APRIL 2022 PROFESSIONAL EXAMINATION
ADVANCED TAXATION (PAPER 3.3)
CHIEF EXAMINER'S REPORT, QUESTIONS & MARKING SCHEME

EXAMINER'S GENERAL COMMENTS

This report provides a panoramic view of the performance of candidates in the April 2022 examinations and to set the tone for conversations around the performance.
Going through the paper, one came across scripts of candidates who did not prepare for the examination and if they did, the preparation was not adequate to bring about wonderful performance.

The report that is always provided after each diet of the examination appears to have no impact or little impact on the candidates. The report continues to harp on certain regular and common mistakes committed by candidates. One will think that the report should create value addition in what candidates provide as answers but the same mistakes keep taking centre stage in every report. There is so much fatigue in reporting the same mistakes every time. Students should take the examiners' report seriously.

Tuition Centres should support the Institute of Chartered Accountants, Ghana in its bid to increase the pass rate of candidates. Lecturers should as a matter of urgency add the highlighted mistakes in the reports and bring same to bear on students with the hope that they will take it on board in their preparations for the examinations.
Candidates should as a matter of seriousness take into account the highlighted mistakes in the report so that it makes it easier passing the Institute's examination.
Another important milestone in the conduct of the examination was that there was no trace of examination malpractices across the entire scripts reviewed. Candidates presented their own solutions and each solution differed in content and approach. This is also a pat on the back of the Institute of Chartered Accountants, Ghana for being able to conduct incident free examinations, where candidates comported themselves sufficiently.
The Institute should consider re-introducing mock examinations before the main diet to help candidates be able to test their level of preparedness before the main examination.
We believe, just as William Shakespeare in Julius Caesar stated, "Our mistakes, Dear Brutus, are not in our stars but in ourselves". The report makes it abundantly clear that the mistakes which were observed in the course of marking were largely the fault of the candidates themselves and therefore not blameable on extraneous factors.
Another area that is emerging is mixed up in the index numbers of candidates. It came to light that some candidates quoted their index numbers wrongly in the answer booklets. This could only stem from inadequate preparation and or nervousness on the part of such candidates. This should not be allowed to fester.

STANDARD OF THE PAPER

The tax paper continues to be a standard paper by all standards. The examination questions have moved from the recall ones to ones which required candidates to evaluate certain outcomes and to comment on their answers as part of the requirement of the questions.

The questions are miniature of practically oriented questions which confront taxpayers and tax consultants on daily basis. This gives confidence to candidates that they will be able to offer relevant solutions in future in tax related issues. In effect, without any iota of exaggeration, the paper is a foreshadow of what to expect in the field of taxation.

The paper quality was good and the type setting was also good.

The spread of the paper covered the entire syllabus. This to all intents and purpose worked for an average student as they managed to sail through.

The marks allocation appeared appropriate for each of the questions presented. The sub questions were also appropriate for a final level paper.

Another important aspect of the questions was the ones which tested the understanding of candidates on the taxability of resident individual and corporate entity. The question revealed that lecturers and tuition providers should place emphasis on the teaching of this critical fundamental concept in tax administration.

On the whole, the paper tested skills and application of the candidates. A candidate who made a pass mark really demonstrated great aptitude.

The Institute of Chartered Accountants, Ghana must be commended very highly for the choice of questions as the question tested the ability of candidates to think laterally and to provide original thoughts in their answers.

PERFORMANCE OF CANDIDATES

The performance of the candidates was not too good. Some scored as low as 1 mark in a twenty mark question. In some cases, many candidates scored zero. This reveals that a lot of candidates are taking the paper for granted with no or little seriousness.

The fact that there are many materials in the system makes the situation quite unfortunate. This is not examination candidates will pass easily if they do not put in much time substance in the learning.

The last diet was better as compared to this current diet. The standard of the paper was appropriate for the final level. Candidates who put in their best managed to sail through.

Many candidates did not appear to understand the questions and therefore offered weak and inappropriate answers. Such candidates ended up not making marks from their efforts.

It is also worth mentioning that, their performance tells that they do not read the examiners' report as they keep making the same mistakes previous candidates made which were highlighted in the reports.

One is at a loss as to why candidates do not do so well despite the abundance of materials. The examination has always followed the usual pattern making it easy for prediction by candidates.
The spread of the questions was also remarkable. The paper in its current form, therefore distinguishes between good and poor candidates. A good candidate will read the entire syllabus to help them be able to pass their examination easily.
On the whole, some of the candidates did so well and consequently ended up with huge success.

NOTABLE STRENTHS AND WEAKNESSES OF CANDIDATES
The performance of candidates was not bad but could be better given the support from the Institute in terms of study materials and timely release of examiners' report and the marking scheme.
Some of the candidates judging from the scripts approach their studies by fits and starts and this does not help candidates put off their best.

Notable strengths
Candidates are gradually able to predict the Institute of Chartered Accountants as they keep to the syllabus as a guide.
Additionally, some of the areas in the syllabus have become areas candidates have mastery over given how the answer questions from such areas.
There is no fear of contradiction about candidates having control over double taxation issues. A lot of candidates are able to compute the foreign tax credit reliefs and able to compare the comparative in the average tax rates of Ghana and the foreign country (ies).
Additionally, candidates have demonstrated skills in the computation of the ceiling or limit of financial cost from derivatives as well as ability to compute taxes after the necessary adjustments have been made.

Notable weaknesses
Some candidates have challenges computing capital allowance. Most or nearly all got the classification of the depreciable assets wrong.
Additionally, what also emerged as a weakness is poor writing skills. This denies the candidates of putting their cases through.
How to treat non-allowable deduction is becoming a threat. Candidates are encouraged to read section 130 of Act 896 to help them identify the transactions which are non-allowable.

QUESTION ONE

a) All persons can carry over their losses, so far as it can be proven that it is a loss by the person making the claim. This was mooted at a seminar organised for a business community in some parts of Accra, the capital city of Ghana.

Required:
Explain the mechanism of carryover of losses. **(6 marks)**

b) "***Bending the law without breaking it is said to be the way to go by businesses***". This concept of tax administration has caught up with so many businesses that they now engage experts to help shape their business transaction to create this impact for them.

Required:
How is tax avoidance different from aggressive tax avoidance? **(6 marks)**

c) Lawaaba Guo is a Ghanaian born in Nigeria and has lived all his life there. He got an opportunity to relocate to Ghana and took up an appointment as a lecturer in one of the prestigious universities within the first three months of his arrival in Ghana in 2018.

He took up an employment with ABB Ltd as a procurement officer. The following relates to his employment details for 2020 year of assessment.

	GH¢
Salary	200,000
Commission from employers	10,000
Interest on savings from a Bank in Ghana (Gross)	1,000

His investment income and other returns received from Nigeria are as follows:

- Dividend of US$ 12,000 net of tax. Tax of US$ 1,000 was paid.
- Rental Income of USD 6,000 gross with tax at the rate of 10%
- On-line consultancy fee USD 20,000 net of tax. Tax of USD1,500 was paid.

Additional information:

- He is married
- Children (2): both schooling in Nigeria
- Contributes to Social Security at 5.5%
- Exchange Rate USD1=GH¢5.2

Required:
Determine the following:

i) Chargeable Income
ii) Tax Payable
iii) Amount of foreign credit relief granted **(8 marks)**

(Total: 20 marks)

QUESTION TWO

a) In response to some taxpayers' behaviour, transfer pricing regulation has been passed to ensure that all arrangements are conducted at arm's length. The Commissioner-General in his dealings with taxpayers must ensure that market price drives business transactions. The Commissioner-General reserves the right to allege abuse of transfer pricing if certain factors point to the fact that there is an arrangement not in accord with the dictate of market forces.

Required:
Explain **FOUR (4)** factors the Commissioner-General will rely on in his comparability analysis in Transfer Pricing arrangement. **(8 marks)**

b) Free Zone means area or building declared as a free zone by publication in commercial and industrial bulletin. It includes Single Factory Zone, Free Ports, Free Airports, Free River and Lake Parts among others (Free Zones Act 1995, Act 504). Free Zone operations are export led aimed at promoting foreign earnings to Ghana.

Required:
What mitigation measures will a Free Zone Enterprise adopt to reduce its tax liabilities and raise enough benefits to the shareholders? **(6 marks)**

c) Tax incentives have traditionally been used by governments as tools to promote a particular economic goal. They are preferential tax treatments that are offered to a selected group of tax payers and may take the form of tax exemptions, tax holidays, preferential tax rates, among others.

Required:
Explain the tax implications of the following:

i) A person engaged in Farming activity
ii) A person engaged in Agro-Processing activity
iii) The rental income of a person engaged in Cocoa Farming activity. **(6 marks)**

(Total: 20 marks)

QUESTION THREE

Jones Addoteye is a Ghanaian Citizen by birth but has also acquired a British Citizenship. He has lived in Britain for several years and relocated to Ghana in January 2015. He decided to invest his life-long savings in Ghana by incorporating a company limited by shares with his wife, Maame Abrefa who also happens to be a Ghanaian/British. Jones and his wife are the only shareholders of the company called Addofa Ltd which was registered with the Registrar Generals Department in January 2016.

Jones and his wife Maame Abrefa continue to maintain links with Britain even though they have relocated to Ghana. This is because they still have some economic interest in Britain. In view of this, they decided to share their working time in both Ghana and Britain following an advice from a Junior Tax Consultant of one of the Ghanaian Tax Firms. The junior tax consultant informed them they will be tax efficient if they share their working time.

Part of their object for setting up Addofa Ltd was to produce poultry for sale to the Ghanaian market in the first few years and later export the poultry products to other countries. It is also part of Addofa Ltd's growth strategies that after five (5) years, it will process and package the poultry in an edible manner for export to other African markets. This poultry processing business will be carried out in a new company which they intend to set up. Both companies will be located at Cape Coast, the Central Regional Capital. Business for Addofa Ltd is expected to grow significantly in 2021.

Addofa Ltd also invested 37% equity in another Ghanaian company from which they received dividend of GH¢50,000 in 2018.

Mr. Jones Addoteye intimated to you that even though he had some initial advice, he was still not sure if his wife and himself were making optimal tax decisions for themselves and for the company. He has therefore approached you as an experienced Tax Consultant for advice. They wish to take advantage of the beneficial provisions of the Income Tax Laws to arrange their personal and company affairs to be tax efficient.

Required:

a) Evaluate the tax implications on Jones Addotey and Maame Abrefa sharing their working time between Ghana and Britain. **(8 marks)**

b) Explain the tax implications available to Addofa Ltd if it goes into export or sell in the local market. **(4 marks)**

c) Explain the tax planning opportunities available to the new company to be set up. **(4 marks)**

d) Discuss the tax compliance obligations for Addofa Ltd at the time of commencement of operations in Ghana. **(4 marks)**

(Total: 20 marks)

QUESTION FOUR

a) Joefel Company Ltd, manufacturer of fruit juice for local consumption commenced business on 1 October 2019, with accounting year-end at 31 December each year. The company submitted its accounts for 2019 and was assessed accordingly. The company submitted its tax returns for 2020 year of assessment to the Ghana Revenue Authority on 30 April 2021. Below are the details:

	Note	**GH¢**	**GH¢**
Gross profit			900,000
Other income	6		23,000
			923,000
Less operating expenses			
Wages and salaries	5	146,000	
Directors' remuneration		52,000	
Electricity and water		31,500	
Printing and stationery		8,200	
Telephone and postage		1,800	
Installation of plant and others	2	60,000	
Registration and licensing		12,100	
Depreciation		2,700	
Business promotion		6,000	
Legal fees		8,000	
Staff welfare	3	26,200	
Donation and subscription	4	28,000	
Advert and publicity	1	23,700	
			406,200
Net profit			**516,800**

Additional information:

	GH¢
1) **Advert and publicity**	
Radio and television	3,300
Newspaper advert	2,400
Permanent signboard at the company's entrance in 2020	18,000
2) **Installation of plant and others**	
Installation of plant	21,500
Heavy duty Generator bought in 2019 to support Plant and Machinery	20,500
General maintenance before the use of the plant	18,000
3) **Staff Welfare**	
Staff medical bills	3,700
Safety wear for staff	10,500
Canteen Equipment purchased on 30 November 2020	12,000
4) **Donation and Subscription**	
Goods given as gratis to customs officials	13,000
Donation of goods to SOS Children Village	10,000
Subscription to Association of Ghana Industries	5,000

5) **Wages and Salaries**

Old staff	120,000
Fresh graduates employed by Joefel Company Ltd. (Fresh graduates constitute 1% of total workforce)	26,000

6) **Other Income**

Compensation from a customer for cancellation of a sale order	8,000
Compensation for loss of trading stock of the company	10,000
Compensation for cancellation of purchase order by supplier	5,000

The company's assets include the following:

Type of Assets	**Date of Acquisition**	**Cost (GH¢)**
Factory Building	1/10/2019	300,000
Plant and Machinery	25/10/2019	171,000
Delivery Van	1/11/2019	50,000
Computers	1/10/2019	40,000
Furniture and Fittings	10/12/2019	150,000
Other Office Equipment	1/10/2019	200,000
Office Building	30/06/2020	500,000

Note 2) above has not been included in the plant and machinery acquired.

Required:

i) Compute the appropriate capital allowance for 2019 and 2020 years of assessment. **(8 marks)**

ii) Calculate the chargeable income of the company for the 2020 year of assessment. **(6 marks)**

b) Explain of the following sources of revenue accruing to the Government of Ghana from the upstream petroleum operations in Ghana:

i) Royalty.
ii) Carried Interest.
iii) Additional Interest.
iv) Additional Oil Entitlement. **(6 marks)**

(Total: 20 marks)

QUESTION FIVE

a) You are a Trainee Accountant, and your manager has asked you to correct a company tax computation which has been prepared by the Managing Director of Prime Shea Ltd, a manufacturing company located in Batanyili, a suburb of Tamale in the Northern Region. The company commenced business on 1 January 2014. The company tax computation is for the year ended 31 March 2020 and contains a significant number of errors:

	GH¢
Profit before tax	468,910

The following were included in arriving at the profit before tax:

Financial cost from derivative	50,000
Depreciation	15,740
Financial gain from derivative	20,000
Donations to political parties	40,000
Professional accounting services	20,300
Legal fees	50,700

Additional Information:

Unrelieved loss from previous year and capital allowance for the current year were:

Unrelieved tax loss from 2019	460,400
Capital allowance-2020	60,600
Withholding tax paid on account	5,000

Required:

i) Determine the allowable financial cost for the year ended 31 December 2020. **(4 marks)**

ii) Prepare a revised tax computation to determine the chargeable income for the year ended 31 December 2020. **(4 marks)**

iii) Calculate the tax payable by Prime Shea Ltd under the Income Tax Act 2015 (Act 896) as amended. **(2 marks)**

b) You are a final level CA student who has been helping Naagode Ltd on tax issues. Naagode Ltd has been doing business in the international space, importing and exporting products. You have been told that when you qualify, you would manage their Tax Department.

What has baffled the company lately is an audit outcome by the Ghana Revenue Authority. The audit was done in two-folds. One by the Post Clearance Audit Department of the Customs Division and the other by Tax Audit and Quality Assurance (TAQA) Department of Domestic Tax Revenue Division.

The audit findings are as follows:

	GH¢
Post Clearance Audit Department of the Custom Division:	
Import Duties	10,000,000
Value Added Tax (VAT)	12,000,000
National Health Insurance Levy (NHIL)	4,000,000
Ghana Education Trust Fund (GET/Fund)	4,000,000

	GH¢
TAQA Department of Domestic Tax Revenue Division:	
Corporate Tax	230,000,000
VAT	29,000,000
NHIL	29,000,000
With-Holding Tax (WHT)	105,000,000

The management of Naagode Ltd has asked you to assess the chances of the Company if an objection to the assessment is raised as it considers the assessment quite excessive.

Required:
Recommend the process that the management should adopt to ensure success in its appeal.
(10 marks)

(**Total: 20 marks)**

2020 Annual Tax Rates

Chargeable Income Tax	Annual	Rates
	GH¢	
First	3,828	Nil
Next	1,200	5%
Next	1,440	10%
Next	36,000	17.5%
Next	197,532	25%
Exceeding	240,000	30%

SOLUTION TO QUESTIONS

QUESTION ONE

a) Losses incurred by persons can be carried over for 3 years and for 5 years. The losses incurred in a particular year are deducted from the profit made before taxes are charged and paid or collected. Persons that can carry over their losses for 5 years are as follows:
Manufacturing
Agro-processing
ICT software development
Tourism registered with Ghana Tourism Authority
Farming
Energy and power
Petroleum operations
Mining and mineral operation

All other may carry over their losses for 3 years
Losses to be carried forward include capital allowances.

Persons that make business loss may deduct it from investment loss, but investment loss cannot be deducted from business loss.

Under change in underlying ownership, loss incurred under section 17 shall not carried forward

Venture Capital Financing Company that incurs loss on the disposal of investment shall carry it over for 5 years.

Loss cannot be carried forward by an entity that has

The losses must be determined in accordance with tax principles and must be certified by Tax Auditors of the Ghana Revenue Authority.

(6 marks)

b) Avoidance is the structuring or the re-structuring of activities in the manner that minimal tax is paid. With tax avoidance, the laws allow it but with aggressive tax avoidance, it is an arrangement that may not infringe upon the tax laws but works against tax administration. The Commissioner-General interprets aggressive tax avoidance as an attempt to reduce taxes using unapproved methodology.

A person that keeps oscillating among activities to reduce tax liabilities may have an axe to grind with the Ghana Revenue Authority. **(6 marks)**

c) **Lawaaba Guo**
Computation of tax payable
Y/A 2020
Basis Period 1/1/20-31/12/20

		GH¢	**GH¢**
Basic Salary			200,000
Add Commission from employers			10,000
210,000			
Add Income from foreign sources:			
Dividend	(13,000*5.2)	67,600	
Rental Income	(6,000*5.2)	31,200	
On line Consultancy	(21,500*5.2)	111,800	
			210,600
Total Cash emolument/QEY			420,600
Deduct Reliefs			
Marriage Relief		1,200	
SSF (200,000 *5.5%)		11,000	
12,200			
Taxable Income			408,400
Tax Charged			**106,575**

Computation of Tax Payable

		GH¢
Total Tax Charged		106,575
Less Foreign Credit Relief:		
Dividend (1000*5.2)	5,200	
Rent (600*5.2)	3,120	
Consultancy (1500*5.2)	7,800	
		16,120
Tax Payable		**90,455**

Ghana Average Tax Rate	106,575/408,400*100%	=24.877%
Dividend	1000/13000*100%	=7.692%
Rental		=10%
Online Consultancy	1500/21,500*100%	=6.976%

First	3,828	Nil	Tax
Next	1,200	5%	60
Next	1,440	10%	144
Next	36,000	17.5%	6,300
Next	197,532	25%	49,008
Exceeding	168,400	30%	50,520
	408,400		**106,575**

(8 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The a) part of the question required explanation on carry over of losses in tax administration. Losses can be carried forward by all businesses as opposed to the past where only few persons could carry over their losses.

A candidate who has read widely should be able to explain the mechanism of carryover of losses. A lot of candidates had no idea the requirement of the question. For some of the candidates, the question required a definition of carry-over of loss.

On the whole, it was well answered by a few candidates.

Question one b) required the difference between tax avoidance and aggressive tax avoidance. Tax avoidance was well answered by a few candidates but the aggressive tax avoidance posed a challenge to many candidates. Aggressive tax avoidance is not frown upon by the Tax Acts but is not welcomed by the Commissioner-General.

The Commissioner-General sees it as an effort not to pay tax. This happens when the taxpayer decides to pick and choose decisions in a manner that the taxpayer does not pay tax in a long while not created by the tax law.

Generally, most candidates likened tax avoidance with tax evasion.

Question one c) was on double taxation. This is a popular area in tax administration. It was one of the questions that was well answered. The following areas are of concern:

Some of the candidates computed the relief as follows:

Relief is equal to foreign income tax multiplied by the exchange rate less tax paid multiplied by exchange rate. Others computed 8% of the dividend as a relief. The above are alien to the tax laws.

The principle is to compare the rate of tax of foreign income against that of the Ghanaian tax rate. The lower is the basis for the grant of the relief.

Additionally, most candidates were of the wrong impression that if there is no double taxation agreement with a country, no relief is granted. Under section 112 of Act 896, it does not matter whether there is double taxation agreement with a particular country or not, the relief must be granted.

Others calculated the tax using only the income from the Ghanaian source.

Computation of social security (SSF) came up as a challenge. Candidates should note that the SSF is computed on the basic salary and not on the gross income. Other Candidates erroneously computed it on the gross amount inclusive of the foreign income.

QUESTION TWO

a) Factors the Commissioner-General will rely on in his comparability analysis in Transfer Pricing arrangement.

Factors and comparability

It is necessary for the multinational enterprise or the tax administration to compare attributes of the transactions or enterprises that would affect conditions in arm's length transactions and have an impact on arm's length transactions.

Characteristics of properties or services

Differences in specific characteristics of property or services often account, at least in part, for differences in their value in the open market. As a result, comparisons of these specific features might be useful in determining the capacity of controlled transactions and uncontrolled transactions. Characteristics that the multinational enterprise or the tax administration should consider the following:

FAR Analysis (Function, Asset and Risk)

Compare the functions to be performed on the product on the controlled relationship and that on the uncontrolled relationship. Any material differences should be adjusted for. The economic significance of the functions, not the number of functions, is determinative.

Functions may include the following:

- Design
- Distribution
- Marketing
- Assembly
- Advertising
- Research & development
- Transportation
- Servicing
- Financing
- Purchases
- Management

Are the products on controlled and the uncontrolled transaction produced on the same functions highlighted above? The more the functions the more the price all things being equal.

- **Asset utilization**

The functional analysis should consider the use of all assets: physical assets such as plant and equipment; intangible assets; financial assets; and other assets. The multinational enterprise the business entity or the tax administration, in its analysis of assets as part of the functional analysis processes, should consider the nature of the assets the taxpayer uses. The nature of assets includes the age of the property, the market value of the property, the location of the property, and the availability of the property rights protection.

- **Risk consideration**
  The multinational enterprise the business entity and tax administration should focus on the risks that the taxpayer undertakes. In that regard, controlled transactions or entities are not comparable to uncontrolled transactions or entities if significant differences exist between them and the risk that each taxpayer assumes.
  A functional analysis is incomplete unless the multinational enterprise or the tax administration considers risks assumed by each party to the transaction. There are many risks that the multinational enterprise or the tax administration should consider, such as;
    - Input Cost fluctuation
    - Output Price Fluctuation
    - Risks of loss associated with investment in and use of property, plant and equipment.
    - Risks of the success or failure of the investment in research and development.
    - Financial risks such as those risks caused by the currency exchange rate and the credit risks.
    - Other risks.

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, economic substance should be determinative of the result.
Between the controlled and uncontrolled, are the contracts the same? If there is material difference, there would be the need for adjustment to take account of the difference in the contractual terms under controlled and uncontrolled persons.
The contractual terms define, whether explicitly or implicitly, the following:
how the parties are to divide the responsibilities, the risks, and the benefits.
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 by the economic principles that generally govern relationships between parties.

Economic circumstances
The economic factors of the controlled transactions and the uncontrolled transactions, may be different and may explain the differential. As a first step in determining economic circumstances, it is essential for the multinational enterprise the business entity or the tax administration to identify the relevant market or the relevant markets, taking account of available substitute goods or available substitute services. The following economic circumstances that might be relevant to determining market comparability:
  - The geographical location
  - The size of the market

- The extent of competition in the market's location
- The level of market (eg. Retail or wholesale)
- The time and date of the transaction
- Consumer purchasing power
- Costs of production, including the costs of land, labour and capital

Market penetration

Multinational enterprises' business strategies could include market penetration strategies. Taxpayer seeking to penetrate a market or to measure its market share might temporarily charge a price for the product that is lower than the same price charged for otherwise comparable products in the same market.

Additionally, a taxpayer seeking to enter a new market or a taxpayer seeking to expand or defend its market share might temporarily incur higher cost. Such costs could include start-up costs or increased marketing efforts.

As a result, such a taxpayer might achieve lower profit levels than other taxpayers operating in the same market or may even make losses at the market penetration stage.

(Any 4 points @ 2 marks each = 8 marks)

b) Free Zone Enterprise must run the business in accordance with the free zone Act and regulation.

The following benefits will accrue to shareholders

- Exports will attract tax at the rate of 15%
- Dividend declared shall be exempt from tax
- Imports of raw materials and machinery are exempt from taxes
- VAT shall be exempt
- National Health Insurance and Get/fund are exempt on their activities

(6 marks)

c) Temporary Concession:

Farming activity

Temporary concession for the following businesses:

Tree Crops 10 years temporary concession for which tax at the rate of 1% shall be imposed

Cattle business 10 years temporary concession for which tax at the rate of 1% shall be imposed

Cash crops 5 years of temporary concession during which period a tax of 1% shall be paid

Agro-processing:

5 years temporary concession while they pay tax at the rate of 1%

After the temporary concession, there is locational incentive for 5 years only

Accra/Tema	-20%
Regional Capital outside the northern savanna ecological zone	-15%
Any other area outside the northern savanna ecological zone	-10%

Northern savanna ecological zone -5%

After the locational incentive

Tax shall be paid at the rate of 25% in the case of corporate bodies and the individual tax rates in the case of individuals

The rental income of a person engaged in cocoa farming activity is taxable: In the case of residential, it is taxed at 8% final. In the case of commercial, it is 15% final in the case of persons that carry out business as rental it is taxed at rate of 25% or using the individual tax rates in the case of individuals.

(6 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The a) part of the question is a popular area in international taxation. Some candidates leveraged on this area and maximised marks. Many, however, misconstrued the concept and lost marks. The methods of transfer pricing were used as an answer to the question. In fact, this question was a huge deviation for many candidates. The comparability factors are not the same as methods of transfer pricing. On the whole, this was a well answered question. Others, unfortunately, did not attempt the question at all.

The question b) was on Free Zone Enterprise. Free Zone is a popular area in tax administration. The question was on how to mitigate the tax effect on free zone enterprise. Some understood the question to be the tax benefit to shareholders, and therefore lost marks. Most candidates indicated that Free Zone enterprises pay tax at the rate of 1% for the first 10 years of operations. Candidates must note that free zone enterprises do not belong to the temporary concessions category. They are exempt from tax for the first 10 years.

Question two c) appeared familiar, however, some candidates had no clue what the requirement of the question was. Candidates were required to write on cattle, tree crops and cash crops with livestock other than cattle with their temporary concessions, the locational incentive and the marginal tax rates and in the case of individuals, the individual tax rates. Candidates dwelt on the temporary concession and did not go any further.

With agro-processing, it has the same feature as farming in terms of tax benefits.

The rental income of a person engaged in cocoa farming activity is taxable. Many candidates did not read the requirement well and thought the question demanded the status of the income of cocoa farmer from cocoa farming.

Some candidates indicated that Rental Income is taxable at the rate of 1% for the first 5 years of operations. This position cannot be supported by law.

QUESTION THREE

a) Taxation implications of Jones and Maame Abrefa sharing their working time between Ghana and Britain in any year is determined by reference to the residence rule. The resident rule determines whether they are resident for tax purposes or non-resident as well as the tax rates that should apply to them as individuals. It has to be noted that as a resident of a country, the rule of income tax law is that an individual will be taxed not only on the income accruing to the individual in the place where the individual is resident but also on his worldwide income whether the income is remitted to Ghana or not.

Residence of an individual is determined by section 101 of the Income Tax Act, 2015 (Act 896). An individual is resident in Ghana for a year of assessment if that individual is:

- A citizen of Ghana, other than a citizen who has a permanent home outside of Ghana and lives in that home for the whole of that year;
- Present in Ghana during that year for an aggregate period of 183 days or more in any twelve (12) month period that commences or ends during that year of assessment;
- An employee or official of the Government of Ghana posted abroad during that year of assessment; or
- A citizen who is temporary absent from Ghana for a period not exceeding 365 continuous days, where that citizen has a permanent home in Ghana.
  Section 102 (1) of Act 896 provides that a person who is resident in the country during a year of assessment is deemed to be resident for the whole of that year; and
- By section 102 (2), a non-citizen is deemed to be resident in the country from the start of the 183-day period.

Jones and Maame Abrefa would be considered as resident for tax purposes and taxed on their worldwide income including income derived or accruing in Ghana as well as incomes earned in Britain and other jurisdictions apart from Britain whether or not the incomes were received or brought into Ghana. This is based on the principle that they are Ghanaian citizens who have not been out of Ghana for the whole of 365 days. As tax residents, the tax on their incomes will be calculated using the tax rates applicable to individuals (i.e., the graduated tax table). The tax calculated on the worldwide income using the Ghanaian tax rate will be reduced by the foreign taxes suffered (foreign tax credit) on the foreign income earned by Jones and Maame Abrefa. Note that the tax credit to be set off against the total foreign tax credit from the foreign income should not exceed the Ghanaian tax calculated on the foreign income. The right of Ghana to tax the income in Ghana would have been lost to Britain by reason of some provision of the Double Taxation Agreement (DTA) between Ghana and Britain which provides that if Jones and Maame Abrefa were non-resident in Ghana and the cost relating to their employment in Ghana is borne by the UK Company, then Ghana cannot tax them.

If Jones and Abrefa were deemed as non-resident for tax purposes in Ghana, then the income they derive or accrue in Ghana will be taxed using the withholding tax rate of 25% as provided for in Act 896 but this will be subject to the lower rate of rate of 10% in accordance with the DTA.

Note also that using the graduated tax rate in taxing Jones and Maame Abrefa instead of the withholding tax rate will not be beneficial to them. This is because the graduated tax rate is higher than the withholding tax rate.

To conclude, the tax consultant is right in advising that sharing their time between Ghana and Britain will make them tax efficient is correct only if Jones and Maame Abrefa are non-resident for tax purposes.

(1 mark for each valid point up to 8 marks)

b) Tax Implications for Addofa Ltd.

- In view of the fact that the company is engaged in poultry farming the company will be subject to a concessionary rate of tax of 1% on its chargeable income for a period of five (5) years of assessment from the year of commencement of business. After the first 5 years, the company would be ordinarily subject to tax at the rate of 25% being the normal company tax rate on the income earned from sales into the local market;
- In view of the growth strategy of the company in 2021 regarding exports, the company will be liable to tax at the rate of 8% on the income earned from export of farmed poultry (being non-traditional goods).
- The dividend income of GH¢50,000 received in 2018 by Addofa Company Limited will be exempt from withholding tax on the grounds that section 59 (3) of Act 896 provides that dividend paid to a resident company by another resident company is exempt from tax where the company receiving the dividend controls, directly or indirectly, at least twenty-five per cent (25%) of the voting power of the company which paid the dividend.

(4 marks)

c) Tax Planning Opportunities available to the new company to be set up.

- After five (5) years, when the poultry processing entity and business has commenced, the processing company would have been deemed as engaged in agro-processing business in a regional capital other than Accra, Tema and the Northern Savana Ecological Zone.
- Being an agro processing entity, the processing company will be entitled to a one percent (1%) concessionary tax rate for five (5) years from the date commercial production commences.
- After five (5) years, the agro processing business would have the option of being taxed at the rate of 15% (being the tax rate applicable to agro-processing businesses situated in a regional capital other that Accra, Tema and the Northern Savana Ecological Zone) if sales are made into the local market; and at the rate of 8% if all processed poultry are exported into other African markets.

- Further, a company engaged in agro-processing will also be deemed to be in the priority sector and can carry forward tax losses incurred in any year of assessment for relief against future taxable incomes for a maximum period of 5 years after which they will lose the right to relief the tax losses. The tax losses will be relieved on first-in-first-out (FIFO) basis.

(4 marks)

d) The tax compliance obligations of the company at the time of commencement will include the following:

- Submit to the Ghana Revenue Authority (GRA), an estimate of tax payable (self-assessment return) form by the end of the first quarter of the company's year of assessment.
- Pay the first quarter's estimated tax due to the GRA by the end of the first quarter;
- Monitor the company's performance during the year and re-submit to the GRA a revised estimate of tax payable when performance of the company changes significantly stating the reasons for the revision in a letter to the GRA.
- The revise estimate overrides the previous estimate of tax payable and remains so until the estimate is revised again or allowed to remain until the end of the year and ensuring that the estimated chargeable income does not exceed the actual chargeable income by more than 90%. Note that penalty will be triggered if the deviation is more than 90%
- Four (4) months after the end of the company's accounting date (year of assessment), file the company's annual tax returns with the GRA

(4 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

This question basically is about the residency test of individuals and corporate entities as well as the tax implications of the set up.

The a) part required candidates to demonstrate knowledge of apportionment of time between Ghana and Britain and the tax implication. Candidates were required to provide the basis of an individual becoming a resident individual. Many candidates did not answer the question and therefore lost marks.

What was curious was that resident individuals who establish companies in Ghana, make such companies permanent establishment in Ghana. Candidates should learn to understand permanent establishment and how they are created.

The question b) had to do with tax implication on exports. Some candidates dilated on the company-Addofa Ltd becoming a free zone enterprise. Some candidates changed the question to free zone enterprise and proceeded to answer the question in that direction.

The c) part of the question required tax planning opportunities available to the new company to be set up. Some understood the question to be general tax planning opportunities for any new company. Candidates should exercise caution when they are answering questions in order not to provide irrelevant questions.

The d) part of the question was well answered but many got it wrong.

QUESTION FOUR

a)

i) **Capital Allowance Computation**

	Pool 1	**Pool 2**	**Pool 3**	**Pool 4**	**Pool 4**	**Total**
Y/A 2019	**40%**	**30%**	**20%**	**10% SLM**	**10% SLM**	
Cost	40,000.00	263,000.00	350,000.00	300,000.00		
Capital Allowance	**4,032.88**	**19,887.12**	**17643.84**	**7,561.64**		**49,125.48**
WDV	35,967.12	243,112.88	332,356.16	292,438.36		
Y/A 2020						
WDV	35,967.12	243,112.88	332,356.16	292,438.36	-	
Addition			12,000.00		518,000.00	
Depreciation Basis	35,967.12	243,112.88	344,356.16	292,438.36	518,000.00	
Capital Allowance	**14,386.85**	**72,933.86**	**68,871.23**	**30,000.00**	**51,800.00**	**237,991.95**
WDV	21,580.27	170,179.01	275,484.93	262,438.36	466,200.00	

Y/A 2019	**Pool2**	**Y/A 2019**	**Pool 3**	**Y/A 2019**	**Pool 4**
Installation	21,500.00	Furniture	150,000.00	Factory	300,000.00
Generator	20,500.00	Office Equipment	200,000.00		**300,000.00**
Plant and Machine	171,000.00		**350,000.00**		
Delivery Van	50,000.00				
	263,000.00				

Y/A 2020	**Pool 3**	**Y/A 2020**	**Pool 4**
Canteen	12000	Office	500,000.00
	12000	Signboard	18,000.00
			518,000.00

(Marks are evenly spread using ticks = 8 marks)

ii) **Computation of Chargeable Income**

		GH¢
Net Profit		516,800.00
Deduct other income		23,000.00
		493,800.00
Add back:		
Advert and Publicity		
Permanent Signboard	18,000.00	
Installation of Plant and Others		
Installation of Plant	21,500.00	
Heavy Duty Generator	20,500.00	
Staff Welfare		
Canteen Equipment	12,000.00	
Donations and Subscription		
Goods given gratis to Custom	13,000.00	
Depreciation	2,700.00	87,700.00
		581,500.00
Add Other Income		23,000.00
		604,500.00
Deduct the following:		
Fresh Graduate	2,600.00	
Loss from 2019	49,125.48	
Capital Allowance	237,991.95	289,717.42
Chargeable Income		**314,782.58**

(Marks evenly spread using ticks = 6 marks)

b)

i) **Royalty:** Royalty in the oil and gas industry refers to payment for the right to extract the crude or gas. It is calculated as a percentage of the revenue obtained from the oil and gas produced. Royalty is a revenue tax which is also tax deductible in ascertaining the chargeable income of the contractor/operator. The Government of Ghana as per the Petroleum Agreement, imposes royalty which may vary among contractors which ranges between the rates of 5% and 12.5%. Government does not pay anything for the royalty it takes from the contractors.

ii) **Carried Interest (Initial Interest):** Carried interest is an automatic interest given to the Government of Ghana without payment for the interest by the Government. The interest entitles the Government to a certain percentage of the petroleum resource without contribution to exploration and development of the petroleum operations but Government will be required to contribute to production of the petroleum operations. It is another source of revenue to the state. The rate ranges between 7.5% and 15% in most oil producing countries but Ghana is currently holding 10% of the carried interest in most petroleum operations. This entitles the state to a share of the oil produced without making financial contribution towards exploration and development cost. Government will have to contribute towards production cost being its proportionate representation.

iii) **Additional Interest:** It is an option incorporated in the Petroleum Agreement to enhance the state's benefits which are exercisable by the state within 90 days subject to Petroleum Agreement after declaration of Commercial Discovery by the venture or the investor company (Contractor). The state can acquire up to 5% in every commercial discovery. The state represented by GNPC shall pay the percentage of all future costs including development and production costs approved by the Joint Management Committee (JMC).

The state may wish to dispose of its additional interest, but the contractor has the first right of refusal. That is, the contractor should be made to acquire the government's interest or upon refusal, the government may then approach other interested persons to offer it.

iv) **Additional Oil Entitlement:** It is described as the portion of a contractor's share of petroleum produced to which the State is entitled to a share computed on the basis of the after-tax inflation-adjusted rate of return that the contractor achieved with respect to each field. This is levied in case of windfall profit, where the venture's actual rate of return exceeds the targeted rate of return used to evaluate the profitability of the venture during the negotiations.

Under the exploration and production Act 2016 (Act 919), the State is entitled to a portion of a contractor's share of petroleum produced from each field on the basis of the after-tax inflation-adjusted rate of return that the contractor achieved with respect to each field.

(1.5 marks each = 6 marks)

EXAMINER'S COMMENTS

The a) part of the question was the computation of capital allowance and chargeable income. A strange approach by some candidates was the re-production of the question as an answer. It also emerged that some candidates had difficulty computing the capital allowance. The determination of the number of days of the business period in the year of commencement was a challenge to many candidates. Some candidates did not know the rate to apply to the depreciable assets. Students should revise this area well.

Other income was treated twice by many candidates. Some candidates also treated the other income as investment income instead of business income.
What was shocking was the fact that most of the solutions had no title, no basis period and no year of assessment.

The question b) required some understanding of the government take in the upstream petroleum operation.
This was quite straight forward. Many candidates did so well. Others too, had no clue what those concepts were and therefore did not answer them satisfactorily.

QUESTION FIVE

a)

i)

	GH¢
Profit before tax	468,910
Add back: Depreciation	15,740
Donation to political parties	40,000
	524,650
Less: Unrelieved loss	460,400
Adjusted profit	**64,250**
Less: capital allowance	60,600
Chargeable income	**3,650**
Add: financial cost	50,000
	53,650
Less: financial gain	20,000
Chargeable income after adjusting for financial gain and financial cost	33,650

Allowable financial cost:

Financial gain + 50% of the adjusted chargeable income
= 20,000+ (50%*33,650)
=36,825

The amount of GH¢36,825 represents the allowable financial cost for the 2020 year of assessment. The excess financial cost of GH¢13,175 (50,000 – 36,825) that is not allowed as a deduction may be carried forward for the next five years of assessment.

(4 marks)

ii) Computation of Chargeable Income and tax payable by the company

	GH¢	GH¢
Profit before tax		468,910
Add back:		
Depreciation		15,740
Donation to political parties		40,000
Financial cost		50,000
		574,650
Less:		

Unrelieved loss	460,400	
Allowable financial cost	36,825	497,225
Adjusted profit		77,425
Less: Capital allowance		60,600
Chargeable income		**16,825**

(4 marks)

iii) Computation of tax payable by Prime Shea Limited

Because Prime Shea Limited is a manufacturing business and is located in Batanyili, a suburb of Tamale, its tax rate is 12.5% -a rebate of 50%

Therefore, the tax payable is 12.5% * GH¢16,825 = GH¢2,103.13

(2 marks)

b)

Taxpayers as part of their rights may object to a tax decision by the Commissioner-General if not satisfied with the notice of assessment (tax decision).

Management of Naagode Ltd must object to the tax decision in writing within 30 days upon being notified of the tax decision, stating clearly the grounds of the objections.

As per the information available, the taxpayer has indicated the assessments were excessive, the condition of stating clearly the reason for the objection must be met.

The objection by Naagode Ltd must be done within 30 days.

Additionally, management of Naagode Ltd is required to pay all taxes relating to the DTRD taxes not in dispute plus 30% of the taxes in disputes.

	GH¢
TAQA Department:	
Corporate Tax	230,000,000
VAT	29,000,000
NHIL	29,000,000
WHT	105,000,000
30% of 393,000,000=117,900,000	**393,000,000**

From the above, if all the taxes are in disputes, then 30% of the total amount must be paid before the objection is determined. On the other hand, if some are in dispute, pay 30% of the taxes in dispute and those not in dispute, pay all before the objection is determined.

As regards the custom duties and other taxes, the law requires that management of Naagode Ltd pays all the taxes in full.

Post Clearance Audit Department:

	GH¢
Import Duties	10,000,000
VAT	12,000,000
NHIL	4,000,000
GET/Fund	4,000,000
	30,000,000

Management of Naagode Ltd has to settle all the GH¢ 30,000,000 in full.
It must be noted that, the objection will not be entertained by the Commissioner-General until the above conditions are met.

The Commissioner-General, using his discretion, may waive, vary or suspend the 30% payment in respect of taxes in disputes.

Management of Naagode Ltd may appeal to Commissioner-General for a suspension, variation or waiver of the 30% in respect of the Domestic Tax Revenue Division.

(10 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

To start with, question five a) required candidates to use data for the year ended 31 March 2020 for their computation while the requirement was up to 31 December 2020. This was an obvious mistake but it did not impact on the outcome of the results required by the examiners. Financial costs from derivative is a popular area in tax administration. This question was adequately addressed by candidates except some few aberrations. Some candidates added legal fees as non-allowable deduction. This made candidates to get the computation of the adjusted chargeable income wrong.
Some candidates applied 25% to the chargeable income. It must be noted that manufacturing concerns have locational incentive. Accra/Tema is taxed at 25%, Regional Capitals at 18.75% a rebate of 25% and any other area is taxed at 12.5%. This, most candidates did not apply in the computation of the taxes

The b) part of the question was thought to be straight forward, but it turned out to be a nightmare. Some of the answers are worth taking a look at. "Naagode should not self-assess, after 30 days, Naagode should appeal", "Apply for an objection, request for practice notes and private rulings, request for reliefs and determine the nature of business and lastly follow up". This looks like a poem and not an answer to a question.

RECOMMENDATION

- Candidates on their part should make it a point to read at least the report twice before they sit for the examination.
- Candidates with terribly bad hand writing should continue to explore ways to improve their handwriting. Some of the hand writings are so terrible that, they impede and make marking very slow and boring.
- Most candidates continue to present work without writing any headings which aid the identification of question for easy marking. Closely akin to this is mixed up in the

numbers of questions. Some sub questions are added to questions which they do not belong. This does not lend itself for easy marking.

- We want to advise the candidates to make it a must to read the examiners' report before the examinations are administered. This will afford the candidates the ability to handle the questions well and eschew pitfalls which characterized our making.
- It is becoming a normal feature in the examination where candidates display poor command over the English language. This one was no exception. This to say the least is becoming worrying and candidates must know that a criterion of learning is the English language. It is to bring improvement in this area that the Institute as part of the syllabus incorporated Communication (Section C). English language skill comes about by reading widely.

CONCLUSIONS

- Candidates appear unwilling to read the examiners' report and keep repeating on a daily basis and keep committing the mistakes. Some of the mistakes appear so basic and commonplace.
- We want to urge candidates that the success in the examination to a very large extent depends on one's ability to read the report and apply same in answering the questions.
- The Institute should continue to offer assistance to candidates to help raise the pass rate in the examination.
- The examiners' report should be mailed to all candidates who register for the examinations in order to compel them to read.
- Bad handwriting from some of the candidates continues to characterise the examinations. Candidates with bad hand writing should continue to work hard on their hand writing in order to improve the eligibility of their presentations.
- Tuition Centres should continue to support the efforts of candidates in all the processes. Getting candidates to write mock examination with the view to discussing their strengths and or weaknesses. The mock examinations will help candidates work on improving their weakness.