



Association of Taxation Technicians

Examination

May 2007

PAPER 7

**PRACTICE ADMINISTRATION
& ETHICS**

ANSWERS
(without marking guide)

1. Any four of the following:

VAT account
Copies of all VAT invoices issued
Copies of all VAT invoices received
Copies of credit notes in connection with either of the above
All business and accounting records
Documents relating to VAT imports and exports, etc.

Records must be retained for 6 years.

2. A VAT surcharge liability notice runs for a period of one year from the end of the period for which X Ltd was in default.
X Ltd must pay all of the VAT due and lodge all returns due within that period on time in order to remove itself from the VAT surcharge liability notice.
Returns and any payment due must be submitted within one month of the end of the return period.
Even if there is no VAT to pay for a particular VAT quarter, if the return is made late, HM Revenue & Customs can issue a surcharge liability notice extension that will run to the first anniversary of the end of the last VAT period for which default occurred.
3. The penalties for late submission of a corporation tax return are as follows:
£100 where the return is no more than three months late.
£200 where the return is more than three months late.
The above penalties are increased to £500 and £1,000 respectively if this is the third consecutive time that the return is late.
In addition to the above, there are tax based penalties where the return is not filed within 18 months after the end of the return period:
An initial penalty of 10% of the tax unpaid at the 18 month point, or
20% of the tax unpaid at the 18 month point if the return is not filed within two years after the end of the return period.
4. An enquiry may be opened at any time up to 31 July 2008.
Normally an enquiry may only be opened up to 12 months from the normal lodgement date (in this case, 30 April 2008), but as the return was lodged late, the enquiry window is extended to the end of the next relevant quarter.
5. The answer depends on whether Zedzed Ltd is a small or large company for these purposes.
A company which pays corporation tax at the full rate of 30% (i.e. a company with profits for an accounting period exceeding £1.5M) is large.
Zedzed is clearly a large company this year. However, if it was not a large company in its previous accounting period, its liability will be due on 1 January 2008.
If Zedzed Ltd was also a large company in its previous accounting period, it will have to settle the liability by quarterly instalments due on 14 October 2006, 14 January 2007, 14 April 2007 and 14 July 2007.
6. (a) The trustees of the interest in possession trust are responsible for the tax arising in relation to her interest in the settlement.
Her personal representatives are responsible for the balance of the tax due.

Tax is due six months after the end of the month of death ie by 31 October 2006, unless the personal representatives deliver the account for inheritance tax earlier, in which case the tax falls due then.

The personal representatives can elect to pay the tax due with regard to the house in ten instalments, the first falling due on 31 October 2006, and annually thereafter.

(b) The Inheritance Tax return must be submitted within 12 months after the end of the month of death, i.e. by 30 April 2007.

7. The deadline for amending an income tax return is 12 months after the normal filing date. Therefore, at April 2007, Mike's income tax return for 2005/06 can be amended. As his return for 2006/07 will not have been submitted yet, the correct relief can be claimed for that year when the return is submitted.

Where the normal amendment deadline has passed, Error or Mistake claims under s.33 Taxes Management Act 1970 can be used to amend the tax liability. However, claims may not be made later than 5 years from the normal 31 January filing deadline. Therefore, the tax liability for 2000/01 cannot be amended, as the deadline expired on 31 January 2007.

8. You should maintain a diary system that enables you to advise all clients of the due date for payment of liabilities.

You should advise clients of the tax due for payment and draw the client's attention to the fact that interest will be charged on unpaid tax from that date.

9. In order for damages to be paid by a Member State under a breach of EU law, the following conditions have to be satisfied:

- The rule of law infringed was intended to confer rights on individuals;
- The breach was sufficiently serious i.e. where the Member State manifestly and gravely disregarded the limits on its discretion; and
- There is a direct causal link between the breach and the damage.

10. The four rules of statutory interpretation are as follows:

- (a) The literal rule. Words in the statute are given their ordinary and natural meaning. If the words of the statute are ambiguous, the literal rule cannot be applied.
- (b) The golden rule. Words are to be given their ordinary and natural meaning in so far as possible, but only where they do not produce an absurd result. If absurdity results, the courts try to modify the meaning so as to provide a rational meaning.
- (c) The mischief rule. The courts can ask themselves what mischief existed before the Act and what interpretation best gives effect to the cure.
- (d) The purposive rule. This is the approach adopted by the European Court of Justice. Under this rule, the courts try to find the purpose of the legislation and try to give effect to it, whatever the specific wording of the legislation.

Note: only three of the above were required.

11. Tax evasion is against the law. It occurs when a taxpayer dishonestly withholds or falsifies information.

Tax avoidance is within the law. It occurs when a taxpayer uses legitimate means to reduce their overall tax liability.

12. The minimum requirement for members of the Association is 45 hours of Continuing Professional Development per calendar year.

A minimum of 15 hours per calendar year must be structured training, with the remainder being unstructured training

13. Information acquired in the course of a member's work must not be divulged in any way outside his organisation without the specific consent of the client or employer, unless there is a legal or regulatory duty or professional obligation to disclose.

A member should safeguard the confidentiality of client information, particularly where there could be a conflict of interest with another client.

Confidential information acquired in the course of the work must not be used for personal advantage by a member or anyone else associated with him.

14. An annual limit of £1M cover is required for each and every claim OR where turnover is less than £400,000, the cover required is the greater of
- (i) 2.5 times gross income OR
 - (ii) £100,000
- A policy excess of up to £20,000 per principal is acceptable.

1. Bluebird Ltd

Memorandum

To: Jason Rees
From: John Smith

Re: Bluebird Limited

As requested, I have reviewed the company's accounts for the year ended 31 December 2005 and I have discovered that there is an error in the corporation tax computations as submitted by the former accountants. They have used the retained profits for the year as the basis of the tax computations, rather than the net profits per the accounts. As a result, they have allowed the dividends paid to Mr and Mrs Jones as a deduction for corporation tax, and this means that the company has paid too little corporation tax.

We should therefore arrange for the Corporation Tax computations for the year ended 31 December 2005 to be amended, so that the correct amount of tax is paid. This amendment must be made within one year of the filing date for the return, namely by 31 December 2007.

I assume that the directors, Mr and Mrs Jones, will agree to amend the computations as suggested. If they refuse to allow us to amend the computations, we must make it clear to them that we have an obligation to cease to act on behalf of the company and are also obliged to notify HM Revenue and Customs that we have ceased to act. We should also point out that ceasing to act in this way might prompt HM Revenue and Customs to raise a formal enquiry into the company's affairs.

You also asked me to summarise the procedures recommended by the Association's Professional Rules and Ethical Guidelines that should be undertaken when accepting instructions from new clients. First, we will need to undertake identification checks to comply with the Money Laundering Regulations 2003. In order to comply with the regulations, we will require the production of satisfactory evidence of identity as soon as is reasonably practicable after first contact is made with the client. Where companies are concerned, the Association's guidelines indicate that we should obtain the following documents:

- A copy of the latest report and accounts, which we already have, and
- A copy of the certificate of incorporation.

Furthermore, the principal requirement under the regulations is to identify those who have ultimate control or significant influence over the business and its assets. We will therefore need to undertake identity checks on Mr and Mrs Jones in their personal capacity as well. For example, obtain sight of passports, driving licences, proof of address.

In addition, we will need to send a clearance letter to the outgoing accountants, advising them that we have been appointed to act for the company and requesting details of any professional reasons why we should not accept the appointment. The objective of the clearance letter is to ensure that we are fully aware of all factors that may be relevant to accepting the appointment, as well as ensuring that we are fully aware of all factors that may have a bearing on the company's tax affairs. This will ensure that we do not miss any deadlines that might arise in the transition period.

Finally, we will need to issue a formal letter of engagement to the company. This serves as the contract between the client and ourselves and, although it is possible to have a verbal contract, it is safer for all concerned to have the terms of our engagement laid out in writing. We will need to check the wording of the engagement letter to ensure that the scope of our work is clearly defined, as well as the basis on which we will charge fees.

If you have any queries, please let me know

JS

11/05/07

2. Fred and Mabel Jones

Large Practice and Co
Anytown

Mr A Richards
Large Firm
Anytown

Dear Adam

Mr Fred Jones

Thank you for your email concerning your client, Mr Fred Jones. I understand that you are only asking for my views on the conduct of the accountant and not whether the tax liability is correct.

I would first recommend that you obtain a copy of the letter of engagement issued by the accountant and signed by your client. The issuing of such a letter is recommended by the Association under its Professional Rules and Practice Guidelines. This letter serves as the contract between the client and the accountant and forms the basis upon which the accountant is to act on behalf of the client. It is usually appropriate to include a clause as to how fees are to be charged and this may clarify whether the additional fee of £3,000 is payable. For instance, if

the accountant has quoted a specific hourly rate or a fixed fee, he would not be able to issue a fee note in excess of the amount quoted without prior agreement.

I note that the accountant has now suggested that he will undertake to reclaim tax he believes has been overpaid and that the fee suggested is partly contingent on the amount of tax reclaimed. Whilst the Association's guidelines allow fees to be charged on a contingent basis, it does recommend that such arrangements are used with care, as there is a risk that professional independence and integrity will be impaired during the conduct of the work.

However, my main concerns relate to whether the accountant is fulfilling his professional obligations to the client and whether he is in breach of his duty of care in dealing with your client's tax affairs. When acting for a client, a member of the Association places his professional expertise at the disposal of the client. In doing so, the member assumes a duty of care towards the client and which is recognised in law. A member must therefore exercise reasonable skill and care when acting for a client, else he may expose himself to a claim for professional negligence.

From the information you provided, it would appear that the accountant was engaged by your client to deal with the enquiry raised by HM Revenue and Customs. Therefore he owed a duty of care to Mr Jones to ensure that the correct amount of Capital Gains Tax was paid. However, as he is now saying that he believes tax has been overpaid, it would appear that he failed to correctly deal with the enquiry in the first instance. The fact that he is refusing to give reasons as to why the tax can be reclaimed does suggest that he may have made an error, but there may be legitimate reasons why less tax is due.

It may have been the case that the fees that would be incurred in obtaining the reduction far outweighed the tax being saved. If so, the accountant was at least obliged to make the client aware of the situation and let the client decide whether to proceed accordingly.

From the information provided, I believe that the accountant has probably breached his duty of care to your client and may have exposed himself to a claim of professional negligence. However, I would recommend that you carefully read the letter of engagement to clarify the terms on which your client engaged him, and obtain copies of any correspondence and advice, before taking any action for professional negligence.

Under the Professional Rules and Practice Guidelines of the Association, a member should have a complaints procedure in place and this procedure should be detailed in the letter of engagement, together with the name of the person designated to deal with complaints. If, after considering all of the facts in this case, your client believes that a complaint is warranted, he should complain in accordance with the terms of the letter of engagement.

A complaint can also be lodged directly to the Taxation Disciplinary Board of the Association, who may decide to refer the case to the Disciplinary Committee. If the complaint is upheld against the member, the Disciplinary Committee has the power to award costs to your client.

I trust that you will find my comments straightforward, but if you want to discuss the matter, please contact me.

Kind regards

Yours sincerely

J Smith

3.

1) Note to colleague following meeting with Mrs Peterson

- (a) Mrs Peterson intends to become self-employed, some of her clients being in Eastern Europe. She will require a high level of support and we need to ensure that the firm has the capability to act for her, especially if she requires assistance in relation to any clients in Eastern Europe.
- (b) A conflict of interest may arise between acting for her and also acting for Creative Information Ltd. This will require monitoring and you may wish to consider whether you should pass responsibility for her tax affairs to me, while you retain responsibility for Creative Information Ltd.

2) Briefing note for Mrs Peterson regarding possible self - employment

Payment dates

The income tax liabilities, together with any Class 4 National Insurance, are due to be paid in three instalments.

The tax due on 31 January 2009 will consist of your balancing payment for 2007/08 and a payment on account for 2008/09. Your balancing payment for 2007/08 will be determined by subtracting the tax and NIC paid through the PAYE system from your total tax and NIC liability for the year. This liability will consist of the tax and NIC on your employment from 6 April 2007 up to the date of leaving Creative Information Limited, together with any tax and Class 4 NIC liabilities on three months' profits.

If the balancing payment for 2007/08 is less than £500, or if you pay at least 80% of your income tax and NIC liability by deduction at source (including PAYE) then you will not be required to make payments on account for 2008/09. However, assuming that payments on account are required for 2008/09 then each payment on account for 2008/09 will be equal to half of the amount paid otherwise than by deduction at source for 2007/08.

On 31 July 2009, a further payment on account for 2008/09 equal to half the income tax and class 4 NIC payable for 2007/08 is due.

On 31 January 2010, the balance of income tax and class 4 NIC due for 2008/09 and a payment on account for 2009/10 equal to half the income tax and class 4 NIC payable for 2008/09 is due. This payment is likely to be substantial since payments on account have been based only on three months' profit, whereas the final liability will be based on 12 months' profit.

Penalties

Interest is charged where tax liabilities are paid late.

A surcharge of 5% of the tax outstanding is imposed if the balancing payment is more than 28 days late. The surcharge increases to 10% if the balancing payment is still unpaid more than six months after the due date.

Submission of tax return

You will continue to require to lodge your tax return with HMRC by 31 January following the end of the previous tax year eg for the tax year ending 5 April 2008, the form requires to be lodged by 31 January 2009.

There is a £100 penalty where a tax return is lodged late. This rises to £200 where the return is more than six months late. Penalties are limited to the amount of tax outstanding, if lower.

Other administrative arrangements

When you commence self-employment, you are required to lodge form CWF1 with HMRC within three months of attaining that status. This form provides HMRC with basic information, so that you can be registered for the appropriate National Insurance Contributions and so that tax returns can be issued to you for the appropriate tax years. There is a £100 penalty for failing to do so.

When you lodge form CWF1, you will need to commence payment of Class 2 National Insurance contributions. These are due at a fixed rate and are generally collected by direct debit from your bank account.

It is possible that the existing mandate that we have with HMRC does not cover all of the taxes with which your business will have to comply, so it is essential that this is reviewed. If necessary, a new form 64-8 should be signed and lodged with your tax office to enable us to deal with all of these taxes on your behalf.

As a self employed person you are required to keep various records connected with your business. Broadly speaking, you should keep all records connected with the business for at least five years after the filing date. For 2008/09 this will be 31 January 2015.
A penalty of up to £3,000 may be charged for failure to keep or retain adequate records.

4.

a) Current position

- Currently Stoneywell Limited is required to prepare forms P11D with regard to the car benefits and other reimbursed expenses.
- These must be lodged with HMRC by 5 July following the end of the relevant tax year and a copy provided to each affected employee
- Stoneywell Limited is required to pay Class 1A NI in connection with the car benefits by 19 July following the end of the relevant tax year.
- Stoneywell Limited will have no Class 1A liability in connection with the reimbursement of travelling expenses as these are within HMRC guidelines.

b) The timetable for enacting a Finance Act is explained below:

- The pre-Budget report takes place around November/December.
- The Budget speech takes place around the following March.
- The Chancellor's pre –Budget report and Budget speech, together with associated Press Releases, set out proposed changes in taxation which will usually take place either with immediate effect or from the start of the following tax year.
- The Finance Bill is usually issued in early April. It sets out in detail the Chancellor's new tax proposals. (1)
- Once the Finance Bill is published, three readings take place, interspersed with sittings of a Standing Committee.
- The Standing Committee comprises MPs from all of the main parties and will include some members who specialise in taxation.
- It is at this stage that substantial changes may take place and where various professional bodies and other interested parties will attempt to have certain changes made, so called "lobbying".
- After final approval, Royal Assent is obtained and the Bill becomes the Finance Act.
- The Finance Bill must receive Royal Assent by 5 August 2008 as that is the date on which the provisional statutory effect given to certain Budget measures expires.