



# Examiner's report

P6 Advanced Taxation (IRL)

December 2009

## General Comments

The examination consisted of two compulsory questions (Question 1 for 35 marks and Question 2 for 29 marks) and three optional questions of 20 marks each of which candidates must attempt two.

All candidates attempted the compulsory questions and questions 3 and 5 proved most popular in the optional questions. Some very good answers were presented by candidates and high marks were achieved by a number of candidates. The performance of candidates overall, however, was disappointing with a large number of candidates appearing to be unprepared for the examination. In addition, results were hindered by many candidates not reading carefully the content and requirements of questions resulting in time being wasted dealing with issues which were clearly not required, for example a number of candidates calculated top-slicing relief and PRSI in Question 1 when this was specifically excluded.

Workings were generally shown and the format of answers and schedules were mostly satisfactory. There was no evidence that candidates were rushed or had difficulty with completing the paper within the timeframe available. Candidates are reminded to use the following guidelines in approaching the paper:

- Read carefully the questions and requirements, noting the number of marks offered for each requirement,
- Start each question on a new page,
- Note the required layout of the answer e.g. memorandum, letter, to gain the professional marks available in questions 1 and 2.

Candidates should revise the core areas covered at F6 level to enhance their proficiency in tax computation and understanding of the fundamental rules in preparation for the exam.

## Specific Comments

### Question One

This 31-mark compulsory question tested candidates' ability to calculate and tax termination payments and the application of the provisions of the 'restriction of reliefs for high earners'. Overall the question was well answered and the calculation of the basic exemption; increased basic exemption and the income tax liability were generally correct. Candidates set out their answers in memo format with appropriate schedules at the end which earned them professional marks.

Some general comments on the answers:

- the majority of candidates neglected to re-gross the P60 figures for pension contributions and many prepared detailed calculations of Net Relevant Earnings and pension contributions which was not relevant to the question,
- Some candidates failed to identify the correct tax treatment of the different parts of the termination package,
- Most candidates were familiar with the theory of the high earners restriction but the adjusted income calculation did not reflect a particularly good understanding of the practical impact of the restriction. Very few candidates reached the conclusion that the restriction did not apply.

The layout of the answers to this question was generally good with clearly labelled sections and schedules referred to in the body of the answer.

**Question Two**

This compulsory question was worth 29 marks and dealt with withholding tax on royalties, loss relief and capital gains tax on the disposal of a subsidiary. Part (i) of the question was poorly answered and few candidates referred to the EU interest and Royalties Directive which provides for the 25% voting power requirement and a two year holding period. In part (ii) many candidates missed the fact that TML was non-Irish resident and few were familiar with the loss provisions allowing losses arising in an EU resident subsidiary to be utilised by its Irish parent company.

Generally in part (iii) the calculation of corporation tax was well answered however, very few answers recognised the split of losses between commercial sites and developed units in KWL. Part (iv) dealing with the sale of a subsidiary was well attempted by the majority of candidates. Overall the presentation of answers and schedules was good.

**Question Three**

This question examined the taxation implications of the separation of trades following disagreement between the shareholders and considered the buyback of shares, the direct sale of shares or the de-merger of the trades into separate companies.

Most candidates were aware of the conditions necessary for the capital gains tax (CGT) treatment to apply to the buyback of shares however some did not consider the distribution treatment at all. Where the distribution treatment versus CGT treatment was considered, candidates approached the tests for CGT treatment correctly with the exception of the 5 year ownership of shares requirement.

In respect of the separation of the training trade to a separate company, little knowledge was shown of the Revenue concession allowing relief for such a de-merger, the steps required to qualify for this treatment or the tax implications of same. Marks were, however awarded for recognising the tax treatment of the transfer of trades to a separate non-group company.

In part (b), most students correctly recognised the clawback of retirement relief and business relief. There was confusion however over who was accountable for the CGT on the retirement relief claw back and few candidates considered marginal relief. Valuable time was again lost by listing the requirements for retirement relief which was unnecessary.

**Question Four**

This was the least popular question and in general was poorly attempted.

In part (a) of the question candidates were not aware of when a 'negligible value' claim could be made and also showed a lack of understanding in relation to the four week rule for 'bed and breakfast' provisions for CGT purposes. In part (b) most candidates did not correctly address the different treatment which applies when a couple are separated under a legal obligation and those where no legal separation/divorce is in place. Most students correctly identified Brian's residence status but failed to apply the 'remittance rules' and offset his loss on the French property against the gain on the Cork home.

Part (c) of the question was answered much better with most candidates picking up points for their capital acquisitions tax (CAT) and CGT calculations. However, there was some confusion in identifying

the tax consequences following Martina's transfer of her approved retirement fund to her daughters during her lifetime. Few identified the income tax cost to Martina and many thought that a child over 21 would be liable to Income Tax rather than CAT on the benefit received.

**Question Five**

This was a popular question. Part (a) was generally well answered. However, most candidates failed to note the surcharge exposure and that there is no capital good scheme adjustment for property developers in the initial period. In part (b) many candidates correctly treated the transfer of the office to Carol and Jack as a distribution. However, some treated this as a gift from their parents and applied CAT on same. Most students recognised a capital gain on the transfer of the property to Carol and Jack and also largely dealt with the value added tax (VAT) treatment on the transfer correctly.

Part (c) was well understood and answered. Indeed, where candidates had studied the new VAT provisions, high marks were achieved. The lease to Bank of Jersey caused some confusion with regard to the calculation of the claw back.