

WRITTEN EXAMINATION

PAPER II

10 NOVEMBER 2011

10.45am – 12.45pm

Time Allowed – 2 Hours

Instructions to Candidates:

1. Complete the Green Examination Information Sheet by stating your examination candidate number (not your name) together with the area in which you are practising and the local Association of which you are a member. Attach the green sheet to the top of your answer pad and ring the numbers of the **three** questions that you have answered.
2. Write your candidate number (not your name) on each page. Put the number of the question and the page in the top right-hand corner.
3. Write on one side of the paper only, leaving the margin on the left-hand side.
4. Start each answer on a separate sheet and place your answers in numerical order.
5. Time has been allowed for you to read through the Question Paper **and plan** your answers.
6. You should attempt to answer **three** out of the six questions, ringing their numbers on the green sheet; where relevant state whether you are answering for England, Wales or Scotland.
7. All questions carry equal marks: 20 each.
8. Questions are framed so as to minimise the need to make assumptions but state clearly any that you do make and the reasons for them.
9. Where appropriate, you will be expected to state the relevant Act, Statutory Instrument or case upon which you have based your answers.
10. You may use imperial or metric measurements in your answers. Please indicate which units you are using.

11. The presentation and clarity of your answers is important.

PAPER II Q 1

Your client, John Doe, has recently purchased Manor Farm which includes the following two residential properties:

- Holly Cottage – occupied by the farm manager, Bill Smith who has lived in the property as a farm employee for 35 years
- Mistletoe Cottage – which is currently vacant

Since purchasing the farm, the Farm Manager, Bill Smith, has decided to retire but doesn't want to vacate Holly Cottage.

Mr Doe is also now in the process of employing Stephen George as a new farm manager and plans to house him in the vacant Mistletoe Cottage but is worried about granting security of tenure to Mr George

Prepare a letter to your client explaining the following: -

- a) In respect of Bill Smith's existing tenancy:
 - i) The type of tenancy Bill Smith has. **(2 marks)**
 - ii) The process and timetable for reviewing the rent and what happens if the rent change is not agreed. **(4 marks)**
 - iii) The basis on which Bill Smith's rent is assessed. **(4 marks)**
- b) In respect of Stephen George's new tenancy: -
 - i) The type of tenancy you would recommend and why. **(2 marks)**
 - ii) What must the landlord do to set up that tenancy? **(2 marks)**
 - iii) Outline (in bullet point format) the main terms of the tenancy. **(6 marks)**

PAPER II Q 2

Your client, James Johnson, owns Pound Farm. The Farm comprises a large range of traditional farm buildings, a steel portal frame hay barn and 100 acres of land. Mr. Johnson has been approached by Stephen Hill, a neighbouring farmer, who would like to rent the entire farm through his company, Hill Farms Limited. Mr. Hill is looking to expand his equestrian enterprise. His proposal involves improvements to the buildings at Pound Farm plus the creation of additional facilities. This may include over 50 stables for livery purposes.

Your client is interested in Mr Hill's proposal but is unsure as to how the arrangement should be formalised and documented.

Prepare a letter to your client, setting out the following: -

- a. The different types of letting arrangements that are available for the use of land and buildings for equestrian purposes. For this specific situation, make a recommendation with reasons as to which option is most suitable. **(8 marks)**
- b. The Heads of Terms (in bullet point format) for your recommended agreement. **(8 marks)**
- c. The tax and planning implications for both parties **(4 marks)**

PAPER II Q 3

You have been asked to advise a farmer on the Capital Gains Tax implications for him of selling a barn for which he has received planning consent for conversion to residential use.

The relevant facts are as follows:

- He owns a 500 acre farm which he purchased in 1975. The title is in his own name and not in a company. He farms as a sole trader.
- The barn would have been valued at £2,000 in March 1982 and is now valued with planning consent at £300,000. Until now it has been used only for agricultural purposes.
- He proposes to sell the barn unconverted but with the benefit of planning consent.
- He proposes to use the proceeds of the barn sale to repay borrowing.
- After selling the barn, he proposes to carry on his farming business exactly as before.
- He is married.
- With other income, he is a higher rate income tax payer

Set out your advice to him on the likely CGT implications of his proposed sale on the following basis:

- a. What are the **basic** rules on Capital Gains Tax that apply to such a sale
(8 marks)
- b. Calculate the tax he is likely to have to pay in the above scenario assuming current tax rates and standard tax free allowances
(6 marks)
- c. There are other reliefs available for CGT. Give brief notes on all reliefs and discuss what changes to the above circumstances your client could contemplate in order to qualify for some of these reliefs?
(6 marks)

PAPER II Q 4

Fred Gummow is a local businessman who runs a large and successful company in the area. He has always been interested in farming and in March 2006 purchased a 300 acre block of pastureland. In March 2007 Mr Gummow put up a large range of modern livestock buildings and in September 2007 stocked the holding with 170 single-suckler cows. The herd is part autumn and part spring calving with all cattle finished on the holding.

In 2008 Mr Gummow employed a full time stockman and obtained temporary planning consent for a mobile home at the farm. He would now like to apply for a permanent dwelling

Prepare a letter to Mr Gummow, ahead of a meeting with him at the farm, explaining the following:

- a) The relevant legislation and policy framework for such a development. **(3 marks)**
- b) The criteria against which a planning application for a **permanent** agricultural dwelling is assessed. **(10 marks)**
- c) The criteria against which a planning application for **temporary** accommodation is assessed. **(4 marks)**
- d) The documentation that will need to be submitted with Mr Gummow's application **(3 marks).**

PAPER II Q 5

Bob Smith is a tenant under an Agricultural Holdings Act 1986 tenancy of a 100 hectare holding with a dairy herd of 120 head. The farm is in an NVZ. Bob wants to increase his milking herd to 250 head in the next two years which will involve adaptation of land and buildings.

On the holding there are 25 hectares of old low-lying meadows. The land is always too wet to fertilise or cultivate but Bob wants to drain the land and use it to grow maize and dispose of slurry.

Alteration of the buildings to house the cattle will involve extending a building put up in the 1960s by 400m². This will mean removing the asbestos side cladding and re-siting the diesel tank, also in place since the 1960s.

Before you go and see Bob prepare brief notes to cover:

- a. What assessment procedure should Bob Smith follow in seeking to plough up the old meadows? **(4 marks)**
- b. What are the implications of the farm lying in a NVZ for the expansion?
Calculations are not required **(7 marks)**
- c. How might Bob Smith get his landlord to provide the slurry storage?
(2 marks)
- d. What should be considered in extending the building?
(7marks)

PAPER II Q 6

Your tenant client is proposing to retire and give up his full Agricultural Holdings Act tenancy of Yew Tree Farm with 250 acres on 1st February 2012, having held it since 1975.

His Solicitor has suggested that he takes advice from you over claiming compensation for certain end of tenancy matters.

a) Prepare briefing notes to enable you to advise your client on the principles for the compensation basis and treatment of the following items (*values are not required*): -

i) A 30m x 12.3m steel portal-framed building constructed by the tenant in 1999 with an unconditional landlord's written consent. **(4 marks)**

ii) 30m x 20m of concrete yard – no consent, laid by the tenant in 2009; **(4 marks)**

iii) A planning consent for a tenant's building obtained without landlord's consent but yet to be implemented or built. **(2 marks)**

b) *Answer either 1) or 2)*

1) **England/Wales** - How would the items numbered i), ii) and iii) in a) above be treated any differently if the tenancy of Yew Tree Farm was a fixed term Farm Business Tenancy commencing on 2nd February 1996 and terminating on the same date. Prepare further notes outlining your revised advice.

3 marks for item i), 4 marks for item ii), and 3 marks for item iii)

2) **Scotland.** The tenant has been pursuing two wind turbine projects with landlord's written consent:

a. He has erected a 50kW turbine whose electricity is largely used in the farm

b. He has erected a 500kW turbine to generate electricity overwhelmingly for export off the farm.

In each case, can the tenant claim compensation? If so, on what legal basis and how would it be assessed? **(5 marks for each case)**