



# Examiners' report

## P6 Advanced Taxation (IRL)

### December 2007

#### Introduction

The general points to emerge at this session, as in previous sessions, are:

1. A disappointingly large number of candidates failed to do themselves justice because of poor layout particularly in computational questions. Clearly the examiner cannot award marks to solutions which he cannot follow.
2. There was, yet again, an apparent refusal by candidates to read the questions set or address the issues relevant to the circumstances of the taxpayers in the questions.
3. Poor exam technique manifested itself in two main ways:
  - a) Failure to attempt all parts of the questions. This suggests an inability to manage time in the examination.
  - b) Wasting time writing unnecessary explanations when a short computation was called for which would have more clearly demonstrated the candidate's ability and knowledge.

#### Marks available in respect of professional skills

Marks were available for professional skills in questions 1 and 2. In order to earn these marks candidates first had to satisfy the requirement in relation to the format of the document requested. Further marks were then available for the clarity of the answer, including the ease with which it could be marked and the degree to which the conclusions reached followed logically from the explanations and calculations provided. These latter marks were more likely to be earned by those candidates who thought about the manner in which they intended to satisfy the requirement such that there was a sense of purpose and a cohesion to their answers.

#### Question 1

This question tested the ability of candidates to offer advice on the tax issues that arise when a business is transferred from one generation to the next. It also tested knowledge on the issues that arise in connection with the incorporation of a business in the context of such a transfer.

Generally, this question was well answered. Most answers were set out in letter format and dealt with the conditions attaching to retirement relief. The claw back of the relief where the child does not retain the asset for six years was also dealt with correctly by most candidates. A point normally missed was that it may be possible to take some consideration in the form of cash or a loan to facilitate the tax-free extraction of funds from the company.

Candidates failed to gain marks by not stating that all of the assets, except cash, must be transferred in order to avail of relief under Section 600 Taxes Consolidation Act 1997.

Some candidates wasted time preparing gift tax computations despite the fact that the question specifically stated that full market value was to be paid for the business.

Many did not attempt part (b) and some of those that did attempt it did not state that interest on money borrowed to acquire the business or shares in a company would be deductible for income tax purposes.

#### Question 2

This question tested knowledge of the tax issues which arise on disposals made by a group of companies. It included a disposal of a subsidiary where group relief had previously been claimed for a transfer of assets and a sale and lease back arrangement for a factory which had qualified for industrial buildings allowances.

This question was poorly answered.

Very few answers dealt with the conditions for the favourable holding company relief. Few stated that the transfer of the office would have qualified for group relief on 1 April 2004. Many answers failed to restrict the balancing charge to the capital allowances claimed.

Many did not answer part (b) which was worth 4 marks.

Part (c) was generally well answered.

### **Question 3**

This question tested knowledge of the close company rules. It tested ability to recognise a close company, and knowledge of the consequences of being regarded as a close company. It also tested ability to compute various liabilities which can be incurred by a close company and the ability to suggest methods of avoiding such liabilities.

This was the most popular question and was generally the first to be attempted. Most of the computations were correct.

Common errors included:

1. Calculating the allowable interest based on €2,000 rather than €4,000 (€2,000 each).
2. Taxing the deposit interest under Case IV rather than Case III.
3. Treating the dividends received as Schedule F income.

Many answers included professional service income surcharge in addition to the investment and estate income surcharge. There was no professional income as the company carried on a trade rather than a profession. Others did not show the (deemed/calculated) distributions as deductible from the distributable investment and estate income.

Most did not deal with the income tax liability arising under s438 TCA 1997 despite the fact that the question asked candidates to compute the income tax payable by the company. Some calculated dividend withholding tax instead.

### **Question 4**

This question tested knowledge of the tax treatment of a purchase or redemption by a company of its own shares.

This question was well answered. Most answers listed out the conditions attaching to capital gains tax treatment or a purchase by a company of its own shares .

Many stated that stamp duty of 1% applied to shares generally but when the company bought back its own shares the rate was 0%. Very few stated that the shares could be converted to redeemable shares and then redeemed.

### **Question 5**

This question tested the ability of the candidates to advise on the taxation factors relevant to the establishment of a holding company in Ireland to hold shares in subsidiaries operating outside of Ireland and also to appreciate the

distinction between a domestic trade qualifying for the 12½% rate of corporation tax and a trade carried on wholly abroad which is subject to the 25% rate of corporation tax..

This question was poorly answered. It was clear that most candidates had no knowledge of the topic being examined. The question dealt with issues relating to an Irish holding company with subsidiaries abroad. Instead, candidates spent time dealing with branches and permanent establishments which were not relevant to the question. In addition, many spent time dealing with company residence which, again, was irrelevant to the question asked.

In part (a) it was clear that:

1. Few seemed to be aware of holding company exemption from capital gains tax.
2. Few had any knowledge of the conditions attaching to relief for interest paid by a company on money borrowed to acquire shares in another company.

In part (b) candidates did not demonstrate an understanding of the distinction between a trade which is taxable under Case I and one which is taxable under Case III.