



Examiner's report

P6 Advanced Taxation (ZAF)

December 2009

General Comments

The examination consisted of two compulsory questions (Question 1 for 24 marks and Question 2 for 36 marks). Candidates had to then elect any two of the three questions in Section B (each for 20 marks). The examination required mainly discussion and advice with some computation as well.

The performance of candidates overall, however, was disappointing with a large number appearing to be unprepared for the examination.

The poor performance of many candidates was once again exacerbated by a clear failure to carefully read the content and requirements of questions. Some of the poor performance can be attributed to candidates not showing workings for their answers.

Candidate answers to discussion questions tended to be repetitive and indicate that candidates had not fully grasped or considered all of the issues on the topic.

The paper did not appear to cause any time constraint difficulties as all the candidates attempted the necessary questions.

Specific Comments

Question One

Question 1 required candidates to provide client advice in the form of a letter regarding the tax implications on the application of section 9C to a trading portfolio of shares. Section 9C provides that qualifying trading shares held for a period of more than 3 years must be treated as capital in nature on disposal of such shares.

Three queries had to be addressed in the letter:

Part (a) – The qualifying criteria for the application of section 9C had to be provided here. No candidate identified all the relevant criteria to be applied.

It was very evident from this part that candidates had little knowledge of this provision and consistently confused it with other provisions (such as 8E (hybrid equity instruments); 8C (taxation of directors or employees on vesting of equity instruments) and 20A (ring-fencing of assessed losses)).

Part (b) – Information concerning the application of section 9C had to be provided here. Based on the performance in part (a), solutions provided for part (b) were poor. That is not to say that candidates did not make statements valid to the sections they thought applied, but such statements could not carry marks in this part.

Part (c) – Advice had to be provided as to whether the client should transfer the trading share portfolio to a close corporation. Again candidates made valid comments concerning the value a close corporation could provide, but none relevant to the particular transfer of the trading share portfolio.

Question Two

This question addressed a variety of issues and required a memorandum format. While better than the first question, this question was generally poorly handled.

Part (i) addressed the income tax issues pertaining to a leasehold improvement. Many candidates failed to discuss the leasehold improvement issues but discussed VAT and rental income and expenditure issues extensively. The marking scheme did not cater for these types of answers.

Most candidates appear to be preparing answers from templates previously seen rather than considering the issues. This was most evident in the discussion of the 5% allowance.

Part (ii) – This part considered the allowances claimed and recoupment and capital gains effects on the sale of a patent to a connected person. Most candidates failed to discuss the general income tax issues of allowances and recoupments but rather immediately discussed capital gains.

It was very evident from the solutions that candidates are not ensuring their knowledge is up-to-date as none identified the correct treatment for the acquisition of an asset from a connected person (see section 23J).

Part (iii) – The straight-forward discussion of the deductibility of certain expenditure was handled poorly by the candidates. Candidates failed to supply appropriate reasons for the non-deductibility of the expenditure.

Parts (iv) – The thin capitalisation and transfer pricing section was handled well. This suggested either that candidates spot study for exams or that candidates focus their studies only on the advanced issues rather than obtaining a fuller understanding of the South African tax law expected at a professional level.

Question Three

This question was a straight-forward royalty discussion from the perspective of a non-resident. Candidates confused the effects arising from deemed source versus true source and the application of section 35.

In addition, the habit of candidates to leap into discussion of capital gains tax calculations again costs the candidates marks. Candidates should have addressed first whether the capital asset being sold was within the scope of the 8th Schedule to the Income Tax Act at all.

The identification that the asset should not be considered in terms of the 8th Schedule while the client was a non-resident should have been assisted by the requirement of part (b) which asked for the impact on sale of the patent if the client had been a resident. This part was poorly handled.

Question Four

Question 4 concerned trusts. It covered the introduction of assets to the trust, income earned and distribution of both income and capital gains.

Part (a) required candidates to contrast the difference between a donation and an interest free loan to a trust and the effect on the income. Most candidates correctly identified that the issue was the

disposal of the asset to the trust by means of donation or interest free loan. However, most either failed to discuss the income effects (as required) or attempted to force a different treatment for the donation versus interest free loan. This suggests that candidates are not familiar with the differences and similarities of these two methods of disposal. Candidates also tended to write far too much for a section only worth 3 marks and less for the later parts in which more marks were available.

Part (b) required a discussion of the revenue distribution to Dirk. Many candidates devoted a significant part of their solution to a discussion of capital gains (which was not relevant to this distribution). Some of the calculations demonstrated candidate's lack of understanding as regards the fundamental concept of capital and revenue nature.

Part (c) required a discussion of only the capital distribution made to Len. Many candidates devoted most (if not all) their solution to a discussion of the revenue distribution and as a result scored little or no marks. Those that did discuss the capital element failed to discuss the effect of the capital in the trust having been introduced by donation (and therefore the retained portion of the capital gain reverting to the donor).

This question was not handled well.

Question Five

The question required the identification of a controlled foreign company and the application of section 9D to the two resident shareholders (holding a combined 66% in the CFC).

This question was poorly handled with no candidates identifying the foreign business establishment exemption in section 9D, and few the section 9D(12) exemption to ignore the section 9D(9) exemptions for the minority resident shareholder.

As a result, the calculations and discussion that followed were incorrect and even taking into account the wrong path taken by the candidates were unfortunately usually incorrect in application in any event.