



# **The Chartered Tax Adviser Examination**

November 2008

---

## **PAPER I**

---

GENERAL TAXATION

Suggested Answers (without marks)

# Module A – Personal Tax

Where candidates are required to comment on tax (and in particular CGT) which may apply in 2008/09 and subsequent years they will be given full credit whether they assume that 2007/08 rates (including taper relief) continue to apply or whether they answer using 2008/09 rates (including entrepreneurs relief).

1 Economic factors which might indicate self employment:

- the ability to create a profit or loss due to one's own efforts
- the incurrence of one's own overheads: insurance, advertising, travel other
- provision of own equipment/ having to finance business assets or working capital
- own premises
- own staff
- exposure to bad debts
- the ability to create a profit or loss on disbursements and recharged expenses
- the ability to sub-contract and 'make a turn' thereon
- the ability to control costs

Different economic factors which might indicate employment:

- holiday/ sick/ maternity pay
- employers' liability insurance
- restrictive covenants concerning personal profit from (e.g.) employer's intellectual property, or customers
- provision of equipment, premises,
- pension rights
- period of notice to be worked

2 Mrs Chard – income tax liability 2007/08

	Tax at source	£
Income		
Occupational pensions	2,024	9,200
Dividends	2,600	<u>26,000</u>
		35,200
Deduct personal allowance		<u>(5,225)</u>
		<u>29,975</u>
Tax on pensions income:		
9,200 – 5,225 = 3,975		
2,230	10%	223
1,745	22%	384
Tax on dividends:		
26,000	10%	<u>2,600</u>
		3,207
Less: paid at source:		
Tax credit on dividend		(2,600)
Less: BR tax on occupational pension		<u>(2,024)</u>
Tax refund due		<u>(1,417)</u>

3 Corporal Allen – record keeping – self assessment

(a) 2007/08

For those not carrying out a trade profession or business, the 'relevant day' as defined is the first anniversary of the 31 January following the end of the tax year

In this case, 31 January 2009

(b) 2007/08

For traders and certain others, records must be kept until the end of the 'relevant day', being the 5<sup>th</sup> anniversary of the 31 January following the end of the tax year.

In this case, the 31 January following is 31 January 2009, and the fifth anniversary 31 January 2014

4 Hitch – overseas rental property

(1) (a) Four air flights:

Under general principles, relief is denied if the expense is not wholly and exclusively for business purposes. This seems likely to be the case from the limited facts given.

[Alternatively, s272 ITTOIA does not list s92 (overseas travel costs) as a deduction applicable to property income, and therefore relief is denied for this alternative reason].

(b) Loan interest:

Interest on a loan to purchase an overseas property is deductible as an expense to the extent that it is incurred wholly and exclusively for the purpose of the overseas property business. The interest should be apportioned where the owner occupies the property, or where it is otherwise unavailable for let. Thus £1,000 of interest would qualify.

(2) Income tax is chargeable on the profits of a property business, whether a UK property business or an overseas property business. However, for a UK resident, there is a distinction between the two, and the overseas property loss can only be carried forwards and set against a future profit of the same (overseas property) business.

5 It appears that he has a domicile of origin in Switzerland.

Since he still intends to return to Switzerland he has probably not obtained a domicile of choice in the UK.

He is resident and ordinarily resident in the UK.

He will need to report the Swiss income on his return unless:

(a) it is not remitted to the UK and

(b) he claims on his tax return that the remittance basis should apply.

6 Mr Dalton – NI calculation – director's method

*Month 1*

Cumulative earnings £3,000

Annual primary threshold not reached

Employee's NI contribution NIL

*Month 12*

Cumulative earnings increase from £33,000 to £36,000

Employee's NI Contribution:

£

£1,840 @ 11% = 202

£1,160 @ 1% 12

Total employee's NI contribution 214

7 Hook: Car benefits 2007/08:

		<i>Car</i>
		£
List price		20,000
Later accessories		450
		<u>20,450</u>
Therefore the 'price' of car		20,450
Cash equivalent (24% + 3% diesel supplement)		27%
Therefore car benefit		5,522
Contribution towards motoring		(500)
		<u>5,022</u>
Fuel benefit	14,400	
Fuel percentage	27%	3,888
Total car and fuel benefits		<u>8,910</u>

8 Surgeon Reynolds – 2007/08 allowances and reliefs

Personal allowance: 65 – 74		7,550
Maintenance: 12 × £(200 + 20) = £4,800		
Restricted to minimum MCA		
2,440 10%		244
MCA not married for 6 complete tax months so only 6 months entitlement		
6,285 6/12 10%		314

9 Ardendorf – IR35 – P35

Ardendorf should have accounted for PAYE and NI as if the contract payments to his company were an actual payment of employment income to him under PAYE.

It is normally the case that the 'employment payment' is deemed to be made on 5 April in the tax year.

The total income tax, employee's NICs and employer's NICs due in respect of the deemed payment should have been paid over to HMRC on or before 19 April following the tax year.

Interest on overdue tax will accrue from 19 April 2008.

10 EIS and qualifying trades

(1) Loss making company:

A trade is a 'qualifying trade' if it is conducted on a commercial basis with a view to the realisation of profits.

The test is subjective, but a continually loss making company may fail, whereas a profitable company that makes a first year loss is likely to qualify.

(2) Land and retail company:

EIS companies must substantially carry on a 'qualifying trade'. Certain activities are 'excluded'. Dealing in land is excluded, retail trades are not.

HMRC regard as 'substantial' for the above purposes a part of a trade which consists of 20% or more of total activities, judged by any reasonable measure (normally turnover or capital employed).

On this basis, it looks as though the company is on the borderline as to whether it is carrying out a qualifying trade and a closer examination of the relative sizes of the two trades would be required.

11 Henry Martini – trading losses

Opening loss relief

Any loss made in any of the first four years of trading may be carried back three years on a first in first out basis

And set against total income before allowances

The 2007/08 loss can be carried back therefore to 2004/05 and the 2008/09 loss can be carried back to 2005/06

12 Rorke –

(1) Gift aid donation £600 2007/08

No tax saving because he is clearly not a higher rate taxpayer, and the gross amount of the donation extends the basic rate band.

(2) It is still worthwhile making the donation, because the charity can recover the tax at source ( $£600 \times 22/78$ ) = £168

(3) If the donation is made in 2006/07, the tax saved is 18% x the gross gift as he is clearly a higher rate taxpayer:

$$£(600 + 168) = \text{gross gift } £768 \times 18\% = £138$$

13 Mrs Gresham

(1) Mrs Gresham may invest in an ISA if she is:

- An individual, and
- aged 18 or over (16 or over in the case of cash accounts), and
- resident and ordinarily resident in the UK

Therefore Mrs Gresham qualifies.

(2) There is no loss of income tax relief on withdrawals from an ISA.

(3) Alternative investments available to Mrs Gresham are:

- Premium bonds
- NSB Index linked savings certificates
- NSB Fixed interest savings certificates

(Other suitable alternatives will also gain credit)

14 Tax advantages of furnished holiday lettings over other furnished lettings:

- (a) Relief for losses as if the losses were trade losses
- (b) Disapplication of the 50:50 joint property rule for spouses and civil partners
- (c) Income counts as earnings for personal pension relief purposes
- (d) Plant and machinery provided for use in a dwelling house qualifies for capital allowances

15 Mr Broomhead – notice of chargeability

(1) TMA1970 s7(1) states that every person who is chargeable to income tax for any year of assessment, and has not received a notice to file a return shall within six months from the end of that year, give notice to HMRC that he is so chargeable.

In this scenario, rental profits first arises within 2007/08, therefore he must notify by 5 October 2008.

(2) He should have been advised to notify earlier and complete a 2006/07 tax return, to claim the rental expenses and carry forward the loss against the future rental income.

(3) The penalty for not notifying is up to 100% of the amount of the tax which is not paid on or before the 31st January next following the relevant year.

16 SIP performance shares

Initially, all employees must be invited to participate on equal terms. No feature of the plan must have the likely effect of conferring benefits mainly on directors, or the higher paid.

However, free shares may nevertheless be allocated by reference to performance.

The performance measure must be based on business results or some other objective criteria

The performance criteria must represent a fair and objective measure

Method one prescribes that 20% of the shares must be *not* performance related

And that an individual's performance share award must not be higher than four times his or her non performance shares

Method 2 prescribes that some or all of the shares can be performance related, but that once again all employees in the participation unit must qualify on equal terms.

17 Qualifying loan interest: s390 ITA 2007; CAA2001 s36

Generally, loan interest is available to individuals where the plant is used in a partnership or in one's employment

- (i) Relief is restricted to interest payable not later than three years after the end of the tax year in which the loan was made; in this case up to 2009/10.
- (ii) Proportionate relief is permitted: Where there is part private use, relief is restricted to the 'business' proportion of the interest.
- (iii) However, to obtain the relief, the plant must belong to the individual, and the individual must be able to obtain capital allowances in respect of it. Thus, it appears, no relief is available here.
- (iv) It is possible the loan would qualify instead for interest relief under s392 ITA 2007 (loans to close companies). However, there is insufficient evidence here to conclude that the company is close.

18 Mr Cetewayo

(1) South African earnings

The employee is resident and ordinarily resident but not domiciled in the UK.

This means 'chargeable overseas earnings' can escape UK tax if not remitted to the UK, as here.

Chargeable overseas earnings are earnings from an employment with a 'foreign employer' – one resident outside the UK,

They are also emoluments which arise from duties performed entirely overseas.

(2) UK earnings

UK earnings of a UK resident individual are taxable in the UK regardless of domicile status

The earnings will be taxed on the earlier of the date of payment and the date of entitlement to payment, This is likely to have been the normal monthly pay dates hence it will be taxable in 2007/08.

19 (1) Tax free as per Morris CS [1967], but usually taxable under the current P11D rules, unless not in cash, under £250, and not in recognition of employment services, as here.

(2) Awards under staff suggestion schemes have to fulfill certain criteria to be tax free. For example, the suggestion could not reasonably have been expected to be made by the employee performing his normal duties (as here). There are also percentage limits re. the financial benefit to the company and an overall cap of £5,000. The award should not be taxable.

(3) Long service award: tax free if for 20 years or more and under £50 per year, hence tax free.

20	Victoria Cross: income tax payments due 2009:	£
	Total income tax liability	10,664
	Class 4 NI liability	198
	2007/08 PAYE deducted	(5,740)
	Tax credits on UK dividends received	(400)
	Tax deducted form building society account savings	<u>(600)</u>
	Final payment of IT and NIC for 2007/08 due 31.01.2009	<u>4,122</u>
	Payment of CGT for 2007/08 due 31.1.09	<u>3,222</u>
	First payment on account due 31.01.2009	<u>2,061</u>
	Total due 31.01.2009	9,405
	Second payment on account due 31.07.2009	<u>2,061</u>

## Module B – Business Tax

Where candidates are required to comment on tax (and in particular CGT) which may apply in 2008/09 and subsequent years they will be given full credit whether they assume that 2007/08 rates (including taper relief) continue to apply or whether they answer using 2008/09 rates (including entrepreneurs relief).

- 1 Andrea  
Capital allowances  
8 months ended 31 March 2008

	<i>Main pool</i> £	<i>Exp. Car</i> (60% bus) £	<i>Allowances</i> <i>claimed</i> £
<i>Additions – no FYA's</i>			
Car		14,000	
<i>WDA – restricted</i> £3,000 x 8/12		<u>(2,000)</u>	1,200
<i>Additions- with FYAs</i>			
Computer system	4,000		
FYA @ 50%	<u>(2,000)</u>		<u>2,000</u>
WDV carried forward	<u>2,000</u>	<u>12,000</u>	
Maximum Capital allowances			<u>3,200</u>

*Note:* equal credit is given for the computer if it is treated as a short life asset.

2

Local hospital scanner appeal	Disallowable as relief is gained under gift aid. <i>Irrelevant that local charitable payment</i>
Redecoration of newly acquired offices	Allowable expenditure – although newly acquired the offices were still fit for purpose at acquisition (as previous owners had used them). <i>Odeon Theatres</i>
Lease premium paid	A proportion of the lease premium paid is allowable expenditure over the duration of the lease.  $\frac{\text{Landlord's property income proportion}}{\text{Number of complete years of the lease}} \text{ pa}$ $\frac{(51-15)}{50} \times \text{£}10,000 \times \frac{1}{15} \text{ pa} = \text{£}480 \text{ pa}$

- 3 (1) Provision of car
- Sole trader
- The business will have allowable expenses equal to the business use proportion of the costs of running the car.
  - Capital allowances will be restricted to the business use proportion.
- Incorporated
- There will be no restriction on the costs of running the car or on the capital allowances.
  - Carlos will be subject to income tax on both a car benefit and a fuel benefit.
  - The company will pay class 1A national insurance contributions on these benefits.

(2) National insurance contributions

Sole trader

- Carlos pays class 2 and 4 contributions.

*Note:* credit given on this if only class 4 is mentioned (asked for NIC on earnings)

Incorporated

- Carlos pays class 1 primary contributions on his 'cash' earnings.

4 The most beneficial loss relief is,

- (1) Relief against £5,000 of general income in 2006/07 (s.64 ITA 2007); then  
 (2) Relief of the remaining £45,000 of loss against gains in 2006/07 (s.261B TCGA 1992)

Although there is no tax relief in (1) above as the income would have been covered by the personal allowance, this relief must be given before relief can be given in (2) above. The £45,000 will obtain relief at 40%.

Any loss relief in 2007/08 would waste losses as income is covered by the personal allowance and gains by the annual exemption.

Carrying forward the losses would only give relief against future TRADING PROFITS (ie against £40,000 in 2008/09) which would give relief later and at lower rates than under (2) above. The remaining loss of £10,000 would be carried forward.

5

	<i>Total</i>	<i>Edgar</i>	<i>Flavia</i>	<i>Guy</i>
	£	£	£	£
Salary (pa)	20,000	5,000	Nil	15,000
Loss (2:3:1)	<u>(60,000)</u>	<u>(20,000)</u>	<u>(30,000)</u>	<u>(10,000)</u>
	<u>(40,000)</u>	<u>(15,000)</u>	<u>(30,000)</u>	<u>5,000</u>
Reallocate notional profit		<u>1,667</u>	<u>3,333</u>	<u>(5,000)</u>
15:30		<u>(13,333)</u>	<u>(26,667)</u>	<u>Nil</u>

\* = for recognising a notional profit

6 Opening year rules

<b>Option 1</b>		£
2006/ 07	1.12.06 to 5.4.07 4/16 x £52,128	13,032
2007/08	12 months ending in the tax year 1.4.07 to 31.3.08 12/16 x £52,128	39,096
<b>Option 2</b>		
2006/ 07	1.12.06 to 5.4.07 4 months ended 31.3.07	5,010
2007/08	12 months ending in the tax year Year ended 31.3.08	47,118

Option 2 has nothing taxed in 2006/07 but a significant amount taxed at 40% in 2007/08. Option 1 has nothing taxed at 40%.

Option 1 is preferable.

7 Accounting periods

10.1.08 to 29.2.08	From acquiring a source of income
1.3.08 to 28.2.09	From commencement of trade to 12 months later
1.3.09 to 31.5.09	Until the end of the period of account

8 The provisions apply for corporation tax purposes in respect of chargeable gains if there is a qualifying change of ownership of a company; a loss accrues to a company on the disposal of a pre-change asset; that change of ownership occurs directly or indirectly in consequence of or otherwise in connection with any arrangement where the main purpose or one of the main purposes is to secure a tax advantage; and the advantage involves the deduction of a qualifying loss from any chargeable gain.

9 Scissors Ltd is a close company.

A s.419 liability arises as although Kathreya works full-time she both owns more than 5% of the share capital and the loan exceeds £15,000.

The liability is 25% of the loan. As £30,000 of the loan is repaid before the due date of 1 January 2009, the liability is reduced to 25% of the remaining balance.

Kathreya repays the balance of the loan in July 2009 (in y/e 31 March 2010) and the s.419 charge will be repaid by 1 January 2011 (due date for accounting period of the repayment).

Under the loan relationship rules the company will be taxed under Sch DIII on the 3% per annum interest payable by Kathreya.

As Kathreya has a benefit relating to a beneficial loan, the company will pay class 1A NIC relating the interest assessed.

10 ENT Ltd

	<i>Y/e 31 December</i>	<i>3 m/e 31 March</i>
	<i>2007</i>	<i>2008</i>
	£	£
Adjusted profit (12:3)	96,000	24,000
Capital allowances (Jan 08) 50% x £20,000		(10,000)
Schedule D1	96,000	14,000
Gains	20,000	Nil
Charges on income	(300)	(300)
PCTCT	<u>115,700</u>	<u>13,700</u>

- 11 Samsy Ltd must retain the records relating to the year ended 31 March 2008 until the latest of (para. 21 Sch 18 FA 1998) :
- (i) 6 years from the end of the accounting period i.e. 31.3.2014
  - (ii) The date from which enquiries cannot be commenced  
ie 12 months from due date for the return (for accounting periods ending on/ before 31 March 2008)  
31.3.10
  - (iii) The date of completion of an enquiry
- If records are not retained for a sufficient period there is a maximum penalty of £3,000.
- 12 Damson Ltd
- (1) Maximum surrender to Cherry Ltd is lower of
    - Cherry Ltd available profit = £21,000
    - $20\% \times \text{Damson Ltd available loss} = 20\% \times \text{£}(98,000 - 12,000) = \text{£}17,200$   
ie £17,200
  - (2) If the shareholdings are 80%,10% and 10% there is no longer a consortium. Instead Damson Ltd is in a loss group with Apple Ltd and losses can only be surrendered to Apple Ltd ie no losses can be surrendered to Cherry Ltd.
- 13 Intangible fixed assets
- Registered design*
- A non- trading debit of £39,000 (£176,000 - £215,000) is created.
- A claim can be made to relieve all or part of this by
- (i) Set off against other income of the year ended 30 June 2008, then
  - (ii) Group relief
- Any more unrelieved debit is carried forward as a non-trading debit.
- Goodwill*
- As the goodwill was acquired prior to 1 April 2002 its disposal will be treated as a chargeable gain of £116,000 (£176,000 - £60,000) less indexation allowance from May 1996 until disposal date.
- 14 Interest on late paid/ overpaid Corporation Tax
- |  | £                      |
|--|------------------------|
| <i>Liability of £111,250</i>   |                        |
| Due 1 April 2008   | 2/12 x £111,250 x 7.5% |
| Paid 2 months late on 1 June 2008  | 1,391                  |
| <br><i>Reduction of liability to £82,000</i>                               |                        |
| Reduction of interest payable  | 2/12 x £29,250 x 7.5%  |
|  | <u>(366)</u>           |
|  | <u>1,025</u>           |
| <i>Note: equal credit will be given for combining these 2 computations</i> |                        |
| <br><i>Interest on overpaid tax</i>  |                        |
| Paid 1 June 2008 and repaid<br>31 October 2008                             | 5/12 x £29,250 x 4%    |
|  | <u>488</u>             |

- 15 Under the loan relationship rules the interest paid of £20,000 and the interest received of £1,500 relate to non-trading loan relationships and must first be fully netted off against each other to give a remaining deficit of £18,500.

The deficit may be relieved as follows: (s.83 FA 1996)

- (i) Against the profits of the same period before charges and s.393A loss relief
- (ii) Carried back 12 months against Schedule D III credits on non-trading loan relationships
- (iii) Surrendered as group relief
- (iv) Any remaining deficit is then carried forward against future non-trading profits

Relief under i, iii and iv can be for any amount.

16

	<i>Year ended 30 June 2006</i>	<i>9 months ended 31 March 2007</i>	<i>Year ended 31 March 2008</i>
	£	£	£
Schedule D1	40,000	30,000	–
Schedule A	3,000	2,000	4,000
Chargeable gain	<u>–</u>	<u>8,000</u>	<u>–</u>
	43,000	40,000	4,000
S 393A relief	(10,750)	(40,000)	(4,000)*
Gift aid	<u>(1,000)</u>	<u>–</u>	<u>–</u>
PCTCT	<u>31,250</u>	<u>Nil</u>	<u>Nil</u>

\* this mark is for the position of the relief (ie before gift aid)

	£
Loss of y/e 31.3.08	90,000
Relief against:	
y/e 31 March 2008	(4,000)
9 months ended 31 March 2007	(40,000)
y/e 30 June 2006 (3/12)	<u>(10,750)</u>
Loss carried forward	<u>35,250</u>

17 R&D tax credits

	£
Surrenderable loss	
<i>Lower off</i>	
• Unrelieved trading loss £100,000 - £5,000	<u>95,000</u>
• 150% x qualifying R&D expenditure 150% x £81,000	<u>121,500</u>
ie	<u>95,000</u>
Tax credit	
<i>Lower off:</i>	
• 16% x surrenderable loss	15,200
• PAYE/NIC for the year	<u>14,600</u>
TAX CREDIT	<u>14,600</u>

18	Leit Ltd	£
	Lump sum received	40,000
	This is a 'reverse premium' and will be treated as Schedule DI income as the property is used in the trade. It may be spread over the term of the lease, in line with accounting practice	
	<i>Premium received</i>	
	Schedule A income of:	
	$\frac{51-50}{50} \times 334,000$	27,880
	The balance is treated as a capital receipt, subject to corporation tax on the gain.	
	<i>Interest payable on the loan</i>	
	Treated as a Schedule DIII deficit	2,500
19	Sonic Ltd	
	10 months ended 31 March 2008	£
	Upper limit $\pounds 1,500,000 \times 10/12 \times 1/2$	625,000
	Lower limit $\pounds 300,000 \times 10/12 \times 1/2$	125,000
	Schedule D I	140,000
	Schedule D III	<u>20,000</u>
	PCTCT (= Profits)	<u>160,000</u>
	Dividend received is not FII	
	PCTCT x 30%	48,000
	Marginal relief	
	$1/40 \times (\pounds 625,000 - \pounds 160,000)$	<u>(11,625)</u>
	Corporation tax liability	<u>36,375</u>
20	Class 4 National Insurance Contributions	£
	Earnings	
	Trade profit	50,000
	Less loss (ignore relief against other income)	(10,000)
	Less interest on partnership loan	<u>(2,000)</u>
	Class 4 earnings	<u>38,000</u>
	Liability	
	$\pounds(34,840 - 5,225) 8\%$	2,369
	$\pounds(38,000 - 34,840) 1\%$	<u>32</u>
	Class 4 liability	<u>£2,401</u>

## Module C – Capital taxes and Trusts

Where candidates are required to comment on tax (and in particular CGT) which may apply in 2008/09 and subsequent years they will be given full credit whether they assume that 2007/08 rates (including taper relief) continue to apply or whether they answer using 2008/09 rates (including entrepreneurs relief).

1 Hamish

	<i>Cost</i> £	<i>MV82</i> £
Proceeds (MV as to connected person)	265,000	265,000
Cost including improvements up to March 1982	(85,000)	
MV82		(95,000)
Enhancement – July 1999	<u>(18,000)</u>	<u>(18,000)</u>
Unindexed gain	162,000	152,000
IA March 1982 to April 1998 (162.6 – 79.44/79.44) 1.047 x £95,000	<u>(99,465)</u>	<u>(99,465)</u>
Indexed gain	<u>62,465</u>	<u>52,535</u>
Lower gain taken of £52,535		
Taper non business asset, 9 + 1(bonus) = 10		60%
Taxable gain		<u>31,521</u>

[Holdover relief not available as the property is not a qualifying asset for the relief.]

2 Jiao

	<i>Exempt</i> <i>years</i>	<i>Chargeable</i> <i>years</i>	<i>Total</i> <i>years</i>
March 1990 to March 1993 – resided	3		3
March 1993 to March 1995 – working overseas; any period is deemed exempt	2		2
March 1995 to March 1996 – travelling allowed under three years absence for any reason	1		1
March 1996 to March 2003 – resided (resumed residence after absence allowed previous periods to be deemed exempt)	7		7
March 2003 to March 2005 – another PPR and not residing in property		2	2
March 2005 to March 2008 – last 36 months exempt	<u>3</u>	—	<u>3</u>
	<u>16</u>	<u>2</u>	<u>18</u>
Indexed gain			£ 140,000
PPR exemption			
16/18 x £140,000			<u>(124,444)</u>
Gain before taper			<u>15,556</u>

3	OB Ltd	£
	Indexed gain	438,000
	Rollover relief (bal)	<u>(218,000)</u>
	Chargeable gain (working)	220,000
	Less: capital loss b/f	<u>(35,000)</u>
	Chargeable gains for year ended 31 March 2008	<u>185,000</u>

*Working*

Proceeds reinvested in qualifying asset:  
 $4/5 \times \text{£}1,850,000 = \text{£}1,480,000$

Gain chargeable is:  
 amount of proceeds not reinvested  
 $\text{£}1,700,000 - \text{£}1,480,000 = \text{£}220,000$  (lower than the gain before relief)

Rollover relief claim must be made by 31 March 2014 (6 years from the end of the accounting period).

4	Olivia	£
	<i>Painting</i>	
	Gross proceeds	9,100
	Selling costs	<u>(600)</u>
	Net sale proceeds	8,500
	Cost (£5,200 + £350)	<u>(5,550)</u>
	Gain	<u>2,950</u>

Gain is lower of:  
 £2,950  
 And  
 $5/3 (\text{£}9,100 - \text{£}6,000) = \text{£}5,167$

	<i>Antique</i>	
	Deemed proceeds	6,000
	Cost	<u>(7,500)</u>
	Loss	<u>(1,500)</u>

5 Nina Ltd

- (1) The disposal of the 10% shareholding in March 2008 would be exempt as the substantial shareholding exemption applies.
- (2) The substantial shareholding exemption will continue to apply until 1 March 2009 (a 10% holding is required in 12 months of the 24 months prior to sale).

If the sale of the remaining 8% shareholding will give rise to a gain, a disposal prior to this date will mean that the gain is exempt.

If the share sale would crystallize a loss then the disposal should be after 1 March 2009 as the loss will then be allowable. (A disposal prior to 1 March 2009 and the loss would not be allowable.)

6 Freddie

Elect under s.23(3) TCGA 1992 to do a part disposal calculation only in respect of the proceeds not used in the restoration (<95% and >£3,000 of compensation used in the restoration).

	£
Insurance proceeds	46,000
Used in restoration	<u>(38,000)</u>
	8,000
Cost	
(£60,000 + £38,000) x £8,000/(£8,000 + £102,000)	<u>(7,127)</u>
Indexed gain	<u>837</u>

	£
Base cost for a future disposal:	
Cost (£60,000 + £38,000)	98,000
Part disposal	<u>(7,127)</u>
Compensation rolled over	<u>(38,000)</u>
	<u>52,873</u>

7 Jeff

A gift of unquoted shares in a trading company qualifies for gift relief under s.165 TCGA 1992. However as proceeds were received a gain is chargeable to the extent that these proceeds exceed original cost.

Therefore gain of £40,000 - £2,000 = £38,000 of which £5,000 is chargeable immediately with the balance of £33,000 being held over.

A joint election by Jeff and the transferee is required by 31 January 2014.

The gain on the gift to the discretionary trust of £170,000 can be heldover under s.260 TCGA 1992 as it is immediately chargeable to Inheritance Tax. There is no restriction despite the property being rented to an investment company.

An election by Jeff only is required by 31 January 2014.

*Note that the actual date by which elections should be made was not required to gain full marks. They are included here for completeness only.*

8 Manjit

	£
Indexed gain	<u>190,000</u>
Taper:	
5 years	
Business asset	
2/3 x £190,000 x 25%	31,667
Non business asset	
1/3 x £190,000 x 85%	<u>53,833</u>
Taxable gain	85,500
Annual Exemption	<u>(9,200)</u>
Chargeable gain	<u>76,300</u>
Basic rate remaining (£34,600 - (£33,000 - £5,225)) = £6,825	
£6,825 x 20%	1,365
£69,475 x 40%	<u>27,790</u>
Capital Gains Tax payable	<u>29,155</u>

9 Elizabeth:

Elizabeth disposed of cash and a vintage car both of which are exempt assets.

The listed shares are a chargeable asset.

The gain on the chargeable asset was only £5,350 which is less than the annual exemption for 2007/08 of £9,200 and therefore no Capital Gains tax is payable.

As the gains are less than the annual exempt amount the capital losses brought forward are not offset. The capital loss of £3,000 will be carried forward to 2008/09.

10 Partnership

The introduction of Thomas to the partnership in October 2004 resulted in a change in the ratio for sharing capital profits and losses. Ciaran's share fell by 20% and Thomas acquired 20%.

Ciaran therefore disposed of 20% of the property owned by the partnership. As the asset had not been revalued this was at NGNL.

Deemed proceeds equal to 20% of cost of £160,000 = £32,000.

On disposal of the asset by the partnership in December 2007:

	<i>Ciaran</i>	<i>Joseph</i>	<i>Thomas</i>
	£	£	£
Proceeds (40:40:20)	104,000	104,000	52,000
Cost	(96,000)	(64,000)	(32,000)
	<u>32,000</u>		
Taxable gain before taper	<u>40,000</u>	<u>40,000</u>	<u>20,000</u>

[Only Ciaran needed for the marks]

11 Izbister trust

	£		£
Property income			9,600
Bank interest (1,040 x 100/80)			1,300
UK dividend income			<u>3,100</u>
			14,000
For expenses:			
(£450 x 100/90)	500	× 10%	50
Distributable:			
On £1,000 at standard rate	1,000	× 22%	220
Dividend income at dividend trust rate			
(£3,100 - £500)	2,600	× 32.5	845
On balance at rate applicable to trusts	<u>9,900</u>	× 40%	3,960
	<u>14,000</u>		<u>5,075</u>

12	Luiza		£
	Tax on settlement:		
	Settlor's transfers in the previous seven years		180,000
	Initial value of settlement		<u>350,000</u>
			<u>530,000</u>
	Tax		
	(£530,000 - £300,000) £230,000 x 20%		<u>46,000</u>
	Actual rate is 30% of effective rate		
	£46,000/£350,000 x 30%	3.94%	
	At 6 June 2008		
	Number of complete quarters between 6 June 2004 and 6 June 2008 is 16		
	£40,000 x 3.94% x 16/40		<u>631</u>

*Note that a nil rate band of £300,000 or £312,000 was equally acceptable.*

13 Raphael

Raphael was domiciled in Italy as this was his domicile of origin as acquired at birth.

There was no indication that he had acquired a domicile of choice in the UK as he still had ties with Italy and intended to retire there.

However s.267(1) IHTA 1984 states that a person shall be treated as domiciled in the United Kingdom if he was resident in the United Kingdom in not less than seventeen of the twenty years of assessment ending with the year of assessment in which the relevant time falls.

Therefore Raphael would be treated as domiciled in the UK, as he had been UK resident for the last 20 years, and will be liable to Inheritance Tax in the UK on his worldwide assets.

14 Estate at death:

		£
	Villa in Seville, Spain – excluded property	–
	Diamond ring and necklace held in bank safety deposit box in Madrid, Spain – excluded property	–
	Cash held in bank accounts with UK bank:	
	London branch	87,000
	Madrid branch – excluded property	–
	10,000 £1 shares in Ubit plc, quoted on the London Stock Exchange Value at lower of:	
	¼ up	
	160p + ¼ (168p-160p) = 162p	
	And	
	Mid bargain	
	(164 + 169)/2 = 166.5p	
	10,000 x 162p	<u>16,200</u>
	Chargeable estate	<u>103,200</u>

15 BPR

*Alice*

Husband's ownership period can be added on to that of Alice. Therefore the unquoted trading company shares had been owned for at least two years and qualify for 100% BPR. Nothing chargeable.

*Diana*

Diana's shares in Stick Ltd will qualify for 100% BPR.

The £284,000 building will be chargeable to Inheritance Tax. No BPR is available as Diana, together with related property, does not have control of Stick Limited. Diana and her husband only own 40% of the shares.

16	Faheem	£
	<i>1 May 2007</i>	
	PET	
	Value before transfer	
	2,000 x £300 (80% holding with related property)	600,000
	Value after transfer	
	1,000 x £180 (60% holding with related property)	<u>(180,000)</u>
		420,000
	BPR	
	100% x 420,000 x (1,300,000 – 260,000)/1,300,000	<u>(336,000)</u>
		84,000
	Marriage exemption	(5,000)
	AE 2007/08	(3,000)
	AE 2006/07 b/f	<u>(3,000)</u>
		<u>73,000</u>

17 Ailish

*Alternative 1*

The NRB for 2007/08 is £300,000. As Ailish died after 9 October 2007 and was the surviving spouse the new rules apply. On the death of her husband none of the NRB was used and therefore the NRB will increase to £600,000 on the death of Ailish. Therefore no Inheritance Tax is payable.

*Alternative 2*

The NRB when her husband died in December 2006 was £285,000. He used £114,000 of this with the gifts to the children i.e. 40%. Therefore on the death of Ailish her NRB will be increased by 60% to £480,000. £70,000 will be subject to IHT at 40% i.e. £28,000.

18	Richard	£	£
	Free Estate		
	Freehold house – half share	175,000	
	Passed to widow as joint tenant	<u>(175,000)</u>	
			–
	Other assets		<u>117,000</u>
			117,000
	Settled Property		
	Trust fund		<u>210,000</u>
			<u>327,000</u>
	IHT at 40% on £27,000 (327,000 – £300,000)		<u>10,800</u>
	Estate rate is £10,800/£327,000 = 3.303%		
	Payable by executors		
	3.303% x £117,000/ [117/327 x £10,800]		<u>3,864</u>
	Payable by trustees		
	3.303% x £210,000/ [210/327 x £10,800]		<u>6,936</u>

19	Oscar	£	£
	No tax on gift in June 1998 as more than 7 years before death.		
	March 2002		
	Gift of Cottage	236,000	
	Annual exemptions 2001/02 and 2000/01 b/f	<u>(6,000)</u>	
	Original chargeable amount	230,000	
	Fall in value (£236,000 - £185,000)	<u>(51,000)</u>	
	Revised chargeable amount	<u>179,000</u>	
	NRB £140,000 (£300,000 - £160,000)		
	IHT at 40% of £39,000 (179,000 – 140,000)		15,600
	Less: Taper relief (5-6 years) 60%		<u>(9,360)</u>
	IHT payable		<u>6,240</u>

- 20 Noah
- Instalment option is available as follows:
- 1 Yes – land
  - 2 Yes – controlling shareholding; no BPR as not trading
  - 3 No – quoted shares and not a controlling holding

## Module D – VAT

Where candidates are required to comment on tax (and in particular CGT) which may apply in 2008/09 and subsequent years they will be given full credit whether they assume that 2007/08 rates (including taper relief) continue to apply or whether they answer using 2008/09 rates (including entrepreneurs relief).

- 1 (a) When input tax was incurred on goods and services supplied to the business whilst it was registered, but it had not claimed that VAT because it did not have the necessary evidence, or because the failure to claim was an error, it can still reclaim this VAT.

It should reclaim the VAT using form VAT 427. The business must provide invoices or such other evidence as HM Revenue & Customs agree to accept, confirming that the goods or services were supplied prior to cancellation of registration.

Such claims are subject to the ordinary three-year cap rules.

- 2 (1) A lease for land/buildings is always regarded as an interest in or right over land, and hence falls under Item 1 of Group 1 of Schedule 9. The option to tax can therefore be made, and will apply subject to the relevant provisions of Schedule 10,
- (2) A licence may also fall to be treated as an interest in or right over land if it is an exclusive licence to occupy a defined area, in which case for VAT purposes it will be treated in the same way as a lease. For licences of this kind, the option to tax can therefore be made, and will apply subject to the relevant provisions of Schedule 10,
- (3) But a licence may often simply confer upon the licensee the use and enjoyment of the facilities that the land has to offer, in which case it is regarded as a standard rated supply of services. Licences of this kind are not an interest in or right over land, and do not fall within the scope of the option to tax.

Some licences – such as embedded licences which allow persons to be physically present on land without committing trespass, for the purposes of carrying out obligations under a contract – will not fall to be treated as separate stand alone supplies.

- 3 The place of supply is where the supplier belongs.....BUT there are two exceptions;

If the supplier belongs in the UK, then place of supply will nevertheless be outside the EU (and the UK) if the effective use and enjoyment of the means of transport is outside the UK (and the EU).

If the supplier belongs outside the EU then the place of supply will nevertheless be in the UK if the effective use and enjoyment of the means of transport is in the UK.

- 4 *Examiner's note – as the question is asking for the candidate's reasoned opinions, answers are likely to vary significantly from that shown below, and marks will be awarded for any answer which correctly explains the underpinning legislation and shows a correct understanding of the principles involved.*

The supply of food of a kind for human consumption is zero rated under Group 1 to Schedule 8 of the 1994 VAT Act.

This means that vendors of foodstuffs do not have to account for VAT on the selling price.

Group 1 to Schedule 8 contains a number of specific rules which exclude specified products from being zero rated.

One of those exclusions is beverages, and fruit juices are specifically named as being within this exclusion for beverages.

HMRC would therefore have taken the view that the sale of fruit smoothies drinks is a standard rated supply.

It is believed that given the high fruit content (96%) HM Revenue & Customs concluded that the smoothie was not a beverage, but was, in essence, liquidised fruit, and therefore zero rated as food of a kind used for human consumption

- 5
- (1) The Fleming case concerned late claims for input tax recovery after the introduction of the 3 year cap in May 1997.
  - (2) Fleming submitted a claim before June 30, in line with HM Revenue & Customs's Business Brief which was published as a result of the decision of the ECJ in the Marks & Spencer case
  - (3) The ECJ M&S case established that the introduction of the 3 year cap, whilst legal, could not make historic rights to recover VAT impossible to exercise without the introduction of an adequate transitional period
  - (4) HM Revenue & Customs attempted to introduce that transitional period in Business brief announcements such that where businesses overpaid Output VAT prior to December 1996, they could reclaim that VAT if the claim was made prior to June 2003, but HM Revenue & Customs did not allow the same transitional regime to cover input tax claims.
  - (5) The House of Lords held that HM Revenue & Customs's attempt did not amount to an adequate transitional period, and hence the three year cap did not apply to Fleming's claim.
  - (6) Taxpayers who had not previously submitted such claims can now do so, as HM Revenue & Customs have now introduced a transitional period for such claims, which ends on 31 March 2009
- 6
- (1) As per SI 1995/1268 Article 5(1)(b)(iii), since Alpha is already taxable person, there cannot be a TOGC unless Beta is also taxable person or becomes taxable person as a result of the transfer.
  - (2) VATA 94 s49(1) states that where a business is transferred as a going concern, the transferee (Beta) will be treated as having carried on the business before, as well as after the transfer, for the purposes of determining whether the transferee is liable to be registered for VAT.
  - (3) VATA 94 Schedule 1 para 1(2) confirms that where a business is transferred as a going concern and the purchaser not already VAT registered, the purchaser (Beta) becomes liable to register if the turnover of the acquired business exceeds the registration limit.
  - (4) Prior to the transfer to Beta, the widget business had turnover of £120,000 per annum.
  - (5) Beta therefore becomes taxable person at time it acquires the business from Alpha.
  - (6) The requirement of SI 1995/1268 Article 5(1)(b)(iii) is therefore met, and Alpha can treat the sale as a Transfer Of a Going Concern regardless of whether Beta fulfils its legal obligations and becomes registered as soon as it acquires the business.
- 7 The table below is for the marking schedule only and is not intended to be used for mark allocation

	Supplies made	VAT Incurred
Freehold sale of new dwellings	£1,500,000 TAXABLE (ZR)	£8,000 NOT RECOVERABLE
Construction of Student halls of residence	£ 5,000,000 TAXABLE (ZR)	£ 5,000,000 RECOVERABLE
Constriction of a new Prison	£ 5,000,000 TAXABLE (SR)	£175,000 RECOVERABLE
Sale of Land	£ 3,000,000 EXEMPT – OTT disappplied	£2,750 NOT RECOVERABLE – ATTRIBUTABLE TO EXEMPT SUPPLY
General expenses		£17,500 RESIDUAL – TO BE APPORTIONED
Legal fees		£8,750 RESIDUAL – TO BE APPORTIONED

- (1) Omega making taxable and exempt supplies – must therefore use a PE method. No special method, therefore must use standard method.
  - (2) Recovery for year ended 31 March 2008 is  
 $11,500,000 / (11,500,000 + 3,000,000) = 79.31\%$
  - (3) Likely that none of the supplies would be considered incidental to the business
  - (4) Recovery rate rounded up to 80% (Reg101(4) & (5) as residual input tax less than £400,000 on average
  - (5) Recovery entitlement is £350,000 directly attributable, plus [80% of (£17,500 + £8,750) = £21,000]  
 Therefore £371,000 recoverable
  - (6) Omega not de minimis under Reg 106(1) as exempt input tax is £2,750 + [20% of (£17,500 + £8,750) = £5,250] = £8,000 in total, therefore more than £625 per month on average.
- 8
- (1) As this is hotel type accommodation, it is a taxable supply as it is excluded from exemption by item 1(d) of Group 1 of Schedule 9 to VATA 1994,
  - (2) Where an asylum seeker stays in one of the hotels for any period up to 4 weeks, VAT is due on the full amount payable in the normal manner.
  - (3) For the 29<sup>th</sup> day onwards of a specific individual's stay (and not the 29<sup>th</sup> day of the contract with the Immigration Service) , VAT is only due on
    - (a) meals, drinks, service charges, and
    - (b) charges for facilities other than for the right to occupy the accommodation.
  - (4) For b) above, the facilities subject to VAT must always be valued, for VAT purposes, at no less than 20% of the total amount due for the facilities and accommodation.
- 9
- (1) It must be a non-profit making organisation
  - (2) It must be precluded from distributing any profit it makes – or is allowed to distribute any such profits only to another non-profit making body
  - (3) Any profits that it does make must be applied/ploughed back into the supply of sports related services.
  - (4) It must not be subject to commercial influence as per the definition in the relevant legal notes in Group 10 of schedule 9 to the 1994 VATA.

*[Examiner's note – it might also be argued that recent case law holds that the membership subscription services must be supplied to an individual – i.e. not a corporate body; **additional marks up to the maximum available** will be awarded to candidates who advance that proposition.]*

- 10 (1) The Council of the EU may authorise any EC member state to introduce special measures which are not in accordance with, or permitted by, the VAT Directive.
- (2) Each special measure so authorised is called a derogation.
- (3) Derogations are usually authorised to allow the member state requesting it to simplify the collection of VAT or to prevent evasion or avoidance.

Current UK derogations include:

*(marks will also be given for stating any valid derogation not listed below)*

- The zero rate schedules;
  - Special retail schemes;
  - Exemption from registration for persons making zero rate supplies exceeding the VAT registration limit;
  - Valuation provisions for sales of cosmetics to “party plan” resellers;
  - The UK oil terminal markets;
  - Long stay in hotels;
  - Treatment of goods in warehouses;
  - Cash accounting schemes;
  - VAT recovery on fuel for company cars;
  - 50% restriction on VAT recovery on leases of company cars;
  - Place of supply of telecoms services;
  - Transport services relating to intra EC transport of goods;
  - Transfer of assets to partly exempt VAT groups
  - Voluntary accounting scheme for gold & precious metals
- 11 (1) the “compensation” one-off payment is not compensation, as it is not a restitution payment for damages;
- (2) regardless of the underpinning reason why it does so, Gamma Ltd is making a supply and that supply is passing over of the legal title to the assets it owned;
- (3) the “compensation” payment that Gamma Ltd receives from the public authority therefore has to be treated as consideration for the supply made;
- (4) as to the VAT liability, that will depend on the nature of what it is that the contracting authority – or the third party nominated by it – receives;
- (5) if Gamma Ltd is passing over title to plant and equipment goods and stock, it will bear the same liability as the supply of such items from any other supplier in the marketplace;
- (6) if Gamma is transferring title to any interest in land & buildings that it owns, then at least some of the “compensation” will relate to that, and the liability will be exempt, or taxable if the Gamma has exercised an effective option to tax.
- 12 (a) The name and address of the retailer
- (b) The date the supply is made
- (c) The retailers VAT registration number
- (d) A description sufficient to identify the goods supplied;
- (e) The total amount payable, including VAT
- (f) For each rate of VAT chargeable, the gross amount payable and the applicable VAT rate
- (g) Less detailed invoices cannot be used if there are any VAT exempt supplies.

- 13 Unless specifically over-ridden by other legislative provisions, the transfer of goods within the same legal entity from one EC country to another is deemed to be a supply of goods for UK VAT purposes, under the provisions of para 6 of Schedule 4 to the 1994 VAT Act.

Accordingly, the supply is liable to VAT under normal intra-EC supply rules.

The UK business must therefore register for VAT in the other member state in order :-

- (a) to substantiate any claim for Zero rating on the deemed supply under UK VAT legislation, and
- (b) to be able to account for acquisition VAT, and if applicable for output VAT due on any subsequent supply of the goods, in the other member state.

If the UK business does not register for VAT in the other member state, it must treat the deemed supply as a standard rated supply, and account for VAT in the UK, which it cannot recover as input tax either in the UK or in the other member state.

- 14 The concession applies to employment business within the meaning of the Employment Agencies Act 1973, who supply members of staff to another business (its customer);

Provided that the customer is responsible for paying the member of staff's wages directly to him/her and discharges any liability to pay PAYE, NIC, pensions and similar contributions, the employment businesses are allowed to exclude the wages element from the supplies they make, and to account for VAT solely on their margin;

Following the introduction of new regulations by the DTI in 2004, HM Revenue & Customs consider that the VAT tax concession is no longer necessary. HM Revenue & Customs have also stated that in their view the concession has no basis in UK or EU VAT law and must therefore be withdrawn;

When the concession is withdrawn, employment businesses will have to charge VAT on all of the consideration including the wages element.

- 15
- (1) *Bespoke Scheme*: Retail businesses with annual turnover exceeding £100 million may agree a bespoke scheme with HM Revenue & Customs;
  - (2) *Point of Sale Scheme*: Directly identifying the correct VAT liability of each item sold at the time of sale.
  - (3) *Apportionment Scheme 1* – Only available to retail businesses with an annual turnover of less than £1 million; the retailer calculates the percentage of purchases for resale that are standard rated, and assumes that the same proportion of takings will be standard rated.
  - (4) *Apportionment Scheme 2* – Only available to retail businesses with a turnover of less than £100 million; the retailer must work out the expected selling prices of his goods, at the different rates of VAT, and apply the proportions to his sales.
  - (5) *Direct Calculation Scheme 1* – Only available to businesses with an annual turnover of less than £1 million; the retailer must work out the expected selling prices of his goods, at one or more rates of VAT, so that the proportion of sales on which VAT is due can be calculated. This is usually done so that Zero Rated sales are calculated and that figure subtracted from the takings figure.
  - (6) *Direct Calculation Scheme 2* – as for direct calculation scheme 1, but with an annual stock adjustment.

- 16 (1) Theta is buying goods (cameras) and services (the cookery course) that it will be giving away for no consideration - if the input VAT is deductible under VATA 94 sections 24, 25 & 26, then output tax will be due on the deemed onward supply.
- (2) The VAT incurred on the cameras is deductible as it is incurred for business purposes but the disposal is a deemed supply under VATA 94 Schedule 4 paragraphs 5(1).
- (3) As there is no consideration received for the cameras, the valuation will be the cost to Theta of buying identical goods as per VATA 94 Schedule 6 para 6 (1)(b) and 6(2), and VAT will therefore be due on the cost.
- (4) Any VAT incurred on cookery course is input VAT as it is incurred in the course and furtherance of Theta's business activities.
- (5) But as it is provided to the customer's employee, and not to Theta's own employee, it is VAT incurred on business entertainment, and recovery is blocked under SI 1992/3222 Article 5(3).
- (6) There is no deemed supply of the cookery course and therefore no output tax to account for.

*Examiners note: candidates can also mention the tax point for accounting for the output tax due on the deemed supply of the cameras will be, as per VATA 94 s 6(12), when each camera is given to a salesman.*

- 17 The supply of any form of power, heat, refrigeration or ventilation is a supply of goods, and not a supply of services. Para 3 of Schedule 4 to the 1994 VAT Act applies.

With effect from 01.09.1997, VAT at the reduced rate of 5% applies to all such supplies if they are qualifying supplies – as defined in Group 1 of Schedule 7A to the 1994 VAT Act.

Qualifying supplies are those for domestic use, or use by a charity. Note 3 to Group 1 of Schedule 7A to the 1994 VAT Act.

By default, if supplies are not qualifying supplies, they are liable to VAT at the standard rate of 17.5%

- 18 Changes in Policy generally only have prospective effect

Such changes are usually within HM Revenue & Customs' discretion, and therefore will be applied only from a current or future date to give businesses time to prepare for, and adapt their systems to, the change. Sometimes HM Revenue & Customs will also introduce a transitional period, where a less beneficial policy than existed before, is introduced.

Changes in the interpretation of the Law generally have retrospective effect.

These changes are usually as a result of litigation which means that HMRC's interpretation of the law was wrong, and therefore the correct legal position is that the legislative provision should always have been applied in accordance with the revised interpretation. Such changes are therefore not at HM Revenue & Customs's discretion, and the correct interpretation of the legislation always applied since the time the legislation was introduced.

- 19 None of the VAT on these items is recoverable

Where the sale of the dwelling is a taxable sale (zero rated first grant of a major interest) then if the dwelling incorporates goods which are defined as "other than building materials", the input tax incurred on their purchase which would otherwise be recoverable as attributable to a taxable supply, is blocked from recovery under SI 1992/3222 article 6

Where the dwellings are leased, the VAT on items which are defined as "other than building materials" is not blocked from recovery under SI 1992/3222 article 6, but as the grant of the 15 year lease will be an exempt supply, the input vat is exempt input tax under SI 1995/2518 (The Gen Regs) Reg 101 (2(d)) is therefore not recoverable

20 Consideration is not defined in either the EC VAT Directive 2006/112, or in UK VAT legislation.

The definition, which existed in the EC 2nd Directive Annex A para 13, is still used by the ECJ, and therefore still applies through case law.

It is therefore taken as meaning everything received in return for a supply of goods or services, including incidental expenses such as packing, transport, insurance and includes not only cash amounts but also non-monetary consideration and subsidies.

There must be a direct link between the making of the supply and the reciprocal receipt for the receipt to be treated as consideration. This has been established in many ECJ cases such as Apple & Pear Development Council and Tolsma.

# Module E

Where candidates are required to comment on tax (and in particular CGT) which may apply in 2008/09 and subsequent years they will be given full credit whether they assume that 2007/08 rates (including taper relief) continue to apply or whether they answer using 2008/09 rates (including entrepreneurs relief).

- 1 State the six methods of valuation for Customs Duty purposes.

**Answer**

Method 1: The 'Transaction Value' - the price paid or payable by the buyer to the seller of the goods when sold for export. **(1 mark)**

Method 2: Identical Goods method - based on the customs value of identical goods exported to the EC at or about the same time as the goods to be valued. **(1 mark)**

Method 3: Similar Goods method - based on the customs value of similar goods exported to the EC at or about the same time as the goods to be valued **(1 mark)**

Method 4: Selling Price method - based on the selling price of the goods in the EC. **(1 mark)**

Method 5: Costs of production method - based on the costs of production of the goods. It is a built-up value of the cost of the materials and fabrication plus producers profit and general expenses plus the cost of transport, insurance and loading and handling connection to the import into the EC. **(1 mark)**

Method 6: Final method or 'fall-back' method - arrived at by using reasonable means consistent with the World Trade Organisation Valuation principles. **(1 mark)**

- 2 State six approval criteria for the 'Simplified Import VAT Accounting' scheme.

**Answer**

The Trader must:

- have been VAT registered (and continuously trading) for 3 years;
- have a good compliance history
- have a good payment history
- have a good HMRC offence record
- sufficient financial means to meet any amount deferred under SIVA.
- have a 12 month record if international trade operations; and
- have a good compliance record for International trade.

**(1 mark each from above – maximum 6 marks)**

*Note: Credit given for any other valid points raised not listed above.*

- 3 You are required to state how the place of introduction, under the Transaction value method, is defined for goods imported by:

- (a) sea
- (b) air
- (c) road, rail or inland waterway
- (d) post

**Answer**

- (a) For goods by sea  
The port of importation (goods direct to UK)  
The port of unloading in another EC state (where goods delivered there first)  
The port of transshipment (where goods transhipped within EC) **[3 marks]**
- (b) For goods imported by air  
Where the EC border is first crossed during the air journey **[1 mark]**
- (c) For goods imported by road, rail or inland waterway  
The place where the goods first pass a Customs office on EC territory **[1 mark]**
- (d) For goods imported by post  
Address for delivery **[1 mark]**

- 4 Your client has recently received a decision from HM Revenue & Customs relating to an application he made for Customs Duty relief. He has decided that he does not want to accept the decision, and now wishes to appeal against it.

You are required to briefly state the steps your client should follow to appeal this decision as far as lodging an appeal with the Tribunal.

**Answer**

Your client has 45 days from the date of written notification of the decision by HM Revenue & Customs to ask for a formal Departmental Review. **(2 marks)**

HM Revenue & Customs then have 45 days from receipt of the letter in which to carry out the review and notify your client of the outcome. **(2 marks)**

If following the formal review your client still wishes to pursue the matter, he has 30 days to lodge his appeal with the Tribunal. **(2 marks)**

- 5 State the conditions an insurer must meet to benefit from the *de minimis* provisions for Insurance Premium Tax.

**Answer**

If:

- (1) A mixed policy is written with elements of taxable and exempt cover
- (2) The total premium does not exceed £500k
- (3) On apportionment, the taxable element is 10% or less

the insurer need not account for IPT on that contract.

**(2 marks for each condition – maximum 6 marks)**

- 6 Your client is just starting to provide insurance services and wishes to understand when Insurance Premium Tax is due.

You are required to explain, briefly, the basic tax points for Insurance Premium Tax.

**Answer**

Cash receipt method – the date the premium is received by the taxpayer or any person on their behalf. **(2 marks)**

Special accounting method – ‘written premium’ method – the date when the accounts of the taxpayer show the premium is due. **(2 marks)**

Alternative special accounting method – the date the premium was actually entered into the accounts. **(2 marks)**

7 Your client has asked about group registration for Insurance Premium Tax.

- (a) State the eligibility criteria for group treatment; and
- (b) State the conditions that will be applied once group treatment applied.

**Answer**

- (a) A group of at least two corporate bodies may account for Insurance Premium Tax under a single registration if
  - (i) one body controls the others; **(1 mark)** and
  - (ii) all corporate bodies wishing to be included in the group are “resident” or “established” in the UK. **(1 mark)**
- (b) If you are allowed group treatment, the following conditions will apply
  - (i) the liability of a member of the group to pay tax shall be taken to be a liability of the representative member; **(1 mark)**
  - (ii) the representative member shall be taken to carry out any taxable activities which a member of the group would carry out **(1 mark)**
    - i.e. the representative member shall be taken to be the insurer in relation to any taxable insurance contract where a member of the group is the actual insurer; and
    - any receipt by a member of the group of a premium under a taxable insurance contract shall be taken to be a receipt by the representative member.
  - (iii) all members of the group shall be jointly and severally liable for any tax due from the representative member. **(1 mark)**
  - (iv) Insurance Premium Tax must still be accounted for and paid on all taxable supplies of insurance made within the group, unlike group treatment for VAT. **(1 mark)**

8 Different rates of Insurance Premium Tax are applicable depending on the risk being insured.

State the Insurance Premium Tax rate applicable and calculate the Insurance Premium Tax charge within the following tax inclusive premiums

- (a) A £800 tax inclusive premium for fully comprehensive motor insurance
- (b) A £180 tax inclusive premium for central heating cover
- (c) A £500 tax inclusive premium for life insurance.

**Answer**

- (a) 5% rate of Insurance Premium Tax under ESC 4.3 **(1 mark)** £38.10 i.e. £38 Insurance Premium Tax charge **(1 mark)**
- (b) 17.5% rate of Insurance Premium Tax **(1 mark)** £26.80 i.e. £27 Insurance Premium Tax charge **(1 mark)**
- (c) Exempt from Insurance Premium Tax **(1 mark)** £NIL Insurance Premium Tax charge **(1 mark)**

9 The weight of an aggregate has to be determined for the purposes of Aggregates Levy.

You are required to explain the rules for adjusting the weight to allow for the presence of water in certain circumstances.

**Answer**

If the aggregate has natural water content there is no allowance for this. This is because under FA2001 s 17(1) the aggregate is defined as ‘rock, gravel and sand, together with whatever substances are for the time being incorporated ...or naturally occur mixed with it.’ Natural water is naturally part of the aggregate and therefore part of the weight. **(1 mark)**

Rainwater does not count as added water and hence there is no disallowance from the weight for this. **(1 mark)**

If the aggregate has had water added it may be discounted from the calculations. (1 mark)

There are standard added water percentages which may be used:

Washed sand: 7%  
Washed gravel: 3.5%  
Washed Rock/aggregate: 4%

(1 mark)

Alternatively traders may agree a more exact percentage of added water with HM Revenue and Customs, in which case evidence of the weight of the water must be provided. (1 mark)

In either case prior written agreement must be obtained from the local aggregates levy officer. (1 mark)

10 Aggregates Levy legislation refers to the 'originating site' of an aggregate.

You are required to explain the meaning of the term 'originating site'.

**Answer**

The 'originating site' is the site where the aggregate was won, or most recently won. (2 marks)

If it is won from the seabed within UK territorial waters then it is where it is first landed in the UK. (2 marks)

If it is from an exempt process then it is where the process was applied. (2 marks)

11 State three exempt processes for Aggregates Levy purposes.

**Answer**

- (1) the process of cutting any rock to produce stone with one or more flat surfaces.
- (2) the process of extracting or separating a "relevant substance" from any aggregate; and
- (3) the process for the production of lime or cement from limestone, or from limestone and another substance.

**[2 marks for each process – maximum 6 marks]**

12 You are required to state six examples of prescribed industrial processes which may be entitled to credit from Aggregates Levy.

**Answer**

Any six examples from the 38 listed industrial processes in SI 2002/761 Schedule.

**(1 mark each up to maximum of 6 marks)**

13 Landfill Site Operators have two options for calculating tax points for the purposes of Landfill Tax. You are required to state these options and the conditions applying to their use.

**Answer**

- (1) disposal tax point i.e. date on which waste disposed of to landfill
- (2) invoice date tax point

**(2 marks)**

If a landfill invoice is issued within 14 days after the disposal tax point this will be the tax point used unless the operator notifies HM Revenue and Customs in writing in advance that he does not want this rule to apply. (A longer period than 14 days may be agreed with HM Revenue and Customs). (2 marks)

An invoice issued prior to disposal does not create a tax point. (1 mark)

A site operator may use different tax points for different customers, provided a consistent approach is adopted. (1 mark)

- 14 Landfill Tax applies to all waste disposed of by way of landfill, at a licensed landfill site, on or after the date it was introduced unless the waste is specifically exempt.

You are required to state six situations where waste will qualify for exemption from Landfill Tax.

**Answer**

- (a) Material removed from water
- (b) Waste arising from the clearance of contaminated land
- (c) Restoration of landfill sites
- (d) Waste arising from mining and quarrying operations
- (e) Filling of quarries
- (f) Pet cemeteries used solely for the burial of dead domestic pets
- (g) Disposal of official NATO forces' waste

**(1 mark for any from the list up to maximum of 6 marks)**

- 15 You are required to state six of the requirements for information needed on an invoice for it to be regarded as a 'landfill invoice'.

**Answer**

An invoice is a **landfill invoice** if it contains the following information:

- An identifying number
- The date of issue
- The date of disposal or disposals in respect of which it is issued
- The name, address and registration number of the person issuing it
- The name and address of the person to whom it is issued
- The weight of the material disposed of
- A description of the material disposed of
- The rate of tax chargeable in relation to the disposal
- The total amount payable for which the invoice is issued
- Where the amount of landfill tax is shown separately, a statement confirming that that tax may not be treated as the input tax of any person

**(1 mark each up to a maximum of 6 marks.)**

- 16 You are required to state six examples of groups of materials that if noted on a waste transfer note would be charged at the lower rate Landfill Tax of £2 per tonne.

**Answer**

- Rocks and soils
- Ceramic or concrete materials
- Minerals
- Furnace slags
- Ash
- Low activity inorganic compounds
- Calcium sulphate
- Calcium hydroxide and brine
- Water

**(1 mark each up to a maximum of 6 marks)**

- 17 You are required to state six examples of uses for taxable commodities that are **exempt** from Climate Change Levy.

(You are not required to consider excluded uses, or uses subject to reduced rates.)

**Answer**

- Supplies not for burning or consuming in the UK
- Supplies of gas intended for burning in Northern Ireland
- Supplies for use in transport
- Supplies to producers of taxable commodities other than electricity
- Supplies (other than self-supplies) to electricity producers
- Supplies (other than self-supplies) to Combined Heat and Power Stations (note if partly exempt for inputs only a proportion of the supply is exempt)
- Supplies (other than self-supplies) of electricity from partly exempt Combined Heat and Power Stations when supplied below the limit certified as exempt
- Self-supplies by electricity producers who are auto-generators
- Supplies not used as fuel
- Supplies for use in recycling processes
- Supplies of electricity from renewable sources
- Supplies of electricity from fully exempt Combined Heat and Power Stations

**(1 mark each from the list up to a maximum of 6 marks)**

- 18 You are required to explain, for commodities other than gas and electricity, the basic tax point rules for Climate Change Levy purposes where the supplier is resident in the UK.

**Answer**

- if the commodity is to be removed, the supply takes place at the time of removal **(2 marks)**
- if the commodity is not to be removed, the supply takes place at the time when the commodity is made available to the person to whom it is supplied **(2 marks)**
- if the commodity (being sent on approval, or sale or return, or similar terms), is removed before it is known whether a supply will take place, the supply takes place when it becomes certain that the supply has taken place or, if earlier, 12 months after removal. **(2 marks)**

- 19 You are required to explain the three options for splitting the consumption of electricity and gas across a CCL rate change that the supplier can elect to use.

**Answer**

**(1) Splitting based on an actual meter read**

The supply can be split pre and post the change based on what was actually supplied if you have the relevant meter readings at the time of the Climate Change Levy rate change.

The old rate can then be applied to the portion of consumption actually supplied pre the change and the new rate to the portion supplied post the change. **(2 marks)**

**(2) Splitting the period based on a pro rata apportionment based on the days pre and post the change.**

Where there are no relevant readings it may not be possible to split the consumption into what was 'actually' supplied pre and post the Climate Change Levy rate change.

Hence, under this rule the pre-change fraction is calculated as the number of days in the period pre the change divided by the total number of days in the billing period. The post change fraction is calculated as the number of days in the period post the change divided by the total number of days in the billing period.

The pre change and post change fractions are applied to the consumption for the billing period to split the consumption into the amount at the old rate and the amount at the new rate. **(2 marks)**

- (3) A pro rata apportionment of the period based on the days in the period but with a weighting factor applied.

If the use of the fractions in option 2 would produce an inequitable result the pre change and post change fraction may be derived from a reasonable estimate of the fractions of the supplied commodity actually supplied before and after the change.

This means that HM Revenue and Customs will agree a weighting factor which can be applied to the pre and post change fractions from Rule B to ensure some account is taken for the seasonality of supply. **(2 marks)**

- 20 You are required to state six types of records that suppliers of taxable commodities must keep for Climate Change Levy purposes.

**Answer**

- Climate Change Levy Account
- Climate Change Levy Accounting Documents/Sales Invoices issued for the overall supply, used to account for the Levy
- Separate bad debt account for bad debt relief claims
- Any records required or maintained as part of a special utilities scheme
- Customer certificates used in the calculation of Climate Change Levy on their invoices (VAT certificates, supplier certificate Form PP11)
- Business and accounting records in respect of the Levy
- All credit and debit notes and similar documents issued or received in respect of the Levy
- Any records required as part of the Combined Heat and Power Plant rules in SI 2001/838 Part IV (A)
- Any other documents required by Public Notice CCI1 or any other notice published by HM Customs & Excise.

**(1 mark each from the list above up to maximum of 6 marks. Credit given for all relevant examples listed)**