

Examiner's report

P6 IRL Advanced Taxation

June 2015



General Comments

The examination consisted of two sections. Section A contained two compulsory questions, question 1 for 35 marks and question 2 for 25 marks. Section B comprised three further questions of 20 marks each, and candidates were required to answer any two questions.

The vast majority of candidates attempted the required four questions, and there was little evidence of time pressure.

The standard of candidates' answers was mixed. Whilst, many candidates were well prepared for the paper and this was reflected in their performance, a significant number of candidates were not adequately prepared. Difficulties were encountered in applying many fundamentals of the tax system and syllabus including group relief, identifying the commencement/cessation issues arising when a sole trader transfers to a partnership and identifying close company restrictions and surcharges.

The presentation of candidates' answers was also mixed.

Specific Comments

Question One

This 35-mark question examined the issues arising on a transfer of a business to the next generation. These issues included the decision whether to transfer ownership as a lifetime gift or on a death, retirement relief, business property relief, pension planning and various miscellaneous issues.

- (i) Retirement Relief was identified by most candidates and the conditions were listed and applied. However there was some confusion over which limit should apply, even where it was found that John was a qualifying nephew. Other issues where difficulties were encountered included overlooking or applying the incorrect treatment to the non-business asset, and not knowing the correct claw back period

Business relief was also identified by most candidates and the conditions were listed and applied. Common mistakes made in the calculations included:

- Not applying the Group 1 threshold for favourite nephew
- Allowing the 90% relief to the full market value of the shares and not restricting it to the amount excluding the investments.
- Not deducting the small gift exemption or stamp duty in arriving at the taxable value for a gift, or in some cases deducting the exemption after the tax was determined.
- Not recalculating the CAT due for an inheritance.

- (ii) Retirement fund options
This was either well dealt with by those who had studied ARF's, or else very poorly answered. A number of candidates suggested investment in EIS and Film Schemes not recognising that Anthony was retiring and Film relief no longer due for individual investors.

- (iii) Shares to Olivia
The main problem encountered was the application of the Group 1 threshold and in particular only allowing it until her 18th birthday. Many candidates allowed the annual CGT exemption even though retirement relief had applied in that year.

(iv) Alternatives

This was generally poorly dealt with and many candidates simply suggested a transfer of the assets on death or into a trust. As many candidates had missed the restriction on the Group 1 threshold (in relation to Olivia's 18th birthday), some of the other planning options were also missed.

(v) Transfer of remaining assets

Most candidates suggested some planning around the dwelling house relief. However, some were confused over the fact that she had to live there alone and not with Anthony. The requirements regarding years before and after was, in many instances, also not correctly dealt with.

Professional marks

Many candidates performed well here. However common mistakes included not using the required letter format, not relegating detailed calculations to appendices, and, in some cases, very untidy work. In some cases, too much was written in the introduction to the letter, which wasted time. Please refer to previous model solutions as a guideline in this regard.

Question Two

This 25 mark question dealt with group loss relief and transfers of assets and VAT on property.

In parts (a) and (b) candidates were required to define loss groups and capital gains groups and then to identify these groups from the scenario. A total of 5 marks was available for this. The quality of many of the answers presented was unsatisfactory.

Part (c) required the computation of the group CT position. Answers here were generally unsatisfactory. Common mistakes included:

- Using the losses brought forward of Pasta Ltd rather than the current year losses of Bread Ltd against other group members' profits
- Not re-grossing the gain in Pizza Ltd
- Not restricting the loss available to New Ltd to six months and in some cases only taxing the profits of New Ltd from when it became a group member.
- Applying the relief on a value basis for all sources of profits, i.e. trading income, investment income and gains
- Not allowing CT losses against the capital gain in Pizza Ltd.
- Combining the capital losses in Bread Ltd with its trade losses for determining loss relief forward.

In part (d) the majority of candidates correctly dealt with the holding company relief.

However a common mistake was to confuse the disposal of shares with the component assets in the company ,particularly for VAT purposes but also CT purposes, with many candidates considering the VAT implications of the earlier transfer of the building to Idle Ltd and balancing adjustments. The consideration of a potential stamp duty claw back was considered by only a small number of candidates.

In part (e) the application of the cost to Pasta Ltd in determining the gain was not well dealt with and in some cases candidates used the 2010 market value for proceeds instead of actual proceeds. While many candidates recognised the claw back of VAT, there was a difficulty in determining the number of remaining intervals with many candidates just looking at the calendar years remaining.

Question Three

This question was only attempted by a small minority of the candidates.

Part (a) examined the various taxation issues arising on the transfer of a sole trade to a partnership.

- (i) This part examined a proposed lease of the offices to the partnership and a possible VAT claw back. While some candidate answered this part very well, common mistakes included:
- Incorrectly determining the full intervals remaining in the VAT life of the building, again not looking at the VAT intervals but looking at years and not complete years either.
 - Incorrectly calculating the VAT on the original purchase price by treating it as VAT inclusive.
 - Suggesting waivers could apply.
- (ii) Candidates were required to identify various other taxation issues associated with the transfer. There was quite a common misconception that the trade was being transferred to a corporate entity and not a partnership with many candidates applying transfer of business CGT relief. It is very important that candidates ensure they understand the facts of the question.

In relation to those who correctly answered the question as dealing with a partnership, marks were often not maximised because some of the following issues were not mentioned:

- CGT exposure
- Income tax implications of the commencement and cessation, together with registration requirements.
- Stamp duty
- Interest relief (disallowed)

- (iii) Many candidates identified the potential conflict of interest.

(b) VAT registration

This part of the question was generally answered well.

(c) The 2/3rds rule for VAT.

The majority of candidates recognised the rule, but many reached the wrong conclusion because they made the mistake of ignoring profit and overheads in determining the 2/3rds rule.

Question Four

This 20 mark question was chosen by many candidates.

- (a) Close company issues were examined and, in general, the standard of answering was satisfactory. However, there was some confusion over the treatment of the benefits in the hands of Mark and Anne. Many candidates were not aware when the distribution treatment applied versus the BIK treatment.



Furthermore, many failed to recognise that, where BIK treatment applied, the expense was deductible in the company.

Omitting to gross up the gain was quite a common problem in calculating the CT due.

With regard to the surcharges, while candidates were familiar with the 50% deduction due for professional services income and the 7.5% trade deduction for investment income, many did not take a deduction for any distributions earlier recognised in the question, nor applied the distribution to the investment income in the first place.

- (b) Employee share awards were examined.
 - (i) Unfortunately, many candidates treated the award as an approved share scheme, despite the absence of such information in the question. Employer's PRSI was also dealt with unsatisfactorily.
 - (ii) The majority of candidates correctly suggested restricted share awards

Question Five

This 20 mark question was generally well answered which reflected a good level of preparation for which candidates should be congratulated.

- (a) The difference between branches and subsidiaries was reasonably dealt with
- (b) The treatment of the termination payment was reasonably dealt with.

Some candidates failed to treat the tax free pension lump sum correctly in determining both the 'increased' exemption and the SCSB. Most candidates did not recognise that PRSI did not apply to termination payments.

- (c) While this was reasonably dealt with, some candidates simply advised on the factors to be considered in determining employment status without making an evaluation of the case in the question as required.