MAY 2021 PROFESSIONAL EXAMINATIONS
ADVANCED TAXATION (PAPER 3.3)
CHIEF EXAMINER'S REPORT, QUESTIONS AND MARKING SCHEME

EXAMINERS' GENERAL COMMENTS

The paper was practically oriented. It tested the ability of candidates to apply the knowledge and skill they acquired in interpreting the practical questions. The paper mimicked the reality of today's tax situation globally.

The level of difficulty was quite appropriate for the final level taxation paper and comparable to any tax paper examinable at any Professional level the world over. By implication, candidates who studied well were better placed to handle the paper without any stress. However, that cannot be said to be the case for persons who studied by fits and starts as the saying goes, a rolling stone gathers no moss.

On the whole, the paper was not error-ridden with clarity as its feature. The typesetting was good, with crafted questions which were properly moderated. The team that worked on the question right from scratch to the examination process should be commended for good work and should not rest on their oars.

STANDARD OF THE PAPER

The standard of the May 2021 diet cannot be over-emphasised. The quality of the paper used was good, with proper font size appropriate for easy reading. The paper could be answered by an average candidate within three (3) hours without complaint. The paper was case study-liked questions. In some cases, the computations were done, and candidates were required to use the computation to explain the tax implication. In other cases, candidates were required to analyse the tax implication in a given scenario. The nature of the questions was bound to create discrimination between scholars and non-scholars. Candidates who did not study well had some challenges. The performance was much about the level of preparation and the input that was put into it.

The paper would have passed off as the best in recent times except that one area was repeated three times, making candidates who did not prepare well in this area have challenges. It is hoped that in future, this should be taken into account so that a repeat of such is avoided, else it has the potential of giving some candidates unfair advantage against others.

The Institute has largely followed its syllabus coverage and therefore kept candidates in no doubt about the areas they should always prepare. Every question was within the syllabus, and the marks allocated were also appropriate as they compensated for the efforts required.

PERFORMANCE OF CANDIDATES

The Institute's examination has never been easy. It requires some effort and dedication to be able to pass. Unfortunately, this is exactly what this paper came across. It indeed created clear discrimination between the read and the unread.

What was so certain before the examination was that, the questions were going to come from the syllabus as has always been the norm over the years with questions spread across the entire syllabus.
The general performance may slide a bit from the previous diets as this paper came across, as question 1 to the last question tested the practical ability of candidates. Many appeared ready to meet recall and theory questions, but luck eluded them, and they had to settle for the practically oriented solution they had not made up their minds to handle.

Was it out of the ordinary? The simple answer is that the paper was not out of the ordinary. It was very much within the syllabus and so much within the candidates' academic strength, especially those who studied well.
Admittedly, the impact of the Covid-19 has been very devastating as some candidates had to hang around online studies with its attendant disadvantages while others risked attending in-person classes. Classes in both streams could not have been so effective compared to period without Covid that allowed candidates to get close to each other to study and solve questions together. This era has instead promoted individual studies, which is almost ineffective.
There was a visibly poor preparation of candidates. Some of the answer booklets returned almost the way they were given out. Nothing to write. Such candidates did not know what to write. Others had no idea what the requirements of the questions were and presented their understanding of the issues.
Handwriting is another stress for examiners. Unfortunately, bad handwriting is becoming common in the examination.

NOTABLE STRENGTHS AND WEAKNESSES OF CANDIDATES
As it is with every examination, some candidates could show class while others would need to work harder if they must pass the examination.
Notable weaknesses:
- Inability to read questions carefully continues to cripple candidates' ability to present the right materials.
- Candidates have difficulty in relating theory to practice. Some find it difficult with interpretations and analysis.
- The features of writing memos was lost on many candidates. Most of them failed to use the memo presentation style and lost marks for that.
- Most of the computation questions were solved without headings. Moreover, some do not provide the cedi symbol making examination marking quite uncomfortable.
- The numbering of questions continued to be a challenge. For example, in some cases, the solution to question 1 was added to the solution to question 5, thereby making marking difficult.
- Additionally, most do not read the examiners' report and keep repeating mistakes they are told not to make in the report.
- English language and poor writing skills are a threat to this profession. Candidates must know that the accountancy profession does not make us backstage staff but staff who interact and communicate with other stakeholders, and therefore English language is critical.

Notable strengths:

- The maxim of tax planning is a well-answered question. Some few candidates scored high marks meaning, and they made time to read and took time to answer the questions correctly or to the best of their ability.
- Some candidates also understood the thin Capitalisation question and earned good marks for it.
- Some candidates also did so well in the mining question despite its length.

QUESTION ONE

a) Farmer Ltd is a non-resident company based in USA. Farmer Ltd has succeeded over the years acquiring and selling companies in distress alongside its primary objectives of buying and selling cosmetics.
In the 2020 year of assessment, it decided to announce its presence in Ghana by acquiring Bugum Ltd a resident company. Bugum Ltd has had financial setbacks in its fortunes over the last couple of years and became vulnerable to predators.

Required:
Advise the management of Farmer Ltd, what the tax implications are if Farmer Ltd acquires more than 50% of the underlying ownership of Bugum Ltd. **(8 marks)**

b) At a public symposium, a tax administrator made a statement to the effect that withholding taxes must be exacted from any payment made to persons around the world for goods, works and services.

Required:
Evaluate the extent to which this statement is true in the light of the tax provisions of the Income Tax Act, 2015 (Act 896) as amended. **(4 marks)**

c) Kaeka Ltd is a resident company providing cleaning services in Ghana. For the first time in the history of the entity, it launched operations as an external company in January 2020 in Lusaka- Zambia. It came to light that the entity earned the equivalent of GH¢2,500,000, which was evenly made for the 2020 year of assessment.
On the home front, it earned GH¢16,000,000 in 2020 year of assessment as income in Ghana. Assume that allowable cost of GH¢12,000,000 was incurred. It received a dividend net of tax from a company in Israel it acquired shares from amounting to GH¢20,000 in December 2020. Tax of GH¢5,000 was paid on the dividend received.

Required:
i) Compute the tax payable by Kaeka Ltd. **(4 marks)**
ii) Explain the tax implication if the company made the income from Zambia in the last quarter of 2020. **(4 marks)**

(Total: 20 marks)

QUESTION TWO

a) There has been a merger among three companies. Ann Ltd, Bab Ltd and Cee Ltd. The merger was geared towards creating a monopoly in the market.
After careful revaluation of the assets and liabilities of the companies, the following is the outlook.
Gain from revaluation:

	GH¢
Ann Ltd	4,200,000
Bab Ltd	5,000,000
Cee Ltd	5,200,000

The following is the outlook of the new company after the merger:

Profit	GH¢5,000,000

Required:
As an Intern of IKERN and Associates, write a memo to your partner on the company's tax exposure after the merger. **(7 marks)**

b) Tanko Ltd has been into tree cropping for some time now. The last four years has been a boom for the business as its fruits are bought before they are harvested on the farmland. Tanko Ltd intends to transfer the entity to Agoo Ltd as a going concern.

Required:
Explain the tax implication of the transfer of Tanko Ltd to Agoo Ltd. **(5 marks)**

c) As part of measures to fight back base erosion and profit shifting, Parliament of Ghana has legislated against profit splitting.

Required:
Evaluate the impact of income splitting as an anti-tax avoidance measure. **(4 marks)**

d) Ganigani Ltd is a company based in Ghana and has a business dealing mainly in Nigeria. In the 2020 year of assessment, the following data is relevant to parts of its operation:

Global income	GH¢25,000,000
Tax paid in Nigeria	₦1,000,000
Exchange Rate	GH¢1= ₦67.59

Ganigani Ltd elects to relinquish a foreign tax credit for the year in line with section 112 of the Income Tax Act, 2015 (Act 896) as amended.

Required:
Compute the tax payable. **(4 marks)**

(Total: 20 marks)

QUESTION THREE

a) Ghana Investment Promotion Centre (GIPC) is a Governmental agency established to promote, co-ordinate and facilitate investment in Ghana. In its efforts at promoting both local and foreign investments in Ghana, it has mounted series of lectures to drum home this fact and has thus done so well over the years in this regard.

Required:
In line with the GIPC Act, 2013 (Act 865), how should foreigners participate in business activities in Ghana? **(9 marks)**

b) Contractual terms between two persons both dependent and independent persons must be examined regarding goods, property and services. The associate's transactions must be scrutinised to ensure that revenue is not lost relative to non-associate.

Required:
How do contractual terms protect revenue in transfer pricing arrangements? **(3 marks)**

c) The following is an extract of Adidas Ltd for 2020 year of assessment with basis period January to December each year.

	1 January, 2020	**31 December, 2020**
	GH¢	**GH¢**
Stated capital	1,000,000	1,200,000
Retained Earnings	(2,000,000)	(1,100,000)
Revaluation Reserves	10,000	10,000
Equity	990,000	110,000

Additional information:

- Adidas Ltd, is owned 100% by IDAS
- The loan taken 5 years ago was GH¢12,000,000 from IDAS
- Loan balance as at 1 January, 2020 was GH¢2,400,000
- Loan balance as at 31 December, 2020 was GH¢1,200,000
- Interest payable for the 2020 year of assessment stood at GH¢150,000 to IDAS
- Foreign exchange loss from the loan repayment for 2020 was GH¢20,000

Required:

i) Explain the tax implications of the above arrangement. **(6 marks)**

ii) Explain the tax implication of the movement in the stated capital as shown in the extracts above. **(2 marks)**

(Total: 20 marks)

QUESTION FOUR

Kanawu Mine Resources Limited was incorporated on 1 January 2017 to mine gold and diamonds at Prestea in the Western region of Ghana. Various reconnaissance and prospecting activities took place from 2017 to 2019. Actual production started on 1 January, 2020.

The following were the cost and revenue relative to reconnaissance and prospecting activities and cost from 2017 to 2019.

Activities	**2017 GH¢**	**2018 GH¢**	**2019 GH¢**
Analysing historical exploration data	250,000	-	-
Purchase of motor vehicles	1,000,000	-	-
Exploratory drilling and sampling	-	2,500,000	-
Purchase of surveying infrastructure	500,000	-	-
Construction of office building	-	3,700,000	-
Conducting market and finance studies	-	-	300,000
Renting of office space	400,000	-	-
Sinking shafts and underground drifts	-	-	5,400,000
Purchase of land	-	460,000	-
Permanent excavations	-	400,000	3,000,000
Constructing roads and tunnels	-	2,200,000	1,100,000
Purchase of drilling machines	-	700,000	900,000
Purchase office equipment	50,000	550,000	120,000
Legal fees for the acquisition of lease	-	130,000	-
Purchase of software	-	230,000	-
Removal of overburden and waste rock	-	-	470,000
Acquisition of rights to explore	300,000	-	-
Protocols to chiefs of Prestea as part of the arrangement	10,000	5,000	23,000
Topographical and geophysical studies	25,000	56,000	-
Geological and geochemical studies	35,000	300,000	-
Sale for cash of surveying software	-	-	130,000
Penalty for breach of mining regulations	-	-	25,000
Trenching and sampling expenses	-	400,000	100,000
Sale of drilling equipment	-	-	50,000
Revenue from pre-production items of gold	-	-	500,000

The following transactions took place from 1 January, 2020 to 31 December, 2020:

i) The company received a compensation of GH¢3,500,000 from their insurers for destruction of some gold mined.

ii) Mining and processing cost, including wages and salaries, incurred during the year was GH¢120,345,000.

iii) Sales of gold and diamonds GH¢378,532,900.

iv) Ground rent paid to the Administrator of Stool Lands GH¢321,500.

v) The company undertook further research and development studies at the cost of GH¢374,300.

vi) Royalties amounting to GH¢11,355,987 was paid to the government.

vii) The company acquired a new Mineral Right at a cost of GH¢5,000,000. Bonus payment made in respect of grant of the new mineral right was GH¢300,000. The legal and other professional fees paid with respect of the acquisition of the new right was GH¢121,800.
viii) Stope preparation and development cost paid was GH¢884,300. The total cost of the stope preparation and development incurred was GH¢1,021,700.
ix) The total cost of business operating permits was GH¢5,563,200. This amount includes GH¢400,000 provision for 2021.
x) Other general and administrative expense totaled GH¢190,467,100. This includes construction of a huge iron gate at the entrance of the mine at a cost of GH¢421,600.
xi) Selling and distribution cost paid was GH¢172,554,700.
xii) Finance charge of operations, including interest on loans and bank charges, incurred was GH¢211,500,000.

Required:

a) Compute capital allowance claimable in 2020. **(6 marks)**
b) Compute the chargeable income of the company and the tax payable for the year 2020. **(10 marks)**
c) Comment on the tax treatment of Royalty Payment and acquisition of new mineral rights. **(4 marks)**

(Total: 20 marks)

QUESTION FIVE

a) You are a final level student of ICAG engaged by Baby Heights Ltd, a manufacturing company. The company is 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 brief report in relation to the case above explaining to the Board of Directors about ***tax planning maxims or variables*** with appropriate examples. **(10 marks)**

b) The shareholders of Japan Rocks, a computer chip manufacturing company based in Japan, are planning acquiring 60% of the shares in Konadu Yiadom Ltd in Ghana. The return on income for Konadu Yiadom Ltd for the year ended 31 December 2020 showed a loss of GH¢3,600,000 and the financial cost of GH¢900,000.

As a tax expert, the parties are requesting an opinion on the tax implications of the proposed transactions for Konadu Yiadom Ltd and its current shareholders.

Required:
Advise Japan Rocks and its shareholders on the income tax implications of the acquisition of shares by Japan Rocks and the treatment of financial cost. **(10 marks)**

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE

a) Mergers and acquisitions have blessings for the predator(s) and may equally bring losses to the predator. Therefore, under section 62 of Act 896 (Act 2015), the following shall not be benefitted by the new owners that are Farmer ltd in this.

- The financial cost incurred under section 16 cannot be beneficial to the new owners.
- Shall not benefit from any loss incurred under section 17
- Shall not claim any bad debts incurred by previous managers
- Shall not carry back loss if it is in a long term contract.
- Shall file two tax returns, one before and one after the change in underlying ownership.
- Will benefit from new values of depreciable assets
- Can rebrand to create a value-added image for the entity

(8 marks)

b) An authorised agent is required to withhold tax from payment to a withholdee. The withholdee could be resident or non-resident. In the case of the resident, there is some situation where there is an exemption. In the case of a non-resident, withholding is only relevant when the person is trading in Ghana. In the case of trading with Ghana, withholding taxes do not apply to such transactions.

(4 marks)

c) Kaeka Ltd

i) Computation of tax payable
Y/A 2020
Basis Period 1/1/2020-31/12/2020

	GH¢	GH¢
Income from business		16,000,000
Add foreign Income		
Branch Income (2,500,000/2)	1,250,000	
Dividend	25,000	1275000
Gross Income		17,275,000
Deduct allowable deduction		12,000,000
Chargeable Income		5,275,000
Tax Charged @ 25%		**1,318,750**
Less Tax Paid on Dividend		5,000
Tax payable in Ghana		**1,313,750**

(4 marks)

Explanation

Income received from foreign country losses its character hence the dividend added to the income and tax paid in a foreign country given as credit.

Additionally, the branch of the entity in Ghana has become a foreign PE and therefore, its income for the first 183 days is taxable in Ghana. After that, it is exempt from tax.

ii) Kaeka Ltd
Computation of tax payable
Y/A 2020
Basis Period January 1-December 31, 2020

	GH¢
Income from business	16,000,000
Add foreign Income	
Dividend	25,000
	16,025,000
Deduct allowable deduction	12,000,000
Chargeable Income	4,025,000
Tax Charged @ 25%	**1,006,250**
Less Tax Paid on Dividend	5,000
Tax payable in Ghana	**1,001,250**

(4 marks)

Explanation

Since the foreign Permanent Establishment did not earn the income in the first 183 days or first 6 months, the income shall be exempt from tax in Ghana in line with section 111 of Act 896 (Act 2015).

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

The a) part of the question tested the understanding of change in underlying ownership under section 62 of Act 2015 Act 896. The question was poorly answered. From the answers provided, most candidates had no clue what was required of them.

For 1b), candidates must know that withholding tax is not applied without some basic rules. There are some exemptions in the case of resident and non-resident persons trading with Ghana that do not require withholding tax. Therefore, the statement could not be entirely accurate.

Question 1c) tested the understanding of candidates on the taxation of Permanent Establishment (PE) and the circumstances under which foreign PE will be exempt from tax. It is instructive to note that the first 6 months income will be taxed in Ghana, and after that, the income will be exempt from taxation with a foreign PE. Additionally, the treatment of dividends was a challenge. All income from non-resident sources loses its character and therefore, taxable. Candidates ought to have grossed the dividend and give credit for the tax paid in the foreign credit.

QUESTION TWO

a) **Memo**

To: Partner
From: Tax Intern
Date: 16 February 2021
Subject: **Tax Exposure after the merger**

Introduce

Following our discussion on the above subject matter, I furnish as follows for your consideration.

Issues

The gains on the realisation of an asset accruing to or derived by a company arising out of a merger, amalgamation or reorganisation of a company are exempt from tax when is a continuity of at least fifty percent of the underlying ownership in the asset.

Tax implication

The merger of the three and gains arising from the mergers shall be pitted against the underlying ownership in the new entity. Any entity that is less than 50%, the gain stands to be taxed at the corporate rate that the entity is exposed to.

	GH¢
Ann ltd	4,200,000
Bab ltd	5,000,000
Cee ltd	5,200,000

From the above gains, the company in the post-merger, if the underlying ownership in the post-merger is less than 50%, shall be subject to tax at the marginal tax rate of 25%. The reverse is exempt from tax.

The profit being made is a testimony of the positive of the merger and, therefore, subject to tax at the marginal tax rate.

Conclusion

I hope the above would help you in your further action on the matter.
Thank you.
Yours faithfully
Handsome Padii.

(7 marks)

b) When there is a change in underlying ownership, the following will arise:

- The assets and liabilities are deemed realised
- The period before the change and period after the change shall be treated as separate years of assessment.
- The entity that changes ownership shall not deduct the financial cost from derivatives.
- Loss incurred before the change of ownership is not allowable
- Bad debts cannot be claimed
- Carry back of loss cannot be benefitted by the entity
- Shall be subject to tax on the gains made

(5 marks)

c) Under section 32 of Act 896 Act 2015, where a person attempts to split income with another person, the Commissioner-General may, in writing to that person, prevent a reduction in tax payable. The provision allows the CG to adjust any arrangement that is of income splitting nature to protect revenue.
This is very impactful if the CG gets wind of the arrangement and re-characterises the income accordingly. **(4 marks)**

d) Ganigani Ltd
Computation of tax payable
Year of Assessment 2020
Basis Period 1/1/2020-31/12/2020

	GH¢
Income (Global)	25,000,000.00
Less Tax Paid in Nigeria (1,000,000/67.59)	14,795.09
	24,985,204.91
Tax Payable @25%	**6,246,301.23**

(4 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

Question 2a) required candidates to determine the tax implication of a merger with gain from realisation (revaluation). Under section 47 of Act 896, gain where an entity holds a minimum of 50% underlying ownership in the assets after the merger is exempt from tax. In this particular question three entities were used. Some candidates became confused on how to proceed. Principles should be applied to practical situation.
If the entities hold less than 50%, the gains are taxable at their marginal tax rates. If one holds 50%, the rest withholding less than 50% should pay tax on the gain. For some candidates, it was a challenge.
Question 2b) was similar to that of question 1a). Some candidates performed so well, while some appeared not to have even read on it. Additional information in this area perhaps worth mentioning is that Agoo ltd was to enjoy the unexpired period of Tanko ltd during the temporary period. Some candidates deviated by discussing tax treatment of acquisition of less than 50%. This was a clear case of candidates setting their own questions.
2c) was a question on income splitting as an anti-avoidance measure. Good performance by most candidates. Some candidates defined income splitting but could not link it to the requirement of the question.
2d) was on double taxation, where the applicant relinquishes the credit method right. Some candidates had difficulty with the translation of tax paid from Naira to Ghanaian cedi. In effect, some multiplied the tax paid in naira to the exchange rate and had weird answers.

QUESTION THREE

a) Under section 28 of the GIPC Act (1), A person who is not a citizen may participate in an enterprise if that person

- in the case of a joint enterprise with a partner who is a citizen, invests a **foreign capital of not less than two hundred thousand United States dollars in cash or capital goods** relevant to the investment or a combination of both by way of equity participation and the partner who is a citizen does not have less than ten percent equity participation in the joint enterprise; or
- where that person wholly owns the enterprise and invests a foreign **capital of not less than five hundred thousand United States Dollars in cash or capital goods** relevant to the investment or combination of both by way of equity capital in the enterprise.
- A person who is not a citizen may engage in a trading enterprise if that person invests in the enterprise, **not less than one million United States Dollars in cash or goods and services** relevant to the investments. “trading” includes the purchasing and selling of imported goods and services. An enterprise that goes into trading shall employ at **least twenty skilled Ghanaians**.

The above is the mode through which a foreigner can conduct business activities in Ghana. **(9 marks)**

b) **Contractual terms**

Economic substance governs a transaction. Economic substance determines the result of such a transaction. Contractual terms might provide for a purported allocation of risks, but, in the end, the economic substance should be determinative of the result.

Between the controlled and uncontrolled, are the contracts the same? If yes, it means the market price has been used in the price to the associate. If there is a material difference, there would be the need for adjustment to take account of the difference in the contractual terms under controlled and uncontrolled persons.

It is suggested that tax administration should include an analysis of contractual terms as part of the functional analysis. Contractual terms might not be in writing. In that event, the multinational enterprise or the tax administration must deduce the contractual relationships for the parties' conduct and the economic principles that govern relationships between parties.

(3 marks)

c)

i)

Equity:	GH¢
Stated capital	1,000,000
Retained Earnings	(2,000,000)
Equity	(1,000,000)
Debt	2,400,000

Safe Harbour Rule : Debt Equity Ratio

3 : 1

(3,000,000) : (1000,000)

From the above, and by implication, the entity is not required to borrow and if it must the interest is not allowable.

Interest on loan	GH¢150,000
Foreign Exchange loss	GH¢ 20,000

The interest on the loan is not an allowable deduction and therefore shall be added back to income for tax purposes. The equity being negative implies that for any loan from a related party, the interest shall not be an allowable negative. The foreign exchange loss shall not be allowable as the same reason adduced under the interest.

Given that the equity is negative, the interest shall be disallowed for tax purposes, so should the foreign exchange loss.

The interest should suffer a withholding tax at the rate of 8% that is (8% X GH¢150,000) = GH¢12,000

(6 marks)

ii) It means that the company has issued shares, and consequently, a stamp duty of 0.5% shall be applied on the additional capital of GH¢200,000 introduced. (0.5% X GH¢200,000) = GH¢1,000. This is tax to be paid to GRA via Registrar General's Department. **(2 marks)**

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

The a) part of the question was on how foreigners could participate in business activities in Ghana. This was a well-answered question.

Question 3b) was on contractual terms under comparability factors in Transfer Pricing. This is an area the Commissioner-General will look at to determine whether prices are at arm's length or not. The same contractual terms with a controlled person and an uncontrolled person, and if the prices are not the same, the Commissioner-General shall adjust the price to ensure that revenue is protected.

Thin capitalisation is a popular area in taxation. Question 3c) was a bit tricky as the equity given was negative. Many candidates were competent to notice it was thin capitalisation but did not know how to proceed. The equity being negative means that the entire interest and the foreign exchange loss should not be an allowable deduction.

The tax implication of the increase in stated capital saw an interesting reaction from some candidates. The simple answer is that additional shares have been issued, and therefore a stamp duty at the rate of 0.5% on the additional capital being injected should be paid.

It must be noted that just a few candidates understood the question correctly and answered it well.

QUESTION FOUR

a) Kanawu Mine Resources Limited

Computation Of Capital Allowance

Activities	**2017 GH¢**	**2018 GH¢**	**2019 GH¢**
Balance brought forward	**0**	**2,570,000**	**14,196,000**
Analysing historical exploration data	250,000	0	0
Purchase of motor vehicles	1,000,000	0	0
Exploratory drilling and sampling	0	2,500,000	0
Purchase of Surveying infrastructure	500,000	0	0
Construction of office building	0	3,700,000	0
Conducting market and finance studies	0	0	300,000
Renting of office space	400,000	0	0
Sinking shafts and underground drifts	0	0	5,400,000
Purchase of land	0	460,000	0
Permanent excavations	0	400,000	3,000,000
Constructing roads and tunnels	0	2,200,000	1,100,000
Purchase of drilling machines	0	700,000	900,000
Purchase of Office equipment	50,000	550,000	120,000
Legal fees for acquisition of lease	0	130,000	0
Purchase of software	0	230,000	0
Removal of overburden and waste rock	0	0	470,000
Acquisition of rights to explore	300,000	0	0
Protocols to chiefs as part of the arrangement	10,000		
Topographical and Geophysical studies	25,000	56,000	0
Geological and geochemical studies	35,000	300,000	0
Sale for cash of surveying software	0	0	(130,000)
Trenching and sampling expenses	0	400,000	100,000
Sale of drilling equipment	0	0	(50,000)
Revenue from pre-production items of gold	0	0	(500,000)
Balance carried forward	**2,570,000**	**14,196,000**	**24,906,000**

	GH¢
Reconnaissance and Prospecting Expenditure as at 01/01/2020	24,906,000
Capital expenditure in 2020:	
Iron Gate	421,600
	25,327,600

Capital Allowance 20% x GH¢25,327,600 = GH¢5,065,520

(6 marks)

b) Kanawu Mine Resources Limited
Computation of chargeable income for the 2020 year of assessment

	GH¢	GH¢
Sale of Gold		378,532,900
Compensation received		3,500,000
		382,032,900
Less Allowable expenses		
Mining and processing cost	120,345,000	
Ground rent	321,500	
Royalties	11,355,987	
Stope preparation and development	1,021,700	
Business operating permits (5,563,200 – 400,000)	5,163,200	
General and Adm Exp. (190,467,100 – 421,600)	190,045,500	
Selling and distribution costs	172,554,700	
Finance costs	211,500,000	
Capital allowance	5,065,520	
		717,373,107
Loss carried forward		**(335,340,207)**

There will be no tax payable for the assessment year 2020 because of the assessed loss. **(10 marks)**

c) Royalty is a levy on production and therefore an allowable deduction for tax purpose. New mineral right acquired is an asset and therefore should be capitalized and capital allowance granted. Being related to a new acquisition, it becomes a separate mineral operation

(4 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

This question was on mining. Candidates must know that royalty is a tax type, and at the same time, it is also an allowable deduction only in respect of mining. Royalty is also calculated on revenue and not done arbitrarily. Candidates ought to have computed 5% on the total revenue to ensure that the royalty is correct. The compensation received should be part of the revenue for the purpose of computing the royalty.

The capital allowance computation posed a challenge as candidates had difficulty calculating all costs from reconnaissance to prospecting for the capital allowance computation.

Research and development expenditure is not allowable. The land is also not allowable. Candidates must note that depreciable assets sold before production must be adjusted to the capital cost so that in future, the capital allowance will be reduced. In the cost build-up, some candidates added a penalty as part of the cost. All protocols

in connection with domestic and excluded expenditures are necessary for the determination of the cost build-up.
The new mineral right acquired would be ring-fenced and treated differently and should not under any circumstance be added to the cost in respect of the production contract.

QUESTION FIVE

a) The Consultant
ADDRESS
The Board of Directors
Baby Heights Company Limited

Attention: The Chairperson -Mrs XYZ
Dear Madam,
Subject: REPORT ON TAX PLANNING VARIABLES

Introduction:
Further to your request regarding tax planning issues of Baby Heights Company Limited, please find below the following are the tax planning schemes or variables or activities for your study:

(1 mark)

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 income recognition due to the concept of time value of money. However, if one expects a sharp increase in tax rates, acceleration of income recognition 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.

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 after that. 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.

(2 marks)

Jurisdiction or Location Variable
The taxing rules under the Income Tax Act, 2015 (Act 896) and other laws (e.g. the Free Zones Act, 1995 (Act 504) vary depending on the location of the entity.

All citizens and residents, including companies incorporated in Ghana, are subject to income tax provided the income is accrued in, derived from or earned elsewhere outside Ghana. In Ghana, the rate of corporate income tax differs depending on where the entity is located. 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 and operating in northern Ghana enjoy tax holidays. Companies producing cocoa by-products from cocoa waste have different tax rates depending on where they are located. **(2 marks)**

Character or Activity variable
Different tax rules apply depending on whether a taxpayer is engaged in farming, manufacturing, real estate development, hospitality industry, The Income Tax Act, 2015 (Act 896) provides various incentives to persons that carry on these activities. For example, a bank lending to farming businesses has a different and lower tax rate (20%) from one lending to other sectors of the economy, which is taxed at 25%. Also, a person who earns income from the export of non-traditional goods pays tax at 8%, whereas a person engaged in the hospitality (hotel) industry pays tax at 22%. **(2 marks)**

Entity Variable
Different entities, such as sole proprietorships, partnerships and limited liability companies, are taxed at different rates, so choosing the right entity may minimise taxes. Since tax rates differ between individuals and companies, an opportunity for tax planning exists. Moreover, some entities are either tax exempt or enjoy tax holidays. This variable is very important when entrepreneurs are starting new businesses and must decide which organisational form to adopt. This is because the choice of organisational form determines whether the business income will be subject to income tax rates applicable to individuals (sole proprietorship and partnership) or the corporate tax rate (for companies). **(2 marks)**

Conclusion
It can be concluded that a number of tax planning schemes can be available to the company, but this depends on the company's circumstances and the tax planning appetite of the Board of Directors and management of the company.

Yours faithfully,

Signed:
Joe Fraser
Tax Consultant **(1 mark)**

(Total: 10 marks including address, subject and conclusion)

b) Advice Konadu Yiadom Limited and its shareholders on:

- The income tax implications of the acquisition of shares by Japan Rocks.
- The acquisitions of sixty percent shares of Japan Rocks by Konadu Yiadom Limited will amount to change ownership of Japan Rocks.
- Sections 38(l)(f) and section 62 of Act 896 provide that where the underlying ownership of an entity changes by more than fifty percent at any time within three years, the assets and liabilities of the entity immediately before the change is deemed to be realised.
- Underlying ownership in relation to an entity is defined in section 133 of Act 896 to mean membership interests owned in the entity, directly or indirectly through one or more interposed entities, by individuals or by entities in which no person has a membership interest.
- Since there will be more than fifty percent change in ownership of Japan Rocks, the assets and liabilities of Japan Rocks will be deemed to have realised immediately before the change.
- Section 62(2) of Act 896 provides that where the underlying ownership of Japan Rocks changes by more than fifty percent, Japan Rocks cannot:
    - deduct financial costs carried forward under section 16(3) that were incurred by the entity before the change
    - deduct a loss that was incurred by the entity before the change;
    - claim a deduction after the change, in a case where the entity has included an amount in calculating income under those provisions before the change; or
    - carry back a loss that was incurred after the change to a year assessment before the change.
- Thus, the loss of GH¢3,600,000 of Japan Rocks cannot be carried forward, and the financial cost of GH¢900,000 cannot be deducted or carried forward.
- If the underlying ownership changes by more than fifty percent during a year of assessment of Japan Rocks, the period after the change shall be treated as separate years of assessment under section 62(3) of Act 896.

(10 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

The a) part of the question was on tax planning maxims or variable of tax planning. This was a well answered question. Few candidates spent time distinguishing between tax avoidance and tax evasion. Unfortunately, that was not the requirement. Question 5b) was on the acquisition of shares and the implication on losses and financial cost. A very familiar area in the syllabus. While others did justice to the questions, others struggled.

RECOMMENDATION

I recommend the Institute's manuals to students and suggest that Tuition Providers should administer examinations in the form of mock to get students grounded for the

examination to improve the pass rate. In addition, the immediate diet past questions can be used to test the readiness of candidates.
Additionally, students should read widely. Obtain good books and also get the Tax Acts and Regulations as supplementary readers.
Read the marking schemes to get to know the nuances of the questions and answer questions from the emphasis placed on certain areas of the scheme.
Work on the English language, especially the writing skills, to be able to convey thoughts well.

CONCLUSIONS
From the foregoing, students should read within the syllabus to give a good account of themselves and increase the pass rate, considering the myriad of materials available to enrich the quality of studies and presentation. The tax laws are now available in soft copies and with practice notes to ease understanding of the laws coupled with the availability of manuals by the Institute.
Additionally, students should work on their handwriting to make it legible for reading to ease the frustration in marking.
Where students cannot present information properly, they should consider adding examples to enhance the quality of the presentation to earn more marks.
Tuition Centres should consider the intermittent conduct of mock examination to determine the preparedness of candidates before the main examination. This will bring to the fore areas of strength and weakness of students before the examination.