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

## EXAMINER'S GENERAL COMMENTS

This report sets the tone for assessments of the questions and the performance of the candidates of the August 2022 examination with the view to enhancing the quality and standard of the paper.

The report also presents a snapshot of events before, during and at the marking of the scripts and also events after marking with the hope that it serve as source of reference to stakeholders. Having completed the marking, it is quite instructive to give feedback on the performance of candidates to the managers of the examination with the view to improving the examinations process.

Generally, the paper was a very good one in terms of content and requirement. Candidates who studied for a maximum of two hours each day should be able to pass the examination with ease. The paper quality was good and the type setting was impressive and followed the usual pattern.

On the whole, candidates did not perform badly at all. The performance appeared incredible and impressive. However, some candidates have no clue of what they were required to do while others demonstrated lack of adequate preparedness.
It was observed that most candidates did not read the examiners' report of the previous sitting before they sit for the examination. This means that candidates repeat mistakes which are being highlighted diet after diet by the examiners.

## STANDARD OF THE PAPER

The questions reflected what in the real world confronts taxpayers and tax consultants on daily basis. This provides confidence to candidates that they will be able to offer relevant practical solutions in future in tax related issues. In effect, the standard of the paper was a reflection of what to expect in the field of taxation in real life situation.

The marks allocation appeared appropriate for each of the questions asked. The sub questions were also appropriate for a final level paper and standard. Another aspect of the questions worth commenting was the one which tested the understanding of candidates on the taxability of resident individual and corporate entity.

All the questions were taken from the syllabus. The spread of the paper covered the entire syllabus. There was no question administered from outside the syllabus.
The paper tested skills and application of the candidates. A candidate who made a pass mark really demonstrated great aptitude.

## PERFORMANCE OF CANDIDATES

The performance of candidates in the August 2022 exams has not deviated from what has been previously known. With the preponderance of materials and information, it is expected that the performance of candidates should see upward trajectory but candidates' performance continues to assume the same trend.

The preparation for the examination continues to be a challenge for many candidates. The scripts of candidates continue to reveal this fact. Some candidates scratched the surface of the questions as clear indication of lack of preparation.

There were some crop of candidates who left some of the questions unanswered. These candidates may appear as candidates who did selective reading instead of using the syllabus as a guide and studying along those lines.

Some of the answers provided by candidates left much to be desired and did reflect lack of adequate preparation and knowledge. On the whole and in fairness, some candidates did so well and should be commended for their industry and determination.

## NOTABLE STRENGTHS AND WEAKNESSES OF CANDIDATES

It must also be stressed that it was not doom and gloom. A lot of candidates gave a good account of themselves by performing excellently.

### Notable strengths

Most of the candidates attempted all questions. This implies that the syllabus served as a guide to candidates except some few ones who did not write on some of the questions. It also means that the Institute of Chartered Accountants, Ghana is committed to its syllabus.

Candidates demonstrated adequate knowledge of the tax implication of Thin Capitalisation and profit shifting behaviour of taxpayers. Many candidates scored a lot of marks in this question.

### Notable weaknesses

Candidates had difficulty computing tax expenditure. As tax candidates, the determination of tax expenditure from a set of relevant data should be pretty much simple.

Writing eligibility is a problem among a lot of candidates. Incomprehensible construction and poor explanation of issues continue to dog the efforts of candidates and render their solutions meaningless.
Computation of capital allowance from a set of data remains a challenge for most candidates. More than 99% of the candidates got the capital allowance computation

wrong. Capital allowance with repairs and improvement continues to be a difficult area for most candidates.

Solutions without appropriate headings have become common in the examination. Tax computation is always in respect of a person. That person must always be identified. Any solution that does not identify the tax payer is alien in tax administration.

Another key weakness is the inability of candidates to delineate the dynamics of self-assessment in tax administration.

It is essential for tax candidates to understand clearly what constitutes resident and non-resident persons. This area is the fulcrum around which all other things fall under. The concept of taxation can never be fully appreciated, unless candidates take steps to understand the nuances of taxation of resident and non-resident persons.

Many candidates reproduced the same question on examination of accounts instead of adding back non-allowable and deducting non-business income. We saw reproduction of the same set of data but deducting only what they thought was allowable. This poses problems for markers in the award of marks.

## QUESTION ONE

a) Jantua Ltd (Jantua) is a company incorporated in the Republic of Israel with subsidiaries across other countries including Frankaa Company Ltd (Frankaa) in Ghana. All subsidiaries were incorporated in their respective countries by Jantua.

Jantua won a contract with the Ministry of Roads and Highways to construct a road in Ghana. Jantua used its subsidiary, Frankaa to carry out the project. Jantua billed the Ministry of Roads and Highways for the work done. Likewise, Frankaa billed Jantua for management and technical services on the road project.

**Required:**
What is the tax treatment of this arrangement? **(4 marks)**

b) The following relates to information of two companies both resident in Ghana for 2021 year of assessment with basis period January to December each year:

| | **Company A** | **Company B** |
|---|---|---|
| | **GH¢** | **GH¢** |
| Income | 10,000,000 | 12,000,000 |
| Cost of Sales | 4,200,000 | 4,400,000 |
| Gross Profit | 5,800,000 | 7,600,000 |
| Less operating cost | 4,900,000 | 3,000,000 |
| **Chargeable Income** | **900,000** | **4,600,000** |

Both companies are located at Dodowa in the Greater Accra Region of Ghana.

**Additional information:**

i) Dividend paid to each company by Company C, another resident company in Ghana is as follows: Company A: GH¢200,000:
Company B: GH¢230,000

Company A and Company B both hold 25% and 30% shares respectively in Company C. Company A added its dividend to income above while Company B increased its creditors with the amount of the dividend received.

ii) Contribution towards Kanzo Football Club, a local football club at Nima by Company A amounted to GH¢ 80,000 while Company B also contributed GH¢100,000 following an appeal by the Club. Both companies could not show government approval of the contribution.

iii) Two vehicle engines costing GH¢80,000 each was purchased by the two companies.

Pool 2 had a written down value of GH¢200,000. The Tax Managers of both companies did not know the implication of the transaction, therefore ignored the impact of the purchase of the engines. This transaction coincidentally relates to both Company A and Company B.

iv) Company B paid its foreign employees tax to a United Kingdom (UK) tax office as the employees were from the UK.

**Note: Company A is in its 4th year under the temporary concession while Company B is in its 5th year as free zone enterprise.**

**Required:**

i) What is the tax implication of holding 25% or more of the voting power of another resident company? **(1.5 marks)**

ii) What is the position of the tax law on tax payment made by Company B to the UK? **(1.5 marks)**

iii) What is the total tax payable by both companies? **(8 marks)**

iv) What is the total tax expenditure? **(1 marks)**

c) In tax administration, the Commissioner-General has the mandate to protect revenue collected and collectible. As part of ensuring the protection of revenue, the Commissioner-General has the mandate to re-characterise or disregard any transaction that has an effect to erode tax gains.

**Required:**

In accordance with the tax provision, under what circumstances will the Commissioner-General re-characterise any transaction? **(4 marks)**

**(Total: 20 marks)**

## QUESTION TWO

a) ***Despite the growing number of contributions to bilateral double taxation, some tax analysts have questioned whether bilateral double taxation conventions relating to the taxation of income and capital are essential for the resolution of international tax problems.***

**Required:**

Discuss the above statement. **(10 marks)**

b) Dekey Company Ltd was incorporated under the Companies Act, 2019, (Act 992) on 1 January, 2021 to prospect for diamonds in the Densu River in the Eastern Region of Ghana.

A review of its Comprehensive Income Statement for the year ended 31 December, 2021 showed a loss of GH¢29,304,000 for 2021 year of assessment.

An extract of the Comprehensive Income Statement is as follows:

| | GH¢ | GH¢ |
|---|---|---|
| Income from Operations | | 864,000 |
| Operational Cost | 17,920,000 | |
| Administration and General Expenses | 11,160,000 | |
| Finance Charges | 1,088,000 | (30,168,000) |
| **Net Loss** | | **(29,304,000)** |

The CEO of Dekey Company Ltd remembered a discussion on "Unrelieved Losses" during a training workshop. The CEO has approached you, a final year tax candidate to explain and advise him on the implications of the loss on future tax liabilities of the company.

**Required:**
Write a report explaining to the CEO what "***Unrelieved Losses***" are and the rights available to the company for the loss declared at the end of its first year of operations under the Income Tax Act, 2015 (Act 896). **(10 marks)**
**(Note: the format of a report must be followed)**

**(Total: 20 marks)**

## QUESTION THREE

John Zookay is a Ghanaian Citizen who has lived in the Republic of Liberia for many years. He is also a citizen of Liberia. He is an employee of a Multinational Company that has a subsidiary company in Ghana and Liberia. He works for the Ghanaian subsidiary company, but his role makes him work for the other subsidiary in Liberia as well. John has chosen Ghana as a place of his permanent home even though his immediate family is based in the Republic of Liberia and he visits Ghana anytime during the year.

In 2018, John spent more than 184 days outside Ghana working for the Liberia office. In addition to his employment income in Ghana, he earned some income from a high yielding fixed deposit accounts maintained with Bank of Africa, Ghana. His gross interest income for the year 2018 was GH¢10,000 from Bank of Africa. A few years back, whilst studying in the United Kingdom, he maintained some high yielding interest bearing account from which he earned £3,500 in 2018. John does not know how the current income tax law "Income Tax Act, 2015 (Act 896)" will affect his incomes earned from Ghana and elsewhere in the United Kingdom and is worried that he would be liable to tax on all his incomes in Ghana. He is keen on getting tax planning advice from you to enable him reduce his tax liability (if any).

John also had serious business interests in Ghana. In view of this interests, he set up two companies limited by shares in Ghana in which he implemented his business ideas. The following are the objects of his two companies:

1) farming and production of palm fruits on commercial scale; and
2) processing of palm fruits into oil for both the local and international market.

John together with his management team strategically decided that each of the companies maintains equity in each other in order to avoid difficulties with sourcing for external funding thus using income from dividends within his companies effectively. John intends that at some point, he will merge the two companies into one to avoid all the legal compliance obligations and duplication of cost associated with running separate companies. All the two companies are instalment taxpayers and are required to file their self-assessment estimate at their various tax offices.

John desperately needs your assistance to enable him structure his personal and business interest so as to minimise his tax liability.

**Required:**

a) Prepare a briefing paper to John on the tax implications on him and his companies. **(10 marks)**

b) Advise him on the compliance obligations of his companies under self-assessment. **(10 marks)**

**(Total: 20 marks)**

## QUESTION FOUR

Zimbo Ltd (Zimbo) specialises in the manufacture of personal hygiene soaps and related products at their factory in the industrial area of Accra. Zimbo commenced business operations on 1 April 2020 and had an assessed loss of GH¢112,000 for the period ended 31 December 2020 attributable to large start-up costs in the first period of trading.

Turnover for the year ended 31 December 2021 amounted to GH¢1,980,000 of which GH¢700,000 relates to export sales. Zimbo is trying to increase its turnover from export sales through participation in foreign market trade fairs as well as other marketing campaigns. The gross profit margin for the year ended 31 December 2021 was 60%.

Zimbo recorded a net profit of GH¢315,000 for the year ended 31 December 2021 after taking into account the following transactions:

| | **Note** | **GH¢** |
|---|---|---|
| Gross rental income | i) | 180,000 |
| VAT refund | | 20,000 |
| Net interest received | | 10,028 |
| Trademarks | ii) | 95,000 |
| Donation | iii) | 120,000 |
| Depreciation | | 67,000 |
| Marketing cost | iv) | 88,000 |
| General cost | v) | 140,000 |
| Compensation cost | vi) | 290,000 |
| Rental expense | | 48,000 |
| Canteen expense | | 75,000 |
| Interest paid | vii), x) | 30,000 |
| Other expenses | viii) | 230,000 |

**Additional information:**

i) The gross rental income earned was from leasing one wing of the head office building. The wing constitutes 10% of the entire building.

ii) The registration of three trademarks, 'Cleanex', 'Perfect' and 'Alfresh' at a total cost of GH¢30,000 in respect of Zimbo's personal hygiene soaps that is to last for fifteen years. The market research expenses incurred in connection with the development of these soaps amounted to GH¢65,000.

iii) The donation was made to a local government assisted school as part of Zimbo's corporate social responsibility programme.

iv) GH¢25,000 of the marketing cost was incurred when the export market Development Manager attended two trade conventions and one trade mission as part of Zimbo's efforts to increase its export sales. The trade mission was duly approved. The remaining GH¢63,000 of costs were incurred in marketing Zimbo's soaps to foreign markets.

v) GH¢28,000 of the general costs was incurred in underpinning the office building to strengthen its foundations against sinking.

vi) The compensation cost was as a result of the production manager incurring an injury while working on one of the production lines in the factory. The Production Manager was rendered incapacitated as a result of the incident. Zimbo settled out of court. GH¢250 000 of the costs relate to a payment made to the Production Manager in full settlement of the case. GH¢50,000 of the GH¢250,000 out-of-court settlement was paid in order to prevent the Production Manager from setting up a similar business in competition with Zimbo. The remaining GH¢40,000 of costs represent fines imposed by the Factory Inspectorate Division following the incident. The production line was also condemned as a result.

vii) The interest paid was incurred in respect of Zimbo's GH¢200,000 overdraft facility. GH¢100,000 of the facility was applied towards recurrent expenditure while the other GH¢100,000 of the facility was applied towards the cost of a new showroom.

viii) Ghana Revenue Authority considers 40% of other expenses to be prohibited for tax purposes.

ix) Zimbo's projected taxable income for the year ended 31 December 2021 was GH¢360,000. The Accountant remitted the provisional tax for the three quarterly payment dates (QPDs) on time but, due to the pressures of year-end work, forgot to submit the return for the final QPD. The Accountant also omitted the brought forward assessed loss from his computations of the provisional tax.

x) During the year, a showroom was constructed in close proximity to Zimbo's factory building. The showroom is used to display the soaps from the factory as well as for storage purposes pending shipment to various destinations. The showroom was constructed at a total cost of GH¢100,000 and was wholly funded by Zimbo's overdraft facility. The showroom was brought into use on 1 August 2021. Zimbo has made all tax appropriate elections in connection with the showroom.

xi) Details of Zimbo's other fixed assets are provided below. These were all acquired/constructed during the year to 31 December 2020:

| | **Cost (GH¢)** |
|---|---:|
| Factory building | 200,000 |
| Plant and machinery (operates two shifts) | 110,000 |
| Office building | 120,000 |
| Furniture and Office equipment | 60,000 |
| Motor vehicles | 130,000 |

**Required:**

a) Calculate the capital allowances claimable by Zimbo for the year ended 31 December 2021, assuming all favourable elections are made. **(6 marks)**

b) Calculate the provisional tax which should have been paid by Zimbo for the year ended 31 December 2021, clearly indicating the due dates and the respective tax amounts. **(3 marks)**

c) Calculate the chargeable income and company tax payable by Zimbo for the year ended 31 December 2021. **(10 marks)**

**Note: Your calculations should assume that the provisional tax paid was as calculated in part b) of the question.**

d) Compute any other tax liability apart from the company tax. **(1 mark)**

**(Total: 20 marks)**

## QUESTION FIVE

a) Alpha Ltd is a company operating in the upstream petroleum sector and commenced production in 2020. The Accountant who is new to the industry provided the following extract for the 2020 year of assessment with basis period 1 January to 31 December, 2020.

| | GH¢ | GH¢ |
|---|---:|---:|
| Gross Revenue | | 900,000,000 |
| Cost of processing | | (240,000,000) |
| Gross Margin | | 660,000,000 |
| **Other Cost:** | | |
| Licence Cost | 1,000,000 | |
| Exploration Cost | 40,000,000 | |
| Development Cost | 60,000,000 | |
| Production Cost | 80,000,000 | |
| Research and Development | 14,000,000 | |
| Purchase of Land | 10,000,000 | |
| Staff Cost prior to production | 45,950,000 | |
| Staff cost during production | 30,000,000 | |
| Seismic data at exploration up to 31/12/2019 | 110,110,000 | |
| Cost incurred in Hire of geologist from a rivalry company at development | 15,000,000 | |
| Proceeds from sale of assets before production in 2019 | (9,000,000) | |
| Penalty by Petroleum Commission | 670,000 | |
| Fines | 100,000 | |
| Hedged gains | (200,000) | |
| Christmas tree | 13,000,000 | |
| Bonus payment to government | 340,000 | |
| Proceeds from sale of assets after production | (1,140,000) | |
| Payment for infraction of regulatory requirement | 15,000,000 | |

| | | |
|---|---|---|
| Marketing Cost | 1,000,000 | |
| Letter of Credit Cost in connection with purchase of the oil | 80,000 | |
| Hedged loss from derivative | 14,000,000 | 439,910,000 |
| **Net Operating Margin** | | **220,090,000** |

**Additional information:**

i) Production in barrels is 120,000,000.

ii) Finance Lease:
Principal Repayment is GH¢15,000,000.
Finance cost is GH¢1,200,000.
Lease is over 6 years starting from 1/1/2020.

**Required:**
Compute the tax payable for Alpha Ltd for 2020 year of assessment. **(10 marks)**

b) Wina Ltd (Wina) is a company incorporated in the United States of America and also resident in the United States of America. The Company has been looking for opportunities across Africa to invest its idle funds in support of shareholders' decision.

In the latter part of 2021, the management of Wina identified Ghana as a country with huge potentials for foreign investments. Wina intends to acquire 60% shares in Fatia Ltd (Fatia), a company resident in Ghana with indigenous ownership but with unimpressive financial records.When the deal is approved, it would provide a financial facility, the equivalent of GH¢10,000,000 as a loan with interest at the rate of 22.5% comparable to all other interest rates.

The equity of Fatia amounts to GH¢500,000 comprising Stated Capital of GH¢250,000, Retained Earnings of GH¢200,000 and Revaluation Reserves of GH¢50,000.

**Required:**
Using the format of a memo:
Advise the management of Wina as a final level candidate on the tax implications of this investment and the credit support that Wina can give without any restriction from the Ghana Revenue Authority. **(10 marks)**

**(Total: 20 marks)**

**SUGGESTED SOLUTION**

**QUESTION ONE**

a) The winning of contract by Jantua Ltd to construct roads, makes Jantua Ltd a permanent establishment in Ghana for a period of 90 days or more. This means that once the 90 days' period is reached, Jantua Ltd will be required to file its tax returns. Its withholding tax is not final after it attains the status of a permanent establishment in Ghana.
Additionally, it is required to withhold on the payment to Frankaa Ltd on the management and technical service fees. **(4 marks)**

b)

i) The tax implication of a resident entity holding 25% of another resident entity is that, any dividend declared is exempt from tax. This does not, however, apply if the paying company is into mining and mineral operations or petroleum operations. **(1.5 marks)**

ii) Income accrued and derived by non-resident is payable in Ghana and the global income of resident person is payable in Ghana. It is therefore wrong for PAYE payment of Citizens of United Kingdom be payable in United Kingdom. It has to be paid in Ghana. **(1.5 marks)**

iii) **Computation of tax payable and Tax Expenditure**
**Year of assessment 2021**
**Basis period January 1, 2021 to December 31, 2021**

| | **Company A** | **Company A** | **Company B** | **Company B** |
|---|---|---|---|---|
| | **GH¢** | **GH¢** | **GH¢** | **GH¢** |
| Chargeable income | | 900,000 | | 4,600,000 |
| Deduct Dividend | 200,000 | | | |
| Repairs and Improvement (W1) | 7,000 | 207,000 | | 7,000 |
| | | 693,000 | | 4,593,000 |
| Add back | | | | |
| Support Contribution without approval | | 80,000 | | 100,000 |
| | | 773,000 | | 4,693,000 |
| Capital Allowance (W2) | | 45,900 | | 45,900 |
| | | 727,100 | | 4,647,100 |
| Tax Rate | | 1% | | Exempt |

| | | | | |
|---|---|---|---|---|
| Tax Charged | | 7,271 | | |
| Tax Expenditure | 24%*700,000 | 174,504 | 25%*4,610,400 | 1,161,775 |

**Workings:**

Computation of capital allowance (W 1)

| **Y/A 2021** | **Pool 2 (30%)** |
|---|---|
| | **GH¢** |
| Basis Period 1/1/21-31/12/21 | 200,000 |
| Capital Allowance (30%*200,000) ( W2) | 60,000 |
| Written Down Value | 140,000 |
| | |
| Amount of Repairs and improvement (80,000 * 2=160,000) | 160,000 |
| 5% of Written Down Value (5%*140,000) Amount to be expensed | 7,000 |
| Amount to be capitalized | 153,000 |
| | |
| (W2) | |
| Y/A 2021 | GH¢ |
| WDV b/fwd | 200,000 |
| Repairs and Improvement (W1) | 153,000 |
| | 353,000 |
| Capital Allowance | 105,000 |
| Capital Allowance granted previously (W 2) | 60,000 |
| Difference in capital allowance to be granted | 45,000 |

**(9 marks)**

c) The Commissioner-General reserves the right to re-characterise a transaction under the following circumstances:

- Fictitious or does not have a substantial economic effect
- The form does not reflect its substance
- Artificial
- Anything that is done to avoid or reduce tax liability

**(4 points for 4 marks)**

**(Total: 20 marks)**

**EXAMINER'S COMMENT**

Question 1 a)

This question required explanation on how to treat Non-Resident persons who win contracts in Ghana and engage subsidiary to carry out the work because it does not want to create a Permanent Establishment in Ghana and file and pay taxes. The question required candidates to look at the issue from two angles namely, the management and technical fee between the parent in the Republic of Israel and the subsidiary in Ghana and also the issue of billing by the parent to Ministry of Roads and Highways.

Clearly, Jantua Ltd would have created a permanent establishment in Ghana if the construction works were done for 90 days or more. By using a subsidiary, it is an attempt to disguise the taxability of the arrangement. The Commissioner-General will ignore the role of the subsidiary and hold the parent company largely responsible for the works and therefore gets it to file its returns in Ghana.

The management and technical fee from the parent company to the subsidiary must also reflect the market price which will attract a withholding tax at the rate of 7.5%.

Question 1 b)

The question required the examination of accounts with a computation of tax expenditure. This is the first time computation of tax expenditure has been required in ICAG examination.

The question was also mixed with repairs and improvement and how to determine the capital allowance from that. Unfortunately, most candidates got it wrong. The corollary is that, almost all the candidates did not look at this important area of tax administration. Another sad spectacle was how to calculate the taxes using the appropriate rates. Candidates must know that during the temporary concession, the rate of tax is 1% tax. Free Zone, however, is exempt from tax for the first 10 years. Tax expenditure is the difference between the tax rate at the marginal tax rate of 25% and 1% in the case of the temporary concession category while it is the difference between 25% and 0% in the case of the free zone.

Question 1 c)

This question required the circumstances under which transactions are re-characterised for tax purposes. This was a question a lot of candidates answered satisfactorily.

**QUESTION TWO**

a) The interrogation is based on the idea that bilateral double taxation conventions may be dispensed with. In other words, that such conventions are not necessary in order to resolve the international tax problems that normally fall within their purview. However, this premise also works on the assumption that it is possible to ascertain why such conventions exist and what they are intended to do.

Therefore, the following purposes of double taxation conventions are stated, expressly, to serve:

- A major goal of bilateral tax treaties is to remove impediments to international trade and investment by reducing the threat of double taxation that can occur when both Contracting States impose tax on the same income. This goal is advanced in four distinct ways. First, a bilateral tax treaty generally increases the extent to which exporters residing in one Contracting State can engage in trading activity in the other Contracting State without attracting tax liability in that latter State. Second, when a resident of a Contracting State does engage in a sufficient activity in the other Contracting State for that State to have the right to tax, the treaty establishes certain guidelines on how that income is to be taxed. Third, a bilateral tax treaty provides a dispute resolution mechanism that the Contracting States may invoke to relieve double taxation in particular circumstances not dealt with explicitly under the treaty.
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  Fourth, where income or gains remain in principle taxable in both Contracting States, the State of residence of the taxpayer will relieve the double taxation that results either by allowing a credit for the tax paid in the other State or by exempting the income or gain from its own tax in practice.
- The scope of a bilateral tax treaty typically is not limited to commercial and business activities. Treaties may remove tax impediments to desirable scientific, educational, cultural, artistic and athletic interchanges. In addition, a treaty may address issues arising in the tax treatment of pension plans and Social Security benefits, of contributions to charitable organizations, of scholarships and stipends paid to visiting scholars, researchers, and students, and even of alimony and child support payments.
- The historical emphasis on the elimination of double taxation should not obscure the fact that most tax treaties have another equally important operational objective — the prevention of tax evasion and avoidance or double non-taxation. In other words, the fundamental principle is that treaties should apply to ensure that income is taxed once, and only once. This objective counter-balances the elimination of double taxation. Just as double taxation imposes an inappropriate barrier to international commerce, the tolerance of fiscal evasion and avoidance offers an inappropriate incentive to such commerce.
- One ancillary objective is the elimination of discrimination against foreign nationals and non-residents. Any country entering into a treaty wants to ensure that its

residents who carry on business in the other contracting State are treated the same as the residents of that other State who carry on similar activities.

- Another ancillary objective is to facilitate administrative cooperation between the contracting States. This administrative cooperation has three main dimensions: exchange of information, assistance in the collection of taxes and dispute resolution. The exchange of information in the typical tax treaty can be an important tool in combating tax evasion and avoidance and to ensure that taxpayers receive treaty benefits. Finally, most treaties provide a mechanism in their treaties — the mutual agreement procedure — for resolving disputes concerning the application of the treaty. This procedure is often used to resolve transfer pricing disputes.
- One of the most important effects of tax treaties is to provide certainty for taxpayers. Certainty concerning the tax consequences of cross-border investment is an important factor in facilitating such investment. Tax treaties have an average life of approximately 15 years. As a result, non-resident investors know that, despite changes in the tax laws of the source country, the basic limitations in the treaty on the source country's right to tax will continue to prevail.

Despite the above objectives and benefits of double taxation treaties, the following are summarised costs of problems a nation should consider:

- Immediate revenue costs.
- Affect or limit on the operation of certain domestic tax laws.
- Risk of treaty shopping and treaty abuse.
- Risk of double non-taxation.
- Need for changes and/or clarifications to domestic law to conform to tax treaties.
- Challenges to tax administration capacity to negotiate and administer tax treaties, including obligations under the mutual agreement procedure, exchange of information.

There are, however, alternatives to having a double taxation treaty. Such alternatives might include the following:

- The grant of unilateral relief (where appropriate).
- Multilateral tax conventions.
- Dealing with taxation through multilateral trade and investment treaties.
- The harmonisation of tax law.
- The introduction of a universal model tax law.

**(10 marks)**

b) **Dekey Company Limited**

To: The Managing Director, Dekey.
From: Final Level Candidate
Date 19th August 2022
Subject: **Unrelieved Losses under Income Tax Act.**

This is in response to your request for explanation on the above subject.

Unrelieved Loss is the amount of a loss that has not been deducted in calculating the income of a person or company including amounts not written off as bad debts.

Under Section 82 of the Income Tax Act, 2015 Act 896, unrelieved loss of a company from separate mineral operations shall be deducted in the order in which the losses from the separate mineral operations are incurred and losses from separate mineral operation may be deducted only in calculating future income from that operation and not income from any other activity.

From the Act, there is an unrelieved loss of person /company in a specified priority sector for any of the previous five years of assessment from the business or a relieved loss of the person / company in all other sectors for any of the previous three years of assessment from the business.

Where a person makes a loss and if the loss were a profit:

a. The profit would tax at a reduced rate, the loss shall be deducted only in calculating income taxed at the same reduced rate, a lower reduced rate or exempt amounts, or
b. Would be exempt, the loss shall be deducted only in calculating exempt amounts.

An unrelieved loss from a business may be deducted in calculating income from an investment, but an unrelieved loss from an investment shall be deducted only in calculating income from an investment.

From the above analysis and mining which is a priority area the company can recoup the losses for the year over the next five or carry forward the losses as when they are ascertained over five-year period.

This is submitted for your perusal and in case of any further explanation, do not hesitate to contact me.

Thank you

Yesu Dodoo

**(10 marks)**

**(Total: 20 marks)**

**EXAMINER'S COMMENT**

Question 2 a)

This is another popular area in international taxation. Many candidates leveraged on their familiarity in this area and maximised marks. The question was on double taxation. Candidates were to explain the benefits and problems of double taxation agreements. Some listed the benefits of double taxation but could not explain them. Others, unfortunately, did not understand the requirement of the questions and failed to meet the expectation of the examiners.

Question 2 b)

This question was on unrelieved losses, another familiar area. The requirement of the question was for candidates to put it in the format of a report. Others merely answered the question but not in the form required. Candidates must learn to abide by instructions especially the requirement of the questions.

A lot of candidates understood the question to border on unrelieved losses but failed to link their solution to mining and mineral operations which have a unique treatment. Unrelieved loss is the amount of loss that has not been deducted in calculating the income of a person. The losses are deducted in the order in which they occur. It operates on the principle of first come first served.

## QUESTION THREE

a) **BRIEFING PAPER ON:**
**TAX PLANNING OPTIONS AVAILABLE TO JOHN ZOOKAY AND HIS COMPANIES**

From:

To:

Date:

Introduction:

Further to your request for tax planning options available for your personal and companies, find below some matters for consideration:

**OPTIONS FOR PERSONAL TAX PLANNING**

- Section 111 of the Income Tax Act, 2015 (Act 896) ("the Act") provides that the global income of a resident person derived from any source is taxable in Ghana.
- Even though John was to stay and work outside Ghana for at least 184 days, he is still a resident person since he is a citizen of Ghana who has his permanent home in Ghana and he will not stay outside the country for the whole of the year of assessment. The law says when a resident individual leaves the shores of Ghana for a period not more than 365 days continuously, that individual is still considered resident
- Section 101 (1) (a) provides that an individual is a resident person in Ghana for a year of assessment if that individual is a citizen, other than a citizen of Ghana who has a permanent home outside Ghana and lives in that home for the whole of that year.
- As an employee of the Ghanaian subsidiary, his employment income from the foreign sources would ordinarily have been taxable in Ghana based on the principle of taxation of worldwide income of resident persons.
- However, section 111 (2) provides that the income of a resident individual from employment exercised in a foreign country is exempt from tax if (a) that resident individual exercises his employment with a non-resident employer; or (b) the individual exercises his employment with a resident employer; where the individual is present in a foreign country for purposes of that employment for 183 continuous days or more during the year of assessment.
- In conclusion, Richard's employment income from the foreign employer will be taxed in Ghana because, he exercised his employment with a non-resident employer.
- The interest income from Bank of Africa, Ghana will be exempt from tax. This is because interest paid to an individual by a resident financial institution is exempt from tax as stipulated in section 7 (1) (c) of the Income Tax (Amendment) Act, 2016 (Act 907).
- With regards to the interest income from the UK, if John were to pay tax on the interest income of £3,500 in 2018 in UK, that tax would be deducted as foreign tax credit but limited to the amount of local tax on interest income as provided for under section 112 of the Income Tax Act, 2015 (ITA). But since interest income paid to individuals is exempt from tax in Ghana, the UK interest income will be taxed in Ghana.

- John Zookay shall be granted relevant personal reliefs.
- The agro-processing shall be subject to tax at the rate of 1% for the first 5 years
- The dividend shall be taxed at the rate of 8%

**OPTIMISATION OPTIONS FOR COMPANY TAX PLANNING**

Tax Planning/minimization options for the companies include:

- For the company that is engaged in farming and production of palm fruits on commercial scale, the company can carry over /forward unrelieved tax losses for a maximum period of 5 years in First-In-First-Out (FIFO basis. This is because farming and production of oil palm is one of the specified priority sectors that are allowed to carry forward tax losses as stipulated by Regulation 19 of the Income Tax Regulations, 2016 (L.I. 2244).
- The loss carry forward provisions also apply to the second company that is engaged in processing of palm fruits into pal oil for both the local and export market. The business of processing palm fruits into palm oil is agro processing which is also in the priority sector. This affords the opportunity of this company to benefit from the five (5) years tax loss carry forward for a maximum of 5 years on FIFO basis.
- As an agro processing entity, by the combined reading of paragraph 2 of the 6$^{th}$ Schedule and paragraph 7 of Schedule 1 of Act 896 provides that the income of a person from an agro processing business conducted wholly in the country is subject to tax at the concessionary rate of 1% for a period of five (5) years of assessment commencing from the year in which commercial production commences.
- Agro processing business means the business of processing crops, fish or livestock produced, caught or raised in the country from their raw state into an edible canned or packaged product.
- With regards to merging of the two entities, a merger does not culminate into realisation of an asset for tax purposes as stipulated by section 38 (2) of Act 896 which provides that realisation of an asset accruing to or derived by a company arising out of a merger, amalgamation or reorganization of the company where there is continuity of underlying ownership of the asset of at least fifty percent (50%) will not be deemed as a sale for taxation purposes.
- Prior to the merger, the two companies had some tax planning opportunities with regards to dividends. Section 59 (3) provides that a dividend paid to a resident company by another resident company is exempt from tax where the company that received the dividend controls indirectly or directly, at least 25% of the voting power of the company which paid the dividend. The two companies therefore needed to maintain at least 25% of voting rights in each other to benefit from the exemption from dividends withholding tax.

Looking forward to having further discussions on the matters raised in this briefing paper.

**Signed:**
**Name:**
**Tax Consultant**

**(1 mark for each valid point up to 10 = 10 marks)**

b) **Compliance obligations of companies under self-assessment**

- Section 122 (1) of the ITA provides that a person (individual, company or trusts) who is an installment payer for a year of assessment shall file with the Commissioner-General (CG) by the date for payment of the first installment (i.e. end of the first quarter of the company's accounting or basis period), an estimate of tax payable for the year;
- An installment taxpayer is one that is required to pay tax by quarterly instalment if the person derives or expects to derive assessable income during a year of assessment from a business or investment or from an employment where the employer is not required to withhold tax;
- Except where the CG instructs to the contrary, the estimate filed must be on a prescribed form which indicates the estimate of the following:
- The assessable income of the person for the year of assessment from each employment, business and investment and the source of that income; and
- The chargeable income of the person for the year and the tax to become payable with respect to that income;
- Any other information that the CG may require shall be attached to the estimate;
- The tax charged on the chargeable income of a person is the estimated tax payable for the year of assessment. In estimating the tax payable, a person may take into account:
- A foreign tax credit to be claimed; and
- Foreign income tax, only if the person has paid the tax or the person reasonably estimates that the tax will be paid during the year
- The estimate of an installment payer remains in force for the whole of the basis period unless the person files a revised estimate with the CG together with a statement of reasons for the revision.
- A revised estimate is the estimated tax payable by that person for the year of assessment, and shall be used in calculating the quarterly installments payable only after it has been filed with the CG;
- An installment taxpayer shall pay tax instalments:
- Where the basis period of that instalment payer is a 12-month period beginning at the start of a calendar month, on or before the last day of the 3$^{rd}$, 6$^{th}$, 9$^{th}$ & 12$^{th}$ months of the basis period; or
- In any other case, at the end of each 3-month period commencing at the beginning of each year of assessment, unless it coincides with the end of one of the 3-month periods.

**(1 mark for each valid point up to 10 = 10 marks)**

**(Total: 20 marks)**

**EXAMINER'S COMMENT**

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

The a) part of the question required candidates to demonstrate knowledge of who is resident in respect of an individual and an entity.
Candidates were required to provide the basis of an individual becoming a resident individual. The question elicited implication of employment income, interest paid to a resident person to a resident individual and non-resident person to resident individual, the tax implication of farming , agro-processing and dividend payment to a resident individual.

The b) part of the question required the obligation of companies under self-assessment regime. This area appeared quite familiar with candidates, consequently, the score in this area was quite commendable.
Most candidates did not answer the question and therefore lost marks.

## QUESTION FOUR

a) Computation of Capital Allowance

| 2020 | Pool 2 | Pool 3 | Factory (0) | Office building | Office R& Imp | Show Room | Pool 5 | Cap. all |
|---|---|---|---|---|---|---|---|---|
| | **GH¢** | **GH¢** | **GH¢** | **GH¢** | **GH¢** | **GH¢** | **GH¢** | **GH¢** |
| Cost (1/4-31/12/20) | 240,000 | 60,000 | 200,000 | 108,000 | 108,000 | | | |
| Capital Allow. 275/365days | **54,247** | **9,041** | **15,068** | **8,137** | 8,137 | | | **86,493** |
| | 185,753 | 50,959 | 184,931 | 99,863 | 99,863 | | | |
| Additions | - | - | - | | 20,747 | 30,000 | 115,000 | |
| | 185,753 | 50,959 | 184,932 | 99,863 | 120,610 | 30,000 | 115,000 | |
| Capital Allow. | **55,726** | **10,192** | **20,000** | 10,800 | **13,401** | **2,000** | **11,500** | **112,819** |
| WDV | 130,027 | 40,767 | 164,932 | 89,063 | 107,209 | 28,000 | 103,500 | |
| 5% of WDV c/f (5%*89063.01) | | | | | 4,453.15 | | | |
| Amount of Repairs & Imp (90% 0f 28,000) | | | | | 25,200 | | | |
| Amount to be capitalised | | | | | 20,746.85 | | | |

**(Marks are evenly spread = 6 marks)**

b) Provisional tax payable

| | | **GH¢** |
|---|---|---|
| Projected taxable income | | 220,000 |
| Less assessed lost b/fwd | | 112,000 |
| | | **108,000** |
| Tax 25% x108,000 | = | 27,000 |
| Per quarter 27000/4 | = | GH¢6,750 |

The due dates are at the end of each quote of March, June, September and December.

**(3 marks)**

c) **Zimbo Ltd**

**Computation of Chargeable Income for the Year Assessment 2021**

| | | **GH¢** |
|---|---|---|
| Net profit per account | | 315,000 |
| Deduct the following: | | |
| Gross Rental Income | 180,000 | |
| VAT Refund | 20,000 | |
| Net Interest Received | 10,028 | |
| | | 210,000 |

| | | | |
|---|---|---|---|
| **Adjusted Profit** | | | **104,972** |
| Add back | | | |
| Trade Marks | | 30,000 | |
| General Overheads | | 28,000 | |
| Depreciation | | 67,000 | |
| Compensation Cost-Fines | | 40,000 | |
| Interest-New Show room | | 15,000 | |
| | | | **272,000** |
| **Adjusted Profit** | | | **376,972** |
| Capital Allowance | | | 112,819 |
| Chargeable income | | | 264,153 |
| Assessed loss from 2020 | | | 112,000 |
| Chargeable income | | | 152,153 |
| Add net interest received | | 10,028 | |
| Add withholding tax | | 872 | |
| Gross Interest | | | 10,900 |
| Tax Charged @25% | 1280,000 | | **26,352** |
| Tax charged @8% | 700,000 | | **4,612** |
| Total Tax charged | | | **30,964** |
| **Less withholding tax** | | | **872** |
| **Tax payable** | | | **30,092** |

**(Marks are evenly spread = 10 marks)**

d) other tax liability
Rental tax 15% x 280,000 = **GH¢42000** **(1 mark)**

**(Total: 20 marks)**

**EXAMINER'S COMMENT**

This was in the area of examination of accounts. A strange approach by some candidates was observed as they re-produced the question as an answer with little amendments. It also emerged that candidates had difficulty computing the capital allowance as they mixed up the classification of depreciable assets. The determination of the number of days of the business period in the year of commencement was a challenge to many candidates hence they got the computation wrong.

Other income was treated twice by many candidates. Some few candidates also treated the other income as investment income instead of business income. Others, did not know the rate to apply to the depreciable assets. Candidates should revise this area well.
What was shocking was the fact that most of the solutions of candidates had no title, no basis period and no year of assessment.

## QUESTION FIVE

a)

**Alpha Ltd**
**Computation of Tax Payable**
**Year of Assessment 2020**
**Basis Period 1/1/2020 –December 2020**

| | GH¢ | GH¢ |
|---|---|---|
| Net Margin | | 220,090,000 |
| **Add the following:** | | |
| Licence | 1,000,000 | |
| Exploration | 40,000,000 | |
| Development | 60,000,000 | |
| Research and Dev. | 14,000,000 | |
| Land | 10,000,000 | |
| Staff Cost | 45,950,000 | |
| Seismic Data | 110,110,000 | |
| Geologist Hire | 15,000,000 | |
| Christmas Tree | 13,000,000 | |
| Bonus Payment | 340,000 | |
| Infraction | 15,000,000 | |
| Letter of Credit | 80,000 | |
| Hedged Loss | 14,000,000 | |
| Penalty | 670,000 | |
| Fines | 100,000 | |
| | | 339,250,000 |
| | | 559,340,000 |
| Deduct | | |
| Hedged Gains | 200,000 | |
| Sale before Prod | 9,000,000 | |
| | | 9,200,000 |
| | | 550,140,000 |
| Capital Allowance | 55,280,000 | |
| Finance lease | 700,000 | 55,980,000 |
| Chargeable Income | | 494,160,000 |
| Tax Charged @ 35% | | 172,956,000 |
| **Capital Allowance** | | |
| Licence Cost | 1,000,000 | |
| Exploration | 40,000,000 | |
| Development | 60,000,000 | |
| Seismic Data | 110,110,000 | |
| Staff Cost | 45,950,000 | |
| Geologist | 15,000,000 | |

| | | |
|---|---|---|
| Christmas Tree | 13,000,000 | |
| Proceeds from sale of asset | (9,000,000) | |
| Bonus Payment | 340,000 | |
| | **276,400,000** | |
| **Capital Allow. @20%** | **55,280,000** | |
| Lease Payment (15,000,000/6 years) *20% | 500,000 | |
| Lease-Finance Cost (1,200,0006years) | 200,000 | |
| Capital Allowance | **57,580,000** | |
| | | |

**(Marks are evenly spread = 10 marks)**

b) **Memo**

**To : Management of Wina ltd**
**From : Final Level Student**
**Date : XXXX**
**Subject: Tax implication of investment and maximum amount without restriction**

**Introduction**

Reference your letter dated 6th January 2022 on the above subject matter, I have evaluated the issue carefully and provide the following for your attention and further action.

**Issues**

An arrangement of this nature would create Thin Capitalisation implication for the Fatia ltd, resident company in Ghana. This means that, a control of underlying ownership of 50% or more in a resident controlled entity interest on loan above 3:1 debt equity ratio which is the safe harbour rule shall be disallowed. The interest up to the safe harbour rule shall be allowed.

**Withholding tax on interest on loan**

Interest to be paid shall be subject to a withholding tax at the rate of 8% payable to the Ghana Revenue Authority. This constitutes a final withholding tax.

**Interest to be allowed**

Holding 60% of the underlying ownership in the assets of Fatia ltd makes any interest on loan above 3:1 safe habour rule. The total equity is GH¢450,000 (stated capital of 250,000 and Retained earnings of 200,000). Allowable debt is thrice the equity. This is 450,000. Three times is 450,000 by 3 which is GH¢1,350,000.
The interest on loan above the allowable level of 1,350,000 shall be disallowed.

**Foreign exchange to be allowed**

Any foreign exchange paid or payable on the loan and its related interest shall be treated as the interest.

**Amount of loan without restriction**

Any loan amount up to GH¢1,350,000 shall be admitted without any difficulty and therefore all the interest shall be disallowed.

Management of Wina ltd may decide to increase the stated capital to the extent that the amount to be given as loan shall be accommodated within the Debt/equity ratio.

Additionally, 60% acquisition creates change in underlying ownership with the Wina ltd not benefiting from the following:

Financial cost from derivative

Losses

Bad debts

Carry back of losses

**(10 marks)**

**(Total: 20 marks)**

**EXAMINER'S COMMENT**

The question a) required knowledge in petroleum upstream operations. Candidates needed to demonstrate knowledge of cost incurred before production and cost incurred after production.

Another area that required technical knowledge was how to determine the capital allowance and the allowable deduction in respect of finance lease.

The b) part of the question required the understanding of Thin Capitalisation. The safe harbour rule is debt equity ratio should not exceed 3: 1 rule. Candidates were required to comment on the portion of the interest to be disallowed based on the acceptable ratio.

Many candidates did not understand what they were required to do and gave below average answers. Some candidates went about calculating the interest which was not a requirement. Candidates did not need to compute interest before making their analysis. All they needed to do their analysis was provided in the question. On the whole, it was a well answered question.

**CONCLUSION**

The following areas should engage candidates' attention to improve candidates' performance in the examination:

- Candidates should learn to provide headings in answering questions on examination of accounts.
- Knowledge of how to compute capital allowance when repairs and improvements are included should engage candidates' attention.
- Candidates should learn to improve their handwriting.
- Candidates must read the tax laws very well to enable them to pass their examinations easily.