

The tax and legal aspects of business

At the end of this unit, candidates should be able to demonstrate an understanding of:

- the main legal forms of business and how they are set up and managed;
- the consequences of bankruptcy or insolvency;
- business accounts and financial controls;
- the taxation of each type of business entity, its owners and employees;
- the main legal responsibilities businesses have to employees, suppliers and customers.

Summary of learning outcomes

1. Understand the main legal forms of business in the UK;
2. Understand the main principles of business accounting and the interpretation of accounts for each of the main legal forms of business;
3. Understand the main internal and external options for financing a business;
4. Understand the principles and application of the following taxes in the business context:
 - Income Tax;
 - National Insurance contributions;
 - Corporation Tax;
 - Capital allowances;
 - Value Added Tax;
 - Capital Gains Tax;
 - Inheritance Tax;
 - Stamp Duty Land Tax and Stamp Duty Reserve Tax;
5. Understand the impact of employment law on business;
6. Understand the main principles of business protection insurance, including key person insurance, share protection insurance and partnership protection insurance.

Notes:

- The syllabus is examined on the basis of the legislative position in England three months prior to the examination date.
- Where law and practice in Scotland differs, this will be explained in the primary text.

1. Understand the main legal forms of business in the UK

Sole traders

- The lack of separate existence of the business from the business owner;
- Personal liability;
- Responsibilities of sole traders;
- Business names and passing off;
- Bankruptcy – the main causes, procedures before and after the bankruptcy order, the effects of bankruptcy, discharge, transactions voidable by the court, individual voluntary arrangements.

Partnerships

- The role of the Partnership Act 1890 in providing the basic code for partnerships, the significance of partnership agreements;
- Creating an ordinary partnership – the implications for the partners. Creation of partnerships by implication and expressly;
- Formation and existence of a partnership – numbers of partners, names, duration, ceasing to be a partner;
- The relationship between partners – duty of good faith, accountability, competing, right to indemnity, partners' capital, profit and loss sharing, interest on loans and capital, loans and capital, partnership property;
- Partners' relations with third parties – agency and authority, holding out, liability;
- Changes in the composition of partnerships – expulsion, retirement and novation, death, bankruptcy;
- Dissolution of a partnership – when it occurs, the realisation of partnership assets;
- Limited liability partnerships (LLPs) – relationships between partners, property, designated members, company related requirements, features that LLPs have in common with limited liability companies and how they differ from companies;
- Limited partnerships – the nature of limited partnerships, formation, relationship between partners.

Unincorporated associations

- The nature of unincorporated associations, their lack of a separate existence of the association from the members, responsibilities of members.

Limited companies

- The company as a separate legal person from the shareholders, the main features of a company, when company law is likely to impact on directors and shareholders, buying and selling shares;
- The Companies Act 1985 – the main provisions and proposed reforms;
- Company formation and documents – the promoters and pre-incorporation contracts, incorporation and the main documents of the company, the main contents and functions of a company's memorandum and articles of association, how companies are set up;
- Company management – the relationship between the shareholders and the board, the powers and duties of the directors, the appointment and removal of directors, the role of the company secretary, the role and responsibility of auditors, rights of minority shareholders;
- Corporate finance – introducing capital to a company through share and loan capital, the advantages and drawbacks of the main types of giving debentures, fixed and floating charges;
- Public companies – the main additional obligations on PLCs;

- Other corporate structure – unlimited companies and companies limited by guarantee;
- Corporate insolvency – the differences between compulsory liquidation and voluntary winding up, distribution of assets, duties of liquidators, transactions defrauding creditors, personal liability of directors, the main alternatives to liquidation: administration, voluntary arrangements, administrative receivership, Enterprise Act 2002.

2. Understand the main principles of business accounting and the interpretation of accounts for each of the main legal forms of business

- Setting up a basic accounting system – accounting records and cash flow control;
- Basic accounting principles – accruals basis, the matching principle, the going concern basis, consistency and comparability, prudence and reliability;
- The profit and loss account – different definitions of profit, the difference between the profit and loss account and the cash flow statement;
- The relationship between accounting practice and taxation;
- Interpreting accounts – use of key ratios for measuring performance, the importance of the directors' and auditors' reports;
- The Companies Act 1985 and accounts – accounting standards, audits for limited companies, small companies;
- The use of budgets and budgetary control in business;
- How businesses make investment decisions – payback periods, net present value calculations, measuring internal rates of return, deciding whether to lease or purchase assets.

3. Understand the main internal and external options for financing a business

- Capital structures of partnerships – partnership capital, profit sharing ratios, loans by partners, loans by third parties;
- Company share structures – ordinary shares, special classes of shares, voting and non-voting shares, preference shares;
- Fixed interest securities – priorities, interest rates, security, debentures, difference in the tax position of dividends and interest payments;
- The loan of assets to a company or partnership by business owners;
- Reinvestment of company profits;
- Banking and financing practices – company security, fixed and floating charges, personal guarantees and personal assets used as security;
- Tax relief on loans to sole trader businesses, partnerships and companies, for the purchase of shares and partnership interests, for the purchase or improvement of property used in a business, refinancing partnership capital and directors' loan accounts;
- Ownership of business assets and financing of businesses by pension schemes.

4. Understand the principles and application of the following taxes in the business context

Income Tax – self employed and partners

- Taxable profits – registering a business with HMRC, determining whether a trade is being carried on, the treatment of stock and capital, capital allowances, allowable expenses, interest relief and the introduction of partnership capital into a business, the treatment of losses, private assets used in a business, goods for own use, employment of spouse and partnership with spouse;
- The basis of assessment – the current year basis, opening and closing years of a business and overlap profits, choosing an accounting date, the self assessment tax return, tax payment dates, HMRC enquiries into returns, special rules for partnerships. IR35 impact on partnerships.

Income Tax – employees and directors

- Employee taxation – employed or self employed, the PAYE system of collecting tax, taxable payments, termination payments, tax treatment of expenses;
- Share option and incentive schemes – savings related schemes, share option schemes, enterprise management incentives, profit sharing schemes, share incentive schemes, employee share ownership trusts;
- Taxation of employee benefits – P11D and other employees, general principles of taxing benefits on P11D and other employees, company cars and fuel for private use, mileage allowances, beneficial loans, living accommodation, medical insurance, main benefits wholly or largely exempt, e.g. income protection, provision of mobile phone.

National Insurance Contributions

- NI contributions for the self employed – who is self employed, class 2 NI contributions, class 4 NI contributions, annual maximum annual NI contributions, link of NI contribution records to benefit entitlements, collection of NI contributions;
- NI contributions for employees and directors – employments and offices, earnings subject to NI contributions, class 1 NI contributions, class 1A NI contributions on benefits, rates of NI contributions, contracted out NI contributions, special position of directors, maximum annual NI contributions, collection of NI contributions.

Corporation Tax

- The structure of Corporation Tax – rates of tax, accounting periods, treatment of capital gains and losses, associated companies;
- Taxation of corporate profits – computation of profits, accounts basis of profits, research and development expenditure, purchase of goodwill and other intangible assets, disposal of substantial shareholdings, corporate venturing;
- Self assessment for companies – payment of corporation tax, self assessment tax return;
- Dividends – the position of the company and the shareholder, franked and unfranked income, company year end tax planning and choosing between dividends and bonuses for owner-directors, personal service companies and IR35, the settlement provisions and the implications for the distribution of profits from family businesses;
- Aspects of Corporation Tax – trading losses, groups of companies, close companies and close investment companies, company residence, companies buying their own shares;

- Tax rules for key person insurance – allowable and non-allowable premiums, treatment of the benefits.

Capital allowances

- General principles – allowable expenditure, who can claim, date of expenditure;
- Plant and machinery – first year allowance, writing down allowances, qualifying expenditure, how allowances are calculated, special assets e.g. cars, short life and long life assets;
- Industrial buildings – industrial building defined, qualifying expenditure, balancing adjustments, hotels, enterprises zones;
- Other capital allowances – flat conversions, agricultural land and buildings, research and development, patent rights, know how.

Value Added Tax (VAT)

- Basic outline of VAT – registration, VAT system, taxable, exempt and partially exempt supplies, zero rated supplies, flat rate schemes, schemes for second hand goods, farmers, trade between EU states, bad debts, collection of VAT.

Capital Gains Tax (CGT)

- Basic principles of Capital Gains Tax – disposals, residence status, exemptions, valuation, calculating gains, indexation and taper reliefs, losses, identification rules, calculating the tax liability, holdover relief, rollover relief and reinvestment relief, incorporation, share for share transactions.

Inheritance Tax (IHT)

- Basic principles of Inheritance Tax – lifetime transfers, exempt transfers, potentially exempt transfers, chargeable lifetime transfers, settlements, business property relief, agricultural property relief, gifts with reservation and pre-owned assets, valuation.

Stamp Duty Land Tax and Stamp Duty Reserve Tax

- Outline of Stamp Duty Land Tax and Stamp Duty Reserve Tax – transactions subject to Stamp Duty Land Tax, rates of Stamp Duty Land Tax, application of stamp duty to transfers of shares and securities.

5. Understand the impact of employment law on business

- Contract of employment – the main provisions, rights and duties of employers and employees;
- Employers' duties – statutory sick pay, maternity pay, allowances and leave, maternity leave, pension rights, methods of pay and deductions, equal pay, trade union membership, testimonials and references, employer's liability insurance;
- Employees' duties – skill and care at work, fidelity, confidentiality, employer's vicarious liability;
- Employer's liability for injuries to employees, health and safety at work;
- Discrimination – sex, marital status, sexual orientation, disability, impending laws on age;
- Terminating a contract of employment – unfair dismissal, grounds for dismissal, redundancy, other methods of terminating a service contract.

6. Understand the main principles of business protection insurance, including key person insurance, share protection insurance and partnership protection insurance

- Key person insurance – identifying key people, calculating amounts of life and health cover needed, the tax rules, the main types of suitable insurance policies;
- Share protection insurance – the provisions in companies' Articles of Association, shareholders' agreements, main types of life cover used, how policies are written, calculating the level of cover needed, tax and legal implications, retirement, ill-health;
- Partnership protection insurance – the Partnership Act 1890, main types of partnership agreements and succession planning, capital accounts, main types of life cover used, how policies are written, calculating the level of cover needed, tax and legal implications, retirement and ill health, limited liability partnerships.

Reading List

The following list provides details of various publications which may assist with your studies. The primary text for this syllabus is shown in bold type. Periodicals and publications listed as additional reading will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

Note: The examination will test the syllabus alone. The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/Personal Finance Society members can borrow most of these additional study materials from CII Information Services and may be able to purchase some at a special discount. For further information on lending and discounts go to www.cii.co.uk/is

Primary text

The tax and legal aspects of business. London: The CII. Coursebook J03.

Additional reading

Business law. Denis Keenan, Sarah Riches. [New ed.] Harlow: Longman, 2004.

Business tax and law handbook. David Bertram, Richard Lawson. 4th ed. Harlow, England: Pearson Education, 2003.

Essential accounting for the taxation technician. London: Association of Taxation Technicians, 2002.

Financial management for the small business. Colin Barrow. 5th ed. London: Kogan Page, 2001.

Law for the small business: a practical guide. Patricia Clayton. 10th ed. London: Kogan Page, 2001.

Partnership law. Geoffrey Morse. 5th ed. London: Blackstone, 2001.

Reference materials

Lamont's glossary: the definitive plain English money and investment dictionary for the finance professional and money-minded consumer. Barclay W Lamont. 9th ed. Surbiton, Surrey: Lamonts Glossary Ltd, 2004. Also available online at www.cii.co.uk/is/dictionaries (CII/Personal Finance Society members only).

Partnership taxation. Nigel T Davey, Maurice Parry-Wingfield. 5th ed. London: Butterworths. Looseleaf, updated.

St James's Place tax guide. Walter Sinclair. London: Macmillan. Annual.

Tolley's Partnership taxation. Arnold Homer, Rita Burrows, Sarah Deeks. 6th ed. Croydon: Tolley, 2003.

Periodicals

Financial Adviser. London: FT Business. Weekly. Also available online at www.ftadviser.com

Financial Solutions. London: Editorial Design Concepts. Journal of the Personal Finance Society. Monthly.

Financial Times. London: Financial Times. Daily. Also available online at www.ft.com

Investment Week. London: City Financial Communications. Weekly.

The Journal. London: The CII. Six issues a year. Also available online at www.cii.co.uk/is (CII/Personal Finance Society members only).

Money Management. London: FT Business. Monthly.

Money Marketing. London: Centaur Communications. Weekly. Also available online at www.moneymarketing.co.uk

Examination guides

You are strongly advised to study these before the examination. Please visit www.cii.co.uk to buy online or contact CII Customer Service for further information on +44 (0)20 8989 8464.

Exam technique/study skills

There are many modestly priced guides available in bookshops. You should choose one which suits your requirements.

An example is:

The exam secret: how to make the grade. Barbara Brown. Tadworth, Surrey: Elliott Right Way Books, 2000.

For a more interactive approach, you should consider:

Winning the brain game. London: The CII. 1996. CD-ROM.