Examiners' report

P6 Advanced Taxation (IRL)
December 2008

Introduction

The exam was divided into section A and section B. Section A consisted of two case-study type questions. Both questions in section A were compulsory, worth a total of 70 marks. In section B candidates were required to answer two out of three questions and the total marks awarded for Section B was 30. All candidates attempted the required four questions and there was evidence of some candidates starting their exam with the shorter, optional questions in Section B. In this section questions 3 and 5 proved the most popular questions. There was no evidence that candidates had difficulty with completing the paper within the timeframe available. The layout of answers was generally acceptable however workings were, in some cases, difficult to follow with poor layout and labelling.

In general, the performance of this paper was disappointing with a large number appearing to be unprepared for the examination. Candidates demonstrated a lack of knowledge on some fundamental taxation principles and had difficulty in applying tax theory to the case studies as presented. While performance in Section B was better than in Section A, overall performance was poor. At this level, candidates should be able to clearly analyse the questions and present their answers logically with relevant calculations. Candidates need to be well-prepared for all topics, and show ability in analysing the facts and presenting their findings clearly.

Question 1
This compulsory question was in two parts. In part (a) candidates were required to write a report, including explanations and calculations, dealing with three different options for funding the shareholders pension scheme.

The general layout of the report was good with three clearly identifiable sections however; the candidates demonstrated the following difficulties:

- In considering the dividend option, some candidates considered the dividend as part of 'net relevant income' and therefore pensionable.
- In considering the option of receiving additional remuneration, candidates correctly treated the remuneration to income tax and PRSI/Levies. Most candidates calculated the correct pension contribution however in a number of cases the income ceiling was ignored. While candidates did note the deductibility of the remuneration for corporation tax purposes, few correctly dealt with the resultant loss for 2008 and set-back to 2007.
- PRSI was generally incorrectly calculated

Part (b) of the question was well answered with most candidates showing the correct conclusion of option c. Overall, the question was not adequately answered and schedules were not well presented. In some cases professional marks were lost on presentation and appropriate usage of schedules.

Question 2
This compulsory question examined the student's ability to interpret and correctly present the taxation implications of the distribution of a company surplus to a shareholder through a salary/pension payment as apposed to a distribution on liquidation proceeds.

The question contained two parts. In part (a) students satisfactorily identified and computed the capital gains tax liability arising on liquidation to each shareholder. In part (b), students were required to identify the taxation impact on all shareholders of the payment to one shareholder, James, of his share value as salary and pension contribution. While most students correctly dealt with the income tax and capital gains tax exposure on James, they had difficulty in recognising the impact on shareholders funds after the salary/pension and consequently, their subsequent computations were generally incorrect.

In general, the question was poorly answered. Common errors were:

- Reducing the liquidation proceeds by 20% capital gains tax.
- Students offered suggestions as to alternative means of disposing of the shares such as termination payments or company buy-back of shares. This was not required by the question and no marks attributed to it.

Schedules and workings were inconsistent and did not assist in the understanding or flow of the answer.

Question 3

In the main, this question was well answered by students, Part (a) was a straight forward recounting of the cessation rules for income tax and was generally well answered. Part (b) dealt with income tax losses. Many candidates confused the use of losses for income tax with corporation tax rules while some others suggested the use of terminal loss relief which did not apply. In relation to the capital gains tax exposure in Part (c), candidates recognised the exposure to capital gains tax but few noted that only chargeable assets were liable. Parts (d) and (e) were also well answered.

Question 4

This question deals with the issue of the disposal of a company or the disposal of the property owned by the company. This question was the least answered question by students. The question provided four possible options for discussion and areas of difficulty included:

- Candidates did not generally refer to the marginal relief element of retirement relief and suggested that the first €750,000 sale proceeds would be exempt with the balance liable to capital gains tax.
- Candidates noted the reliefs available on the transfer of shops to separate subsidiarys however did not recognise the difficulties in the parent company claiming relief on the basis that the parent/subsidiary relationship had not existed for a minimum one year period prior to the disposal and that the shares would derive the greater part of their value from land and buildings in the State.

Part (b) dealt with the possibility of disposing of the property/company after the shareholders had become non-resident. Most candidates were familiar with the rules relating to non-residency however, few candidates recognised that the sale of the shops in the company would not be exempted by virtue of non-residence of the shareholders.

Question 5

This question dealt with the exposure to Irish income and capital gains tax on a non resident and non-ordinarily resident couple. While most candidates were able to determine the domicile and residence of the couple, they listed the rules relating to residence, ordinary residence and domicile which was not required and for which no marks were available. Very few candidates related the locum work to the provisions of the OECD model treaty, treated the income as Irish source income and therefore subject to Irish tax on this basis alone. The question of a 'contract for' and 'contract of' services was generally not considered.

Very few considered the view that the locum work may be an employment and subject to PAYE/PRSI. Many candidates incorrectly dealt with the deposit interest by a non resident from a double taxation country. There was a general lack of understanding of the basic tax principles demonstrated in this question.