



Examiner's report

P6 Advanced Taxation (MLA)

June 2009

General Comments

The examination paper consisted of five questions. As usual section A was made up of two compulsory questions, whilst section B had three questions, out of which the candidates had to answer two. The questions in section A carried 60 marks in total and the questions in section B carried 20 marks each (i.e. a maximum of 100 marks achievable per candidate).

Most candidates attempted to answer all the four questions. All candidates answered both compulsory questions in section A. Within section B, the majority of candidates attempted question three, and more candidates attempted question five than question four.

Question one was not generally well answered. Question 2 was better answered. The questions in section B were also unsatisfactorily answered. In particular, questions four and five were very disappointing.

Typically some candidates would fail to understand the requirements of the question. As an example, question 2 required one to discuss the implications of the EC Directives on the proposed transfer of shares. Many candidates just explained the Directives in general without making any reference to the scenario in the question.

The usual general comments made in previous reports for earlier exam sessions apply equally to this session.

- Workings and calculations are sometimes left out, which then makes it difficult to follow how the candidate got to the answer
- Some candidates find it difficult to label their answers properly, and the hand writing in some cases is hardly legible. Points cannot be awarded where the marker does not understand what the candidate writes
- Candidates are advised to give more thought to layout and presentation, and new questions should always be started on a fresh page.

Specific Comments

Question One

This 33-mark question tested the candidates' ability to analyse the tax implications of a number of transactions including a sale of shares in a Maltese company, either outright or through an exchange for shares in another company.

Common errors in part (a) of the question included the failure to recognise the availability or otherwise of an exemption under article 5 (14) of the ITA and very few candidates were aware of the duty implications in respect of a share acquisition by a non-resident company. Also some candidates made reference to a different exemption (under article 5(9)) instead.

The format of the answers was generally poor. The considerations made on the stamp duty exemptions were not so good. On the other hand, the capital gains calculations were done particularly well.

Part (b) was not well answered. Many candidates showed that they are not aware of the deduction rules in respect of interest expense. The question required candidates to explain the deductibility of interest in two scenarios, however, some candidates only worked out one scenario without making reference as to which scenario they were referring to.

Question Two

This 27 mark question tested the candidates' ability to calculate the tax liability on various sources of income, taking into consideration double taxation relief, and calculating tax refunds. It also included identifying the tax implications of the proposed restructuring exercise on the income streams.

The overall achievements were poor.

Participating holding considerations were very well discussed and the anti-abuse rules were generally very well described. However, some candidates had problems with the correct application of the refund (i.e. 6/7 or 5/7) and the fact that a 2/3 refund applies in situations where relief for double taxation was claimed on the foreign income account, which was not well identified.

Question Three

The question was extraordinarily well attempted by the majority of candidates. Out of those attempting the question, most performed well.

The question tested the candidates' knowledge of residence under domestic and treaty provisions. Most candidates answered this very well.

The question also tested the candidates' knowledge of the tax treatment of various sources of income received from Malta and from outside Malta by an individual who qualifies for the returned migrant scheme.

Most candidates left out the calculation of the rate of Malta tax, whilst others had problems calculating the tax liability.

Question Four

This question dealt with taxation issues relative to a division of assets held by a company. Various scenarios had to be analysed such as distributions on a liquidation and an outright sale of immovable property.

Many candidates failed to recognise the applicability of article 5(9) of the ITA (intra-group exemption) in options (iv) and (v) as well as the exemption from stamp duty.

Question Five

Part (a) of the question dealt with value added tax (VAT) issues while part (b) dealt with the tax treatment of payments made by an employer on a termination of employment.

Part (a) of the question was well answered on the whole, while part (b) was very poorly answered, with very few candidates being aware of the exemption provided for under article 12 ITA in respect of payments by way of a retirement gratuity.