Examiner's report
P6 Advanced Taxation (IRL)
December 2013

General Comments
Candidates generally performed well on this paper. Most candidates completed all questions and appeared to have sufficient time to do so. It was clear that successful candidates prepared well for this paper, and had covered both the basic areas (referred to in previous examiner's reports) and the advanced aspects of taxation in their revision programme. Successful candidates were generally able to gain marks in nearly all areas of the paper, which was crucial to their performance.

Overall the format and presentation of answers was satisfactory, with appropriate schedules used where necessary.

Specific Comments
Many of the specific comments arising from this session are similar to the ones identified in previous reports.

- (i) A thorough knowledge of the terms and conditions of the main reliefs continues to be important.
- (ii) Timing is very important in tax planning (as mentioned in previous reports) but it is equally important in the area of tax compliance (and non-compliance). For example the option to "self-correct" a tax return within 12 months was available in question 1, but many candidates overlooked this and wrote about voluntary disclosures instead (which would have resulted in poor advice being given to the client).
- (iii) Four professional marks are available in Question 1. Opportunities continue to be missed here .Candidates should always ensure that answers are presented in such a way as to maximise these marks.
- (iv) Again, many candidates still do not have a sufficient understanding of VAT generally and international aspects (for all taxes). Most candidates avoided question 4, which dealt mainly with VAT. Parts of question 2, which dealt with international aspects of tax, were answered poorly.
- (v) Always read the question and its requirements carefully, to avoid wasting time, and avoid long introductory paragraphs on Question 1.
- (vi) There were a very large number of errors with indexation factors, which indicates that candidates are probably no longer aware of the dates of the "old" tax year (6 April to 5 April). (Tutors please note)
- (vii) Although parts of the paper were challenging, some opportunities to obtain relatively straightforward marks (for the application of basic tax principles to a situation) were missed by candidates.

Question One
The scenario outlined a situation whereby an individual over 55 receives offers for the assets of his business and advice is required in relation to maximising the after-tax proceeds. Advice is also required in relation to severance pay for an employee and candidates are required to identify and advise on an underpayment of employee taxes.

General observation
When writing the letter, candidates should keep the introduction brief. In many cases a page was written before any requirements were addressed.

(i) CGT

Many candidates did not consider the connected persons rule which meant that the losses arising to Ken and Lucille, if the premises were acquired personally, would be ringfenced.

Very few candidates identified that there were no VAT implications.

(ii) Liquidation and other disposals

Most candidates were not aware of the effects of liquidation on retirement relief, either the strict application of the rules or the concessional treatment afforded, and as a result simply considered the conditions for retirement relief. This, in itself, was quite well dealt with.

Many candidates suggested that retirement relief was due on the disposal of the Cork premises but did not consider that the two disposals were NOT the same event, i.e. the sale of the Cork premises was prior to the liquidation of the company for which retirement relief was being considered.

A number of candidates did not prepare separate computations for Ken and Lucille and this affected the use of the annual exemption and retirement relief calculation.

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Most candidates determined the value of goodwill and recognised the CGT due thereon but, unfortunately, while some candidates suggested in part (i) that loss relief would be available for other gains they did not use the loss when determining the CGT due on goodwill.

Some candidates did not correctly determine the 'liquidator's distribution' and as a result the CGT costs of the liquidation were inadequately dealt with.

(iii) Severance Package

The examining of this topical area gave candidates an opportunity to gain marks and the question was generally well answered. Well done!

Errors were made by not identifying statutory redundancy as tax free and by the incorrect determination of average emoluments.

(iv) Payroll underpayments and how to resolve

Most candidates correctly recognised that the two DJ's should be treated as employees.

Very few candidates suggested that it may be possible to argue that only employer's PRSI would be due if it were possible to demonstrate to Revenue that all other taxes were correctly returned (i.e. there was no loss of revenue).

A minority of candidates considered each of the tax years in question and that a different treatment could be applied to each year depending on timing. A minority of candidates suggested that 2012 could be dealt with before the due date for filing the P35 return. A small number of candidates suggested 'self -correction' in general but not specifically for 2011, whilst the majority of candidates simply suggested an unprompted qualifying disclosure. The non-recognition of the self-correction option meant that some opportunity for marks was lost in this part.

Question Two

This compulsory question examined the international aspects of income tax, CGT and CAT. A US domiciled individual is seconded to the Irish subsidiary of his employer company and wishes to utilise all possible reliefs to minimise his exposure to Irish taxes. In addition he has various queries about how best to pay medical insurance and how best to give a gift to his niece.

(a) Residence consideration

Most candidates dealt with this part well but a number of candidates were confused over the implications of Hank's residence status. A thorough knowledge of the implications of various residence/domicile combinations is essential at this level.

Just two marks were available for this part. Unfortunately many candidates wasted time describing the definitions of residence and domicile, which were not sought.

(b) Employment Reliefs

Most candidates only considered one relief, i.e. either Split Year Relief or the Special Assignee Relief Programme (SARP).

Many candidates demonstrated confusion between the old limited remittance basis relief and the new SARP which applies to people arriving in Ireland from 2012.

(c) Taxable Income
Almost all candidates wasted time by preparing detailed income tax, PRSI and USC calculations which were not sought, rather than simply calculating the AMOUNT of taxable income.
While a lot of candidates were able to explain how SARP operated, very few were able to correctly apply the relief in this question. Furthermore many candidates suggested it was also deductible for USC and PRSI purposes.
Some candidates were confused over the treatment of income from government securities given Hank's residence status.
(d) Remittances to pay health insurance
Most candidates recognised that payment of the insurance from US investment income would be a remittance and many, but not all, suggested it should be paid from Irish source income.
Surprisingly, there was much confusion over the relief for medical insurance with many candidates suggesting a claim for relief be made at the end of the year and not recognising that it was relieved at source, while some candidates treated it as 'permanent health insurance' or medical expenses .
(e) Tax consequences of the gift
Most candidates recognised that there were CGT, CAT and stamp duty implications to be considered but the territorial rules clearly caused confusion. Most candidates did recognise that the residence status of both donor and donee had to be considered but forgot the status of the asset itself which would give rise to a charge to each if the asset was treated as Irish.
The planning options were poorly dealt with, and (even though they are detailed in the recommended manual) many candidates did not identify the tax advantages of using government securities. Some candidates simply suggested that Hank sell the shares and gift the cash without expanding on the implications of this while some candidates suggested that such an option would at least avoid stamp duty.

Question Three
This question was not answered by many candidates. The areas examined were consortium relief and the R&D credit. In general those candidates who did attempt the question scored reasonably well.
(a)(i) Consortium relief.
This part was reasonably dealt with but a number of candidates considered only whether a group existed and did not consider whether a consortium existed.
(a)(ii) CT computations with relief
This part was reasonably well dealt with. The most common mistake was allowing relief based on the appropriate percentage of the relieved company's income and not the appropriate percentage of Folsom's available losses.
Some candidates did not correctly calculate relief for trade losses on a value basis.
(b)(i) R&D credit
This part was also reasonably well dealt with.
(b)(ii)
While candidates may be aware of the conditions for R&D relief, they showed much confusion as to how the relief is actually applied, with some reducing assessable income by the relief, whilst others deducted the R&D expenditure for all years from the 2012 expenditure in determining allowable expenditure.

Question Four
Many candidates chose not to attempt this question. The question consisted of a number of short practical questions which addressed operational issues in the area of VAT (mainly) in the context of a company carrying on exempt and non-exempt activities. The question also tested RCT, PSWT and ethics. Scoring on this question was average.
Common mistakes included:

- In scenario (i) candidates misunderstood the difference between a VAT exemption on sales and the allowability of an input credit.
- RCT was not applicable in scenario (iii)

- VAT needed to be apportioned in scenario (iii)
- Candidates did not explain in scenario (iii) that if cash was paid and an invoice was not received that the company could not obtain an input deduction for VAT nor could it obtain an expense deduction for corporation tax purposes.
- VAT is allowable on cars, if certain conditions are met, and it is NOT apportioned to business usage.
- An inadequate understanding of the basis by which VAT was not charged on the provision of foreign services and the implications for the recipient.
- Lack of knowledge of cash receipts basis
- Lack of understanding of when PSWT is applied. (The key is in the name " Professional Services Withholding Tax")

Question Five

Most candidates attempted this question and generally performed well. The question examined the different taxation implications of lifetime transfers of assets versus transfers on a death. Business property relief and basic tax implications of discretionary trusts were also examined.

(a) Shareholding valuation

This was largely well dealt with, although some candidates suggested discounts and others incorrectly used the value at inheritance.

(b) Tax implications of gifts

Option 1

This was largely well dealt with although some candidates suggested that retirement relief was due to Linda. Another common mistake was the use of the wrong base cost (i.e. husband's original base cost instead of €20m).

Also, some candidates did not consider the CGT/CAT offset.

Option 2

Again this was well dealt with.

Option 3 & 4

The majority of candidates recognised the charges to the 6% discretionary trust tax and the annual 1% charge thereafter. The remaining candidates may have excluded trusts from their revision plan, which was unfortunate because this was not a technically difficult question on trusts. There was also some confusion on the implications of setting up the trust in the first place, the implications of the eventual appointment to Ralph, both from a CAT and stamp duty perspective, and the possible CGT implications for the trustees.