MARCH 2024 PROFESSIONAL EXAMINATIONS
ADVANCED TAXATION (PAPER 3.3)
CHIEF EXAMINER'S REPORT, QUESTIONS AND MARKING SCHEME

EXAMINER'S GENERAL COMMENTS

The paper was good with clarity in the requirements and demand. Candidates were also free to make reasonable assumptions as part of answers to the questions. Some candidates generally demonstrated terrible weakness in the way the responded to the questions.

Many candidates left a lot of questions unanswered with blank spaces in the answer booklets as pieces of evidence of not answering the questions well. There is only one corollary that can be used to explain this trend of event thus preparation of candidates was woefully inadequate.

A case of wrong numbering was also cited as part of the aberration in the examination. A candidate was answering question 2 and wrote question 3 instead. Candidates should exercise caution when answering questions. Candidates are required as part of the examination to exhibit some level of professionalism.

STANDARD OF THE PAPER

The standard of the paper was appropriate for the final level taxation paper. The level of difficulty of the paper and the appropriate responses required were all factored in the questions. Some of the question required candidates to apply their knowledge and skill. The paper had clarity and therefore it was easy for candidates to respond without any ambiguity. The marks allocations were appropriate for each question and the time allotted for the questions was quite adequate. A candidate who prepared so well could answer the questions in less than the allocated three hours.

One cannot but conclude that the standard of the paper followed the regular pattern in terms of level of difficulty, demand and application much aligned to a final level taxation paper.

PERFORMANCE OF CANDIDATES

From the results posted, the performance of candidates was relatively impressive. In fact, it was not a deviation from previous diets. As usual, candidates who prepared adequately for the examination were able to bag good marks hence passed. On the other hand, many other candidates did not appear prepared for the examination and therefore could not make the pass mark.

The marks were proportional to the requirement of the questions. The questions as usual, tested candidates based on the spread of the areas in the syllabus, their skill levels, knowledge and above all their professional acumen. This clearly afforded an average candidate the ability to pass the examination with ease if that candidate prepared well enough.

There was no trace of examination malpractices by candidates from the scripts reviewed and marked. All materials presented appeared original and were thoughts of candidates. This was commendable and all stakeholders must congratulate themselves for a job well done. Candidates who were desperate and knew they were failing decided to fail in dignity rather than engaging in examination malpractices.
This diet, without any fear of contradiction may appear as the best in many years given the number of candidates who got 50% and above.

NOTABLE STRENTHS AND WEAKNESSES OF CANDIDATES
As usual the performance of candidates was not out of character. The examination distinguished serious candidates from nonchalant ones. This clearly was seen in the marks they both got.

Notable strengths
Candidates demonstrated strength over the free zone question. This area was a popular area with candidates.
Another area candidates did so well was the tax evasion and tax avoidance with apt examples of either of the concept.

Notable weaknesses
Candidates did not seem to appreciate the practical application of trading in Ghana and trading with Ghana.

Another area some candidates had challenge was the taxation of long term contracts. The question on how long term contract was taxed was strangely enough, not answered by many candidates.

Another area of challenge was the methods of granting double taxation. Though this area appeared fairly simple from the beginning, unfortunately the correct answer eluded a lot of candidates.

Some candidates provided reasons for double taxation as challenges of double taxation. This clearly smacks of lack of adequate preparation on the part of candidates.

Another area that got tongues wagging was the tax implication of manufacturing of ceramics as opposed to importing of finished ceramics for sale. Many candidates rather looked at it from the free zone perspective. Candidates must note that not all manufacturing companies operate in the free zone setting.

QUESTION ONE

a) The free zones enclave offers a fair business environment to all business operators irrespective of nationality, creed or colour. It has attracted both indigenes and foreigners. The benefits from the free zones appears very impressive hence the numerous applications requesting to be granted free zone status.

Required:

In reference to the above statement,

i) Explain the ***concept of free zones***. **(2 marks)**

ii) Explain **TWO (2)** policy rationale for the establishment of the free zone. **(2 marks)**

iii) Explain **FOUR (4)** reasons you would advise an investor to invest in a free zone enterprise. **(8 marks)**

b) There is growing attention on the question of tax treaties signed by developing countries. The costs of tax treaties to developing countries have been highlighted in recent years by NGOs such as ActionAid and SOMO (Lewis, 2013). During 2014, an influential IMF paper warned that developing countries "would be well-advised to sign treaties only with considerable caution,"(IMF, Spillovers on International Corporate Taxation, 2014) and the OECD, as part of its Base Erosion and Profit Shifting (BEPS) project, proposes to add text to the commentary of its model treaty to help countries decide "whether a treaty should be concluded with a State but also whether a State should seek to modify or replace an existing treaty or even, as a last resort, terminate a treaty."(OECD, Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, 2014).

Required:

In reference to the above statement:

i) Examine the challenges double taxation agreements poses to Ghana. (**4 marks)**

ii) Explain the methods of granting double taxation reliefs. **(4 marks)**

(Total: 20 marks)

QUESTION TWO

a) Trolex Ltd was incorporated in the United Kingdom. It manufactures watches for sale only in the Asian Markets. The company is a success story from its commercial enterprise in its production of "wonder watches".

Vielo Ltd, a locally incorporated company with 4 shareholders, scanned the environment with the bid to start a business that would make it successful. The management of Vielo Ltd heard of the "wonder watches" sold by Trolex Ltd. Consequently, the management of Vielo Ltd placed an order for 10 million watches from Trolex Ltd. From the analysis, Trolex Ltd would make £600,000 from this transaction as profit. The sales value to be transferred to Trolex Ltd by Vielo Ltd amounts to £900 million.

The management of Vielo Ltd has written to the Kaneshie Office of the Ghana Revenue Authority on the tax implication of the payment.

Required
Advise the Commissioner-General through the office manager on tax implication of the profit and the transfer payment. **(4 marks)**

b) Location of certain businesses create value addition to owners of businesses. In light of the government agenda to accelerate development across certain geographical locations, tax policies are often used to create that drive in response to the 1992 Constitution that requires balanced growth of the country.

Required:
Identify **THREE (3)** category of persons which stand to benefit from locations and state their respective benefits. **(6 marks)**

c) Talantula Ltd have engaged you as an ICAG final level candidate on the options that would provide enormous benefits to them and also to the government. The two options are:

- To manufacture ceramics using both local and foreign materials. The products will be sold locally and on the international market.
- To imports finished ceramics for sale in Ghana.

Required:
Evaluate **FIVE (5)** tax benefits of either of the business options you will want them to associate with over the other. **(10 marks)**

QUESTION THREE

a) Agogo Ghana Ltd is a manufacturing entity in Ghana. Mr. Konto, a citizen and resident of Malaysia owns 80% of the company's shares. Mrs. Konto, a citizen and resident of Malaysia and wife of Mr. Konto also owns 15% of the shares of the company. Mr. Bawa, the son of Mr. Konto holds the remaining 5% of the shares in the company. As of 1st June 2023, the company had a share capital of GH¢400,000. A report submitted by the management to the Board of Directors indicated that the company needs to acquire a plant valued at GH¢1,000,000 to enable the company to increase its production capacity. Mr. Konto who is the majority shareholder has offered to finance the purchase of a plant for the company, but his challenge is whether to provide the plant to the company as a loan or as capital.

Required:
Advise Mr. Konto on the income tax treatment of providing the asset to the company as capital or loan contribution. **(6 marks)**

b) The Organisation for Economic Co-operation and Development (OECD) describes two kinds of double taxation agreements: economic and juridical.

Required:
Explain ***economic*** and ***juridical*** double taxation. **(4 marks)**

c) According to the Organisation for Economic Co-operation and Development (OECD), tax avoidance and tax evasion are terms which are difficult to define but are generally used to describe the arrangement of a taxpayer's affairs intended to reduce their tax liability.

Required:

i) Explain the differences between ***tax avoidance*** and ***tax evasion***. **(3 marks)**

ii) Enumerate **THREE (3)** examples of tax avoidance activities firms and individuals are likely to engage in. **(3 marks)**

iii) Identify **FOUR (4)** examples of activities that are likely to be classified as tax evasion and not tax avoidance. **(2 marks)**

iv) Explain **TWO (2)** limitations to effective tax planning. **(2 marks)**

(Total: 20 marks)

QUESTION FOUR

Finstruct Ltd has been awarded an airport terminal project. The project started on 1 January 2022 for a contract sum of GH¢60,000,000. The construction of the airport is to be completed on 31 December 2023.

Finstruct Ltd has a financial year ending on 31 December each year. On 31 December 2022 the accounts appropriate to the airport contract contained the following:

		GH¢
Cost of construction materials		25,500,000
Direct Wages of construction staff and project managers		22,100,000
Other Costs:	Hire of Special Equipment	300,000
	Cost of soil test	100,000
	Purchase of fuel and lubricants	750,000
	Consultancy services	135,000

Additional Information:

i) Materials costing GH¢340,000 sent to the site were returned to the Company's warehouse.

ii) Materials sent to the site worth GH¢675,000 were still unused at the construction sites as at 31 December 2022.

iii) Finstruct Ltd pays some of its workers the first week of the ensuing month after the end of the current month. In view of this arrangement, GH¢57,000 is still owed for wages as at the close of the year 2022. This was not included in the accounts.

iv) A bill amounting to GH¢45,000 was submitted late by Finstruct Ltd and as at 31 December 2022, the bill had not yet been paid. This was not included in the accounts.

v) To determine the estimated profit on the contract, it was estimated that the cost to complete the project as at 31 December 2022 should be GH¢8,265,180.

vi) Assets:

	WDA at 01/01/2022 GH¢	Acquired in 2022 GH¢	Disposals in 2022 GH¢
Trucks and Trailers	420,000	600,000	
Electric ceiling and standing fans	60,000		
Window and Split Air conditioners	71,000	8,000	
Dozer	760,000	900,000	80,000
Wheel Loaders	1,260,000		200,000
Computers	50,000		22,000
Rollers	540,000		
Data Handling Equipment		35,000	
Office Photocopier	7,000		
Office LCD Television	6,600		
Vibratory Compactor		580,000	
Hydraulic Excavator		670,000	
Motor Vehicles	630,000		60,000
Visitors chairs	3,000		
Office Chairs and Tables	35,000	20,000	5,000
Office Building	916,000		
File Cabinets	15,000		
Pick-Up Vehicle (bought 1)		140,000	

The values of the assets sold during the year were all for cash.

vii) The building at the start of the year 2022 was constructed 6 years ago and 6 years' capital allowances have been enjoyed.

Required:

a) Compute the capital allowance for Finstruct Ltd for the year 2022. **(6 marks)**

b) Explain the tax rules on long term contract and compute the percentage of contract completion of the project. **(4 marks)**

c) Compute the chargeable income of Finstruct Ltd for the year ended 31 December 2022. **(10 marks)**

(Total: 20 marks)

QUESTION FIVE

a) You have been invited as a student of Taxation to speak at a stakeholder workshop on mining and mineral operations in the extractive industry. In the letter of invitation, the Organisers indicated that you are to submit a detailed write-up of your presentation on the following issues.

Required:

Comment on the following:

i) Allowable deduction peculiar to the extractive industry. **(3 marks)**

ii) Approved Rehabilitation Fund and the tax treatment of contributions into the fund and expenses incurred in respect of rehabilitation under the Income Tax Act, 2015 (Act 896). **(3 marks)**

iii) The tax treatment of relevant financial costs included in the costs incurred in respect of minerals and mining operations under the Income Tax Act, 2015 (Act 896). **(4 marks)**

b) You are an external consultant to the Ministry of Trade and Industry. The Minister has received a delegation of both foreigners and Ghanaians to deliberate on investment opportunities available in Ghana.

Required:

In relation to the above scenario, the Minister for Trade has asked you to present a paper on:

i) Business activities that cannot be engaged in by foreigners. **(5 marks)**

ii) The tax benefits of establishing a sole proprietorship business as against a limited liability company. **(5 marks)**

(Total: 20 marks)

SUGGESTED SOLUTION

QUESTION ONE

a)

i) The free zone is a non-custom controlled territory. It is an export led initiative. It can be an enclave or a single factory. Customs facilitates it but does not control it. The free zone is associated with huge tax incentives to make their products competitive **(2 marks)**

ii) **The policy rationale**

- It is to support the growth of exports and
- Also to provide employment for the citizenry
- To enhance foreign exchange earnings of the country

(Any 2 points @ 1 mark each = 2 marks)

iii) The advice to an invest in the free zone is premised on the benefits the investor stands to derive. The benefits are as follows:

- Free zone enterprises are exempt from tax for the first 10 years of operation
- After the first 10 years of operation, export is taxed at the rate of 15%
- Imports into the free zone is exempt from tax
- VAT and NHIL, GetFund and Covid-19 are exempt from tax
- Dividend paid to shareholders is exempt from tax.

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

b)

i) **Challenges of Double Taxation**

- There is no credible evidence that tax treaties have significant positive effects on Foreign Direct Investment activity.
- Treaty negotiation involves dealing with a broad range of complex matters. DTA ought to meet the political and economic interests of both parties as far as possible and this ensures that it works smoothly in practice, and it avoids creating a strenuous relationship among relevant authorities. Unfortunately, there is lack of clear guidelines and understanding of DTAs by policy makers.
- DTAs inherently pose as a risk to development financing in Africa in the sense that they skew taxing rights away from African countries, are now subject to abuse that eventually erodes the tax base.
- DTAs have also been used by foreign and local companies to pay as little tax as possible or no tax at all. Assisted by accounting and advisory firms, multinationals shift their profits from high-tax to low-tax jurisdictions. While this may make sense for the bottom line, it is highly questionable and at odds with the intention of such agreements.
- Double taxation induces a hardship on taxpayers through an increased tax burden on the investor and can result in the increase of the price of goods and services, discourages cross border investment through curtailing capital movement.
- Double taxation may violate the tax fairness principle of a jurisdiction.

(Any 4 points @ 1 mark each = 4 marks)

ii) Methods of granting double taxation relief:

- Exemption method, the income is taxed at source and thereafter not taxable
- Deduction method, the residual income is taxed in the second country after the first tax in the original country
- Credit deduction rule: this is where comparability is made between the rates of the two countries.

(4 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

Sub-question a) required the understanding of free zone concepts and the policy consideration for the establishment of the free zone. Candidates were required to advise an investor to invest in the free zone area.

For the b) part, candidates were to examine the challenges double taxation agreements pose and also the various methods of double taxation. The methods of double taxation agreement are the exemption methods, the deduction method and the credit relief method. Some candidates had challenges in this area and did not perform well

QUESTION TWO

a) From the information available, the taxpayer is not trading in Ghana but with Ghana. The profit and the payment are therefore not taxable in Ghana. Vielo ltd approached Trolex ltd for the purchase of the wonder watches and there is no indication anywhere that the company has presence in Ghana and should be liable to tax.

In conclusion, both the profit and the amount transferred is not liable to tax.

(4 marks)

b) Category of persons and their benefit
Farming, Agro-processing and cocoa by product persons

Location	Rate
Accra/Tema	20%
Regional capitals outside the northern savanna ecological zone	15%
Any other area outside the northern savanna ecological zone	10%
Northern Savanna Ecological Zone	5%

Young entrepreneur up to 35% in the following:
Manufacturing, agro-processing, waste processing, ICT, Tourism and Creative Arts, Farming, Energy, Horticulture and Medicinal Plant

Location	Rate
Accra/Tema	15%
Regional capitals outside the northern Regions	12.5%
Any other area outside the northern Regions	10%
Northern Regions	5%

Manufacturing Concerns

Location	Rate of Tax	Rebate
Accra/Tema	25%	
Regional capitals	18.75%	6.25%
Any other area	12.50%	12.50%

(3 points @ 2 marks each = 6 marks)

c) There a number of tax benefits for manufacturing entities:

- Locational Incentive-Reduction in tax rates as the company gets sited in areas outside Accra and Tema.
  Accra/Tema -25%
  Regional Capitals-18.75%
  Any other area 12.5%

- Fresh graduate Incentive
  Up to 1% of fresh graduate in total workforce -10%
  Above 1% to 5% -30%
  Above 5% -50%
  The above are percentages on wages and salaries paid to the fresh graduates. It will be taken as additional allowance deduction.

- Carry-over of losses
  Manufacturing companies can carry over losses made for 5 years
- Register with Customs to have rebates in the import duty of raw materials
- Exports are zero rated
- Manufacturing has no restriction in terms of capital requirement a foreigner should meet
- Manufacturing companies which belong to the Association, shall be given upfront reliefs in its Value Added Tax (VAT). Use and pay later.
- Input VAT is claimable
- Note also that, all cost incurred in running the business shall be allowable as a deduction in arriving at the chargeable income.

(Any 5 points @ 2 marks each = 10 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The a) part of question required candidates to tense out trading in Ghana and trading with Ghana from a given set of facts. Candidates must make efforts in trying to distinguish between the concepts trading in Ghana and trading with Ghana with their tax implication. The question was a case of trading with Ghana and therefore, there was no tax implication.

For the b) part, candidates were required to identify persons who benefit from location and the respective benefits. This question was a straight forward case. The following example is worth mentioning "Tema/Accra-20%, Regional 15%, other Area 10% Savanna 5%. The descriptions of the rates, were not clear and also did not tell the category of persons in those locational areas and their respective benefits.
Other candidates stated the persons as "Sole proprietorship, partnership, company" etc. Lack of adequate preparation was blamable for that state of affairs.

Sub-question c) required the evaluation of manufacturing of ceramics and the importation of finished ceramics. This was a question most candidates had difficulty in answering. Some had to reset their own question and brought in some aspects of free zone to answer the question.
The question was on manufacturing Ceramics with raw materials partly imported and partly obtained locally as opposed to importing finished ceramics and selling them locally with their tax implication.
Candidates should learn to appreciate the tax implication of manufacturing concerns.

QUESTION THREE

a) **The income tax treatment of providing the asset to the company as equity contribution.**

The following issues are to be outlined in answering the question:

- The returns a person receives for holding equity in a company is dividend.
- Dividend is not deductible for tax purposes.
- Dividend paid is subject to a withholding tax of 8%.
- Where a company which is controlled by not more than five persons and their associates do not distribute to its shareholders as dividends, a reasonable part of the income of the company, the Commissioner-General may treat any part of the company's profit as dividend after considering the current business requirement of the company and any other requirement necessary for the maintenance and development of the business.

The income tax treatment of providing the asset to the company as equity contribution.

- Any loan to an entity that is not a financial institution by an exempt person is subject to thin capital rule.
- The debt from the exempt person should not be more than 3 times the equity else interest above the 3 times shall be disallowed.
- From the question, there will not be any thin capital rule since the share capital is 400,000 and 3 times will be 1,200,000 far more than the amount contemplated for the lending.

In conclusion, it is better to finance the acquisition though lending to reduce the taxable income and pay tax at the rate of 8% finance.

(6 marks)

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

Economic double taxation arises when income from the same economic activity is subjected to tax in the hands of different persons by more than one state. Economic double taxation refers to the taxation of two different taxpayers with respect to the ***same income or capital.***

Economic double taxation occurs, for example, when income earned by a company is taxed in the hands of the company and in the hand of its shareholders when distributed as a dividend.

Since the income of the entity and the dividends paid to shareholders is generated from the same economic activity, the imposition of taxes at the corporate level and the shareholder level is viewed as economic double taxation of income.

Juridical double taxation on the other hand, arises where ***more than one state*** imposes similar or *comparable taxes* on a stream of income of a person *within* *identical periods*. Thus, Juridical double taxation refers to circumstances where a taxpayer is subject to tax on the *same income* (or capital) in *more than one jurisdiction*.

For example, a resident of Ghana who is also considered to be a resident of the United States would be potentially subject to concurrent full taxation in both countries.

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

Juridical double taxation usually arises due to the following:

- Source Principles or Rules
- Residence Principles or Rules

(2 marks each = 4 marks)

c)

i) **Tax avoidance** can be understood as a **lawful scheme** managed by an individual or by a company **to reduce its tax liability**. Tax avoidance is "*the arrangement of one's financial affairs to minimize tax liability within the law.*" Tax avoidance exploits the loopholes in the laws that were not expected by the legislators.

Tax evasion is an illegal practice whereby someone using unlawful means purposely reduces his or her tax liabilities. This arrangement is exposed to criminal punishment and fines and is considered tax fraud. Tax evasion is illegal. It consists in the wilful violation or circumvention of applicable tax laws to minimize tax liability. Tax evasion generally involves either deliberate under-reporting or non-reporting of receipts, or false claims to deductions. A taxpayer can only commit tax evasion if he or she has breached a relevant tax law.

The following points provides a summary of the distinction between avoidance and evasion:

- Legal status. Tax avoidance is legal, but tax evasion is illegal.
- Court cases in support. There are court cases that support the idea of tax avoidance but court cases on evasion show illegality.
- Careful planning. Careful planning can lead to tax avoidance. There is no amount of tax planning can lead to tax evasion.
- Punishments. There is no punishment for tax avoidance schemes. But there are stiff punishment for tax evasion.

(3 marks)

ii) **Some Examples of Tax Avoidance Strategies**

- Taking legitimate tax deductions to lower business tax liability.
- Setting up a tax deferral plan such as to delay taxes until a later date.

- Taking tax credits for spending money for legitimate purposes, like taking a credit for hiring fresh graduates for the business.
- Locating a business in a strategic area to avoid paying taxes or pay less tax.
- Increase retirement savings. Individuals can contribute to retirement funds up to 35% of basic salaries.

(Any 3 points @ 1 marks each = 3 marks)

iii) **Some of the common ways by which people commit tax evasion are as follows:**

- Keeping two sets of books to record business transactions. One records the actual business and the other contains fraudulent record.
- Doing an extra job for cash and not declaring the income.
- Engaging in barter trade.
- Non-disclosure of major sources of income.
- Submitting false statements and returns to the GRA to reduce tax.
- Making false entries in any books of account or other documents relating to the income which is subject to tax.

(Any 4 points @ 0.5 marks each = 2 marks)

iv) **Limitations to effective tax planning**

There are a variety of factors that limit effective tax planning. These factors can be Legislative, Judicial or Uncertainty in character. Discussions of these constraints are as follows:

Legislative Constraints: This refers to circumstance that limit effective tax planning because of restrictions imposed by certain provisions contained in the Tax Laws. An important assumption underlying business and investment decision is that parties to the transaction will act in their own self-interests. This arm's length transaction assumption is fundamental to a market economy and ensures that the economic results of transactions negotiated between independent, self-interested parties will be respected by the Tax Authorities. Where related-party transactions take place, legislative restrictions exist to prevent the achievement of tax advantages that are not consistent with arm's-length transactions. The Income Tax Act specifically lists three legislative restrictions or anti-avoidance rules. The provisions relate to Income Splitting, Transfer Pricing and Thin Capitalization. These are specifically mentioned legal restrictions in the Tax Laws

In addition, the Tax Laws give the commissioner the power to relocate or re-characterize or disregard an arrangement or part of an arrangement that is entered into or carried out as part of a scheme aimed at achieving tax advantage which is fictitious or does not have a substantial economic effect or the form of which does not reflect its substance.

Judicial constraints: There are three judicial doctrines that give tax authorities powers to rewrite the tax consequences of transactions to reflect their economic realities. The business purpose doctrine, which originated in USA in the case of Gregory v. Helvering, 293 US 465 (1935), ensures that tax planning experts follow not only the letter of the law but also its spirit. This doctrine disregards the results of transactions held to have no commercial purpose other than tax avoidance.

The second doctrine is termed substance over form. This doctrine seeks to permit the tax authorities to look through the legal form of a transaction to determine its true commercial substance and subject the parties involved to tax in accordance with that substance. For instance, a rental payment which turns out to have a political agenda will be ignored in form as a deductible expense.

Finally, the step transaction doctrine permits tax authorities to collapse a series of intermediate transactions in a single transaction to determine the resulting tax consequences. This doctrine is applied when it becomes clear that the parties involved would not have undertaken the initial transaction without believing that the entire series would take place.

Another important judicial restriction, which is closely related to the entity variable of tax planning, is the assignment of income doctrine. This doctrine requires that income should be taxed to the taxpayer who provides or owns the property with respect to which the income is paid. This therefore imply that shifting income to a low-entity cannot be accomplished by giving away the income without also transferring ownership of the underlying income-producing asset.

Uncertainty Constraints: Tax planning involves the projection of future cash inflows and outflows. These projections are based on different assumptions that involve the use of market data, trend analysis and estimates based on the advice of consultants. It is therefore pertinent that tax experts realize or recognize the uncertainty of these assumptions. When the assumptions used in a tax planning decision are wrong the cash flows that will be realized from a particular transaction may differ from their expectations. This is because where future cash flows are uncertain, the risk associated with the transaction might call for the use of either a higher or a lower discount rate for calculating the present value of such cash flows.

There are several uncertainties that are specific to tax costs and benefits. The calculation of a tax cost and benefit of a proposed transaction depends on the taxpayer's expected marginal rate to tax. It will be very difficult to predict or project a person's marginal rate of tax if that person's income fluctuates annually. Changes in tax law could also lead to difficulties in projecting ones marginal rate of tax. It becomes extremely difficult if not impossible where tax plan depends on certain specific provisions of the existing tax law. Changes in those specific provision could result in undesirable effect on future cash flows. In practice this does not seem to pose much problem, since in Ghana many provisions of our laws have remain relatively stable, thereby reducing the risk associated with reliance on current law for planning purposes.

(Any 2 points @ 1 mark each = 2 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

Sub-question a) required candidates to provide the tax treatment of shareholders financing the purchase of equipment through additional issue of shares or through loan financing. This was a popular area hence candidates maximised marks. Some multiplied the loan by 3 and analysed the situation from that perspective.

The b) part of the question has to do with the explanation of juridical double taxation and economic double taxation.

Question 3 c) was on tax planning. Candidates were required to identify tax avoidance and tax evasion and examples of each concept. Candidates did justice to the paper. Additionally, limitation of effective tax planning was also administered.

QUESTION FOUR

a)

Computation of Capital Allowance

	Class 1	Class 2	Class 3	Class 4	Total
	GH¢000	**GH¢000**	**GH¢000**	**GH¢000**	**GH¢000**
WDV / Valuation	50,000	3,610,000	197,600	916,000	
Additions	35,000	2,890,000	28,000	-	
Disposals	(22,000)	(340,000)	(5,000)	-	
	63,000	6,160,000	220,600	916,000	
Capital Allowance	25,200	1,848,000	44,120	229,000	2,146,320
	59,800	4,652,000	176,480	687,000	

(Marks are evenly spread using ticks = 6 marks)

Assumptions:

1. There was no depreciation
2. Pick up was not restricted because of the nature of the sector

b) **Taxation rules on long term contracts**

Amounts to be included or deducted in calculating the person's income that relate to a long-term contract are considered based on the ***percentage of the contract completed*** during each basis period.

The percentage of completion is determined by comparing the total expenses allocated to the contract and incurred before the end of a basis period with the estimated total contract expenses as determined at the time of commencement of the contract.

The Commissioner-General may allow any unrelieved loss to be carried back and treated as an unrelieved loss of an earlier basis period. The amount carried back is limited to the profit (if any) from the contract for the basis period to which the loss is carried back. This applies where a long-term contract is completed, and the person has an unrelieved loss attributable to that contract for the basis period in which the contract ended or any earlier basis period.

$$\textbf{Stage of Completion} = \frac{\text{Cost to date}}{\text{Total cost to complete}} \times 100$$

A profit or a loss from a long-term contract for a basis period is determined by comparing amounts included in income under the contract with deductions under the contract for that period.

(4 marks)

c) **Finstruct Ltd**
Computation of Tax Payable
Year of Assessment-2022
Basis Period January 1 to December 31, 2022

	GH¢	GH¢
Materials to site	25,500,000	
Less materials returned	(340,000)	
Closing stock	(675,000)	24,485,000
Wages paid	22,100,000	
Add owing	57,000	22,157,000
Hire of special equipment		300,000
Cost of soil test		100,000
Fuel and lubricant		750,000
Consultancy services (135,000 + 45,000)		180,000
Capital Allowance		2,146,320
Cost to date		**50,118,320**
Additional Cost to complete		8,265,180
Total cost to complete		**58,383,500**

Stage of Completion

$$= \frac{\text{Cost to date}}{\text{Total cost to complete}} \times 100$$

$$= \frac{50{,}118{,}320}{58{,}383{,}500} \times 100$$

$$= 85.84\%$$

Computation of Chargeable Income

Revenue: 85.84% x 60,000,000	51,504,000
Cost of sale: 85.84% x 58,364,000	50,099,658
C.I	**1,404,342**

(Marks are evenly spread using ticks = 10 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

This question was on contract taxation. It is not a very popular area in taxation though. Candidates did so well. The capital allowance was fairly straight forward even though nobody scored. The tax computation was a challenge for most candidates.

QUESTION FIVE

a)

i) **Peculiar Allowable deductions**

In calculating a person's income from a separate mineral operation for a year of assessment, we deduct the following:

- Ground rents and royalties paid by the person with respect to the mineral operation.
- Contributions to and other expenses incurred in respect of an approved rehabilitation fund for the mineral operation.
- Expenses incurred by the person during reclamation, rehabilitation, and closure of the mineral operation.
- Capital allowances granted with respect to the mineral operation.
- Carry over losses.
- Decommissioning fund/rehabilitation fund
- Over-stripping and shaft sinking cost
- Processing cost

(3 marks)

ii) **Approved Rehabilitation Fund**

These are funds set aside to take care of reclamation, rehabilitation, and closure of the mineral operation. The funds set aside for this purpose are exempt from tax.

Where there is a surplus after the rehabilitation of a separate mineral operation conducted by that person or when there is a breach of an approved rehabilitation, the surplus shall be added to income of the person from the separate mineral operation and subject to tax.

(3 marks)

iii) **Financial cost and Financial gains**

Under section 67(4), relevant financial gain or relevant financial cost may be included in ascertaining the income of a person from a separate petroleum operation.

- Financial cost is a cost associated with derivative or foreign currency instrument and financial gain is said to be derived from interest from a financial instrument; and a person incurs a financial cost when the person incurs losses with respect to a financial instrument.
- The financial cost may be deducted only to the extent that the relevant financial gain is included in determining the income of a person from a separate petroleum operation.
- In a year of assessment, where any loss is incurred in respect of a derivative or a foreign currency instrument, such a loss may be carried forward and deducted from the relevant financial gain of the subsequent five years. The loss is required to be deducted using the ordering rule (first in first out principle).
- The financial cost which is carried forward shall be used in the order in which the financial cost is incurred.
- Loss on a financial instrument may be set off against a gain on a financial instrument (match a loss against a gain).

(4 marks)

b)

i) A person who is not a citizen or an enterprise which is not wholly owned by Ghanaian citizens shall not invest or participate in:

- The sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place.
- The operation of taxi or car hire service in an enterprise that has a fleet of less than twenty-five vehicles.
- The operation of a beauty salon or a barber shop.
- The printing of recharge scratch cards for the use of subscribers of telecommunication services.
- The production of exercise books and other basic stationery.
- The retail of finished pharmaceutical products.
- The production, supply and retail of sachet water.
- All aspects of pool betting business and lotteries except football pool.

(Any 5 points @ 1 mark each = 5 marks)

ii) **Tax benefits of sole proprietorship**

- Sole proprietorship enjoys personal reliefs which reduce tax liabilities whereas a limited liability does not enjoy such benefits.
- The sole proprietorship is entitled to pension of up 35% of declared income whereas a company does not.
- Interest received from a person resident financial institution is exempt from tax whereas that of a company is taxable at 8% on account.
- Interest received from persons other than a resident financial institution is taxed at 1 % on account whereas a company is 8% on account.
- Establishing a sole proprietorship business does not require the payment of stamp duty whereas establishing a company will require the payment of stamp duty.

(5 points @ 1 mark each = 5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

For sub-question a), candidates were to determine the following:
Allowable deduction peculiar to extractive industry and the taxation treatment of rehabilitation fund and finally the tax treatment of financial cost from derivative. This is also another technical area most candidates do not pay particular attention when studying. Rehabilitation fund is a fund escrowed and used for rehabilitation purposes after mining and mineral operations are over. Excess of the fund shall be taxed at the rate of 35% because as a provision, it is an allowable deduction.

Financial cost from derivative must be matched against financial gain from derivative. Any excess above the financial gain shall be carried forward for the next five years. Financial cost from derivative without financial gain shall be carried forward for the next five years.

The b) part of the question required candidates to identify activities which cannot be engaged in by foreigners and the tax benefits of having sole proprietorship over Limited Liability Company featured.
This area looks at the benefits of the sole proprietorship as opposed to the limited liability company. Such benefits are personal reliefs, contributions towards tiers 1, 2 and 3 which will reduce their tax burden. Also, withdrawal from tier 3 without any tax implication.

On the question of activities which cannot be undertaken by foreigners some candidates were bold to write as follows:
Foreigners cannot engage in prostitution, drug dealing, armed robbery, money laundering, exportation of digital communication, join the Ghana Armed Forces, Prisons just to mention but a few. Clearly, these examples are evidence of lack of preparation for the examination and also lack of understanding of the implication of what has been written.

RECOMMENDATION

- Candidates should take up their tax lessons seriously. Taxation is the creature of statute and therefore students should learn to read the Acts and Regulation.
- Candidates should be interested in going to the GRA websites to update themselves of happenings on the tax front and to help with their preparation for the examination.
- The Institute should provide regular tax updates to candidates so that they get to know what is happening on the tax landscape.
- It is observed that candidates continue to make mistakes highlighted in previous examination reports. ICAG should mail the reports to candidates to enable them read them before their examination in order to avoid many of the pitfalls.
- Students preparing for ICAG should continue to read journals and international articles to broaden their horizon.

CONCLUSIONS

We wish to commend candidates and the Institute as there was no scintilla of examination malpractices in the scripts reviewed. Candidates were original in their presentations.
ICAG should continue to hold intervention classes in taxation to further improve the performance of candidates in the examination.

New areas ICAG intends to examine candidates in future should be heralded through students' newsletters for them to get to know happenings around the subject matter before the examination is conducted.