



Association of Taxation Technicians

Examination

November 2007

PAPER 7 – PART II

**PRACTICE ADMINISTRATION
& ETHICS**

ANSWERS (without marks)

Answer 1

Y Ltd must register:

(a) at any time when the company has reasonable grounds for believing that the value of its taxable supplies in the next 30 days will exceed £61,000. Y Ltd must notify HM Revenue & Customs by the end of the 30 day period and will become registered from the start of the 30 day period.

Or

(b) at the end of any month if the value of taxable supplies in the 12 months ending on that date have exceeded £61,000. Y Ltd must advise HM Revenue & Customs within 30 days of the end of that month and will become registered from the first day of the next month.

Answer 2

Pear Ltd should make a voluntary disclosure of this error in order to avoid a misdeclaration penalty.

As the error is more than £2,000, disclosure cannot be made on the VAT return, but must be made separately (form VAT 652).

Interest may be charged on this underdeclaration of VAT.

Answer 3

Statute Law - Acts passed directly by Parliament.

Delegated legislation - Orders, regulations, rules and bye-laws made under specific powers delegated by Parliament.

European legislation - Legislation that applies to the UK as a result of its membership of the European Union; eg regulations, directives and decisions.

Answer 4

Disagreement can arise where no statute covers the precise point in question, such that case law provides the principle of law that should apply.

Disagreement can also arise where legislation does address the precise point in question, but the meaning is not clear.

In this situation case law can provide an interpretation of the statute and so become a secondary source of law.

Answer 5

Future cases

The new decision will be followed unless it is overruled by statute, a decision of the House of Lords (or another court of higher standing than the current decision) or, in certain circumstances, another decision of the court of the same standing.

Cases in progress

The same principles apply as for future cases, above.

Past cases

These will not be reopened and the previous decisions will stand.

Answer 6

The European Union consists of three pillars

- I. The European Communities (the EC Treaty, the Euratom Treaty, and, until it expired, the ECSC Treaty).
- II. Common Foreign and Security Policy; and
- III. Co-operation in the fields of justice and home affairs.

Answer 7

You are entitled to use the designatory letters ATT or to use the term Taxation Technician.

As principal, you should ensure that your employees do not use such titles unless they are also so qualified.

Answer 8

In most circumstances, a member who is asked to act for both parties should refuse to do so. However, this may present difficulties if both the parties are existing clients. The member therefore has three choices:

Option 1 - act for neither party.

This is often the best option because of the potential conflict of interest between the parties and the difficult position in which the member may find himself.

Option 2 – advise both clients that a conflict exists.

This gives both parties the opportunity to consider whether they wish to arrange alternative representation. If both parties still wish the member to continue, the member will need to satisfy himself that no preference will be shown to either party. If this is possible, the member may act for both parties. However, it is recommended that a separate team be appointed to act for each client to prevent confidential information of one party becoming known to the other party.

Option 3 – To act for only one client.

Generally, this will be the client who first sought advice. If the member has previously acquired relevant knowledge concerning one party, and is then instructed by the other party to act, the member should inform the parties of the potential conflict.

Acting for both parties in a divorce settlement can present difficulties. Therefore, it is rarely appropriate to act for both parties. Usually, it will be appropriate to either act for one of the parties or for neither of them.

Answer 9

The Association's Professional Rules and Practice Guidelines suggest that an engagement letter should have the following minimum contents:

- The nature of the services to be provided.
- The responsibilities of the client, including the obligation to provide full information.
- Quality of service and complaints procedure.
- Fee arrangements.

Answer 10

If work is delegated, the member should exercise sufficient supervision to confirm that the work performed is adequate. If the work is inadequate, the member has a duty to remedy any defects.

A member who delegates work should be satisfied that it is undertaken by staff who have been adequately trained to carry out the work.

A member who is an employee and is not satisfied that staff have adequate training or skills to perform their duties should report the situation to his employer with the appropriate recommendation as to further training, replacement or recruitment of staff.

These principles also apply to subcontractors and consultants engaged by the member.

Answer 11

A member in practice should formulate a policy in respect of shareholdings in client companies to be followed by partners and staff.

A member should carefully consider whether it would be better not to undertake financial transactions with a client, or if such arrangements are already in force, not to act for that person.

Acceptance of goods, services or hospitality of any kind could influence a member's independence and should not be accepted, unless of a modest amount or on terms similar to those generally available to the employees of that client.

A member should make sure that any financial involvement with a client does not lead to less favourable service being given to any other client.

Answer 12

Clients' money must be kept separate from money belonging to the firm, and the account must include the word 'client' in the title of the account.

Clients' money received by the firm must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.

Under no circumstances should clients' money be paid into the firm's own account.

Where money of any one client in excess of £10,000 is held for more than 30 days, it is recommended that the money should be paid into a separate interest-bearing account designated as that of the client.

Money held in a client bank account may be withdrawn only where properly required for a payment to or on behalf of the client, including debts due to the firm and agreed fees or commissions earned by the firm.

A firm must at all times maintain a record so as to show clearly the money it has received on account of its clients.

Answer 13

A person commits one of the principal money laundering offences under the Proceeds of Crime Act if he:

- Conceals, disguises, converts, transfers or removes (from the United Kingdom) criminal property;
- Enters into or becomes concerned in any arrangement which they know or suspect facilitates (by any means) the acquisition, retention, use or control of criminal property by or on behalf of another person; or
- Acquires, uses or has possession of criminal property.

<p data-bbox="862 180 1013 243">Tony Finch Address</p> <p data-bbox="237 289 399 352">Sparrow Ltd Address</p> <p data-bbox="948 363 1013 390">Date</p> <p data-bbox="237 401 418 428">Dear Mr Byrd</p> <p data-bbox="237 474 399 501">Sparrow Ltd</p> <p data-bbox="237 548 1013 684">Thank you for your recent letter. I think it will be helpful if I explain to you the normal time limits for corporation tax payments and for submission of corporation tax returns (forms CT600).</p> <p data-bbox="237 730 1013 1052">As Sparrow Ltd is not a large company for corporation tax purposes, i.e. its profits for the accounting period are less than £1,500,000, the company is liable to pay its corporation tax liability 9 months and 1 day after the end of the accounting period. In other words, for the accounting period ended 31 December 2004, corporation tax was due to be paid on 1 October 2005. A similar pattern arises for subsequent periods. Interest is charged from the due date of payment until the date it is actually paid.</p> <p data-bbox="237 1098 1013 1234">The tax return (form CT 600) is due on the anniversary of the end of the accounting period. Using the same accounting period of 31 December 2004, that tax return was due to be lodged by 31 December 2005.</p> <p data-bbox="237 1281 1013 1344">Penalties arise in connection with the late submission of these forms, even if tax is paid on time.</p> <p data-bbox="237 1390 1013 1711">Where a return is lodged late, there is an automatic penalty of £100. This increases to £200 where the return is more than 3 months late. Further, where the tax returns for the previous two accounting periods were also late, those fines increase to £500 and £1,000 respectively. For each of the two accounting periods ended 31 December 2005, the returns were lodged late so it is important that this return is lodged on time ie by 31 December 2007 in order to avoid those increased fixed penalties.</p>	
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If the return is still outstanding after 18 months, then the penalty increases to 10% of tax due, rising to 20% after 24 months. Both of these penalties are based on the tax outstanding at the eighteen month point, so do not apply if the tax is paid by then. This means that the tax geared penalties can be avoided by paying a prudent estimate of the tax due within eighteen months of the end of the accounting period.

For the accounting period ended 31 December 2004, the return was lodged more than 18 months after the end of the accounting period, so a tax based penalty was incurred. Interest is charged on outstanding penalties at the same rate as interest on unpaid tax. Such penalties are due for payment 30 days after their imposition and interest is charged thereafter.

I hope that you are now clear on the various due dates for payment of tax and for submission of tax returns and the penalties and interest charges arising.

I do not anticipate any major change in the corporation tax charge from the amount charged in the accounts - £50,000. I suggest you pay that sum as soon as possible as it is already accruing interest.

You can make payment by cheque. The date of payment is treated as the date of receipt of the cheque (unless received by post following a date of the office being closed when it is treated as received on the first day that the office was closed).

Alternatively you can make an electronic funds transfer. HMRC treat this as being paid one day prior to their receipt.

Payment by bank giro or Girobank is treated as paid on the day the payment was made at the bank or post office.

You also asked me about the tax charge due on the sale of the building. This sale has taken place in the accounting period to 31 December 2007 and any chargeable capital gain arising will be liable to corporation tax at the same time as the balance of the company's profits for that accounting period. This is likely to be consistent with previous accounting periods, such that the tax will be due for payment by 1 October 2008. However, if taking the gain on

the sale of the building into account, the company's Profits Chargeable to Corporation Tax (PCTCT) are £10 million or more, then the company will be liable to pay tax by instalments.

I hope that this has answered all your queries.

Yours sincerely

Tony Finch

Answer 2

To: P Grant
From: L Wade

Brian Stilton

Paul

Thank you for your email regarding the above.

You are correct that we have not yet managed to resolve the position. We cannot agree on a technical matter and we can therefore take steps to have the case heard by the Special Commissioners.

In order to progress the appeal to the Special Commissioners, we do not need to have the enquiry closed.

Once it becomes clear that a technical matter cannot be resolved by discussion with the Inspector handling the case, we should advise the Inspector that the taxpayer intends to seek a hearing before the Commissioners. Then we refer the matter to the Special Commissioners, in writing, jointly with an officer of the Board (S28ZA TMA 1970). If HMRC do not agree with the matter being referred to the Special Commissioners, we may make our own application to the Clerk to the Commissioners.

Representation

I would be delighted to represent Brian before the Commissioners, but I have no statutory right to do so. Brian could represent himself, but I could only represent him if the Commissioners agree. I see that he may wish to appeal the decision if it goes against him – if that is the case I think we should consider instructing counsel or an advocate, even for the hearing before the Commissioners.

Publicity

As far as publicity is concerned, although the cases are normally heard in public, we can request that the hearing is held in private (at least in part) and in those circumstances the case will be reported anonymously, although we cannot stop it being reported at all.

Factors to Consider

The main factors to consider before taking the case before the Commissioners are:

1. tax at stake
2. costs, both time and money, of pursuing the case
3. likelihood of a successful outcome and
4. publicity (see above).

Also bear in mind that the onus of proof lies with Brian.

Information & powers of Commissioners to obtain information

The referral to the Commissioners must specify the question(s) being referred. Generally an agreed statement of facts will be presented to the Commissioners, which outlines the factual position and the technical analysis, but they have wide powers to obtain further information eg

Witness summons

Books, accounts or records.

Appealing the decision

The decision may only be appealed on a point of law and must be lodged within 28 days with the relevant court. (High Court in England & Wales; Court of Session in Scotland; Court of Appeal in Northern Ireland).

Interpretation & construction of statutes

The technical issue in point surrounds the interpretation of the piece of legislation. The four main rules of such construction are:

1. statute to be read as a whole
2. general words to be confined in meaning to words of the same kind
3. where one item is specified, by implication other items are excluded
4. penal provisions are defined narrowly.

I hope this email has clarified a few things and look forward to meeting with you soon.

Paul

3. Letter to Kate Matthews

Accountants & Co
Any Road
Any Town

Mrs K Matthews
Any Street
Any Town

Dear Mrs Matthews

Undisclosed rental income

Further to your recent visit to our office, I understand that my colleague has written to you about the possibility of Accountants & co acting as your tax

adviser. In the meantime, my colleague has asked me to summarise for you the general position regarding the reporting of taxable income.

As ignorance of the law is not regarded as a reasonable excuse for failing to satisfy your obligations as a taxpayer, I will summarise the relevant provisions as a basis for agreeing the way forward.

First, I would point out that a taxpayer is obliged to report untaxed income to HM Revenue and Customs under s.7 Taxes Management Act 1970, when a tax return is not issued to them. The deadline for reporting such income is 5 October following the end of the tax year. For example, HM Revenue and Customs should have been notified of untaxed income for the year ended 5 April 2007 by 5 October 2007. Failure to make such a notification can lead to penalties being applied and I will refer back to this possibility later on.

Therefore, you were obliged to report this income, rather than wait for HM Revenue and Customs to contact you.

Where income tax has been underpaid, HM Revenue and Customs also have the right to charge interest from the proper due date until the date that the tax is finally paid. Under Self-Assessment, income tax is normally collected by means of two half-yearly payments on account on 31 January in the tax year, and 31 July following the end of the tax year. These payments are initially based on the tax liability of the immediately preceding tax year and any balancing payment is due on 31 January following the end of the tax year.

Assuming that you have been receiving this rental income for a number of years, you may be liable to a considerable amount of interest. I would therefore suggest that you consider making a payment on account of the tax due, in order to stop further interest accruing.

As I indicated above, HM Revenue and Customs do have the statutory power to impose penalties where it can be shown that tax has been lost through a taxpayer's fraudulent or negligent conduct. The maximum penalty that can be imposed under s.7 Taxes Management Act 1970 for failing to notify your liability to tax by 5 October following the end of the tax year is an amount equivalent to the tax underpaid. For example, if the tax unpaid was £10,000, the maximum penalty that can be imposed is an additional £10,000.

Of course, HM Revenue and Customs do have the power to reduce penalties where a settlement is reached with a taxpayer without formal proceedings being taken. I would therefore urge you to make a full and prompt disclosure of this liability so that penalties can be mitigated as much as possible.

It is unclear from your meeting as to how many years your non-disclosure of income has been ongoing. The normal time limit for collecting outstanding tax is five years and 10 months after the end of the relevant tax year. In order to reopen tax years outside this normal time limit, HM Revenue and Customs would have to

show fraudulent or negligent conduct on your part. In such cases, the time limit is extended to twenty years from 31 January filing date of the tax return.

I do not believe that HM Revenue and Customs would have any problem in showing negligent conduct, as you have no reasonable excuse for not disclosing this income to them. Therefore, it may be the case that you are due to pay a considerable amount, depending on the length of time that you have been receiving this income.

If HM Revenue and Customs uncover this non-disclosure themselves, the penalties will be considerably higher than if you had made a voluntary disclosure. I would therefore urge you to make a full and voluntary disclosure as soon as possible in order to bring your tax affairs up to date.

Should you have any queries on the contents of this letter, please do not hesitate to contact me.

Kind regards

AN Tax Adviser

3. Memo to tax manager

Memo

To: Tax manager

From: Tax assistant

Date: November 2007

Subject: Kate Matthews

As Kate Matthews has been under-declaring her income over a number of years, we will need to consider whether to make a report to the Serious Organised Crime Agency in accordance with the rules in the Association's Professional Rules and Practice Guidelines.

This is because we may have a suspicion that she has deliberately not disclosed this income to HM Revenue and Customs in the past and has therefore committed a money laundering offence. The definition of money laundering includes any process of concealing or disguising proceeds of any crime and therefore includes the act of tax evasion.

We need to report this case to our Money Laundering Reporting Officer, who will consider whether to make a formal report to the Serious Organised Crime Agency. If we do make such a report, we should ensure that we do not inform Kate Matthews that we have done so, else we will be committing the offence of 'Tipping Off'.

From an ethical viewpoint, a member must do nothing to assist a client to commit any criminal offence or to shield the client from the consequences of having defrauded the Crown or having been negligent in regard to tax matters. A member who acquires information that leads him to conclude that a prospective client may have been guilty of taxation misdemeanours should only accept the appointment on the basis that full disclosure will be made.

Before taking on this client, we should therefore obtain her confirmation that full disclosure of her rental income will be made to HM Revenue and Customs. Preferably, we should obtain this confirmation in writing. If we do not obtain this confirmation, we should not accept the appointment.

Please discuss this case as appropriate.

AN Tax Adviser

4.

Memo

To: Alan Barnes

From: John Smith

Date: November 2007

Subject: Betty Wilcox Deceased

Further to your memo of 1 November, I have reviewed the file and can provide the following information:

- a) The due date for the payment of inheritance tax depends on the point in the year in which the event occurs. If the event occurs between 6 April and 30 September, the due date is 30 April following the end of the tax year. If after 30 September, or if the transfer occurs on death, the due date is 6 months after the end of the month in which the event occurs.

Therefore, the lifetime tax liability on the gift to the discretionary trust was due on 31 July 2001. There is no lifetime tax due on the gift to her son as it was a potentially exempt transfer. The additional tax due as a result of Betty's death was due to be paid on 30 November 2006.

- b) The donor usually pays the tax liability due on a chargeable lifetime transfer. Therefore Betty should have paid the tax on the gift to the trust.

Where potentially exempt transfers become chargeable as a result of death within seven years, or if additional tax becomes due on previous lifetime chargeable events, the extra tax due is payable by the donee. Therefore, the tax on the gift to David will be payable by him and the additional tax on the gift to the trust will be payable by the trust.

- c) I note that you have asked whether we need to report this additional liability to either the personal representatives or HM Revenue and Customs. Under the Association's Professional Rules and Practice Guidelines, a member must be honest in all of his professional work. In particular, a member must not knowingly or recklessly supply information or make any statement that is false or misleading, nor knowingly fail to provide relevant information.

As you will appreciate, the extra tax is properly payable to HM Revenue and Customs. We are therefore obliged under the rules detailed above to notify the personal representatives that extra tax is payable and obtain their agreement to notify HM Revenue and Customs accordingly.

I am also concerned about the standard of work we have undertaken on this case. When acting for a client, a member of the Association places his professional expertise at the disposal of the client and should act in their best interest. In doing so, the member assumes a duty of care towards the client that is recognised in law. A member must therefore exercise reasonable skill and care when acting for a client or he may expose himself to a claim for professional negligence.

The fact that we missed disclosing two taxable events indicates that we may have breached this duty of care to our client. If we have, we may have left ourselves open to a negligence claim being made against us and we should therefore review our professional indemnity cover

If there is anything further you wish to discuss on this case, please let me know.

John Smith