

# Examiner's report

## P6 Advanced Taxation (MLA)

### December 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 1 and question 2 carried 34 marks and 24 marks respectively, and the three questions in section B each carried 21 marks. 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.

A reasonable number of candidates presented good answers for questions 1 and 2. However, the performance of candidates overall was disappointing, with a large number appearing not to be well prepared for the examination, and many failing to read carefully the content and requirements of questions.

Workings were generally shown but were at times difficult to follow. Candidates are advised to start each question on a new page, to give careful thought to the layout and organisation of their answers, and to clearly label questions and workings.

#### Specific Comments

##### Question One

This 34-mark question was split into three parts.

The first part tested candidates' ability to deal with tax issues in respect of share transfers, the second part tested candidates' ability to deal with tax issues in respect of property transfers involving projects, while the third part tested candidates' ability to identify tax efficient methods of financing the acquisition and development of immovable property.

Candidates often demonstrated a lack of knowledge in identifying whether a transfer is one of a controlling interest or not, for example, some candidates were not aware of the tax issues in respect of global transfers and related parties. Also, very few candidates described correctly the application of the final tax system in respect of the two projects, for example many candidates were unable to identify the correct date of acquisition of property which had been acquired by way of an exempt intra-group transfer, failing to recognise that the transfer of units in respect of the Malta project was taxable at the 12% final tax without the possibility to opt out. Some others were not aware that the possibility to opt out of article 5A in respect of a transfer of units forming part of a project having the status of a special designated area was not subject to the five-year limitation.

Very few candidates answered part (c) and fewer still commented on how the company could improve its position.

##### Question Two

This 24-mark question was split in two parts with the first part testing candidates' knowledge of international trading companies, the tax refund system and the ability to identify the changes applicable to international trading companies with effect from 1<sup>st</sup> January 2011. This part also tested candidates' knowledge of value added tax. The second part tested candidates' ability to prepare a tax computation in respect of the various sources of income.

Part (a)(i) was well answered on the whole, although some candidates failed to recognise that this part required a specific approach and went head on describing the refund system in general. Some candidates wrongly stated

that ITCs are subject to a tax rate of 27.5%, or were unaware that ITCs are not allowed to operate a foreign income account.

In part (a)(ii), very few candidates explained how the date of payment of tax by ITCs is determined, with many stating that the date of payment is the tax return date without referring to the special regime applicable to companies that conduct at least 90% of their business outside Malta.

Few candidates answered part (a)(iii), and of those who did, many incorrectly stated that ITC Limited was obliged to register for VAT in Malta.

Part (b) was generally answered well.

### **Question Three**

Question 3 was a 21-mark question which had two parts. Part (a) was a 14 mark question requiring candidates to explain the tax implications in respect of various sources of income received by an individual and to calculate the tax liability, whilst part (b) was a 7 mark question consisting of the tax and duty implications arising under a contract of exchange involving the exchange of immovable property situated in Malta.

Part (a) was generally well answered, however, only a few candidates identified and explained the application of the married rates to Jill's total income, or identified and explained the applicability of tax credits available in respect of Jill's employment (some candidates incorrectly deducted this credit from her employment income).

Part (b) was also generally answered well, although few candidates were aware of the manner in which duty is levied in the case of contracts of exchange and went on to work out the duty on the two separate transfers.

### **Question Four**

The question tested candidates' ability to apply the jurisdiction rules in respect of individuals i.e. residence, ordinary residence, domicile and the remittance basis of assessment. Part (a) also tested candidates' knowledge of the dependent personal services and pensions article in the OECD model of the treaty for the elimination of double taxation.

On the whole, part (a) was reasonably well answered, although very few candidates approached the question in the correct way by first explaining the domestic tax implications and then identifying the Treaty implications. A number of candidates went into great detail explaining the tax implications applicable to permanent residence holders, reflecting their failure to read the question correctly before attempting the answer.

Part (b) was reasonably well answered.

### **Question Five**

Question 5 consisted of two parts, both dealing with VAT. Part (b) tested candidates' knowledge of the taxation of rental income. Very few candidates answered this question.

In part (a), candidates showed a lack of knowledge of the VAT treatment of the various scenarios with many of those who answered this question unaware of the rules for determining the time of supply and the time at which the tax becomes chargeable. Many identified that the donations in question were exempt supplies.

Part (b)(i) and (ii) were generally poorly answered. In section (i), this was due to candidates' lack of knowledge of the obligation to register for VAT under article 12. In section (ii), whilst many candidates described the tax implications of registering under article 10, very few mentioned that if such option were taken up, E would qualify for an input tax credit in connection with the purchase of the furniture, which would neutralise his tax



liability; fewer still mentioned that once registered under article 10 it would require a minimum of 3 years to revert back to an exempt status.

Part (b)(iii) was generally well answered, although few candidates mentioned that E would be eligible to the 15% rate in respect of part-time self employment if the rent was chargeable under article 4(1)(a).