MAY 2020 PROFESSIONAL EXAMINATION
ADVANCED TAXATION (PAPER 3.3)
CHIEF EXAMINER'S REPORT, QUESTIONS & MARKING SCHEME

EXAMINER'S GENERAL COMMENTS

The Advanced Taxation Paper is final level paper (Professional) which is supposed to ensure that candidates develop knowledge and skill set in tax administration and practice and also ability to apply knowledge to practical issues to achieve benefit for their entities.

The level of difficulty of the paper was appropriate for the final level standard and candidates who sat for the examination would attest to that fact. The spread of the questions along the syllabus was quite impressive and appeared to reward hard work, scholarship and intensive research. A candidate who concentrated on only a limited area of the syllabus, was sure to have some challenges with the paper. In fairness, the paper was quite good and appropriate for the final level and of high standard.

One noticeable feature is that most candidates did not give a lot of examples in their solutions. It must be noted that examples help bring out concepts which are not properly explained. Candidates are therefore encouraged to use examples where relevant to elucidate the points being made in their solutions so as to maximize marks. On the whole, the Institute must be commended for maintaining high standards and integrity over the years in terms of the tax paper.

STANDARD OF THE PAPER

The questions administered as always assumed the usual characteristics known at the final level in line with the syllabus content. The marks allocated to each question were good and appropriate for the volume required. The spread of the questions covered the entire syllabus and were of a high standard akin to any final level taxation paper at any professional level.

Some of the questions required practical application which was in order and what the paper sought to achieve. The additional good part of the paper was that it required report writing which was good for a final level paper. This would help cure paucity of writing by candidates and prepare them for the future job market. The paper tested the knowledge, skill and application of the candidates. Some of the candidates gave good account of themselves while others continued to struggle and showed poor academic strength.

The only little low point about the paper was the fact that it did not test much of applications as previous diets did. The questions were more of the recall type and ended up punishing candidates who did not read much and dwelled on technicalities and picking issues out of narratives. The question four which was examination of accounts should have tested, additionally, the rationale for the treatment of certain transactions in a particular way by candidates as a further prove that candidates were on top of the issues, just so the Institute is sure their candidates were practicallyoriented materials ready to face the job market in the future with dexterity. This, however, did not take away the fact that on the whole standard of the paper was high.

The clarity of the question was also quite impressive and worth commenting. There was no ambiguity that really came up in any of the questions. The paper quality was good and the type setting was also impressive and made reading interesting and rewarding. The paper was more importantly, free from material error and conveyed the thoughts of the examiners which came out quite well judging from the responses of candidates who prepared well for the paper in their solutions.

PERFORMANCE OF CANDIDATES

On the whole and as a matter of fact, the performance of candidates continue to show upward trajectory over the years and at each diet. The Institute has continued to make materials available to candidates through manuals which have significantly contributed to the success of candidates and through other engagements with the view to enhancing the pass rate. Additionally, Tuition Centres continue to play their roles in support of the Institute's mandate to churn out accountants.

Notwithstanding the tremendous performance of some candidates, there is the need to marshal resources to improve upon the pass rate. The performance of some candidates also leaves much to be desired as they continue to show paucity of information in their presentations. Not much originality in their presentations and thoughts patterns.

The Institute over the years has remained predictable in its examinations as it has followed religiously its syllabus grid. The spread of the syllabus coverage has also helped average candidates to read widely to be able to pass the examination with maximum ease.

Lack of adequate preparation continues to show up and hampers the ability of candidates with heavy schedules or candidates who procrastinate till the examination is very close. This one could tell from the output of such candidates.
In a related development, there was no trace of perceived or real examination malpractices in the marked scripts of candidates. Each script was unique and independent.

NOTABLE STRENTHS AND WEAKNESSES OF CANDIDATES

- Illegible handwriting of some candidates continue to be a challenge. This slows the marking process. Candidates are encouraged to write legibly to make reading quite easy for markers.
- Report writing which is a common feature of the final level examinations continues to suffer recognition. Most candidates failed to read that part of the requirement and consequently did not offer the report writing as part of the solutions. The Institute should insist that report writing should continue to be adhered to by candidates in order to build the good writing culture.

- Another challenge is the English Language. This continues to be a headache for most candidates writing the examinations and it appears there is no conscious effort to reverse this negative trend. The construction of tenses and spellings have become issues for many candidates. It must be noted that incoherent communication does not help convey the thoughts of candidates clearly in their presentation and may make them lose marks in essence.
- Another important area of concern is how questions are answered. Each question should be written on a fresh page. This admonition by examiners continues to be held in contempt by some candidates as though it is a non-issue. An example here would suffice, questions are answered in a haphazard manner. Question five b) is answered as part of question three. This makes the marking and the scoring difficult for examiners. Candidates should as a matter of urgency eschew from this unhealthy practice. Each question should be answered separately.
- Writing across margins is also becoming a new craze. Some candidates would start writing from one margin to the other margin that is clearly labeled do not write in either margin. The margins are for examiners to aggregate their marks.
- Some candidates demonstrated strength in answering the questions with clarity of thoughts and with examples to bring out the issues clearly. Examples are very important in examinations as they help clarify ideas not well articulated by candidates.

RECOMMENDATION

The Institute should consider administering mock examinations for candidates at each diet to help them try their hands before the start of the examination to help them determine their level of preparedness and to right their wrongs before the main examination in order to increase the pass rate of the candidates.

QUESTION ONE

The spectrum of investment opportunities in Ghana has heightened and this has attracted some investors who intent to visit next month to access potential for investment. The Ministry of Finance has written to your Tax Consulting Firm to make a presentation on behalf of the Ministry to these Investors. The letter from the Ministry, contains in part, the following:

'International trade has given persons the ability to carry out separate aspects of their business operations in different countries. Even though it will be inconceivable to compel a person to pay taxes in every country where that person carries out business operations, the level of business activity carried on by a person in a particular country may expose that person to tax liabilities under the laws of that country. In Ghana, assessable income of a ***non-resident person*** *includes income effectively connected with a* ***Ghanaian permanent establishment*** *of the person irrespective of the source of the income…'.*

Required:

Prepare a report highlighting the following:

a) What Constitute Ghanaian permanent establishment with reference to Income Tax Act, 2015 (Act 896)? **(4 marks)**

b) Explain the taxation rules on Ghanaian permanent establishment as enshrined in the Income Tax Act, 2015 (Act 896). **(10 marks)**

c) There are ***economic double taxation*** and ***juridical double taxation***. Explain these **TWO (2)** concepts of double taxation. **(6 marks)**

(Total: 20 marks)

QUESTION TWO

a) In July 2012, Ghana introduced new transfer pricing rules and guidelines through Transfer Pricing Regulations, 2012 (LI 2188). The transfer pricing rules require the use of the **"*most appropriate*"** method to price related party transactions. Similar to the Organisation for Economic Co-operation and Development (OECD) guidelines, the transfer pricing methods approved by the LI 2188, among others, are:

i) The Comparable Uncontrolled Price method;
ii) The Resale Price method;
iii) The Cost-Plus method;
iv) The Transactional Profit Split method; and the
v) Transactional Net Margin Method.

Required:

Explain the transfer pricing methods stated above. **(10 marks)**

b) XYZ Parks Ltd, an Italian Company, had a contract for the construction of a fuel depot in Ghana. It was clear from the contract agreement that the production and fabrication costing $500,000 would be carried out outside Ghana. The installation works in Ghana and related services would cost $200,000 and GH¢2,400,000 respectively.

XYZ Parks Ltd has asked of your professional advice on the above transaction.

Required:

i) What is the tax implication of trading in Ghana and trading with Ghana? **(4 marks)**

ii) What will be your professional advice to XYZ Parks Ltd on the tax implication of other contract? **(6 marks)**

(Total: 20 marks)

QUESTION THREE

"Tax planning involves anticipating a set of circumstances and the identification of opportunities to minimize or defer tax liabilities within the law".

You have been appointed as a Tax Consultant to Ken Group Ltd, a manufacturing company, having issues with Ghana Revenue Authority on tax evasion and avoidance. Your first assignment is to meet the Board of Directors to brief them on various issues governing tax planning and how to take advantage of the provisions in the taxation laws to avoid the payment of certain taxes and possibly defer certain tax liabilities.

Required:

Write a report explaining the following:

a) T***ax planning*** and its ***intended objectives***. **(10 marks)**

b) T***ax planning maxims or variables*** with appropriate examples. **(10 marks)**

(Total: 20 marks)

QUESTION FOUR

a) Mamavi is a retail business woman with a chain of shops in Ghana. She commenced business on 1 March 2011, with the business name of Unity Enterprise. She sells health foods, fruits, vegetables and juices.

The Enterprise' profit or loss account for the year ended 31 December 2018 as prepared by the Accountant are reproduced below:

	Notes	**GH¢**	**GH¢**
Sales			150,450
Opening Inventory		4,005	
Purchases	i)	55,402	
		59,407	
Closing Inventory		(3,125)	
			(56,282)
			94,168
Add:			
Rental income	ii)	1,500	
Interest Earned		150	1,650
			95,818

Less			
Promotion/Entertainment	iii)	1,800	
Wages	iv)	32,740	
Electricity and Water	v)	4,500	
Bank Payments	vi)	12,400	
Telephone	vii)	2,703	
Depreciation		5,100	
Bad Debts		1,450	
Rent		5,000	
Rates	viii)	2,000	
General Bad Debt Provision		1,750	
Insurance	ix)	2,280	
Legal and other fees	x)	2,300	
Sundry	xi)	8,800	(82,823)
Net Profit			**12,995**

Notes

i) **Purchases**

The purchases figure includes GH¢2,200 in respect of goods taken by Mamavi for her own use with a mark-up of 25%.

ii) **Rental Income**

In 2018 Mamavi earned GH¢1,500 for the rent of her holiday home in Ho, Volta Region, for the year.

iii) **Promotion/Entertainment**	**GH¢**
Golf lessons	600
Christmas party	900
Advertising on Health foods	300
	1,800

iv) **Wages**	**GH¢**
Drawings by Mamavi	12,740
Staff wages	10,000
Paying Baby-Sitter to take care of Mamavi's daughter	6,500
Tax payment on account for Mamavi	3,500
	32,740

v) **Electricity and Water**

Mamavi pays electricity and water for her home and office, 20% of the cost relates to her home.

vi) **Bank Payments**	**GH¢**
Business loan repayments	5,200
Mortgage loan repayments	7,200
	12,400

A business loan was taken out to finance the cost of improvements to the store, in particular the juice bars. The interest element included in the loan repayment amounted to GH¢1,750. A mortgage loan was taken out by Mamavi to buy the family a house in Hlefi, Volta Region. The interest element in the loan repayment for the mortgage was GH¢2,670.

vii) **Telephone**
20% of the telephone costs relate to private use.

viii) **Rates**
This figure includes GH¢120 in respect of the local property tax for Mamavi's home. The difference is business rates.

ix) **Insurance**

	GH¢
Premises Insurance (Business)	800
General Business Insurance	1,000
Private medical insurance for Mamavi's children	480
	2,280

x) **Legal and other fees**

	GH¢
Accountancy Fee	1,200
Court case following a car accident	700
Speeding fines	400
	2,300

This court case was as a result of a car hitting Mamavi when she was walking her dog out at night. The car owner claimed Mamavi stepped out in front of him and therefore it was her fault. Mamavi's Lawyer told her to respond to the allegation because she needed five sessions of physiotherapy to help heal her leg. Mamavi is suing the car owner for her costs.

xi) **Sundry**

	GH¢
Painting	1,200
Juicers/Food Processors for shop	5,000
Advertising	600
Lease charges	1,200
Stationery	800
	8,800

GH¢700 of the painting cost related to the painting of Mamavi's private house. The balance related to painting her shop. GH¢1,200 lease charges relate to the leasing of a car for the business.

Required:
Compute Mamavi's chargeable income for the year ended 31 December 2018.

(17 marks)

b) ABC Ltd declared profit (loss) as provided for in the table below:

Year of Assessment	Business Income/ (Loss)	Investment Income /(Loss)
	GH¢	GH¢
2017	100,000	(50,000)
2018	(40,000)	120,000

Required:
Explain how the unrelieved losses will be treated. **(3 marks)**

(Total: 20 marks)

QUESTION FIVE

a) Mmabia University has written to a financial consultancy firm you work for requesting for a clarification in respect of the taxability or otherwise of its profits. The Financial Controller Bubu Moon signed the letter. It indicated that per the University's understanding, Mmabia is not liable to tax as Government has amended the laws exempting private universities from payment of taxes.

The Financial Controller indicated in his letter that the response from your firm would be shared with other universities to take note also.

The Manager in charge of tax has invited you as his team member to respond to this request for clarification on the matter as expressed by Mmabia University to help clarify the matter better.

Required:
Write a response on the clarification setting straight the tax provision on the matter and also, comment on the decision to share the response with other universities. **(10 marks)**

b) Compute the royalty payable on the following data of A Ltd, a Mining Company for 2018 year of assessment:

Production of resource (Volumes)	1,000,000
Revenue from sale	GH¢10,000,500

Note: the revenue above contains proceeds from sale of scraps amounting to GH¢10,500

Required:
Compute the royalty payable. **(2 marks)**

c) Lydia Waakye aged 16 years old is a sole proprietress with a big super market shop and makes income of an amount of GH¢40,000 per annum over the last 3 years.

Required:
How will the income be subject to tax? **(3 marks)**

d) Kankoka is registered with the Registrar General Department of Ghana as a Non-Governmental Organisation (NGO) and had income amounting to GH¢30,000,000 in 2018 year of assessment.

A detailed analysis reveals the following composition of the income:

Support from Benefactor based in Germany	GH¢10,000,000
Transport business	GH¢10,000,000
Government afforestation project disbursement	GH¢10,000,000

Required:
Determine the tax payable if any by Kankoka and comment on your answer and state any relevant assumption. **(5 marks)**

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE
Report

To: Tax Partner
From: Tax Intern
Date July 7, 2020
Subject: Ghanaian Permanent Establishment

a) Ghanaian permanent establishment, according to the Act 896, could be any of the following:

- A place in Ghana where a non-resident person carries on business or that is at the disposal of the person for that purpose.
- A place in Ghana where a person has, is using or is installing substantial equipment or substantial machinery.
- A place in Ghana where a person is engaged in a construction, assembly or installation project for ninety days or more. This includes a place where a person is conducting supervisory activities in relation to that project.
- A place for the provision of services in Ghana.
- A place in Ghana where an agent performs any function on behalf of the business of a non-resident person:
  - ✓ including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Ghana, but
  - ✓ excluding a case involving a general agent of independent status with its own legal personality acting in the ordinary course of business.

(4 points for one mark each for total of 4 marks)

b) Taxation Rules on Ghanaian Permanent Establishment(PE)

- The mere fact that a non-resident has a subsidiary in Ghana is not enough to make the subsidiary a permanent establishment of the parent company. It is important to show that the parent company performs or carries out its business through the subsidiary in Ghana before the subsidiary will be classified as a PE of the parent company. The general understanding of the word "permanent" establishment connotes an element of "continuity" and as such it will be difficult to characterize a one- off transaction as creating a permanent establishment of a non-resident in Ghana.

- Under the income tax law of Ghana, a permanent establishment is treated as an entity which is distinct from its non-resident owner. A Ghanaian permanent establishment is subjected to tax in the same manner as a resident company but a foreign permanent establishment is exempt from tax. The permanent establishment and its owner are treated as persons in a controlled relationship and thus the transactions must satisfy the arm's length principle. A Ghanaian permanent establishment is expected to withhold tax on payments made, pay taxes on payments received and pay tax by instalments after assessment in the same manner a resident company will do under a similar circumstance. The tax law recognizes a debt owed by an owner to a permanent establishment or a debt owed by permanent establishment to its owner and interest derived or incurred as a result of this debt obligation provided these obligations reflect in the book of accounts maintained by the owner and the permanent establishment.

- Any activity carried out by a permanent establishment is treated as conducted in the course of a single business.

- The Act also provides that when the owner of a permanent establishment employs an individual who is resident in Ghana; makes a sale of trading stock of the same or a similar kind as those sold through the PE and when the owner conducts any other business activity with a person resident in Ghana and the activity is of the same or a similar kind effected through the permanent establishment, the activities of the owner of the PE are treated as conducted by the Ghanaian permanent establishment.

- Any asset held by or employed in an activity of a permanent establishment is an asset of the permanent establishment. An intangible asset created by or through a permanent establishment is an asset of the permanent establishment. However, an intangible asset is recognized as an asset of a Ghanaian permanent establishment if that the asset is exploited in Ghana. A debt obligation incurred in borrowing money which is employed in the activity of a permanent establishment or which is used to acquire an asset which is held or employed in the activities of a permanent establishment is recognized as a liability of the permanent establishment. Any other liability arising directly out of an activity of the permanent establishment is also recognized as a liability of the permanent establishment.

(5 points @ 2 marks each = 10 marks to be allocated)

c) There are two types of double taxations: economic double taxation and juridical double taxation.

- ***Economic double taxation*** arises when income from the same economic activity is subjected to tax in the hands of different persons. Thus, Economic double taxation refers to the taxation of two different taxpayers with respect to the same income (or capital). Economic double taxation occurs, for example, when income earned by a corporation is taxed both to the corporation and to its shareholders when distributed as a dividend. A typical example usually cited to explain the concept of economic double taxation is the tax imposed on the income of an entity and dividends paid to shareholders. Since the income of the entity and the dividends paid to shareholders is generated from the same economic activity, the imposition of taxes at the corporate level and the shareholder level is viewed as economic double taxation of income.

- ***Juridical double taxation*** on the other hand, arises where more than one state imposes similar or comparable taxes on a stream of income of a person within identical periods. Thus, Juridical double taxation refers to circumstances where a taxpayer is subject to tax on the same income (or capital) in more than one jurisdiction. For example, a resident of Ghana who is also considered to be a resident of the United States would be potentially subject to concurrent full taxation in both countries.

  The substantial difference between economic and juridical double taxation lies in the fact that whereas in juridical double taxation, the tax is imposed on the same income (tax object) in the hands of the same person (tax subject) by more than one state, in economic double taxation, the income is taxed in the hands of different persons.

  Juridical double taxation usually arises due to the following:

  ✓ Source Principles or Rules

  ✓ Residence Principles or Rules

  The jurisdiction to impose income tax is based either on the relationship of the income (tax object) to the taxing state (commonly known as the source) or the relationship of the taxpayer (tax subject) to the taxing state based on residence or nationality (commonly known as the residence).

Thank

Nana Kwaw

(3 marks each = 6 marks to be allocated)

(Total: 20 marks)

EXAMINER'S COMMENT

Question One a)

This question required candidates to describe the constituent of Ghanaian Permanent Establishment (PE). This was a fairly easy question for well-prepared candidates. Some of the solutions offered by some candidates were worrying to say the least. The marks awarded were small relative to the requirement of the question.

Question One b)

This question demanded the taxation rules of Permanent Establishment (PE). This question required the application of knowledge of PE. It must be noted that all tax exposures akin to an incorporated entity may be related to a PE depending on what it is established to do except that a PE pays branch profit tax which the rest do not pay. The marks allocated for this area was so much.

Question One c)

This question tested candidates understanding of double taxation rules. The concepts of economic and juridical double taxation were actually the issue. It must be stated that candidates who really studied double taxation and types of double taxation were able to bag a lot of marks in this area notwithstanding.

In conclusion, the Question One required a written report. However, most candidates did not present work (solution) in a report format. This was obviously unacceptable. On the whole, a lot of candidates performed well despite the little aberration as highlighted above.

QUESTION TWO

a)

i) **The Comparable Uncontrolled Price (CUP) method**

The CUP method compares the price for property, goods or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. An uncontrolled price is the price agreed between independent parties for the transfer of property, goods or services. If the transfer is in all material respects comparable to the transfer between related parties, the price becomes a comparable uncontrolled price.

There are two possible types of comparison which are:

- Internal comparable uncontrolled price where the price to the controlled transaction is compared to the price charged in a comparable transaction between one of the parties to the transaction and an independent person and;
- External comparable uncontrolled price where the price to the controlled transaction is compared to the price of a comparable transaction between independent parties, both of whom are unrelated to the parties to the controlled transaction

The use of an internal comparable uncontrolled price is preferred because relatively the circumstances of the controlled transaction are likely to reflect more closely those of the uncontrolled transaction.

(2 marks)

ii) **Resale Price (RP) method**

The resale price method is based on the price at which a product that has been purchased from a related party is resold to an independent person. This resale price is reduced by the resale price margin representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in the light of the functions performed (taking into account assets used and risks assumed), make an appropriate profit. What is left after subtracting the resale price margin can be regarded, after adjustment for other costs associated with the purchase of the product (e.g. customs duties) as an arm's length price of the previous transfer of property between the related parties.

The resale price method will be most useful where the reseller contributes little to the value of the product ultimately on-sold on an arm's length basis. This is because reliable comparables are more likely to be found. The method will be most reliable if the reseller on-sells within a short time because the more time that lapses, the greater the risks assumed in relation to changes in the market, in rates of exchanges, etc. This, and similar issues, will become significant if there are significant variances between such business practices carried out by the tested party, and those carried out by parties identified as comparables. If there are significant differences that, at arm's length, are likely to impact upon the return to resellers, it will be necessary to make comparability adjustments.

(2 marks)

iii) **Cost Plus (CP) method**

The CP method uses the costs incurred by the supplier of property, goods or services in a controlled transaction. An appropriate CP mark-up is added to this cost, to make an appropriate profit in the light of the functions performed taking into account assets used, risks assumed and the market conditions. What is arrived at after adding the cost plus mark-up to the above costs may be regarded as an arm's length price of the controlled transaction.

The CP method starts by computing the cost of providing the goods or services and adds an appropriate mark-up. In contrast, the Resale Price method starts from the final selling price and subtracts an appropriate gross margin to arrive at a purchase price. The CP method will use margins computed after direct and indirect costs of production, while a net margin method will use margins computed after operating expenses of the person as well.

(2 marks)

iv) **Transactional Profit Split (PS) method**

The (PS) method identifies the aggregate profit to be split for the related parties from a controlled transaction(s) and then splits those profits between the related parties based on an economically valid basis. The combined profits to be split are the profits combined earned by the associated enterprises from the controlled transaction under review.

The profit may be the aggregate profit from the transactions or a residual profit intended to represent the profit that cannot readily be assigned to one of the persons. Factors to be taken into account in undertaking a profit split are:

- Whether the profit split is to be undertaken on a particular product line, an aggregation of products, or a whole of entity basis.
- Whether it is necessary to identify the persons in relation to the transaction and the profits of each person so as to determine the profits to be split among them if the person transacted with more than one connected person.
- Whether the accounts of the related persons need to be put on a common basis as to accounting practice and currency and then consolidated in order for the combined profit to be determined.

(2 marks)

v) **Transactional Net Margin Method (TNMM)**
The TNMM examines the net profit margin relative to an appropriate base such as sales, costs or assets that a person realizes from a controlled transaction or transactions that it is appropriate to aggregate. This is compared with the result achieved by independent persons on a similar transaction(s). The main difference between the transactional net margin method and the profit split method is that the former is a one-sided method" that is applied only to one of the connected persons, whereas the latter is applied to all the relevant connected persons.

The transactional net margin method requires the comparison of net margins obtained in its related party dealings against either:

- The net margins of the person's dealings with independent persons in comparable circumstances; or
- The net margins earned in comparable dealings between two independent persons.

(2 marks)

b)

i) Trading in Ghana is having presence in Ghana, doing business in Ghana and making profits in Ghana. Trading in Ghana is taxable in Ghana while trading with Ghana is not having presence in Ghana and not doing business in Ghana. Trading with Ghana is not taxable in Ghana. **(4 marks)**

ii) **Tax implication of XYZ Park Co contract for fuel depot in Ghana are as follows:**

- **Production and Fabrication works – $500,000**.
This work is to be carried out outside Ghana. Therefore, permanent establishment cannot be established in Ghana. The income therefore not liable to tax in Ghana.

Installation Work and related service $200,000 and GH¢2,400,000 respectively.

- Installation site is in Ghana. This will serve as a permanent establishment for the performance of the work in Ghana.
- Related services will also be performed in Ghana and therefore will constitute a permanent establishment for XYZ Park in Ghana.

- If there is double tax agreement (i.e. tax treaty) between Ghana and the country of residence of XYZ Park, Ghana tax will apply to both the installation works and related service and appropriate relief provided.

(4 points @ 1.5 marks each = 6 marks)
(Total: 20 marks)

EXAMINER'S COMMENT

Question Two a)

This was one of the generous questions ever asked in examination. The methods of Transfer pricing were listed and candidates were required to explain them. Unfortunately, however, most candidates lost marks because they were unable to realize that each method is about the price between unrelated persons being used as a yardstick to determine prices between persons who are related in order to avoid price manipulation. The essence is to ensure that prices of goods and or services are at arm's length. On the whole, the performance was impressive as many got the pass mark.

Question Two b)

This question tested practical example of trading in Ghana and trading with Ghana. It became very clear that their practical implication of the concept got lost on many candidates. Few candidates understood the drift of the question and did so well in it.

QUESTION THREE

a) Tax planning is the arrangement of one's affairs in such a manner that the tax planner may either reduce the incident of tax wholly or reduce it to maximum possible extent as may be permissible within the framework of the taxation laws. It does not amount to evasion of tax. It is an act of prudence and farsightedness on the part of the taxpayer who is entitle to reduce the burden of his tax liability to the maximum possible extent under the existing law. Tax planning ensures not only accruals of tax benefit within the four corners of law, but it also ensures that the tax obligations are properly discharged to avoid penal provision.

   The first and foremost characteristic of tax planning is that it results in the reduction in tax liability of an individual which ensure that an individual has more disposable income which can be used by the individual for consumption or for making investments which can come in handy in future.

   Another feature of tax planning is that one needs to plan in advance regarding how to make sure that tax liability is reduced to the maximum, possibly by investing in tax saving instruments right from start of the financial year. If a taxpayer is thinking that he/she can reduce tax liability by doing tax planning the night before the last date for filing income tax returns, then he/she will be in for disappointment.

   Another feature of tax planning is that effective tax planning can be done only by investing in tax saving instruments which can be through tax exemptions, rebates, allowances and other reliefs or benefits permitted under the Law.

   Tax planning is one thing which has to be made every year and unlike other investments like real estate or shares where one has to review the investment after 2 or 3 years.

Lastly, tax planning is dynamic in nature because every year you have to modify your tax plan according to rules framed by the government as the government keeps changing tax laws which in turn keep the tax planner on toes as he or she has to change his or her investment in tax saving instruments accordingly.

(3 marks for explanation of tax planning)
(2 marks for any two features of tax planning)

Intended objectives of Tax Planning

- **Reduction of Tax Liability:** A taxpayer can save the maximum amount of tax, by properly arranging his/her operations as per the requirements of the law, within the framework of the statute.
- **Minimization of Litigation:** There is a war-like situation between the taxpayers and tax authorities as the taxpayer wants the tax liability to be minimum while the authorities attempt to extract the maximum. So, a proper tax planning aims at conforming to the provisions of the tax law, in such a way that incidence of litigation is minimized.
- **Productive Investment:** One of the major objectives of tax planning is to channel taxable income to different investment plans. It aims at the optimum utilization of resources for productive causes and relieving the taxpayer from tax liability.
- **Healthy Growth of Economy**: The growth and development of the economy greatly depend on the growth of its citizens. Tax planning measures involve generating more money that flows freely and results in the sound progress of the economy.
- **Economic Stability:** Proper tax planning brings economic stability by various techniques such as mobilizing resources for national projects or availing ways for investments which are productive in nature.
- **Employment generation:** Tax planning creates employment opportunities in different ways. Firstly, efficient tax planning requires some sort of expertise that creates job opportunities in the form of advisory services. Secondly, amount saved through tax planning is generally invested in commencement of new business or the expansion of existing business. This creates new employment opportunities

(Any 5 points for 5 marks)

b) The following are the tax planning schemes or variables or activities;

Time Variable

When investors expect tax rates to decrease or remain constant over time, one desirable goal is to postpone the moment of taxation as further in the future as possible. Even when tax rates are expected to rise a little, one could benefit from delaying the recognition of income due to the concept of time value of money. However, if one expects a sharp increase in tax rates, acceleration of the recognition of income becomes rewarding.

Due to the decline in the present value of money, the further into the future that the money is received or paid out, the effect of a tax on income will be less if it occurs further in the future. Likewise, a tax deduction is more valuable if taken sooner rather than later, assuming that tax rates remain unchanged during the relevant time frame. Thus, taxes can be lowered by both postponing taxation of income items to later tax years and accelerating tax deductions to earlier tax years.

Also rules of taxation pertaining to taxpayers vary with respect to time. One set of rules may apply for the first five years and a different set will apply thereafter. Thus, a tax benefit available in one year may disappear in the next just as a statutory restriction causing a tax problem this year may be lifted in the future.

This planning technique is most effective when the taxation of the income can be deferred without differing the related cash flow from the income. In the same manner, greater tax savings will result if one is able to accelerate the deductions without altering the timing of the related cash payments.

(2.5 marks)

Jurisdiction or Location Variable

Another method to reduce income tax bill is to ensure that an additional income will be attributed to a family member (in case of individuals) or subsidiary (in case of corporations) with the lowest marginal tax rates. Such behaviour is especially profitable in countries with progressive income tax system and also in case of multinationals. We distinguish between two subtypes of such schemes: those that are purely under the jurisdiction of one tax authority (domestic transactions) and those that have an international scope (international transactions). Tax authorities around the world try to enforce the Substance-Over-Form and Business-Purpose Doctrines when dealing with the contracts between related parties (Scholes et al. 2005). They are much less concerned when contracts are written between parties with opposite interests as in those cases the use of arms-length prices is usually a rule.

All citizens and residents, including companies incorporated in Ghana are subject to income tax provided the income is accrued in, derived from or brought into Ghana. In Ghana the rate of corporate income tax differs depending on where the entity is located or the type of industry in which the company is operating. For example, within the Ghana Tax Jurisdiction companies located in the Free Zone Areas have different rules. Manufacturing Companies in Accra/Tema, Regional capital and other areas enjoy location incentives. Agro-based companies established in Ghana enjoy tax holidays and companies producing cocoa by-products from cocoa waste have different tax rates depending on where they are located.

In summary, tax plays an important role in location decisions, principally in three ways: the fiscal burden, the administrative burden, and long-term stability and predictability.

(2.5 marks)

Character or Activity variable

The third type of tax planning activities includes transactions which convert one type of income into another. In many countries "ordinary income" (like wages, dividends, interests etc) is taxed more heavily than capital gains. Sometimes the distinction has been made between "active income" and "passive income". In the next two sections we analyze one relatively widespread scheme in Estonia that relies on differential taxation of dividends vis-à-vis compensation for work.

Every income item is characterized as either ordinary income or capital gain. Ordinary income is generated from sale of goods or performance of services in regular course of business. Income generated by investments (interest, dividends, royalties, and rents) is ordinary. Capital gains are generated by the sale or exchange of capital assets

Most business income is characterized as ordinary income and taxed at the rates applicable to the taxpayer earning the income. Several tax characters may provide for taxation at a lower rate. For example, individual taxpayers earning interest on Treasury bill issued by the Government of Ghana are exempted from tax. In addition, Banks' lending to the agricultural sector have different rate from lending to other sectors of the economy.

When income is taxed at a preferential rate, the before-tax return earned may be lower than the returned earned on income subject to a higher tax rate. The reduction in pre-tax return inherent in tax-favoured investments is often referred to as an implicit tax. Implicit taxes arise in many jurisdictions in which preferential tax treatment is granted to certain activities but not to others. For instance, most tax laws encourage the acquisition of business property by allowing accelerated depreciation of asset costs over recovery lives much shorter than the assets economic lives. This situation leads to tax benefits decreasing the after-tax cost of purchasing assets relative to leasing comparable property. As a result, the cost of leasing may decline to induce business to continue to rent rather than buy assets.

(2.5 marks)

Entity Variable

Different entities, such as sole proprietorships, partnerships, limited liability companies and corporations, are taxed at different rates, so choosing the right entity may minimize taxes. For instance, corporations do not pay employment tax, so if a taxpayer organizes his business as a corporation, he can receive part of his income as a dividend, which is not subject to employment taxes.

This focuses essentially on individuals and companies as the two types of taxpaying entities involved in business and investment transactions. Given the progressive nature of income tax rates in Ghana, the marginal tax rate applying to each taxpaying entity will depend on that entity's particular circumstances. As a result, the tax rates are bound to differ among these organizations. Entity variable tax planning therefore takes advantage of these rates differentials to improve NPV. Entity variable refers to planning opportunities that shift income to an entity, which is subject to a lower marginal rate of tax or a shift of deductions to an entity subject to higher marginal tax rate.

An individual beginning a business or investing in another person's business must carefully weigh the tax benefits and costs of different organizational forms against the non-tax costs or benefits of these entities before the business or investment is undertaken.

Tax costs decrease (and cash flows increase) when income is generated by an entity subject to a low tax rate.

(2.5 marks)

(Total: 20 marks)

EXAMINER'S COMMENT

This question was on tax planning. It goes without saying that it is an important area and also popular with candidates. A good number of candidates performed well in this area and bagged good marks.

QUESTION FOUR

a) **Mamavi**
Computation of chargeable Income for the year assessment 2018
Basis Period 1/3/2018 -31/12/2018

	GH¢	**GH¢**
Net Profit per account		12,995
Deduct: Rent income	1,500	
Interest earned	150	1,650
		11,345
Add the following:		
Depreciation	5,100	
General Bad Debt Provision	1,750	
Drawings of goods	2,750	
Golf Lessons	600	
Staff Christmas Part	900	
Drawings of cash	12,740	
Payment to Babysitter	6,500	
Preliminary Tax Payment	3,500	
Light and Heat (20% x 4,500)	900	
Loan Interest (5,200- 1,750)	3,450	
Mortgage interest (7,200- 2,670)	4,530	
Telephone (20% x 2,703)	541	

Property Rate	120	
Private medical insurance	480	
Court case	700	
Speeding fines	400	
Juicers/Food Processors	5,000	
Painting	700	50,661
Chargeable Income		62,006
Add back Interest earned		150
Total Chargeable Income		**62,156**

(17 marks to be allocated evenly using ticks)

b)

2017 Year of Assessment	**GH¢**	**GH¢**
Business Income		100,000
This will be the net income for tax because we cannot deduct the investment loss		
2018 Year of Assessment		
Investment Income **Less:** Investment loss in 2017 Business Loss in 2018	 50,000 40,000	120,000 90,000
Net Income		**30,000**
An unrelieved loss from business must be deducted in calculating income from investment. However, an unrelieved loss from investment shall be deducted only in calculating income from investment.		

(3 marks evenly spread using ticks)
(Total: 20 marks)

EXAMINER'S COMMENT

This was a question that bordered on examination of accounts. Many candidates did so well in it. A few of the challenges raised here would help curb the associated problems in examination of accounts. Computation of mark-up continues to be a challenge. It was also observed that most candidates did not provide headings in their solutions to the examination of accounts question. No basis period and no year of assessment were added. These pieces of information are important component of any examination of accounts. Marks may be lost as a result of this important omission. This question was also well answered by some of the candidates.

QUESTION FIVE

a) Hope Firm
Box 22
Accra
Date

FINANCIAL CONTROLLER
MMABIA UNIVERSITY
ACCRA
Sir,
REQUEST FOR CLARIFICATION ON THE TAX STATUS OF PRIVATE UNIVERSITY

- **Introduction**
  Reference your letter on the above issue dated 12th June, 2019, I furnish below the tax implication of profit made by privately-owned universities.
- **Issue**
  The tax provisions (Act 2017, Act 956) state that privately-owned universities shall be exempt from tax when they plough back a hundred percent of their profit-after tax into the business.
- **Implication of the provision**
  With the way the law is crafted, it requires the Privately-owned universities to pay the taxes unless they are able to provide proof of ploughing back their profits.
- **Sharing information with others**
  Our clarification is in response to your request and it shall not be shared with others.
- **Conclusion**
  On the strength of the above, it is our hope that your company shall act accordingly so as to remain in compliance with the tax laws.
  Thanks

  Jojo Small

(5 points @ 2 marks each = 10 marks)

b) Rate of Royalty 5%
Revenue= 10,000,500-10,500
=9,990,000
Royalty Payable:
5% * 9,990,000 =499,500
GH¢ 499,500

(2 marks)

c) Tax is charged on income from employment, business and investment in the case of a resident person, on world-wide income but for non-resident on income derived from and accrued in Ghana.

Lydia Waakye, being an income earner shall be required to pay taxes on income. However, as an individual aged 16 years and running an enterprise, she is an incapacitated person (not fit and proper) and therefore, the tax affairs must be managed by her trustee.

She cannot pay tax on her income, the trustee will pay tax on her behalf until she is able to pay at an adult age

(3 points well explained for 3 marks)

d)

- **Introduction**
  An NGO is a charitable organization that is exempt from tax on its NGO activities. When an exempt entity engages in business activities, that business activities shall be subject to tax.

- **Income from Benefactor of GH¢ 10,000,000**
  Following from the above, the support from the Benefactor based in Ghana is not a business activity after all NGOs run their activities based on funds from Benefactors and like-minded persons.

- **Transport business income of GH¢ 10,000,000**
  Transport business is income from business for which Kankoka shall be subject to tax. Therefore, the income of GH¢10,000,000 from the transport business shall be subject to tax using the marginal tax rate of 25%.

- **Income from Government Afforestation**
  The funds from Government on afforestation is income that is meant for a dedicated purpose. This income is therefore exempt from tax in the hands of Kankoka.

- **Tax computation:**

	GH¢
Income from Transport business	10,000,000
Tax charged @ 25%	2,500,000

The assumption is that the income of GH¢10,000,000 has taken into account all cost associated with the transport business

(5 points for 5 marks)

(Total: 20 marks)

EXAMINER'S COMMENT

Question Five a)

The question required that candidates demonstrate knowledge of taxation of private universities and whether knowledge shared with a client by a consultant should be made public to others without authorization.

The question as part of the requirement demanded a letter to be written as part of the solution. Most candidates did not provide any address as part of the solution. With regard to private universities, their exemption is conditional, meaning, they must demonstrate ploughing back 100% of their after tax profit before the exemption is secured.

Question Five b)

It required the calculation of mineral royalty. The proceeds from the sale of scraps should not be part of the revenue for the purpose of royalty computation. The rate of royalty is 5%. It must be noted that the Minister for Finance may alter the rate of royalty as part of development agreements.

Question Five c)

Lydia Waakye is considered an incapacitated person for tax purpose given her age at 16 years and from the taxation of trust, guardians would act as trustees and file and pay tax on her behalf. On the other hand, GRA could wait till she gets to an age to enter into contract to enable her file and pay her taxes if she has no guardian to represent her. The trustees will file and pay taxes at the marginal tax rate.

Question Five d)

This question required analysis of income of a charitable organisation that is taxable and that which is not taxable. Business income of a charitable organisation is taxable under section 97 of Act 896.

CONCLUSIONS

From the above, the performance of the candidates followed the normal trend. The questions also in our opinion showed the positive discrimination that every professional examination should portray. Good candidates made the mark and those who did not learn did not pass.

Candidates should take the examinations seriously in order to prepare adequately so as to be able to pass the examination easily. Candidates should learn to read the requirement of the questions carefully before they attempt to answer the questions subsequently. Some of the answers offered indicated lack of appreciation of the requirement of the questions and consequent paucity of presentation.

English language continues to be the Achilles heels of candidates as it continues to thwart the effort of candidates in their writing. The only anti-dote to the English language problem is the reading of story books and surfing other scholarly sites for materials. This, candidates should work on, in order to improve upon their grammar and their writing skills.

Candidates should continue to read the tax laws and other relevant materials to broaden their horizon and to acquaint themselves with the style of presentation in order to maximize marks.

Candidates with illegible handwriting should continue to work on their hand writing to make the handwriting better and readable.