

Examiner's report

P6 Advanced Taxation (IRL)
December 2014



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 four questions, and there was little evidence of time pressure.

Where sections of questions were left unanswered by candidates, this appeared to be due to a lack of knowledge or poor exam technique, as opposed to time pressure.

The general standard of answers was satisfactory.

However some basic errors continue to be made as follows:

- Not recognising that the date of contract (not the date of closing) is the date of disposal in Q1
- Not recognising that company chargeable gains are subject to corporate tax and that these gains form part of the corporation tax computation in Q1
- Misunderstanding the basic concepts of group loss relief in Q1
- Allowing the capital gains tax (CGT) annual exemption against capital acquisitions tax (CAT) in Q2
- Allowing the small gifts exemption against CAT on an inheritance in Q2
- Applying the benefit in kind (BIK) rules to a sole trader's car in Q5

Some areas of the syllabus were clearly not adequately covered by some candidates during the course of their studies. These areas included:

- High earner's restriction
- EIS
- R&D relief
- The seven year CGT exemption
- Tax relief in relation to specified intangible assets

It is noteworthy that the high earners restriction, EIS, R&D relief and the seven year CGT exemption all appeared on the June 2014 paper, and yet many candidates still did not appear to be sufficiently familiar with these topics at the current sitting.

In general, the presentation of answers was satisfactory. However, candidates are reminded that they should start new questions on a new page.

Specific Comments

Question One

This 35-mark question was based on two companies under common ownership but which did not form a group. One company was profitable and the other was loss-making. Issues to be considered included VAT, formation of a group, share for share relief, stamp duty, EIS, pension options and the disposal of an investment property.



Part (a) for 2 marks asked whether VAT should be charged on the disposal of the premises. This question part was generally answered well.

Part (b) for 4 marks required a current and projected corporation tax (CT) computation. The most common error was not recognising that the date of contract was the date of disposal and NOT the date of closing. In addition, many candidates completely omitted the chargeable gain from the CT computation.

Part (c)(i) for 7 marks required candidates to evaluate informal advice received from a trainee accountant in relation to forming a group.

Candidates performed reasonably well here. However many candidates incorrectly stated that trade losses could not be used to relieve company chargeable gains. Others incorrectly asserted that the group loss relief would be in proportion to the shareholding (as with a consortium). These are basic loss relief concepts, which should be understood by P6 candidates.

Part (c) (ii) for 2 marks, required a comment on the potential risks in relation to a trainee accountant giving informal advice. This was generally well answered by the majority of candidates.

Part (d) for 3 marks, required a recalculation of the CT liabilities under the proposed group structure. In general the marks in this section were consistent with candidate performance in sections (b) and (c)(i).

Part (e) for 4 marks required a calculation of taxable income for income tax purposes and answers here were generally unsatisfactory. Many candidates did not correctly restrict the EIS relief to 30/41. The high earner's restriction has become increasingly relevant in practice over the last 5 years, as the threshold income limits have been reduced. However many candidates did not recognise its application here and those that did recognise it frequently did not apply it correctly.

Part (f) for 3 marks required a comparison between the EIS and pension investments. In general it was answered adequately, although many candidates' answers were unsatisfactory in relation to the EIS.

Part (g) for 4 marks required a comparison of pension options and was generally answered adequately by the majority of candidates.

Part (h) for 2 marks referred to the tax implications of disposing of an investment property which had qualified for section 23 relief. Many candidates were put off by the section 23 aspect and either did not attempt the question part or struggled with their answers.

Even if a candidate was not comfortable with the section 23 aspects, there was half a mark available for stating that CGT at 33% would apply to the gain and a further one mark available for stating that VAT did not apply. Candidates are encouraged to attempt all parts of a question, even if there aspects with which they are not fully familiar.

Although it is unlikely that the detailed aspects of section 23 or other old property reliefs will be examined in future papers, given that many clients currently own such properties, it is considered important that candidates know the time limits for the disposal of a section 23 property and the implications of disposing of it prior to that time.

Four professional marks were available and in general candidates scored well here, although some candidates did not put their detailed computations into appendices (as required) and therefore did not optimise their marks.



Please also note that long introductions (more than a paragraph) are not required in question 1 and providing such unnecessary introductions results in a loss of valuable time.

Question Two

This question dealt with the transfer of assets (including shares in a business and its premises) from a taxpayer Robert (aged over 55) to various family members.

Part (a) (i) for 4 marks examined the tax implications for the disponer (Robert) of the transfer of the shares and premises. The claim for retirement relief arising on the transfer of shares was well handled by many candidates. However the claim for retirement relief in relation to the premises was less well handled and a number of incorrect assertions were made.

Part (a)(ii) for 7 marks examined the tax implications for the donee (Padraig) on receipt of the shares. This was also reasonably well dealt with. However, common mistakes included:

- Failing to address the discount on valuation of the shares
- Not claiming business property relief on the transfer of the premises but only on the basis that all the shares were not transferred at the same time as the shares rather than on the basis that Robert did not have a controlling interest in the company at the time of transfer of the shares. As a result this had an impact on the recommended date to transfer the shares under part (b).
- Claiming business property relief on the transfer of the premises without any reference to the necessary conditions.
- Failing to deduct stamp duty when calculating business property relief even where it had been correctly determined or, alternatively, deducting stamp duty after business property relief had been claimed.
- Applying consanguinity relief to the shares.
- Omitting to claim the small gifts exemption.

Part (b) for 2 marks sought recommendations in relation to (a). Most candidates recognised the holding period to avoid a claw-back of business property relief and retirement relief but few recommended anything else.

Part (c)(i) for 2 marks required an explanation of the tax issues arising for the vendor on the disposal of an investment property to a connected person. The loss was correctly determined by the majority of candidates but a number of candidates did not recognise the restriction applying to connected persons.

Part (c)(ii) for 3 marks required an explanation of the tax issues of the same disposal from the purchaser's viewpoint. Common mistakes included:

- Regarding the total market value of the property as a gift and not the difference between the market value and price paid.
- Ignoring the earlier use of the tax free threshold on the gift from his son, or if recognising the earlier gift applying the threshold applicable on gifts from parents to children and not vice versa.
- Not referring to the base cost of the investment property for CGT purposes in the event of a future disposal
- Not recognising the planning point regarding the 7 year exemption for CGT

Part (d) for 7 marks required a calculation of the CAT liabilities in relation to various inheritances proposed. This was generally well dealt with by candidates. However, common mistakes included:

- Omitting to consider the dwelling house relief for Kate



- Applying the 'age factor' adjustment to the right of residence calculations for Kate
- Applying the small 'gift' exemption when calculating the inheritance tax due.
- Forgetting the additional inheritance which would arise on Norah's death on the cessation of the right of residence.
- Failing to charge CAT on Tom's inheritance.
- Treating the whole section 72 policy as a taxable inheritance rather than just the excess over the inheritance tax payable. In addition, while many candidates did recognise that the excess section 72 policy proceeds would go into the residue of the estate some candidates omitted to state that this was also taxable.

Question Three:

This question examined the taxation of the income and capital gains of an individual (Nicole) who was resident but not domiciled in Ireland, and also examined the requirements for a company surrendering R&D credits to a key employee.

Part (a) for 2 marks which required an identification of the basis of Nicole's charge to Irish taxation was well dealt with by the majority of candidates. However, some candidates incorrectly suggested that Nicole was only subject to Irish CGT on specified assets.

Part (b) for 6 marks required advice in relation to the Irish tax implications of various investment transactions. The following issues were noted in candidates' answers to this part:

- Many candidates did not recognise that a loss arose on the sale of the Antwerp shares and as a result did not consider the implications of the loss both in relation to loss relief and remittance of any proceeds.
- Many candidates did not recognise that the lodging of the rental income into the same bank account as the proceeds from the disposal of the shares were lodged created a mixed fund and hence would have implications for later remittances from this bank account.
- While a number of candidates did recognise that the funds used to purchase the car would create a taxable remittance others simply suggested the importation of the car would be subject to VRT.
- Finally, while most candidates recognised that the payment of the credit card from the Canadian bank account created a remittance, many incorrectly suggested it would be subject to income tax and not CGT.

Part (c) for 5 marks required an explanation of the conditions for and operation of the relief for the surrender of R&D credits by a company to a key employee. The quality of the answers to this part was very mixed. Whilst some candidates' answers were very satisfactory, others omitted this part altogether, which suggests that the topic was not covered by some candidates in their preparation for the paper.

Part (d) for 4 marks required a calculation of the tax refund due to Nicole arising from the R&D credits.

As in part (c) the quality of answers to this part was mixed. Even where candidates had knowledge of the restriction of the relief to 23% of the taxpayer's income, many candidates omitted to consider 'other' income such as remittances (which arose in part (b) of the question) when considering this limit.

Part (e) for 3 marks examined the conditions relating to the APSS and was generally well dealt with.

Question Four

Part (a)(i) and (ii) for a total of 10 marks examined the tax relief in relation to specified intangible assets. This was another area where candidates' answers were very mixed with some being very satisfactory and others not so. Again, this appeared to be an indication of the level of study which candidates had undertaken on this area of the syllabus.

Part (b) for 10 marks dealt with close company restrictions and the two issues examined were reasonably well dealt with by the majority of candidates.

Notwithstanding this, common mistakes made on this part included:

- Applying the 13% restriction to share capital only and not share capital and premium
- Not recognising that a withholding tax also arose in relation to the interest element of the overall payment.
- Not recognising the implications should the recipient of the distribution not repay the dividend withhold tax (DWT) to the company.

Question Five

This question examined six brief scenarios relating to a sole trader which involved VAT issues as well as some income tax and CGT. Most candidates who attempted this question performed well, particularly in parts (iii), (iv) and (vi). Well done!

Part (i) for 2 marks examined the CGT treatment of the disposal of an asset. Only a few candidates recognised the implications of the earlier claim for relief on the reinvestment of the compensation proceeds when the asset was damaged and therefore did not reduce the base cost by the compensation amount. Some candidates also claimed further relief for the compensation amount despite this being a 'repair' and not enhancement expenditure.

Part (ii) for 3 marks examined the VAT implications of a disposal of developed land. Many candidates were not familiar with the difference between the conditions for determining 'new' developed 'land' versus new developed 'buildings'.

Part (iii) for 6 marks tested international aspects of VAT and was well dealt with by the majority of candidates.

Part (iv) for 2 marks also examined international aspects of VAT and was similarly well dealt with by the majority of candidates.

Part (v) for 4 marks examined the differences between an option to buy or lease a machine. Answers to this part were generally unsatisfactory. There was confusion between income tax deductions due under both options, whether VAT was charged on leases, and indeed the extent to which capital allowances were due under either option.

Part (vi) for 3 marks required an identification of the implications of the purchase of a car. This was well answered by the majority of candidates. However quite a number of candidates suggested that Mary would be charged on a benefit in kind (BIK) in relation to the use of the car, despite the fact that she was a sole trader and not an employee.



In addition, some candidates suggested that the VAT on the acquisition of the car could be reclaimed, forgetting to address the category of the car. Finally, in dealing with the recommendation for VAT relief which could be due, there was evidence of some confusion over the percentage of business use required.