



Examiner's report

ATX Advanced Taxation (UK)

September 2018

General Comments

The exam was the second in its new format comprising wholly compulsory questions. Section A consisted of the compulsory questions 1 and 2, worth 35 marks and 25 marks respectively, and section B consisted of two further compulsory questions, 3 and 4, worth 20 marks each. The style of the questions has remained as in previous sittings.

In general terms, those candidates who did not perform well were weak in the following areas.

- They did not answer the question set, suggesting that they did not spend sufficient time carefully reading the question. There were a significant number of scripts where candidates considered the wrong aspect of a particular tax, or even, in some cases discussed the wrong tax altogether, despite clearly worded requirements. These are all discussed further in the detailed comments below.
- They did not spend sufficient time thinking before they started writing. This meant that they produced an unstructured answer which, in the case of an explanatory or discursive answer, did not include sufficient relevant points and/or they wasted time providing information that had not been asked for. In the case of comprehensive computational answers, this often led to difficult to follow computations. It was also noted that many candidates repeated the same point two or three times in their answer, which clearly wasted time for no additional marks.
- They did not have sufficient, precise knowledge of the tax rules within the syllabus. This was true in respect of areas which are new at the ATX level and also some of the more fundamental rules contained in the TX syllabus.
- Their time management was poor. There were a number of candidates who produced very comprehensive answers to two or three questions, perhaps scoring a good pass on these, but then appeared to run out of time without being able to have a reasonable attempt at their fourth question.

Candidates should pay particular attention to the following in order to maximise their chances of success in the exam in the future.

1. Know your stuff
 - Successful candidates are able to demonstrate a good level of accurate knowledge of the UK tax system.
 - This includes knowledge brought forward from the TX syllabus.
2. Practise questions from past exams with the aim of adopting the style of the model answers, and learning how to spot 'triggers' in the question, which are there to point you towards the required answer. This should be a key part of your preparation for the exam. In particular this applies to the longer, scenario-based Section A questions.
3. Address the requirement
 - Read the requirement carefully – in the Section A questions the detailed tasks that you are to perform will be set out in one of the documents. It may be helpful to tick off the tasks as you address them. Marks are awarded only for satisfying the requirements and not for other information even if it is technically correct.
 - The requirements of each question are carefully worded in order to provide you with guidance as regards the style and content of your answers. It is very important to note the command words (calculate, explain, advise etc). Requirements to 'explain' or 'advise' require a written element to the answer, perhaps accompanied by supporting calculations, but calculations alone will not suffice. You should also pay attention to any matters which are not to be covered, as inclusion of these will not gain marks
 - Pay attention to the number of marks available – this provides you with a clear indication of the amount of time you should spend on each question part.

4. Don't provide general explanations or long introductions.
 - You should avoid just writing out parts of the question, which candidates sometimes appear to use to 'set the scene', but is not an efficient use of time.
 - If you are just asked to 'calculate', there is no need to explain what you are going to do before you do it; just get on with it – only provide explanations when you are asked to.
 - Think before you write. Then write whatever is necessary to satisfy the requirement.
 - Apply your knowledge to the facts by reference to the requirement.
5. Think before you start and manage your time
 - Ensure that you allow the correct amount of time for each question part.
 - Before you start writing, think about the issues and identify all of the points you intend to address and/or any strategy you intend to adopt to satisfy the requirement.

If you are preparing to resit the exam, think about the number of additional marks you need and identify a strategy to earn them. For example:

- Identify those areas of the syllabus where you are weakest and work to improve your knowledge in those areas. This should include any technical areas brought forward from TX where necessary.
- Practise past exam questions in order to familiarise yourself with the style of questions that you will have to deal with. This is a vital part of your preparation for the exam and its importance cannot be emphasised enough.
- Ask yourself whether you could improve the way you manage your time in the exam and whether you address all of the parts of all four questions or whether you waste time addressing issues which have not been asked for. There was considerable evidence of this in the September 2018 exam.
- Make sure that you earn the professional skills marks and that you are prepared to address the ethical issues that may be examined.

Those candidates finding themselves scoring in the 40's should ensure that they read the various non-technical articles aimed at improving performance in the ATX (UK) exam, which are on the ACCA website.

Marks available in respect of professional skills

Marks were available for professional skills in question 1. In this case candidates were required to provide a memorandum for a client file, including explanations and calculations of the outcome of two alternative strategies for the sale of a wholly owned subsidiary company. Candidates should keep two things at the back of their minds while addressing this type of requirement: Firstly, that explanations contained in the notes must be concise, but comprehensive enough to be understandable by another member of staff who may subsequently need to consult them. Secondly, the computations should be presented in a logical, structured way, such that they are easy to follow. Candidates who scored well, structured their answer according to the matters to be addressed, wrote concisely in short, clear paragraphs, provided easy to follow calculations, and demonstrated a logical thought process in addressing each of the issues.

Specific Comments

Question 1

This question required advice on the corporation tax consequences of disposing of a wholly-owned subsidiary company by either selling all of the shares, or, alternatively, selling the trade and assets, together with the value added tax (VAT) implications if the sale of trade and assets route is chosen. There was also an ethics requirement to discuss tax evasion, tax avoidance and the purpose of the general anti-abuse rule (GAAR), and its application to a proposed plan to claim extensive capital allowances. The sale of shares versus sale of trade and assets decision is one which is regularly tested, so a well-prepared candidate should have been familiar with the main issues which they needed to discuss. Additionally, there are significant differences, practically and commercially, between selling shares in a company, and selling its trade and assets, which are reflected in the approach taken for tax purposes. If candidates are not familiar with a scenario, they should take time to think about the reality of the situation, which will often give them pointers as to the tax treatment. More generally, many candidates need to spend more time ensuring they are familiar with key areas relating to chargeable gains for companies – the substantial shareholding exemption (SSE), calculation of indexation, conditions for rollover relief and chattel exemptions in particular.

The use of subheadings, taken from the issues in the manager's email, provides a useful structure in this type of question, which all candidates should consider adopting.

The first part of the question, which was worth 8 marks, required candidates to explain whether or not tax relief would be available for a loss on the sale of the shares, the implications of the subsidiary leaving the group with a building which had recently been transferred to it by another group member, and a calculation of the after-tax proceeds. It was disappointing to see that a significant number of candidates did not mention that the SSE applied in this case, and so wasted time describing reliefs for the capital loss which were not relevant. Awareness of SSE, and when it applies is fundamental at ATX. In any question concerning a corporate disposal of shares, the candidate's first thought should be to consider the application of SSE. There will be marks for considering this, and for demonstrating knowledge of the conditions, which will allow a decision to be made as to whether or not it applies. A few candidates did consider it, but concluded that it did not, or need not, apply where there is a loss, so, again wasted time with unnecessary calculations and discussion of reliefs.

The majority of candidates recognised that the company leaving the group with an asset that had been transferred to it within the last three years would give rise to a degrouping charge (and cited the six year time limit), but only very few also recognised that there would also be stamp duty land tax implications. A small minority of candidates confused the implications of a share sale with those of a trade and asset sale, and so included calculations of the gains/losses on the individual assets in addition to, or instead of, the shares. This confusion then continued into the second part of the question, meaning that relatively few marks were available. As stated above, a few moments spent thinking about the reality of the different scenarios should have enabled a candidate to at least set off in the right direction.

The second part of the question concerned the disposal of the trade and assets of the company, as an alternative to the sale of shares. This part was worth 11 marks and, on the whole, was done better than the sale of shares, with the majority of candidates calculating a correct, or nearly correct, gain/loss on the two buildings, and, pleasingly, identifying the balancing charge on the machinery. The most common errors in this part were to treat the whole business as a single asset, and calculate just a single gain/loss by reference to the total costs and proceeds, and to calculate an indexation allowance to increase an unindexed capital loss. It was also pleasing to see that most candidates did try and address all parts of this requirement, but in a significant number of cases were let down by their lack of detailed knowledge in relation to capital gains tax exemptions and reliefs, in this case the chattels exemptions (wasting chattels and £6,000 rule), and the precise requirements for rollover relief (moveable plant and machinery doesn't qualify).

The third part of the question concerned charging VAT on the sale of the building and machinery if the company decides to sell the trade and assets. This was worth 7 marks. Most candidates picked up a few marks here in relation to the buildings, and consideration of their age and the option to tax. However, very few picked up a key issue, embedded in the facts of this scenario, that transferring the trade and assets would constitute the transfer of a going concern, such that the transaction would be outside the scope of VAT, apart from, potentially, the buildings. Candidates at ATX should not rely on always being prompted in relation to the issues being tested, with a direct reference to the issue. They are encouraged to spend a little time thinking about the reality of the situation, so as to be able to identify the aspect(s) of a tax which may be relevant.

The final part of the question required candidates to distinguish between tax evasion and tax avoidance, to state the purpose of the general anti-abuse rule (GAAR), and to explain its application to the plan proposed by the client. This was clearly an area candidates were prepared for, and was generally done very well, with most candidates scoring at least four of the five available marks. A few candidates produced an exceptionally long answer, and, while they probably scored full marks, these could also have been obtained with a much more concise answer, leaving more time for other parts of the exam. It may be tempting to write at length on a topic with which a candidate is very familiar, and confident, but attention should always be paid to the maximum number of marks available.

Overall, candidates who prepared satisfactory answers to question 1:

- appeared to have practised similar questions
- read the requirements very carefully
- applied their knowledge well to the scenario
- produced concise explanations and clearly laid out computations

Question 2

This question concerned income tax, capital gains tax (CGT) and inheritance tax (IHT) planning for a UK resident married couple, one of whom was not UK domiciled.

The first part of the question, which was worth 11 marks, concerned proposals to minimise the overall income tax liabilities of the couple. Performance on this question part was polarised, with a good number of candidates scoring 8+ marks, but equally, a large number scored fewer than 4 marks. Those candidates who scored well on this particular part:

- clearly spent time carefully reading and thinking about the requirements, so that they were able to adopt a structured, methodical approach to calculating the tax liabilities for each individual if the proposed strategy was followed.
- didn't waste time writing out facts from the question or suggesting alternative strategies which did not satisfy the stated requirements for the couple.

Many of those who scored low marks had attempted this question last, and appeared to have run out of time. The requirements may have appeared a little daunting in length, but those candidates who read through them carefully, and followed the very detailed guidance they contained, were rewarded with high marks. For these candidates, the standard of the calculations of the tax savings was very high, and most were able to recognise and explain the benefit of standard income tax planning measures for a married couple, such as using the savings and dividend nil rate bands, and taking advantage of the lower rate of tax paid by one of the couple. The most surprising aspect of candidates' answers related to the requirement to discuss the income tax implications of a parent providing an income-generating investment for a minor child. Not only did very few candidates recognise that the income from this investment would be taxed on the parent, but a significant number did not discuss any income tax implications at all. Despite the clear instruction in the requirement for discussion of income tax matters, an overwhelming majority of candidates (perhaps having

seen the word 'gift'), discussed the inheritance tax implications, in some cases in quite some detail. Candidates are once again reminded of the importance of reading the question carefully; writing about the wrong tax clearly scores no marks.

The second part of the question related to the IHT implications of a UK domiciled spouse gifting cash from the sale of a property to their non-UK domiciled spouse, and the CGT saving from gifting a share of the property prior to sale, rather than cash following the sale. Although many candidates were not aware of the precise restriction on the spouse exemption in respect of a non-UK domiciled spouse, it was pleasing to see that the majority realised that the full spouse exemption was not likely to be available, so were able to score marks from recognising that there would only be a liability to IHT if the donor spouse died within seven years, and that a non-UK domiciled spouse is able to change their domicile on election.

In calculating the CGT saving as a result of transferring a share in the house to a spouse prior to sale, the majority of candidates adopted a full 'before and after' calculation in this case, calculating the total tax payable by the wife if she sold the house before giving her husband a share of the proceeds, with the total payable by the husband and wife together if she gave him a share of the house prior to sale. This latter strategy enabled the couple to take advantage of the husband's available annual exempt amount (AEA), and lower rate of CGT. This was an entirely reasonable approach to take in this scenario, as the calculation of the liability was quite straightforward. The main errors in this part were, firstly, not recognising that, as this was a sale of a private residence, the higher rates of CGT will apply, and secondly, focusing only on the reduction in the CGT payable by the wife, without taking in to account that there would also be a small liability for the husband in the latter strategy. A minority of candidates used a marginal approach to directly identify the amount of tax which would be saved. This proved to be very efficient if done correctly, but was quite tricky, and several candidates just provided a lot of numbers, without adequate labelling, which made it difficult to award marks in some cases.

The third part of the question required a comparison of the income tax implications of investing in enterprise investment scheme (EIS) or venture capital trust (VCT) shares. Overall, knowledge of these two types of investment was good, with the majority of candidates scoring at least three of the available five marks. However, a significant number of candidates wasted time by apparently discussing everything they knew about these schemes, including the CGT exemption, and the general requirements on the company in order for investors to qualify. Once again, the question was very specific in stipulating that only the income tax implications were required, and careful reading of the question might have prevented these candidates from producing fairly lengthy explanations, which attracted no marks.

Question 3

This question concerned various tax consequences of transferring an unincorporated sole trader business to a company, and the tax implications of alternative ways of extracting profit from the new company.

The first part related to the availability of loss relief for a trading loss brought forward at the start of the final accounting period in the unincorporated business. This question part was not well done, for two reasons. Firstly, the majority of candidates failed to realise that when a loss is given as being brought forward at a particular date, with no indication of the prior accounting period(s) or tax year(s) in which the loss arose, the current year/carry back reliefs against total income will not be relevant. Nor is terminal loss relief relevant, unless the loss arose in the last 12 months of trading, which was not the case here. So the only option is to carry the loss forward against the first available profits from the same trade, which here was just the profit of the final period of trading prior to incorporation. Secondly, the majority of candidates appeared to be unaware of incorporation relief, permitting the remaining loss to be carried forward against the former sole trader's income from the company. The rules relating to reliefs for trading losses for individuals are frequently examined, and candidates are expected to be precise in this sort of question. Candidates would do well to

invest time at the revision stage of their studies in memorising the rules concerning relief for trading losses, and ensuring that they are able to recognise those rules which apply in a given scenario, so as not to waste time discussing reliefs which are not available.

The second part of the question focused on the CGT implications in respect of the assets transferred to the new company. It was pleasing to see that the majority of candidates knew the conditions for incorporation relief to apply, but, disappointingly, a significant number of these did not know how to apply it. More surprising, however, was the fact that relatively few candidates referred to entrepreneurs' relief here. The issue of goodwill not qualifying for entrepreneurs' relief in this situation, is, admittedly, quite a tricky one, but entrepreneurs' relief is a very common, and frequently tested, relief available to individuals disposing of qualifying assets, so should be something that every candidate would be advised to consider, and comment on, in every situation where there is a disposal of business assets. It is important to be very familiar with the precise rules for this relief, so as to be able to ascertain whether or not it is available in any given scenario.

The third part of the question was a variation on the often-tested extraction of profits from a company, this time including withdrawal from a loan account, in addition to the more familiar dividend or salary. On the whole, this was done well, with most candidates adopting a marginal approach, and therefore being able to calculate the additional tax payable by both the individual and the company in a concise and efficient way. It is a useful skill for candidates to be able to recognise where a marginal approach will be appropriate, as in these cases it will usually prove to be much less time consuming than producing full computations, although full marks can still be obtained by a candidate who adopts this latter approach. The best way to develop this skill is, undoubtedly, question practice, in order to gain confidence in being able to identify when it is appropriate, and how to perform the marginal calculations. In relation to the withdrawal from the loan account, a significant number of candidates appeared not to have read the question properly, where it stated explicitly that there would be sufficient funds in the loan account to permit this withdrawal, and dived straight in to explaining the rules for close companies in relation to the tax charge payable on overdrawn director's loan accounts, with which they were clearly more familiar, but which unfortunately were not relevant.

The final part of the question concerned the administrative requirements in relation to deregistration for VAT by the unincorporated business, registration by the company, and the possibility of transferring the VAT registration. This was attempted well by the majority of candidates, who typically scored two out of the possible three marks.

Question 4

This question concerned the availability and implications of a gift relief claim for CGT and the availability of business property relief (BPR) for IHT in respect of a gift by an individual, and the tax consequences for their personal company of selling an item of equipment and using the after-tax proceeds to purchase an asset to gift to a shareholder.

The first part of the question asked candidates to explain why CGT gift relief will be available on the gift of an asset. Many candidates' knowledge of the conditions required for a CGT gift relief claim was rather vague, with many stating a number of possible factors, which were incorrect. Virtually no candidate scored both marks on this part, although a majority managed to score one of the two available. Again, candidates need to learn the conditions required for the various CGT reliefs which are available to individuals, in order to be able to cite them, or to recognise when the relief is, or is not, available.

The second part of this question required an explanation and calculations of the effect of making the gift relief claim, on the total CGT liabilities of both the donor and donee. Almost all candidates identified that, as no proceeds were received, the full gain would be deferred, and would consequently reduce the base cost of the asset for the donee on a later disposal. In the main, this was accompanied by a correct calculation of the gain, and the reduced base cost. However, the majority of candidates stopped at this point and did not follow through the calculation to the end, to quantify the effect of this claim on the total CGT liabilities of the

relevant individuals. Candidates are reminded that when information is provided in the question relating to such factors as the availability of each individual's AEA, and the rate of CGT payable by each, they will be expected to use this information in their answers. The availability of entrepreneurs' relief was not explicitly stated, but sufficient information was provided to enable candidates to determine this. Candidates must expect that exam questions at this level will regularly call upon them to use their knowledge of the various CGT reliefs to determine if, and when, these are applicable.

The third part of this question required candidates to advise very specifically on the availability of BPR for IHT purposes in respect of the lifetime gift. It was therefore very surprising to see that many candidates made only a passing reference to BPR, or in some cases did not mention it at all, and instead discussed at some length the principles of a potentially exempt transfer (PET) which becomes chargeable, and in particular the availability of taper relief. As a result, marks on this question part tended to be very low. Once again it is an issue of not reading the question carefully and not answering the question set. However technically correct an answer is – and most of these were – if it does not address what is specifically required in the question it will not gain marks.

The final part of the question concerned an explanation and calculation of the after-tax proceeds from the sale of an item of fixed equipment, and the tax consequences of a close company gifting an asset to a shareholder. It was pleasing to see that the majority of candidates correctly identified the implications of the disposal in respect of a previously held-over gain, and the balancing charge which would arise, and followed through to correctly calculate the after-tax proceeds. The weakest element within this requirement was the apparent lack of understanding of the link between capital allowances and capital losses, and the fact that a capital loss cannot arise on an asset on which capital allowances have been claimed. Questions such as this, and question 1(a)(ii), which also tested the implications of both CGT and capital allowances in respect of a disposal, have appeared regularly in the ATX exam, and will continue to do so. The majority of candidates were also able to identify that the gift of an asset to a shareholder, who was not a director or employee of the company, would be treated as a distribution, although very few identified that the company was a close company.