

THE INSTITUTE OF CHARTERED ACCOUNTANTS
NOVEMBER 2015 PROFESSIONAL EXAMINATIONS QUESTIONS
TAXATION AND FISCAL POLICY (3.4)

QUESTION ONE

- a) The Chief Executive Officer of LOBILO Limited, producers of Alata Local Soap for the Ghanaian market, returned from a Tax Seminar organized by The Institute of Chartered Accountants, Ghana (ICAG) and called you, the Tax Manager of LOBILO into his office and stated “LOBILO Company Limited has been short changed over the years on account of tax losses”. He said that carryover of losses as an incentive was discussed at length at the Tax Seminar. He went further to add that, LOBILO Limited has not carried over its tax losses as provided for in the tax laws. He states, “Tax Manager, please act now by writing to Ghana Revenue Authority to recognize the tax losses of LOBILO, since the losses are within the five years in order to help reduce the taxes of the Company now that the Company is making profits”, he ended.

You are required to:

Explain clearly the provision of tax laws on carryover of losses and to what extent do you agree with the position of the Chief Executive Officer of LOBILO Company Limited?

(9 marks)

- b) Shares of a resident company are classified as chargeable assets under capital gains tax. Under what circumstances will shares not be described as chargeable assets under capital gains tax provision? **(4 marks)**
- c) Staff of ABC Bank Ghana Limited; have been issued shares by ABC Bank Limited - United Kingdom (the Parent company). The shares have been vested and are available to be sold immediately by the beneficiary staff.

Requirement:

With the support of the provisions of the relevant tax laws, how will the above be treated for tax purpose, if any?

(7 marks)

(Total: 20marks)

QUESTION TWO

- a) Capital Allowance is an incentive granted to all persons in business and investment. They are, however, granted upon fulfillment of certain conditions.

Required:

Explain fully the conditions under which GRA may grant Capital Allowance to a person

(4 marks)

- b) A globally recognized Training and Research Centre on peace keeping and peace support operations in Ghana has engaged you as a tax consultant to provide tax opinion on how the following transactions should be treated:

- i. The Centre engages part time lecturers on its Masters Programmes which are run on a modular basis and run for a one year period. Payments for the fees of these lecturers are based on the number of hours done.

(2 marks)

- ii. The Centre engages facilitators who are to teach and direct the flow of class for courses that run for a short period. Payments for their services are based on hourly/daily work done.

(2 marks)

- iii. The Centre engages experts/consultants to assist in developing new courses or review existing courses being run by the centre or undertake any other assignment as and when required by the Centre. Payment to this category of persons is also dependent on the duration of the task and based on man days.

(2 marks)

- c) Ghana Revenue Authority has embarked on comprehensive reforms geared towards “Voluntary Tax Compliance”. Among the reforms include requesting tax payers to determine their tax liabilities and consequently the tax payable. This has roundly been criticized by some taxpayers as increasing cost of compliance or doing business. You have been engaged by the Ministry of Finance to help Ghana Revenue Authority educate taxpayers on these reforms.

You are required to explain to taxpayers:

- i) Self Assessment Tax Regime **(4 marks)**
- ii) Critically examine the benefits taxpayers stand to derive from Self-Assessment Regime that has become part of tax administration in Ghana **(6 marks)**

(Total: 20 marks)

QUESTION THREE

- a) It is the opinion of some people that borrowing by government may be better option in some cases than imposition of taxes as taxes have the potential of creating resentment and upheavals during a period of economic difficulties.
- i. Explain fully what Public Sector Debt is? **(5 marks)**
- ii. What are the objectives of Public Debt Management **(4 marks)**
- b) Distinguish between Tax Evasion and Tax Avoidance and give one example of each. **(5 marks)**

- c) Kwame Patapaa has written in his Will that a parcel of land located in Kasoa should be given to his friend Adongo Muda upon his death in his Will. He is, however, not sure of the tax implication on this transaction and has approached you for assistance in this direction.

Required:

Detail out your response to this question **(3 marks)**

- d) Who are incapacitated Persons? **(3 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) The Government intends to discourage drastically, the importation of Television Sets and rather create local demands for Osafo Electronics as part of efforts to “Grow Made in Ghana products”.

The following data is relevant:

4,000 pieces of Television Sets at a cost of GHS2,200.00 per one were imported in March 2015 from USA by Kamus Enterprise. The cost of freight was GHS100 per a Television Set via KLM Airline.

Additional information:

Rate of Duty 20%

Rate of Duty: GHS80 per a Television set

- i. Using the above, compute the taxes payable under both the advalorem and specific methods. **(6 marks)**

- ii. Advise the government on which method would help achieve The Government’s intended action and why?

(2 marks)

(Note: Assume that the television sets were imported by air).

- b) Nangodi Enterprise in its bid to be tax compliant has sought your opinion on the circumstances under which its registration under Value Added Tax can be cancelled by the Commissioner General.

Required:

What are the conditions under which the Nangodi Enterprise's registration can be cancelled? **(5 marks)**

- c) The Commissioner General issued a private ruling which conflicts to all intents and purposes with existing practice notes issued by Ghana Revenue Authority on the same transaction.

Required:

Discuss how this issue should be handled in Tax Administration. **(4 marks)**

- d) Statement of retained earnings:

Income Surplus		
	Dr	Cr
	GHS	GHS
Balance b/fwd		100,000.00
Transfer from Income statement		<u>15,000.00</u>
		115,000.00
Bonus Issue	16,000.00	
Balance C/Fwd	<u>99,000.00</u>	
	<u>115000.00</u>	<u>115000.00</u>

What is the tax implication if any on the above income statement?

(3 marks)

(Total: 20 marks)

QUESTION FIVE

a) Songe Enterprise Limited is a dealer in rice. It buys its rice from the Rice Masters a wholesaler and sells to retailers. It has not over the years deducted a withholding tax on payments to its suppliers and its management is contemplating doing so to avoid any possible sanctions from Ghana Revenue Authority. It has received a letter from the Ghana Revenue Authority to conduct a tax audit on its activities. Ahead of the tax audit, the management has invited you as a Tax Consultant to come and conduct tax health check on its operations and put things right.

Required:

Advise the Company on the withholding tax situation on payment to its suppliers.

(6 marks)

b) What constitutes taxable gifts under Direct Tax?

(3 marks)

c) Should a Contractor in the Upstream Petroleum Sector be subject to tax by the Ghana Revenue Authority in a situation where its products are exported to its Parent Company without evidence of sale (technically called export without sale)?

(4 marks)

d) Carried Interest is part of income stream by the Host Government. What is the basis for the ownership of carried interest under petroleum upstream operations and the mining and mineral operation?

(4 marks)

e) CJA Ltd has been incorporated and intends to go into mining operations. You have been approached as a Tax Consultant on the key consideration for the issuance of license.

Required:

What are the factors to be considered by the Minerals Commission before a license is recommended for issuance?

(3 marks)

(Total: 20 marks)

SUGGESTED SOLUTIONS

QUESTION ONE

- a) Under section 22 of the internal Revenue Act 2000, Act 592 as amended by Act 2002 Act 622, Act 2006 Act 700, and Act 2007 Act 731, there shall be deducted losses of the previous five years incurred by that person on that business.

(1 Mark)

The loss shall be deducted in the order in which they occur.

Persons that can carry their losses are as follows:

- i. Farming business
- ii. Mining business
- iii. Information Technology Business (ICT –Software development)
- iv. Tourism business registered with the Ghana Tourism Authority
- v. Agro-processing companies
- vi. Manufacturing mainly for exports
- vii. A loss incurred by a qualifying venture capital financing company from the disposal of shares in any venture investment under section 17 of the Venture Capital Trust Fund Act, 2004 (Act 684)
- viii. In the case of the petroleum upstream Contractors, they are permitted to carry over their losses indefinitely

(6 Marks for any 6 points)

In conclusion, it is not all persons that are allowed to carry over their losses

The statement by the Chief Executive Officer can therefore be supported by the provision of the law as the Company is into the production of the Alata Soap which is covered under the carryover of loss provision under section 22 of the Internal Revenue Act 2000 Act 592 as amended. Any effort put in by LOBILO Company Limited to enjoy the benefit on the carryover of losses can be sustained.

(2 Marks)

b) Shares are classified as chargeable assets under section 97 (1) (a) and (b). However, under the following provisions, shares are not classified as chargeable assets:

i. Securities (shares) of a company listed on the Ghana Stock Exchange during the twenty-five years after the establishment of the Ghana Stock Exchange. It was established in 1990. Section 97 (3) (a) of the Internal Revenue Act, 2000 Act 592

(2 marks)

ii. Also, realization involving the disposal of shares in the course of liquidation (section 96 (2) of the Internal Revenue Act 2000 Act 592 as amended

(2 marks)

c) **Section 63 of the Internal Revenue Act 2000 Act 592** states, the gains or profits from any employment of a person shall be treated as accruing in or derived from Ghana to the extent to which the employment is exercised in Ghana, regardless of the place of payment.

(2 Marks)

Under section 8(3) any amount, allowance, or benefit is a gain or profit from employment if it

a. Is provided by the employer, an associate of the employer, or a third party under an arrangement with the employer or an associate of the employer

b. Is provided to an employee or an associate of an employee; and

c. Is provided in respect of past, present, or prospective employment

(3 marks)

Conclusion:

ABC Bank Limited -United Kingdom (the Parent Company) is an associate of ABC Bank Ghana Limited. Therefore the shares issued to the staff constitute a benefit paid by the Associate of their employer and should be added to its income and tax appropriately using the graduated tax rate

(2 marks)

QUESTION TWO

a)

- i. Capital allowances are granted with respect to depreciable assets of a capital nature
- ii. Capital allowances are only granted in respect of depreciable assets owned by the person making the claims
- iii. The assets should be used in the generation or production of the income of the person
- iv. The Commissioner General should be informed of the purchase and putting the asset into use within one month
- v. It must be in the business in the last basis period of the business except in temporary disuse
- vi. It must be acquired at a cost

(4 marks for any 4 points mentioned)

b)

- i. Part time lecturers should be subject to a final withholding tax at the rate of 10% under section (84)(a) of the Internal Revenue Act 2000, Act 592 **(2 marks)**
- ii. The engagement of facilitators to teach and direct the flow is a clear case of Part time teaching and should be subject to a withholding tax at the rate of 10% **(2 marks)**
- iii. This is a clear case of contract for service and under section 84(2) (b) is a clear case of supply of service and should be subject to 5%. The rate of withholding tax paid to resident persons. It is not a final tax. **(2 marks)**

c)

- a. **Self assessment regime** is a type of assessment regime where a taxpayer is made responsible for accurately computing and reporting their tax liability. The taxpayers are required to estimate their taxable income and the tax thereon for the year of assessment. Tax payers on self assessment may file revision of their estimates and pay taxes in accordance with section 80 of the Internal Revenue Act 2000 Act 592 accordingly

- i. Persons on self assessment are persons specified in a notice published in the Gazette or in a print media by the Commissioner General
- ii. An estimate furnished under a revised estimate to the Commissioner General shall remain in force until revised by the person together with a statement of reason for the revision
- iii. Where the Commissioner General is not satisfied with the estimate or revised estimate, the Commissioner General may set aside the estimated assessment and provisionally assess the person
- iv. Under section 144 of the Internal Revenue Act, 2000 Act 592, where a person on self assessment makes an estimate or a revised estimate of chargeable income less than 90% of the persons actual chargeable income assessed for that year is liable to pay a penalty equal to 30% of the difference between the tax calculated in respect of that person's estimate or revised estimate of that person's actual chargeable income for the year
- v. Under section 48 of Internal Revenue Regulations, 2001 (LI 1675), the Commissioner General may permit a person to furnish an estimate prior to the date by which the person must pay the first installment of tax payable

(4 marks for any 4 points)

b) Benefits of Self Assessment

The benefits include but not limited to the following:

- i. The taxpayer is given the opportunity to make the estimate which engenders trust. This makes the taxpayer confident of the system and helps them own their tax affairs.
- ii. The tax payers know their personal circumstances and can make a better estimate under no duress. The taxpayer makes estimate which reflect their operations. However, it may also lead to low estimate at the early stage of the taxpayer's business which will cripple government's ability to raise enough revenue.
- iii. The Taxpayers is at will to revise estimates so as to avoid any imposition of penalty as the circumstances of their businesses will dictate. This makes taxpayers to pay huge taxes at the last quarter as against earlier quarters.
- iv. It reduces cost of doing business as it does not engender objection to provisional assessment which is very common under a provisional assessment regime. On the part of the business, cost increases as taxpayers will have to engage tax experts to help out

- v. It builds the technical skill of the taxpayers over the period. As the taxpayers furnish these returns over the years, they begin to appreciate the technicalities involved in the tax administration
- vi. It promotes healthy interaction between the taxpayers and the Ghana Revenue Authority. There is always constant engagement between the taxpayers and tax administrators.
- vii. It promotes accurate record keeping by the taxpayers. The self assessment thrives on proper record keeping.

(6 Marks for any 6 points)

QUESTION THREE

a)

- i. Public debt is the sum of public and publicly guaranteed debt. Public debt is the sum of domestic and external obligations of public debtors which include the central government and its agencies and publicly guaranteed debt is the sum of all domestic and external obligations of the private sector that is guaranteed for repayment by a public entity.

(5 marks)

- ii. Minimize borrowing costs **(1 mark)**
 Keep risks at an acceptable level **(1 mark)**
 Support the development of domestic markets **(1 mark)**
 Ensure the financing needs of the government **(1 mark)**

b)

Tax Evasion is the practice of using fraudulent means to pay lower tax or not pay any tax at all. This is criminal and attracts sanctions from the Tax Authority and or the courts. Example (includes but not limited to) is using two receipt books to record transactions with one recording actual transactions which will not be rendered for tax purpose and the one recording lower transactions which will be made available to the Ghana Revenue Authority for tax purpose.

(2 marks)

On the other hand, **Tax Avoidance** is the practice of using the loopholes in the tax laws to pay legitimately lower tax. An example of Tax Avoidance schemes include but not limited to selling chargeable assets and using the proceeds to acquire a replacement asset within a year of such disposal. This is exempt from capital gains tax.

(2 marks)

c)

This is a clear case of a gift from Kwame patapaa to Adongo Muda as land is a taxable gift under section 106 of the Internal Revenue Act 2000 Act 592 as amended by Act 2003 Act 644.

(1.5 marks)

Conclusion:

However, under section 105 of the Act, taxable gift received under a will or upon intestacy should not be included in the calculation of gift tax. In effect, the taxable gift of land received by Adongo Muda is exempt.

(1.5 marks)

d) These are individuals under the age of eighteen years or individuals who, by reason of mental ill-health, are in capable of managing their tax affairs.

(3 marks)

QUESTION FOUR

i) Kamus Enterprise

Computation of Duties and Taxes (using the Ad Valorem Method)

	GHS
Cost of Television Sets (4000@2,200)	8,800,000
Freight Charges (4000*100)	<u>400,000</u>
Cost and Freight	9,200,000
Notional Insurance (1% of Cost and Freight)	<u>92,000</u>
	9,292,000
Duty 20% (20%*9,292,000)	<u>1,858,400</u>
	10,180,800
Value added Tax 15% (15%*11,150,400)	1,672,560
National Health Insurance Levy (2.5%*11,150,400)	278,760

(3 marks)

Kamus Enterprise**Computation of Duties and Taxes (using the Specific Rate Method)**

	GHS
Cost of Television Sets (4000@2,200)	8,800,000
Freight Charges (4000*100)	<u>400,000</u>
Cost and Freight	9,200,000
Notional Insurance (1% of Cost and Freight)	<u>92,000</u>
	9,292,000
Duty (4000@80)	<u>320,000</u>
	9,612,000
Value added Tax 15% (15%*9,612,000)	1,441,800
National Health Insurance Levy (2.5%*9,612,000)	240,300
	(3 marks)

ii) Comparison of Duties and Taxes:

	Ad Valorem Method	Specific Rate Method
	GHS	GHS
Duty	1,858,400	320,000
VAT	1,672,560	1,441,800
NHIL	<u>278,760</u>	<u>240,300</u>
	<u>3,809,720</u>	<u>2,562,400</u>

Comments:

The Ad Valorem Method achieves the objective of the Government as it gives the highest revenue and also acts as a disincentive to imports. **(2 marks)**

b)

Section 19 of Act 2013 Act 870 states the following as condition under which the Commissioner General shall cancel the registration of a person

Where the person

- i. No longer exists;
- ii. Is not carrying on a taxable activity;
- iii. Is not required or entitled to apply for registration;
- iv. Has no fixed place of business or abode;
- v. Has not kept proper accounting records related to a business activity carried on by that person; or
- vi. Has not submitted regular and reliable tax returns required under the Act

(5 Marks for any 5 points)

c)

Private ruling sets out clearly the Commissioner General's position regarding the application of the Act with respect to a transaction proposed or entered into by a person.

(1 mark)

Practice notes are issued to achieve a consistency in administration of the tax act.

(1 mark)

Where there is a conflict, the private ruling takes priority over the practice notes

(2 marks)

d)

Under section 94 of the Internal Revenue Act, 2000 Act 592, bonus issue to shareholders constitutes a capitalization of profits.

(1 mark)

The amount of Ghs16,000.00 is dividend payments and should suffer a final withholding tax at the rate of 8% under section 83 of the Internal Revenue Act 2000 Act 592 and Part IV of the First Schedule

(2 marks)

QUESTION FIVE

Under **section 84(2)** the supply or use of goods or property of any kind, or for the supply of any services are subject to withholding tax when the sum of the payment exceeds Ghc500.00 Act 84(2)(b) amended by (Act 2010 Act 814) **(1 mark)**

There are exemptions to this provision. Section 84(4)(a) provides that any payment to a residents for goods and services where the payment under a contract for the sale of goods which constitute trading stock of both the vendor and the purchaser. **(2 marks)**

Conclusion

The Purchaser (Songe Enterprise) has the same trading stock as the Vendor. This makes it exempt from withholding tax. **(3 marks)**

b) The following constitute taxable gifts

- i. Buildings of Permanent or temporary nature
- ii. Land
- iii. Shares, bonds and other securities
- iv. Money, including foreign currency
- v. Business and business assets
- vi. Any means of transportation (land, air or sea)

(3 marks for any 3 points)

c)

Petroleum operations are described as exploration, development and or production of the product, the sale of the product and export without sale of the product.

The contractor is deemed to have sold its products when exports are done to their affiliates in this case its Parent Company and the revenue will be realized using the rate ruling internationally on the day the export is made.

(2 marks)

Conclusion:

Whether the Contractor will be liable or not depends on whether it has a chargeable income after all allowable deduction as prescribed by the tax provisions. Tax is payable if the allowable deduction is less than the assessable income. If the assessable income is less than the chargeable income, no tax will be payable.

(2 marks)

d)

Carried Interest is in the case of the petroleum activities, allows the Host government to benefit from production of oil and only pay towards production cost. Government does not contribute towards the exploration and development costs. **(2 marks)**

In the case of mining operations, government takes 10% carried interest free without any financial contribution from the government.

(2 marks)

j)

The factors to be considered are as follows:

- i. Evidence of financial and technical resources at the disposal of the applicant
- ii. Proposed amount to be spent on the operations
- iii. Programme of proposed mineral operations
- iv. Applicant's proposals with respect to the employment and training of nationals in the industry

(1 mark for 1 point)