

**NOVEMBER 2019 PROFESSIONAL EXAMINATION
ADVANCED TAXATION (PAPER 3.3)
CHIEF EXAMINER'S REPORT, QUESTIONS & MARKING SCHEME**

EXAMINERS' GENERAL COMMENTS

The Taxation and Fiscal Policy paper has been designed and structured to help students in their tax practice in future and/or add value to their organisation when they find themselves working in areas where tax knowledge will be required after their qualification. This paper is the first of its kind after the review of the syllabus. The paper therefore seeks to test the skill, knowledge and application of candidates.

The paper really was a good one to say the least. The choice of the questions gave the paper the kind of standard that was envisaged in the syllabus. The level of difficulty was appropriate for the final level standard and students who sat for the examination attested to that fact after the examination.

Examiners were together in their conclusion on the standard of the paper at the coordination. The paper was generally a good paper and as usual was meant to create a discrimination between good students and poor ones. The coverage of the questions along the syllabus was quite remarkable and rewarded hard work and intensive research. If a student concentrated on only a limited area, it was obvious that student would have some challenges with the paper.

Additionally the mock questions released by the Institute were very helpful as they exposed students to the trend of questions and the level of difficulty they were to expect. Forewarned is forearmed. It was generally noticed that most candidates computed taxes without providing the names of the taxpayers as part of the solution. Taxpayers are unique. Years of assessment was seldom seen in the solution proffered by many a student. Many candidates did not find the year of assessment important and therefore did not include it as part of the solution.

Spellings and poor construction of English are becoming alarming and demand some drastic action by all stakeholders otherwise, we shall soon see Pidgin English in the examination paper. Abbreviations are becoming part and parcels of students' write up in the examination these days. This is obviously unacceptable in professional examinations.

STANDARD OF THE PAPER

The questions took the same nature as the past and also assumed final level character as some of them required candidates to comment on the questions or apply real life situation to the questions. Given that the principles of taxation is examined at the part 2 level, the final level tested students' ability to apply the knowledge to the questions which in our view was impressive. The marks allocated were quite appropriate and the questions were of a final level standard too. The questions were all within the syllabus coverage. The questions were not of the recall nature too. The clarity of the questions was not in doubt and of a high standard. This made students who really studied seriously for the exam have a smooth sailing.

The paper quality was very high with impressive type setting. The characters of the question paper were also quite good. The construction of the English was superb and conveyed well the thoughts of the Institute in respect of the questions. The paper was carefully and professionally crafted in our view and therefore could be said to be an exceptional paper in terms of the quality, standard and spread across the syllabus.

PERFORMANCE OF CANDIDATES

The performance of candidates continued to show the same trend. There is more room for improvement though. Hard work continues to be the fulcrum around which success of students revolves. Students now have more materials to create needed positive impact which they have to explore with vigour.

Additionally, there are many Tuition Centres across the country which have contributed in no small measure to the uptick of students' performance and should be commended.

The English language continues to be a challenge among the student community. Constructions of sentences continue to be a nightmare for many a student. This to all intent and purposes constrains ability to appreciate students' line of thought and their position on a subject matter.

Additionally, it emerged that students' lack of preparation continued to create problems for them in the examinations. Some candidates almost always would have to write the examination without annual leave from their places of work, this obviously works against their efforts.

NOTABLE STRENGTHS AND WEAKNESSES OF CANDIDATES

- Students are now able to predict the examination pattern, as the Institute over the years has made its examination trend remained unchanged. The purpose is to give every average student an equal opportunity to pass the examination.
- Any student who painstakingly went through the syllabus was sure to have upper hand in the examination.
- Some students demonstrated impressive performance and bagged good marks from the examination. Others really struggled. From all indication, those who performed poorly did not prepare well and it was revealed by the paucity of their answers.
- Most of the candidates demonstrated understanding of the questions and this evidence was seen in the answers they conveyed. As fate would have it, others did not show any understanding of the questions and this was so revealing in their answers.
- Following from the performance of students, one can conclude that the Institute constant engagement in terms of students' journals and keeping students informed on examination matters have had tremendous effect on their output. This should be encouraged and supported to sustain the pass rate or better still improve it.
- Tuition Centres should continue to provide support to students. If possible, they should conduct mock examinations for them to help them correct the notable mistakes to improve the pass rate of students in the examination.
- Wrong numbering of questions became very obvious in the examination among a number of scripts. Fresh questions were added to other questions on the same sheet making the marking difficult.
- Memo writing became a challenge for some students. It emerged that few students did not know the features of a memo. The structure did not award much marks otherwise some students would have lost much.
- Poor English language construction continued to characterize the scripts of most candidates in the examination. This affected the comprehension of the answers offered by students. Examiners had to struggle to read to be able to decipher what students meant or offered as solution.
- Closely connected to this is the spellings of candidates in the examination. The frequent use of the social media as had detrimental effect on the spelling power of some candidates.

QUESTION ONE

- a) The management of Kelkadadi Ltd, a company resident in Ghana since the year of assessment 2007, is a wholly owned subsidiary of Danlerigu Ltd, a company resident in Nigeria. The Finance Manager of Kelkadadi has invited you as a final level three candidate of ICAG and also a Tax Intern with Danlerigu to analyze the transaction below and provide tax implication thereon.

Kelkadadi Ltd contracted a loan of \$10 million from Danlerigu Ltd to help it meet its operational activities.

The balance standing on the loan account at the beginning of 2018 stood at \$5 million and \$4.1 million at the end of 2018 year of assessment. The exchange rates are as follows:

Year Start (2018) \$1 = GH¢5.20
Year End (2018) \$1 = GH¢5.21

The extract of the financial statement at the beginning of the year 2018 was as follows:

	GH¢
Stated Capital	200,000
Retained Earnings	1,235,000
Capital Surplus	40,000
Share Deals	30,000

Interest on the debt paid during the year amounted to GH¢90,124 and foreign exchange loss on the loan repayment stood at GH¢147,000.

Required:

Write a memo on the possible tax implication(s) on this arrangement to the Finance Manager.

(12 marks)

- b) The management of Akolo Ltd (Akolo) has been running this business entity for some time now. At a seminar organized for some select businesses at the Trade Fair-Accra last year, the management of Abolo Ltd (Abolo) realized at the seminar that the two companies (Akolo and Abolo) have a lot in common with the same market share. Consequently, the two companies commenced processes to merge as one strong entity. The two agreed a merger arrangement to benefit from the synergetic efforts.

The two companies intend to form a new entity called Akobolo Ltd (Akobolo).

Required:

- i) What is the tax implication of the arrangement if, in the new company-(Akobolo), Akolo intends to hold 40% in the underlying ownership in the assets of the new company while Abolo holds 60%? **(3 marks)**
- ii) What is the tax implication if both companies hold 50% each in the underlying ownership of the assets of the new company –Akobolo? **(2 marks)**
- c) What is the tax implication of the concepts “**Trading in Ghana**” and “**Trading with Ghana**” in tax administration arrangement? **(3 marks)**

(Total: 20 marks)

QUESTION TWO

- a) Any resident person other than a partnership may be allowed a foreign tax credit relief on any income that is earned outside Ghana subject to the fulfilment of certain conditions, which are critical in the granting of the relief.

Required:

What are the conditions to satisfy before the foreign tax credit relief is granted?

(3 marks)

- b) Countries A and B are contemplating a Double Taxation Agreement (DTA). The two countries are of the view that the Double Taxation Agreement will create a lot of tax benefits to citizens and other persons in both countries. Others have criticized this move as counter-productive and not worth the time of either country.

Your inputs are being solicited as an ICAG Finalist and a patriotic citizen of Country A to provide the benefits to be put on the website of Ministry of Finance of Country A to enable people read, appreciate and support the agreement.

Required:

Explain **FIVE (5)** benefits that the two countries stand to gain from this arrangement.

(5 marks)

- c) The following has been extracted from the tax records of Mbangba Ltd relating to 2018 year of assessment, which it intends to benefit in terms of tax outcome from 2019 year of assessment.

	GH¢
Tax loss recorded for the first time in 2018 Y/A	400,000
Financial Cost carried forward from derivatives- 2018	100,000
Bad Debts from Customers crystallized but not utilized in 2018	1,200,000

Lawomba Ltd in March 2019, acquired 68% equity shares of Mbangba Ltd and rebranded the name as Lawomba Ltd and conveyed the circumstance after the deal was clinched to the Ghana Revenue Authority to amend its records accordingly and recognize as the legitimate persons in control of Mbangba Ltd.

The management of Lawomba Ltd has written to you making available the above disclosures for your tax opinion.

Required:

What is the tax implication of the above transactions in the records of Lawomba Ltd?

(6 marks)

- d) The following is the extract of financial statements-

Financial position as at 31 December 2018 of the following companies:

	Tiika GH¢	Taaka GH¢
Stated Capital	1,000,000	1,000,000
Retained Earnings	600,000	600,000
Share Deals	<u>30,000</u>	<u>30,000</u>
Total Equity	<u>1,630,000</u>	<u>1630,000</u>

Tiika is a Free Zone company, resident in Ghana .Taaka is also a company resident in Ghana and both companies are engaged in the sale of tiles.

A Ghanaian who was living in the United States for a very long time has relocated to Ghana and has sought your opinion as a student of taxation to advise on the company to buy shares in. Your background checks indicate that the two companies have huge prospects.

Required:

Which of the companies will you advise this Ghanaian to invest in and why? **(6 marks)**

(Total: 20 marks)

QUESTION THREE

- a) The Ghanaian Government, worried by the rising incidence of Transfer Pricing abuses by Multinational and Group Companies, introduced new transfer pricing rules and guidelines through Transfer Pricing Regulations, 2012 (LI 2188).

Required:

- i) Explain any **FOUR (4)** objectives of the transfer pricing regulations of Ghana. **(6 marks)**
ii) Explain the ***arm's length principle***. **(2 marks)**

- b) Pyrotechnics Ghana Limited was established for the main purpose of providing marketing support services to Pyrotechnics UK Limited, its parent company. Pyrotechnics Ghana Limited's expenses are reimbursed with a 5% mark-up, which constitutes its total revenue.

Required:

What is the best transfer pricing method that can be used to test this transaction? Justify your response and show how the method will be applied. **(8 marks)**

- c) What are the ***tax policy considerations*** that are relevant to the decision of whether Ghana should enter into an international tax treaty or amend an existing treaty? **(4 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) Bubandushe is a Non-Governmental Organisation (NGO) located in Accra with operational area in the Northern Regions of Ghana. The NGO buys rice from a super market in Accra and transports it to Northern Regions for distribution to widows and orphans. Its main source of funding is from a benefactor based in the Netherlands, who has been supporting the project since its inception.

In support of its operations, it engaged Chartered Accountants from the Institute of Chartered Accountants (Ghana) as employees. Their role is basically to organize training programmes for Government Institutions on budget preparation using advanced financial models for a fee. This additional source of income equally supports the operations of this NGO.

Ghana Revenue Authority (GRA) has written to this NGO to regularize its operations with it for tax purposes. The Management of the NGO has argued that it is exempt from tax on its income. The management has written to you to offer professional help on the matter.

Required:

- i) Determine whether the NGO is required under the tax laws to pay tax and if yes what type of taxes. **(6 marks)**
- ii) On what basis are NGOs liable to tax or exempt? **(2 marks)**
- b) Askona is run as a Trust for Maame Kukua, a Ghanaian based in the USA. Askona is based in the USA and represents a lot of people in trust arrangements. Under the arrangement, Maame Kukua who is currently living in the USA has acquired a transporter vehicle for Askona to use it for the benefit of her two children -Yaaya Mensah and Nana Yaw Mensah who are both resident in Ghana.

In January 2019, Askona made a distribution to Yaaya Mensah and Nana Yaw Mensah in Ghana via Western Union Money Transfer. Maame Kukua has asked you, a young Tax Expert in Ghana to advise on the taxability or otherwise of the above transaction in Ghana.

Required:

Advise on whether a distribution by a non-resident trust such as Askona is taxable and how? **(4 marks)**

- c) The following data relates to Nyametsew Mining Company for 2018 year of assessment.
- | | | |
|--------------------|---|------------------|
| Production | - | 2,000,000 Ounces |
| Revenue | - | GH¢10,000,000 |
| Cost of Production | - | GH¢4,000,000 |

Required:

Compute the Royalty Payable. **(2 marks)**

- d) Mining companies are given some benefits in their operations in many countries to help them create benefits for their host governments and shareholders. One of the benefits of the mineral operation is the stability agreement that mining companies sign with host governments the world over.

Required:

What does stability agreement seek to achieve for mining companies in Ghana? **(6 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) During the tax audit of Kalybos Company Ltd, a lot of information came to the attention of the Ghana Revenue Authority staff who conducted the audit. The staff reminded themselves that a person employed, or engaged by Ghana Revenue Authority must be confidential.

Required:

- i) Under what circumstances would a person or the Commissioner-General disclose information or documents to another person? **(3 marks)**
- ii) Which categories of persons or institutions may the Commissioner-General disclose a taxpayer's information to? **(2 marks)**
- b) During the tax audit of Kalybos Ltd, the Commissioner-General sought the assistance of some Lawyers and Architects who were not employees of Ghana Revenue Authority. The Management of Kalybos Ltd is protesting the use of these experts whose advice influenced the final decisions of the Commissioner-General.

Required:

What are the rules governing the assistance of experts in the duties of the Commissioner-General of the Ghana Revenue Authority? **(5 marks)**

- c) Kaeka Ltd operates in the Upstream Petroleum Sector. The following relates to its 2018 year of assessment:

	US\$
Profit	230,000,000
Tax paid	7,875,000

The following was adjusted in arriving at the profit above:

Research and development cost incurred	4,500,000
Refreshment	1,500,000
Fines and penalty	20,000
Loss-2017 (unrelieved)	1,200,000
Depreciation	800,000
Acquisition of Drilling Machine	30,000,000

Note: Written Down Value of depreciable assets are as follows:

Balance c/d-2017:

US\$21,000,000 with capital allowance granted twice as of 2017.

US\$60,000,000 with capital allowance granted once as of 2017.

Required:

- i) Compute the tax payable. (8 marks)
ii) Comment on the treatment of research and development expenditure. (2 marks)
- (Total: 20 marks)**

The Tax Rates- (ANNUAL 2018)

	Chargeable Income	Rate
	GH¢	
First	3,132	Nil
Next	840	5%
Next	1,200	10%
Next	33,720	17.5%
Next	81,108	25%
Exceeding	120,000	35%

SOLUTION TO QUESTIONS

QUESTION ONE

a) Working: **W1**

Computation of equity:	GH¢
Stated Capital	200,000
Retained Earnings	<u>1,235,000</u>
Total	<u>1,435,000</u>
Debt Outstanding @ 1/1/2018	\$5,000,000
Translation of loan into Cedis	= (\$1 x \$5,000,000)/GH¢5.20
	= GH¢26,000,000

Threshold Ratio Debt : Equity
3 : 1

$$\begin{aligned} \text{3 times equity} &= 3 \times 1,435,000 \\ &= 4,305,000 \end{aligned}$$

Computation of allowable Interest

$$\begin{aligned} \text{If } 26,000,000 &= 90,124 \\ \text{Therefore } 4,305,000 &=? \\ &= (4,305,000 \times 90,124) / 26,000,000 \\ &= \text{GH¢}14,922.45 \end{aligned}$$

W2

	GH¢
Total Interest	90,124.00
Interest Allowable	<u>14,922.45</u>
Interest to be disallowed (difference)	<u>75,201.55</u>

W3

Foreign Exchange Loss:

Total foreign Exchange	147,000
If 26000,000 = 147,000	
Therefore 4,305,000 = ?	
Allowable Foreign Exchange: (4,305,000 x 147,000 / 26,000,000)	= 24,339.81

	GH¢
Total Foreign Exchange	147,000.00
Foreign Exchange Allowable	<u>24,339.81</u>
Foreign Exchange unallowable	122,660.19

(7 marks evenly spread using ticks)

MEMO

TO: Tax Manager
FROM: Tax Intern
DATE: 7th July 2019
SUBJECT: Tax Implication on Thin Capitalization Rules

INTRODUCTION

Following your request for me to provide the tax implication on the thin capitalization, I furnish as follows:

ISSUES

Kelkadadi ltd is a subsidiary of Danlerigu and any loan that is granted shall be subject to Thin capitalization rule which rules say that the debt secured should not be more than 3 times the equity of the entity.

In this particular situation, the debt exceeds the three times. Consequently, the interest paid or payable that exceeds the 3: 1 ratio shall be added to income and taxed and also the foreign exchange loss paid or payable.

Additionally, the total interest paid or payable attracts a withholding tax at the rate of 8%.

Summary of interest

	GH¢
Total Interest	90,124.00
Interest Allowable	<u>14,922.45</u>
Interest to be disallowed (difference)	<u>75,201.55</u>

From W2 as attached, total interest of GH¢ 90,124.00 shall attract interest at 8% which is $(90,124.00 * 8\%) = \text{GH¢} 7,209.92$

Interest of GH¢75,201.55 shall be disallowed, meaning it should not be an allowable deduction out of GH¢90,124 with GH¢14,922.45 allowable.

(2 marks)

Summary of Foreign Exchange Loss

	GH¢
Total Foreign Exchange	147,000.00
Foreign Exchange Allowable	<u>24,339.81</u>
Foreign Exchange unallowable	<u>122,660.19</u>

From W3 as per the schedule attached, the total foreign exchange loss of GH¢147,000 only GH¢24,339.81 shall be allowable with GH¢122,660.19 not allowable for tax purpose.

(2 marks)

CONCLUSION

In conclusion, the attached schedule will aid your comprehension of the issues as stated above.

Thank you

Yours faithfully,

**(1 mark for structure of Memo)
(12 marks)**

b)

- i) Under section 47 of Act 2015 (Act 896), the gains on realization of an asset accruing to or derived by a company arising out of a merger, amalgamation or re-organisation of a company is exempt from tax where there is a continuity of at least fifty percent of the underlying ownership in the asset.

The intended merger of the two companies may create either a tax benefit or burden depending on the arrangement.

Under this arrangement, Akolo has 40% in the underlying ownership in the asset of the new company, this suggests realization of the assets and consequently, any gains made is subject to tax by adding it to business income and subjecting it to applicable tax rates.

In the case of Abolo that intends to hold 60% in the underlying ownership in the assets of the new company, any gain from this merger is exempt from tax.

(3 marks)

- ii) If both hold 50% in underlying ownership in the assets of the new company that constitutes realization of asset but the gains on this realization are exempt from tax in both Akolo Ltd and Abolo Ltd. (2 marks)

- c) **Trading in Ghana** connotes a non-resident person having business presence in Ghana and competing with our local businesses. It implies in simple terms, having a permanent establishment. (1.5 marks)

On the other hand, **trading with Ghana** does not connote having presence in Ghana. This will not create any tax implication for the non-resident person.

(1.5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

- Question 1A. This question tested candidates' knowledge of the Thin Capitalisation rule and its implication in taxation. The question was well answered by most candidates. Some did not write the memo which was part of the requirement. Others really struggled with it. This means students did selective reading of the syllabus hoping that what they read would come. This attitude towards studying would not help broaden the horizon of candidates and would certainly limit their ability to perform well.
- Additionally, in the translation of the loan from dollar to Ghanaian cedi, most students used the closing exchange rate instead of the rates at the beginning of the year in question. Others used the loan amount received ignoring the fact that over

the years, the loans were paid for. Students know that it is the loan balance at the beginning of the year that is used to calculate the interest and for the computation of the allowable interest.

- Question 1 B. Required the tax implication of mergers where each entity holds 50% in the post- merger arrangement and the implication in the lop-sided arrangement. Most candidates did not fare well in this question. Few got it right. Students should know that in a post-merger arrangement, where each entity holds, 50%, the gain if any is exempt from tax. Where the arrangement leaves an entity holding less than 50% in the post-merger, any interest from the realization shall be subject to tax at the rate the entity is taxed.
- Question 1 C was on the knowledge of “Trading in Ghana and Trading with Ghana”. Most of candidates did so well. Others as usual did struggle. The trading in Ghana appeared very familiar with students. There is no tax implication on trading with Ghana but with trading in Ghana, the entity is having presence in Ghana and subject to tax in Ghana.

QUESTION TWO

- a) The foreign credit relief is granted subject to the following:
- Income corresponding to the tax has been assessed
 - Submitting a tax credit certificate
 - Official receipt or a functional equivalent of a tax credit certificate from the tax department of the foreign country signifying the nature of income and the quantum of taxes paid by the taxpayer

(3 points for 3 marks)

- b) **The benefits of double taxation include:**

- It creates fiscal certainty for investors in the affected countries that is countries A and B.
- It provides some income which should be exempt from tax.
- It promotes foreign investment.
- May obtain help in the contracting states in revenue collection.
- It specifies income to be taxed at rates lower.
- It prevents international tax avoidance and evasion.
- Sharing of tax information

(5 points for 5 marks)

- c) The acquisition of 68% of Mbangba Ltd will result in change in underlying ownership of Mbangba Ltd by more than 50%.

Tax implication:

- The period before the change and the period after the change in underlying ownership in the assets shall be treated as separate years of assessment.
- The tax loss GH¢400,000 incurred in 2018 year of assessment cannot be utilized by Lawomba Ltd
- Financial cost of GH¢100,000 from derivatives brought forward from 2018 cannot be benefited by Lawomba
- Bad debts of GH¢1,200,000 cannot be taken account of by Lawomba Ltd.
- Gain on realization is taxable

(4 points @ 1.5 marks each =6 marks)

d)

- A free zone enterprises are enterprises which operate in non-custom controlled territory and pay tax when they export at the rate of 15% on their income while local sales are taxed at the rate of 25%.
- While a company that deals in tiles in Ghana is subject to tax at the rate of 25%. An investor in a company is part of the ownership structure.

(2 points for 2 marks)

The following are other tax benefits to a shareholders:

- Dividend paid to shareholders are exempt from tax
- Shareholders are going to benefit from huge profits when they export to grow their capital

(2 points for 2 marks)

Conclusion

- I will advise the investment in Tiika as the investors stand to benefit from the above arrangement. In the case of investors in Taaka, dividend declared shall be subject to a high taxes at 8% final. The growth of equity is much more with Tiika than with Taaka. In future investors in Tiika shall have huge capital gain from the investment in Tiika as against equal investment in Taaka.
- On the strength of the above, the investor should not look any further but to invest in Tiika for maximum benefit in dividend and capital gains when there is a disposal in shares.

(2 points for 2 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

- Question 2A
This question was on double taxation credit relief. Most candidates who attempted it did a good job on it. Others applied experience and got it correct.
- Question 2B
The question demanded explanation of benefits of double taxation to a country. This was a popular question. Most students did justice to the question. That was highly commendable.
- Question 2C. This question required understanding of change in underlying ownership and the tax implication. Many candidates did well. Others appeared to have seen the question for the first time and consequently lost marks in the process. Interestingly enough, some added the values of the tax loss, financial cost and the bad debts and applied 25% tax rate on it. This was quite bizarre. What answer would that be if one may ask?
- Question 2 D.
This was a question on Free Zone enterprise and a non-free zone enterprise and its implication for an investor decision. This was a pretty much straight forward question.

QUESTION THREE

a)

i) The objectives of a transfer pricing rules would be:

- To ensure that Ghana is able to tax on appropriate taxable basis corresponding to the economic activities deployed by taxable persons in Ghana, included in their transactions and dealings with associated enterprises.
- To provide the Ghanaian authorities the tools to fight tax evasion through over or under-pricing of controlled transactions between associated enterprises.
- To reduce the risk of economic double taxation.
- To provide a level playing field between multinational enterprises and independent enterprises doing business within Ghana; and
- To provide taxable persons with certainty of transfer pricing treatment in Ghana.

(Any 4 points @ 1.5 marks each =6 marks to be allocated)

ii) *Arm's length principle* is the principle that the conditions of a controlled transaction should not differ from the conditions that would have applied between independent persons in *comparable transactions* carried out under comparable circumstances. (2 marks)

b) The most suitable method for the transaction will be the Transaction Net Margin Method (TNMM). (2 marks)

Justification

- The transactional net margin method examines the net profit margin relative to an appropriate base such as sales, costs or assets that a person realizes from a controlled transaction or transactions that it is appropriate to aggregate. This is compared with the result achieved by independent persons on a similar transaction(s). The main difference between the transactional net margin method and the profit split method is that the former is a one-sided method" that is applied only to one of the connected persons, whereas the latter is applied to all the relevant connected persons.
- The transactional net margin method requires the comparison of net margins obtained in its related party dealings against either:
The net margins of the person's dealings with independent persons in comparable circumstances; or
The net margins earned in comparable dealings between two independent persons.
- A search will be performed to identify a set of independent companies that could be used to determine an appropriate arm's length range of return on marketing support services. The independent companies should be in the same industry/similar industry and in similar markets as the tested party, and services rendered should be similar.

- The search process will involve the examination of the companies in the database, the elimination of non-comparable companies, and the selection of those companies that are believed to be suitable as a benchmark for marketing support services. As a result of the search, a set of independent companies will be identified as comparable, which may be used as benchmark for the return that Pyrotechnics Ghana Limited should earn from the marketing support services.

(4 points @ 1.5 marks each = 6 marks)

c) **Tax Policy Considerations that are relevant to the decision of whether to enter into a Tax Treaty or amend an Existing Treaty**

- The extent to which the risk of double taxation actually exists in cross-border situations involving their residents.
- The risk of excessive taxation that may result from high withholding taxes in the source State.
- Features of tax treaties that encourage and foster economic ties between countries.
- Willingness and ability to implement effectively the provisions of tax treaties.

(4 points for 4 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

- Question 3A. This question was on transfer pricing and explanation of the arm's length issues. This question posed a little challenge contrary to the assumption that it appeared a straight forward question. Students should try and read a lot on the transfer pricing regulation to enable them be abreast of the issues of transfer pricing and their implication on tax.
- Question 3 B was on the method of transfer pricing with 5% mark-up. It appeared a challenge for most students.
- Question 3 C was on the policy consideration. This was very unfamiliar but required some amount of thinking outside the box as finalists to get it right. Others left the question unattended to while others gave it their best shot.

QUESTION FOUR

a)

- i) NGOs are treated as charitable organization subject to approval by the Commissioner-General. The Commissioner-General shall, before approving it as such shall ensure that the entity operates as a charitable institution which is of a public nature or as a religious institution of a public nature or a body of persons formed for the purpose of promoting social activities or sporting activities.

It should not engage in the following activities:

- Party political activity, supporting a political party or using its platform to engage in party politics.
- Conferring a private benefit on the promoters.

Issues

- The NGO buys rice and transports it to the Northern Regions for distributions to widows and orphans.
- It engaged chartered accountants to run training programmes on budget using financial models for fees from which the NGO is run.

Conclusions

- Under section 97(4), the income of a charitable organization, which in this case is Bubandushe is exempt from tax but its business income is taxable under section 97(5).
- The NGO is exempt from tax on its core activities. However, the purchase of rice for distribution if it is above two thousand Ghana cedis (GH¢2,000.00) shall be subject to withholding tax at the rate of 3% on the gross value on payment to the suppliers.
- Additionally, the training programme for which fee is charged shall be subject to tax at the corporate tax rate of 25% on the income from the training after cost associated with the business income is deducted.

The types of taxes are:

Corporate tax on its business income

Withholding taxes on payment to third parties

(Any 6 points for 6 marks)

- ii) The income accruing to or derived by a charitable organization is exempt from tax but when the same organization engages in business activities and makes business income, it shall be subject to tax.

(2 marks)

b)

- Under section 56 of Act 896, a Trust is taxed separately from the beneficiaries. When a trust makes a distribution, the following shall be considered before it is considered taxable or otherwise.
- A distribution by a resident trust to its resident beneficiaries is exempt from tax. On the other hand, when the distribution is done by a non-resident trust to its resident beneficiaries, the said distribution shall be subject to tax in Ghana. On the basis of the above, the distribution by Askona is taxable in the hands of Yaaya Mensah and Nana Yaw Mensah.

(2 points @ 2 marks each = 4 marks)

c) **Royalty Payable**

Rate of tax is 5%

Revenue =10,000,000

Royalty =5% of 10,000,000=GH¢500,000.00

Royalty Payable =GH¢500,000

(2 marks)

d) Mining companies want to be able to plan over a long period of time but this can be affected by changes in fiscal system they operate under.

To protect mining companies from fiscal changes, the mining companies enter into stability agreement so ensure that any adverse fiscal system (such as changes in levies, royalties among others) does not affect the mining companies. The stability agreement allows such companies to benefit from any favourable fiscal system.

(6 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

- Question 4 A was on examining students on the tax treatment of exempt organisation and its implication if it engaged in business activities. And also circumstances under which NGOs were exempt from taxes or not exempt. Most students were on top of their game and bagged good marks while others did not appear to have understood the question and consequently performed poorly. This is a clear evidence of lack of preparation.
- Question 4 B was on the taxation of a Non-resident Trust and its distribution to resident. This was also new albeit it is in the syllabus. Most candidates did not appear to understand the question and consequently performed badly.
- Question 4 C, this question required computation of royalty payable. Some computed royalty on the production instead of, on the revenue derived. Others

also deducted the cost of production from the revenue and taxed it at the rate of 25%. Students should carefully read the Acts on mining and mineral operations to get familiar with the correct computation of royalty. A candidate applied 8% as the rate of royalty as an answer to the question. Almost every sitting, questions on royalty keeps coming with examiners' comments showing the rate applicable for the royalty computation. It means students do not take delight in reading the examiners' report to improve upon their pass rate.

- Question 4 D. this question was on stability agreement. While others did a good job, others did not appear to have read the question carefully.

QUESTION FIVE

a)

i) A person or the Commissioner-General may disclose information or documents to another person where:

- The other person is currently employed or engaged by the GRA or assisting the GRA in the performance of a function.
- The disclosure is for the purposes of tax administration or any other tax law.
- The Commissioner-General has authorised the disclosure.
- The Commissioner-General is to disclose information or documents according to a court or tribunal order for the purpose of a tax law.

(3 marks to be allocated for any 3 points)

ii) The Commissioner-General may disclose information or documents to:

- The Minister of Finance
- A person in the service of the Government in a revenue or statistical department where the disclosure is necessary for the performance of the official duties of the person
- The Auditor-General or a person authorised by the Auditor-General where the disclosure is necessary for the performance of official duties
- The competent authority of the government of another country with which Ghana has entered into an international arrangement, to the extent permitted under that arrangement.

(2 marks to be allocated for any 2 points)

b)

- The Commissioner-General may engage experts, on the terms and conditions that the Commissioner-General considers necessary, to assist the GRA in the proper performance of the functions of the GRA. The appointment of an expert is ineffective unless the appointment is in *writing and is expressly made*.
- An expert assisting the GRA to perform a function is to be *supervised by the Commissioner-General or an Officer authorised by the Commissioner-General*.
- A taxpayer, however may refuse to deal directly with an expert but that person is not to *obstruct an expert assisting a tax officer to perform a function*.
- A taxpayer may report to the Commissioner-General where that person is of the opinion that the engagement of a particular expert involves a conflict of interest.
- Where the Commissioner-General receives a report that there is a conflict of interest with respect to an expert, the Commissioner-General is required to take a decision and the decision of the Commissioner-General on the matter is final.

(5 points for 5 marks)

c)

i) Kaeka ltd

Computation of Tax Payable
Y/A 2018

	US\$	US\$
January 1-December 31, 2018		
Profit		230,000,000
Add Back the ff:		
Research and Development	4,500,000	
Refreshment	1,500,000	
Fines and Penalty	20,000	
Loss	1,200,000	
Depreciation	800,000	
Acquisition of Machinery	30,000,000	
		<u>38,020,000</u>
Adjusted Profit		268,020,000
Capital Allowance (7,000,000+15,000,000+6,000,000)		<u>28,000,000</u>
Chargeable Income		240,002,000
Loss		<u>1,200,000</u>
Tax Charged @ 35%		83,587,000
Less Tax Paid		<u>7,875,000</u>
Tax Payable		<u>75,712,000</u>

Computation of Capital Allowance

Y/A 2018

BP Jan 1-Dec 31, 2018	US\$
Written Down Value	21,000,000
Capital Allowance (21,000,000/3)	<u>7,000,000</u>
Written Down Value	14,000,000

Computation of Capital Allowance

Y/A 2018

BP Jan 1-Dec 31, 2018	US\$
Written Down Value b/f	60,000,000
Capital Allowance (60,000,000/4)	<u>15,000,000</u>
Written Down Value c/d	<u>45,000,000</u>

Computation of Capital Allowance

Y/A 2018

BP Jan 1-Dec 31, 2018	US\$
Cost	30,000,000
Capital Allowance (20%*30,000,000)	<u>6,000,000</u>
Written Down Value c/d	<u>24,000,000</u>

(8 marks evenly spread using ticks)

ii) Comments on research and development cost

Research and development has been added back to income as it is not an allowable deduction for tax purposes in petroleum upstream operations.

In the solution above, the research and development has been added back to income.
(2 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

- Question 5A was on confidentiality of release of information. It required some amount of thinking if even the candidate did not read such areas in the tax materials at all. As up and coming professionals, thinking outside the box is part of the game.
- Question 5B required some understanding of the rules on seeking experts' assistance by the Commissioner-General. A lot of the students did very well in this area.
- Question 5C was on computation of petroleum upstream operation tax liability. This followed the usual pattern but unfortunately was poorly executed by few but majority of the students did a good job on it. Kudos to such students. Students were asked to comment on the tax treatment of research and development cost. While some got it correct others appeared to be joking based on the answers provided. A candidate indicated that Research and Development was a place. Really? How could any student do that? Students should show seriousness in the examination.

CONCLUSION

- On the whole, the performance was quite good. Students should carefully read the questions and place emphasis on the marks allocation in the syllabus to help in the determination of where to concentrate energies.
- Students are advised to read the tax laws also in addition to other reading materials to acquaint themselves very well before they write the examination.
- The English language continues to be a challenge for students and students should take their destiny into their own hands by reading novels and story books regularly. Spellings continue to be a challenge students. They should work on this area seriously and improve upon on their answers.