



# Examiners' report

## P6 Advanced Taxation (MLA)

### December 2008

The examination paper consisted of five questions. 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 two questions in section A carried 56 marks and the three questions in section B carried a maximum of 22 marks each (i.e. a maximum of 100 marks achievable per candidate).

Most candidates attempted to answer all four questions. All candidates answered both compulsory questions in section A.

Very few candidates managed to get an average pass mark in Questions 1 and 2 in section A, whilst the questions in section B were equally unsatisfactorily answered. In particular, questions 3 and 4 were poorly answered.

Some candidates failed to understand the requirements of the question, presumably because they failed to read the questions properly. As an example, question 1 required Mr. C is to dispose of his indirect ownership of Opco A, to be achieved by Holdco A transferring its entire holding in Opco A to Mr. A and Mr. B. However, many candidates wrongly interpreted this as a transfer of shares by Mr. C in Holdco A. Workings and calculations are sometimes left out, which makes it difficult to follow the candidate's route to their final answer.

Candidates did not label their answers properly, and the hand-writing in some cases was not legible. Candidates are advised to give more thought to layout and presentation, and new questions should always be started on a fresh page.

#### **Question 1**

This 26-mark question tested candidates' ability to analyse the tax and duty implications of a number of share transfers in Maltese companies. Candidates were required to identify any exemptions or reliefs that could be available.

Common errors in part (a) included failure to recognise that article 5(9) and article 5(14) of the ITA could not be availed of, since both share transfers were made to individuals and not between group companies. Very few candidates mentioned the conditions required to be satisfied under both articles and why both transfers were taxable.

None of the candidate worked out the correct amount of duty on the transfer of shares in Opco A.

The goodwill calculations were mostly wrong with most candidates taking the average annual profits as given instead of a two-year average.

#### **Question 2**

This question tested candidates' ability to analyse the taxability of a company managed and controlled in Malta but domiciled outside Malta, and to calculate the tax implications on two sources of income (dividends), including Double Taxation Relief and tax refunds. It also included identifying relevant changes made to the ITA and their effect in this scenario. This question required knowledge of the definitions of 'equity holding' and 'participating holding' and the requirements to benefit from the participation exemption. Very few candidates noticed that the holding was not entitlement to assets on distribution would exclude the holding from being considered as an equity holding and as a result also failed to identify that the holding could not qualify as a participating holding.

Many candidates wrongly stated that Gibco is taxable on a worldwide basis since the company is managed and controlled in Malta.

Participating holding considerations were mostly well discussed, whilst the anti-abuse rules were generally very well described. Some candidates had problems with the application of the correct refund (ie 6/7 or 5/7) and there was no awareness about the fact that a 2/3 refund applies in situations where relief for double taxation was claimed.

### **Question 3**

The question tested candidates' knowledge of the relevant provisions of the Business Promotion Act and Regulations, and also regulations issued under the Malta Enterprise Act.

In part (a) most candidates identified most of the fiscal incentives available to the company whilst in part (b) candidates had problems calculating the relevant amount of reinvested profits and investment tax credits.

### **Question 4**

The question dealt with taxation issues related to a sale of an immovable property either through the sale of shares in the owner company or the sale of the immovable property by such company, or the liquidation of the company.

Very few candidates identified that the sale of shares would be more tax efficient than liquidating the company due to the fact that the capital loss on the sale of the shares could be offset with the capital gain on the sale of the property.

Many candidates failed to read the question correctly and argued that the liquidation process would have tax consequences when the question stated that the disposal of the assets during the liquidation process would not attract any tax.

The second part of the question dealt with article 51(1) and (2) of the ITA, these being general anti avoidance provisions. Many candidates attempting this question referred to at least one of these articles.

### **Question 5**

The first part of the question dealt with VAT issues and the second part with the two methods adopted under the OECD model convention for the elimination of double taxation.

The VAT question was well answered; however question 5(b) was poorly answered with a clearly misunderstanding of the question.

Candidates failed to mention the two types of systems under the credit method and exemption method i.e. the full credit/ordinary credit and the full exemption and exemption with progression.