

Examiner's report

P6 Advanced Taxation (MLA)

June 2010



General Comments

The examination consisted of five questions set over two sections. Two compulsory questions were set in section A and three questions in Section B from which candidates were to answer two. Question one and question two in section A carried 35 marks and 25 marks respectively and the three questions in section B each carried 20 marks (i.e. a maximum of 100 marks achievable per candidate). The examination had an approximate 2:1 split requirement for computation and narrative respectively.

Most candidates attempted all four questions although there was some evidence of poor time management, particularly in answering questions 4 and 5. Question 5 was the least popular with candidates and it was most frequently omitted.

A reasonable amount of candidates presented good answers for questions 1 and 2. However, the performance of candidates overall, was disappointing with a large number appearing to be unprepared for the examination.

The poor performance of many candidates was once again aggravated by a clear failure to carefully read the content and requirements of questions. This contributed to the overall poor performance in general.

Workings were generally shown but were at times difficult to follow. Too many candidates continue to display their answers poorly, with a lack of clear labelling to indicate which questions are being attempted. Each question should be started on a new page and candidates must give more thought to the layout and organisation of their answers.

Specific Comments

Question One

This 35-mark question was split in two parts, the first part tested candidates' ability to deal with tax issues in respect of property and share transfers by companies while the second part tested candidates' ability to deal with tax and duty issues in respect of the transfer of immovable property by individuals. Candidates often demonstrated a lack of appreciation of the practical aspects of the scenario despite the fact that they were described in the question. For example, some candidates were not aware of the tax issues in respect of the replacement of an immovable property used in the business for three years and replaced within one year with a similar property. Also very few candidates mentioned the implications of the de-grouping charge provision as a result of disposing property X and not Y. Many also failed to recognise that the subsequent transfer of property Y was taxable at the 12% FINAL TAX without the possibility to opt out.

Answer to part (ii) of question 1 (a) was on the whole well answered although many wrongly deducted the book value of property X or Y (and some even both) from the net asset value in calculating the market value of the company.

Answer to part (i) of question 1 (b):

- Overall, it was answered well.
- Some did not treat the transfer of the garden separate from the house and stated that both are exempt if sold.
- Some stated that the transfer of the house is exempt from duty as a result of being used as a main residence by the transferors.
- Duty implications were well understood including the applicable rates.

Answer to part (ii) of question 1 (b):

- very few candidates presented a capital gains computation in respect of the transfer of the garden.

Question Two

This 25-mark question was split in two parts, the first part tested candidates' knowledge of the tax refund system and the ability to identify the tax treatment of various sources of income, while the second part tested candidates' ability to prepare a tax computation in respect of the various sources.

Answer to part (i) of question 2 (a):

- On the whole it was well answered although some failed to recognise that this part required a general approach and went head on describing the refund system applicable to Quidproquo Limited.

Answer to part (ii) of question 2 (a):

- Very few candidates explained the annual market rent allocation and its effect on limiting the 6/7ths refund in respect of tax paid on the business income.
- Some failed to read the question correctly and treated the income of Blue Seas Company, consisting of rents and interest, as if it was received directly by Quidproquo Limited instead of being received as a dividend from Blue Seas Company.
- While many correctly explained the anti-abuse provisions applicable to participating holdings very few were able to put them into practice with some stating that the anti-abuse provisions had not been satisfied. Also many failed to recognise that subsequent to the share exchange, the income of Blue Seas Company was no longer relevant in determining whether the anti-abuse provisions had been satisfied, since Clear Seas Company's income consisted of dividends and not passive income.

Answer to question 2 (b):

- On the whole it was well answered.
- Very few worked out the annual market rent allocation and the correct 6/7ths refund.

Question Three

Question 3 was a 20 mark question which had two parts. Question 3 (a) was a nine mark narrative question concerning anti-avoidance provisions, whilst 3 (b) consisted of a tax computation for a married couple.

Answer to part (i) of question 3 (a):

- It was generally very poorly answered.
- Only two candidates identified and explained the application of article 12(1)(c)(ii) of the ITA (exemption on interest arising to non residents).
- Some also went completely out of point by explaining the implications of the tax refund system.

Answer to part (ii) of question 3 (a):

- It was also very poorly answered.
- Very few candidates referred to article 51 of the ITA (the general anti-avoidance provisions).
- Many candidates stated that the Maltese tax authorities could apply anti controlled foreign company legislation and thin cap rules, when in fact these provisions are not found in local legislation.

Answer to question 3 (b):

- Unfortunately many candidates that attempted this question lacked basic knowledge of Income Tax.
- Many stated that the loss from the professional practice cannot be utilised to be offset against other income and that consequently it had to be carried forward.
- Very few identified the correct treatment of the interest in respect of a private issue of debt. Some also stated that the interest is exempt while others stated that it is taxed at 15% at source.
- Very few correctly worked out the tax credit available in respect of Ruth's employment. Some even deducted this credit from the employment income.

Question Four

The question tested candidates' abilities on determining the source and taxability of business income in Malta, knowledge of the business income article in the OECD model of the treaty for the elimination of double taxation and the VAT implications of a business setting up in Malta.

Answer to part (a) of question 4:

- On the whole, this part was reasonably well answered, although very few approached the question in the correct way by first explaining the domestic tax implications including the concept of "trading in vs trading with Malta", and then identifying the Treaty implications. Many only explained the criteria for the determining whether a permanent establishment exists.
- A lot of candidates went into great detail explaining the tax implications applicable to the engineers taking up residence in Malta, reflecting their failure to read the question correctly before attempting the answer.

Part (b) of question 4 was reasonably well answered.

Question Five

Question 5 was another question which consisted of two parts. Question 5(a) was a VAT question, whilst question 5(b) tested the candidates' knowledge of the taxation of share option schemes.

Answer to part (i) of question 5 (a):

- Candidates showed a lack of knowledge in respect of the VAT treatment of the various expenses and purchases.
- Many identified that Insurance services are exempt without credit.

Answer to part (ii) of question 5 (a):

- The part of the question was generally very poorly answered.
- There was lack of knowledge of the Capital goods scheme.

Answer to part (i) of question 5 (b):

- Although many candidates described the tax implications of share options very few mentioned that the resulting gain is arrived at after multiplying the gain by 42.85%.