.

Advice regarding gift of the FHL

This area was answered either very well or very poorly. Candidates with a good underlying knowledge of the interaction between IHT and CGT made sensible recommendations and explained these well.

Advice regarding lifetime gifts and maintaining equality

This area was answered poorly by most candidates. Often the equality of suggestions and Susan's reluctance to accept gifts were ignored completely.

The interaction between the Nil Rate Band and the order of gifts was not understood well and so was not explained well, if at all.

Advice regarding obtaining the RNRB

This was a strong area for most candidates. A variety of methods were used to ensure the RNRB would be available.

Advice regarding Charitable Gifting

Most candidates made suitable recommendations in this section.

Very few candidates fully developed gifting via the Will in order to obtain the reduced 36% rate for the estate. Most candidates assumed that it would not work.

Taxation of Larger Companies and Groups

General comments

The question required candidates to write a report on the proposed divestment by a retail group of its property portfolio and move into on-line trading. Candidates were invited to consider four possible structuring options and to recommend the solution that maximised the after-tax proceeds of sale and which best met the commercial objectives.

All candidates approached the question by discussing each of the four structuring options separately, and the tax consequences of each one. Another approach could have been to discuss each of the possible taxes and the four structuring options under each tax.

Many candidates took the opportunity to demonstrate their tax technical knowledge but some wasted time by either providing more detail than was required (for example, on Substantial Shareholdings Exemption) or considering irrelevant issues that were not called for by the requirements of the question (for example, on available capital allowances on the proposed investment expenditure, and sale and leaseback anti-avoidance rules).

The consideration of advice and recommendations was less successful, and many candidates who had correctly identified and discussed the tax issues failed to make balanced and commercial judgements leading to good advice and recommendations.

Structure

The majority of candidates produced a report in a broadly suitable format, and thus nearly all candidates passed on the Structure skill. However, future candidates should bear in mind that there should be a difference between reports provided by an external adviser and reports provided by an in-house tax department. In particular, an in-house department would not normally include disclaimers to its own Board.

Identification and Application

The tax technical issues to be brought out, while numerous, were relatively straightforward. Nevertheless, few candidates managed to identify them all and deal with them effectively, though about half did enough to pass on this skill area. Unfortunately, some candidates completely overlooked some of the relevant taxes other than Corporation Tax (that is VAT and Stamp Taxes) or these indirect taxes were considered for only some of the structuring options rather than all of the options.

The approach to rollover relief was particularly poor. Most candidates either rejected the possibility of rollover relief outright or allowed too little relief. Hardly any candidates realised that the whole of the gain on the 'Category B' properties, being by far the biggest gain on property sales, could be rolled over in full before having to access capital losses to shelter the remaining gains.

The commercial issue of correctly identifying the expected proceeds, and how they would be received, under each structuring option proved challenging. In particular:

- very few candidates demonstrated the basic commercial awareness that the pre-tax cash raised would be the same under all four structuring options.
- many candidates failed to understand that the loans were secured on the properties and could not be separated from them, and many were confused between gross and post-loan sale proceeds, some even deducting the loan repayments from proceeds in computing capital gains.
- in dealing with the third structuring option (creation and sale of Newco), many candidates failed to demonstrate an understanding of the different ways the properties could be transferred to Newco and the impact on the split of proceeds between share consideration and loan repayment, though by referencing 'fair and reasonable' adjustments, some managed to arrive at a broadly correct tax treatment.
- the fourth structuring option (share subscription into Newco) was clearly beyond the experience of almost all candidates. Only one or two candidates recognised that the same proceeds as under the other options could be achieved by share subscriptions and then using those proceeds to repay inter-company loans.
- application of sense checks to calculations would identify, and thus enable correction of some obvious errors, such as miscalculating SDLT by a factor of 10, estimated indexation allowance calculations being hugely over- or under-stated, proceeds being double-counted, etc.

Relevant Advice and Substantiated Recommendations

Most candidates weighed up the suitability of the four structuring options by reference to computed after-tax proceeds. For the reasons stated above, those proceeds were frequently not calculated at all (especially for options 3 and 4) or were miscalculated, leading to incorrect judgements on suitability.

The majority of candidates decided which option to recommend mainly on the grounds of which generated the greatest after-tax proceeds. Unfortunately, many candidates failed to go on to demonstrate commercial judgement on the likelihood of achieving a particular structuring option.

Where commercial factors were taken into account, they were frequently not fully thought through. For example, the third and fourth options were often dismissed because they were considered to be administratively complicated, but candidates should have recognised that any administrative inconvenience was hugely outweighed by the sums of money involved.

Overall few candidates scored highly in weighing up the options from the perspective of meeting the group's commercial objectives, as was required by the question. Future candidates should bear in mind that this examination is not just about crunching numbers to see which approach results in the lowest tax burden, but also requires an application of common-sense and commercial acumen to arrive at well-balanced advice and recommendations.

VAT and Other Indirect Taxes

General Comments

Candidates were required by an existing client, Cerebri Cura Trust Ltd ("the Trust") to provide a report which assessed and concluded upon the relative merits of the following proposals:

- 1) A lease and leaseback arrangement under which the Trust would grant a 150 lease to an unconnected person, RG Assurance Plc ("RG") over the site of the Trust's new office and car park. On completion of the works, RG would grant a 30 year underlease to the Trust at a basic annual rent of £604,000, plus a cost related rent, excluding VAT (RG having agreed not to opt to tax the building).

Upon occupation, the Trust would sublet the third floor for a projected annual rent of £200,000, using the lower floors for its purposes.

- 2) Self-funded scheme.

Fixed interest loans secured by the Trust would allow it to construct a smaller two-storied building at a projected cost of £6.75m, excluding VAT. The annual loan repayments over 30 years were estimated to be £492,500.

Candidates were asked to conclude upon and make recommendations on the VAT cost associated with the competing options, taking account of the extent to which the building works qualified for zero rating where the proposed office was used by the Trust and other charitable bodies solely for non-business purposes, as well as the extent to which the interested parties might reclaim VAT charged on the works. Subsidiary matters which fell to be considered under the lease and lease back option included the quantum of SDLT payable by RG on the grant of the headlease (the SDLT charge represented part of the cost related rent) and the administrative obligations to be taken by the Trust as the developer, for example, registration under the Construction Industry Scheme and the Domestic Reverse Charge.

In general, candidates performed in line with previous exams with nearly half reaching the required standard. While the Institute produces a suggested solution, candidates should be aware that it is not “the” answer against which candidates’ scripts are marked. The nature of the paper is such that invariably candidates will come to different conclusions and recommendations based upon their technical analysis. For this, they will receive credit for relevant, well-argued answers although they may be quite different to the suggested solution.

Structure

Candidates dealt with this aspect well, although two candidates produced a letter rather than a report as required. It is important that candidates read and digest what is required of them.

Identification and Application

1) Surprisingly, few candidates recognised that zero rating extends to defined areas of a charitable building intended for use for non-business purposes to the extent of at least 95%. In the case of those that did, the majority incorrectly concluded that the relief did not apply because the building was to be used by RG exclusively for business purposes. Whilst papers were marked flexibly to consider the consequences of additional amounts of VAT being incurred (eg Capital Goods Schemes, and Partial Exemption), it is disappointing that candidates did not identify and follow through a fairly basic aspect of the legislation.

2) Despite the pre-seen material highlighting that the Trust undertook non-business activities (thereby enabling candidates to assess what they might be), the answers supplied by candidates who addressed the issue were poor.

3) Most candidates showed a good awareness of the application of the construction industry scheme and scored well.

4) In contrast, given that the domestic reverse charge is a recent piece of legislation which has been trailed for a lengthy period, it was not well handled. No candidate identified that the Trust was outside the scope of the scheme given that it would be an intermediary supplier which shared a relevant interest in the site with RG.

5) The Corporation Tax aspects were poorly addressed. The pre-seen material highlighted that the Trust’s exemption from Corporation Tax was limited to its charitable activities; yet a sizeable number of candidates proceeded on the basis that charities were exempt from tax.

6) As with VAT, the concept of chargeable consideration is fundamental to assessing the charge to SDLT. The subject matter is dealt with in FA 2003, Schedule 4, and covered in candidates’ training manuals. That being so, it was disappointing that they did not identify this issue in the context of SDLT chargeable on the grant of the headlease, with all but one candidate proceeding on the basis that the chargeable consideration was £500,000 (or £500,000, plus VAT), ignoring other possibilities.

7) The spread of marks and an analysis of candidates’ scripts suggests that candidates are under prepared in relation to the direct taxes.

Relevant Advice and Substantiated Recommendations

1) Many candidates provided well-argued and presentable advice and recommendations relating to the VAT aspects and, particularly so in respect of the commercial considerations.

2) Given above observations on Corporation Tax and SDLT, few candidates scored well on these aspects.