

**NOVEMBER 2021 PROFESSIONAL EXAMINATION
ADVANCED TAXATION (PAPER 3.3)
CHIEF EXAMINER'S REPORT, QUESTIONS & MARKING SCHEME**

STANDARD OF THE PAPER

The paper was good because the spread was in order and did not elicit only recall answers but required candidates to demonstrate practical knowledge and provide innovative answers and interpretation of answers. The pattern that the Institute of Chartered Accountants has adopted, Ghana should be kept and maintained because the pattern appears practically-oriented and positions the candidates for much more challenging roles.

The paper is a mirror image of what happens in the world of practice. It exacted candidates' knowledge, skill, and practical application to get the pass mark. The spread of the questions across the entire syllabus was quite remarkable. This placed every candidate on equal footing. No candidate would complain of undue advantage in the conduct of the examination. In effect, the selection of the questions was appropriate.

The questions reflected the difficulty level appropriate for a final level examination paper. By all standards, this is comparable to any paper administered at the final level in the professional milieu. The paper quality was equally good, with clarity in the questions. There was no trace of ambiguity in any of the questions. The mark allocation was fair as it considered the requirement of the question and other nuances the candidates needed to bring to bear in their solution.

One notable feature about each question was that it elicited some analysis and comments from the computation to fully complement the answers. Those types of questions would compel candidates to appreciate the principle behind every computation.

The paper could be handled by an average candidate within three hours. But for the ill-prepared candidate, the three hours would naturally not be enough. On the whole, the paper was worth the 3-hour duration.

PERFORMANCE OF CANDIDATES

The performance of candidates generally was impressive in fairness. The impressive performance of candidates could be attributable to the fact that the Institute of Chartered Accountants, Ghana has printed manuals for use by candidates and has consistently released the examiners' report together with marking schemes timely. This, to all intents and purposes, has contributed significantly to the positive performance.

Many of the candidates are beginning to appreciate the trend of the Institute's examination. The examination continues to follow the syllabus grid as contained in the syllabus making it easier for candidates to understand and follow it strictly.

Notwithstanding the above, some of the past mistakes which were highlighted in past examiners' reports continue to be exhibited by candidates. This means some candidates do not read the examiners' report and do not understand the import of the report and how it impacts on their examination.

It is also worth noting that some of the candidates concentrated only on limited scope and it reflected in the marks they had. Some candidates were seen scoring 17 out of 20 marks and in others scored 2 out of 20. This tells a story that candidates in preparing for examination do selective learning.

Each candidate's answers appeared original and different in terms of approach. This is a feat worth commending all stakeholders for the good work done to eliminate examination malpractices.

NOTABLE STRENGTHS AND WEAKNESSES OF CANDIDATES

Notable strengths

- Candidates have assumed mastery over mining and mineral taxation. This was seen in the scores in this area. Again the petroleum question was also well answered by many candidates. In sum, the extractive sector is no longer a nightmare as it was in time past.
- We did not witness many aberrations in the wrong numbering of the questions. It was not a total victory over that weakness yet, but it has reduced significantly.

Notable weaknesses

- Headless solutions were seen in the answers submitted by most candidates, and this was a significant concern in the examination. For example, computation of tax payable requires candidates to identify the taxpayer's name, the year of assessment and the basis period. Most candidates did not provide that, thereby losing some marks.
- Additionally, most candidates displayed poor communication skills in some theory questions and lost marks.
- Some candidates could not also explain the computations they did as well as the underlying assumptions required.
- Given the repetition of mistakes highlighted in past examiners' reports, there is an indication that candidates hardly read the report or don't place much emphasis on it.
- Most candidates applied the individual tax rates on the corporate income of a limited liability company. That was a serious anomaly. Individual tax rates should be applied on only to individuals and never on corporate entities.

QUESTION ONE

- a) Orga Ltd has the following information relating to its operation as a Free Zone Enterprise for the 2020 year of assessment with a basis period January to December each year:

| | |
|---------|--------------------------|
| | GH¢ |
| Revenue | 35,000,000 |
| Cost | <u>(21,000,000)</u> |
| Profit | <u>14,000,000</u> |

The following additional information is necessary:

- Depreciation of GH¢200,000 has been added to the cost above.
- Revenue: Local sales GH¢25,000,000; Exports GH¢10,000,000.
- The Managing Director, upon his appointment, was provided with a mini bar and a swimming pool as part of the employment package costing GH¢1,200,000 in his private residence. The employer added only GH¢200,000 as part of the employment income for tax purposes. The total cost has been adjusted to the cost above.
- The dividend received from the United States of America net of taxes of 10% was GH¢22,500. Unfortunately, this income has not yet been recorded even though it has been credited in its bank statement as money received.
- The excess proceeds from the sale of a depreciable asset over the written down value amount to GH¢300,000. This has not yet been brought into the records of the company.

Required:

- i) Compute the tax payable **(6 marks)**
 - ii) Explain the tax treatment of the cost of the swimming pool and mini bar **(2 marks)**
- b) Muda Atesigbe is a major shareholder of Malka Ltd, a company based in Dubai–United Arab Emirates. As part of giving the company a global outlook, it intends to have a presence in Ghana. What is not too clear to the company's management is the mode of entry into the country that would serve its business interests. It is contemplating establishing a company in Ghana or using the permanent Establishment route to make its presence in Ghana.

Required:

He has tasked you, as a final level student of the Institute of Chartered Accountants, Ghana, to advise him on the tax implication of both routes and which is a better option. **(8 marks)**

- c) Evaluate **FOUR (4)** tax planning measures that you can adopt in your desire to form a sole proprietorship business. **(4 marks)**

(Total: 20 marks)

QUESTION TWO

- a) Ghana Union Traders Association (GUTA) has expressed their dissatisfaction with the government and the Ghana Revenue Authority (GRA) on handling activities of non-Ghanaians who choose to engage in business reserved for only Ghanaians. They have consequently threatened not to honour their tax obligation until their concerns are addressed.

Required:

Write to the Commissioner-General indicating the areas of activities that are preserved for only Ghanaians and why you think the Commissioner-General is right in taxing all businesses irrespective of their ownership except as exempt by law. (6 marks)

- b) What is the principle underlying the concept of *Transfer Pricing*? (4 marks)
- c) Yelbateng Ltd is a Korean company and has a subsidiary in Ghana, by the name Yelbateng Ghana Ltd.

The parent company in 2008 gave a loan facility to the subsidiary to support its operations. However, interest on the loan from 2009 to 2019 came to \$8,000,000 after applying a thin capitalisation rule in taxation. As a result, the total amount was accrued by Yelbateng Ghana Ltd, as the company did not have money to pay the interest as agreed in the loan contract.

The total amount of the loan was \$20 million. In the year 2020, the Board took a decision to relieve the subsidiary of the loan obligation, meaning the loan with its interest was not going to be repaid by the subsidiary.

Required:

You have been invited as a final level candidate to advise the company on the tax implication of this arrangement. (6 marks)

- d) A student pursuing a degree programme insists that "*Trading in Ghana* and *Trading with Ghana*" are the same as in each case there is an element of trading, and therefore each should be treated the same way. You are a final level student of ICAG and wish to clarify the position between the two concepts to the student.

Required:

What is the tax implication of each concept? (4 marks)

(Total: 20 marks)

QUESTION THREE

Partey Ltd (Partey) produces flour and various soup powders, and the company is considered as a priority company. On 1 January 2019, Partey owned two refineries in Accra (Weija and Mamprobi) and a refinery in Takoradi. Each refinery comprises building, plant and equipment and a warehouse, all of which were owned by Partey.

Partey has been having financial difficulties and, on 1 February 2019, engaged the services of a business consultant to recommend a survival plan for the company. Unfortunately, staff morale was very low when the business consultant was engaged because their salaries were six months in arrears.

The business consultant's recommendations were agreed and implemented in the year ended 31 December 2019 as follows:

- i) The Takoradi refinery was transferred to the employees at market value to be operated as independent business ventures. The inventory in the warehouse was included in the transfer.
- ii) The Weija refinery was disposed off, together with all its related fixed assets, to fund Partey's future business operations and pay off part of the arrears of salaries due to the employees. The employees at this refinery were all reassigned elsewhere. The inventory at the warehouse, valued at cost, was given to the employees as final settlement of their salaries in arrears.

Both the disposal of the Weija refinery and the transfer of the Takoradi refinery to their employees were made on 30 March 2019.

Details of the fixed assets disposed and transferred are:

| Asset | Date acquired | Cost GH¢ | Market value GH¢ |
|--|----------------------|-------------------------|-----------------------------|
| Transferred to Employees (Takoradi) | | | |
| Plant and equipment | 2003 | 100,000 | 160,000 |
| Buildings | 2003 | 300,000 | 400,000 |
| Warehouses | 2003 | 200,000 | 300,000 |
| Disposal (weija) | | | |
| Plant and equipment | 2008 | 180,000 | 230,000 |
| Building | 2008 | 250,000 | 430,000 |
| Warehouse | 2008 | <u>170,000</u> | <u>320,000</u> |
| | | <u>1,200 000</u> | <u>1,840 000</u> |

Details of inventory transferred are:

| | Cost (GH¢) | Selling value (GH¢) |
|--------------------------|-----------------------|----------------------------|
| Transfer to staff | | |
| Takoradi warehouse | 300,000 | 375,000 |
| Weija warehouse | <u>400,000</u> | <u>500,000</u> |
| | <u>700,000</u> | <u>875,000</u> |

Partey's statement of profit or loss for the year ended 31 December 2019 in respect of Mamprobi is as follows:

| | Note | GH¢ |
|-------------------------|-------------|-----------------------|
| Revenue | i) | 2,800,000 |
| Cost of sales | ii) | <u>(1,600,000)</u> |
| Gross profit | | 1,200,000 |
| Other income | iii) | 370,000 |
| Distribution costs | iv) | (295,000) |
| Administrative expenses | v) | (440,000) |
| Other expenses | | (180,000) |
| Finance costs | vi) | <u>(95,000)</u> |
| Profit before tax | | 560,000 |
| Income tax expense | vii) | <u>(50,000)</u> |
| Profit for the period | | <u>510,000</u> |

Notes:

- i) This amount represents Partey's ordinary sales for the year.
- ii) Included in the cost of sales is the total value of inventory at cost transferred to the employees (in accordance with the business consultant's recommendations) on 30 March 2019. No other adjustments were recorded regarding this inventory transfer.
- iii) Other income comprises:
- | | GH¢ |
|-------------------------|-----------------------|
| Rent received | 260,000 |
| Hire of refining plants | <u>110,000</u> |
| | <u>370,000</u> |
- iv) Distribution costs comprise:
- | | GH¢ |
|---|-----------------------|
| Motor vehicle expenses | 170,000 |
| Vehicle licence penalty | 7,000 |
| Legal fees and fines for unlawfully damaging a client items | <u>118,000</u> |
| | <u>295,000</u> |
- v) Administrative expenses comprise:
- | | GH¢ |
|-------------------------------------|-----------------------|
| Staff costs | 233,750 |
| PAYE on arrears of salaries | 45,000 |
| PAYE penalty on arrears of salaries | 47,250 |
| Software upgrade | 30,000 |
| Allowance for receivables | 40,000 |
| Depreciation | <u>44,000</u> |
| | <u>440,000</u> |
- vi) Finance costs relate to:
- | | GH¢ |
|----------------|----------------------|
| Trade payables | 35,000 |
| Long-term loan | <u>60,000</u> |
| | <u>95,000</u> |
- vii) Assessed losses brought forward from the last two years was GH¢45,000

Capital allowance agreed was GH¢50,000

Required:

- a) Outline the tax consequences for Partey due to the transfer of the fixed assets and inventory to the employees on 30 March 2019, stating when any taxes should be paid. **(4 marks)**

- b) Assess the tax implications:
- i) When the proceeds from the realisation of depreciable assets exceed the written down values? **(1.5 marks)**
- ii) When the proceeds from the realisation of depreciable assets are less than the written down values? **(1.5 marks)**
- c) Calculate the taxable income of Partey for the year ended 31 December 2019. **(8 marks)**
- d) Explain how shareholders of a company are taxed? **(5 marks)**
- (Total: 20 marks)**

QUESTION FOUR

Akwatia Gold Mines was established ten years ago. For the year ended 31 December 2020, the following income statement was prepared and submitted to the Ghana Revenue Authority as part of its financial statement.

Akwatia Gold Mines
Income Statement for the Year Ended 31/12/20

| | Notes | GH¢ |
|-------------------------------------|-------|---------------------------|
| Revenue | 1 | 810,862,702 |
| Cost of sales | 2 | <u>(479,685,632)</u> |
| Gross profits | | 331,177,070 |
| Other Income | 3 | <u>102,999,700</u> |
| | | 434,176,770 |
| General and administrative expenses | 4 | (55,700,500) |
| Selling and distributions expenses | 5 | (23,655,400) |
| Other operating expenses | 6 | <u>(10,222,870)</u> |
| Profit before tax | | 344,598,000 |
| Taxation | 7 | <u>(86,149,500)</u> |
| Profit after tax | | <u>258,448,500</u> |

Notes

| 1. Revenue | GH¢ |
|--------------------|---------------------------|
| Gold bullion sales | 782,655,800 |
| Diamond sales | <u>28,206,902</u> |
| | <u>810,862,702</u> |

| | | |
|---|---------------------|---------------------------|
| 2. Cost of Sales | | GH¢ |
| Inventory as at 01/01/2020 | | 6,605,000 |
| Mining and processing cost | | 252,450,700 |
| Wages and salaries | | 111,235,300 |
| Underground contract cost | note i | 5,433,400 |
| Stope preparation and development | note ii | 43,333,200 |
| Fuel and lubrication | | 4,543,300 |
| Servicing of equipment | | 3,565,152 |
| Consumables | | 3,279,120 |
| Power cost | | 16,788,250 |
| Depreciation and amortisation | | 35,677,800 |
| Inventory as at 31/12/2020 | | <u>(3,225,590)</u> |
| | | <u>479,685,632</u> |
| | | |
| i. Underground contract cost | | GH¢ |
| Cost of blasting rocks | | 4,433,400 |
| Provision for future blasting of rocks | | <u>1,000,000</u> |
| | | <u>5,433,400</u> |
| | | |
| ii. Stope preparation and development | | GH¢ |
| Direct labour cost | | 3,233,200 |
| Steel, concrete, timber and rails | | 30,300,000 |
| Equipment operating cost | | 7,300,000 |
| Contingencies | | <u>2,500,000</u> |
| | | <u>43,333,200</u> |
| | | |
| 3. Other Income | | GH¢ |
| Sale of scrap items | | 90,500 |
| Accounting Translation gains on foreign transactions | | 909,200 |
| Gains on sale of exploration assets | | 1,500,000 |
| Rent received on surplus office space. | | 500,000 |
| Profit from the operations of a Guest House | | 2,500,000 |
| Net interest received from bank deposits. | | 650,000 |
| | | |
| Income from an interest in a joint venture (mineral operation): | | |
| Sale | 233,200,000 | |
| Cost of operation | (122,556,400) | |
| Depreciation | <u>(13,793,600)</u> | |
| Impairment of mine preparation | | <u>96,850,000</u> |
| | | <u>102,999,700</u> |

| | |
|--|--------------------------|
| 4. General and administrative expenses | GH¢ |
| Salaries | 5,600,000 |
| Management fees | 5,230,400 |
| Insurance | 4,344,400 |
| Provision for retrenchment of staff | 2,000,000 |
| Interest on loan | 3,350,300 |
| Commitment fees | 1,200,000 |
| Auditors' fees | 8,450,000 |
| Directors' fees | 6,400,000 |
| Bank charges | 340,000 |
| Education and training | 230,000 |
| Depreciation | 1,360,000 |
| Utility cost | 9,560,000 |
| Office cleaning | 210,000 |
| Annual legal and professional fees | 7,425,400 |
| | <u>55,700,500</u> |
| | |
| 5. Selling and distributions expenses | GH¢ |
| Gold and diamond shipment expenses | 10,650,000 |
| Depreciation | 3,005,400 |
| Vehicle tracking software | 1,500,000 |
| Traffic fines | 100,000 |
| Motor vehicle expenses | 6,000,000 |
| Marketing and promotion | 2,400,000 |
| | <u>23,655,400</u> |
| | |
| 6. Other operating expenses | GH¢ |
| Research and development expenses | 120,000 |
| Property rates | 50,000 |
| District assembly operating permit | 12,000 |
| Unsuccessful exploration cost | 230,000 |
| Donation to undisclosed Politician | 100,000 |
| Donation to political parties | 600,000 |
| Outsourcing of payroll function | 300,000 |
| Special Allowance to the chief of Akwatia (not a staff) | 15,000 |
| Construction of boreholes | 75,000 |
| Acquisition of rights to explore new mineral | 500,000 |
| Provision of electricity to the community | 650,000 |
| Donation towards to promotion of the local football club | 20,000 |
| Legal fees for new mining lease and right | 22,000 |
| Termination of contract of Expatriate staff | 5,550,000 |
| Cash gifts to the Company agents for meritorius service | 120,000 |
| Cost of issue of shares/Bonds | 330,000 |
| New exploratory drilling and sampling | 1,372,870 |
| Conducting market and finance studies for new mine | 156,000 |
| | <u>10,222,870</u> |

| | |
|--------------------------------------|--------------------------|
| 7. Taxation | GH¢ |
| Provisional Company tax for the year | 120,609,300 |
| Mineral royalties paid | 12,340,000 |
| Reduction in Deferred tax provisions | <u>(46,799,800)</u> |
| | <u>86,149,500</u> |

The capital allowance agreed for the period was GH¢24,320,500

Required:

- a) Compute the chargeable income of the company and the tax payable. **(15 marks)**
- b) Advise Akwatia Gold Mines on how to identify opportunities within the tax laws to optimise tax payable for the year ended 31 December 2020. **(5 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) Explain the following concepts in relation to the taxation of petroleum operations:
- i) Surface Rentals
 - ii) Stability Agreements
 - iii) Carried Interest
 - iv) Additional Carried Interest **(10 marks)**
- b) The world over is moving towards voluntary tax compliance. The Minister for Finance in his budget statement tasked Ghana Revenue Authority (GRA) to leverage on voluntary tax compliance. GRA intends to task students on the kind of intervention it needs to roll out to achieve Voluntary Tax Compliance.

Required:

Write formally to the Commissioner-General on why taxpayers find it difficult to comply with the tax laws and possible intervention to make taxpayers comply with their obligation as taxpayers. **(10 marks)**

(Total: 20 marks)

2020 Annual Tax Rates

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

SOLUTION TO QUESTIONS

QUESTION ONE

a)

i) Orga Ltd

Computation of tax payable

Y/A 2020

Basis Period January 1 to December 31, 2020

| | | GH¢ |
|--|--------------------------|----------------------------|
| Profit for year (given) | | 14,000,000 |
| Add back the following non-allowable | | |
| Depreciation | 200,000 | |
| Domestic Expenditure | <u>1,000,000</u> | |
| | | <u>1,200,000</u> |
| Adjusted profit | | 15,200,000 |
| Add other income | | |
| Dividend | 25,000 | |
| Excess of proceeds over WDV | <u>300,000</u> | |
| | | <u>325,000</u> |
| Chargeable Income: | | 15,525,000 |
| | Local Sales Exports | |
| Chargeable Income (25,000,000/35,000,000*15,525,000) | 11,089,285.71 | |
| Chargeable Income (10,000,000/35,000,000*15,525,000) | | 4,435,714.29 |
| Tax Charged | 25% | 15% |
| Tax | 2,772,321.43 | 665,357.14 |
| Total Tax charged | | 3,437,678.57 |
| Tax paid -Dividend | | <u>2,500.00</u> |
| Tax payable | | <u>3,435,178.57</u> |

(6 marks)

- ii) The minibar and the swimming pool are considered domestic expenditures and, therefore, not allowable. However, having added the minibar's cost to the MD's employment income makes it allowable for tax purposes. **(2 marks)**

b)

| Permanent Establishment (PE) | Subsidiary | A better option to Taxpayer |
|--|---|--|
| Register as an external Company and maintain its foreign character | Register as an entity incorporated in Ghana | Less Risky as a subsidiary as compared with a PE |

| | | |
|---|---|---|
| Does not have equity and therefore no stamp duty payment | Register stated capital and pay stamp duty at the rate of 0.5% | Stamp duty tax payable as a subsidiary |
| Does not declare dividend as it has no equity | Dividend declared with tax at the rate of 8%. Dividend at the option of management and approved at Annual General Meeting | Better as PE |
| Branch profit tax at 8%. Automatic payment of branch profit tax | No branch profit tax | Better as subsidiary |
| Interest on a loan borrowed from the parent company is not an allowable deduction | Interest on loan borrowed from the parent company is allowable but may be subject to thin capitalisation. | Better as a subsidiary |
| | | In conclusion: On the whole, it is better to have a subsidiary |

(8 marks)

c) The following are the tax planning measures that I can adopt to reduce the tax payable of a sole business enterprise (sole proprietorship):

- Personal Reliefs:
 - Marriage/ Responsibility (Relief GH¢1,200)
 - Old Age Dep GH¢1,000 limited to 2 relations
 - Old age Relief GH¢1,500
 - Child Education GH¢600 per child limited to 3 children
 - Disability Relief 25% of assessable income from employment or business
- Contribution/donations towards tiers 1, 2 and 3. Up to 35% of declared income is exempt from tax, creating income in the investment.
- Change the character of the income. Can buy treasury bills with interest exempt from tax instead of expanding the business and paying marginal tax rate at 30%
- Take advantage of mortgage interest. The interest on a loan taken for one residential house in one's lifetime will be used to reduce the taxable income and consequently the tax payable.
- Contribution towards worthwhile causes:
 - Charitable organisation
 - Educational Scholarship
 - Sports promotion and sports development
 - Rural and Urban Development

The above, by and large, will help reduce the tax liability of the sole proprietorship
(4 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The a) part of the question required the understanding of the taxation of the Free Zone Enterprises and how to treat income received from foreign sources in taxation. The apportionment between what is sold outside and in Ghana is at the chargeable income levels. Some candidates applied the tax rates on the revenue instead of the chargeable income. Tax is imposed on chargeable income and not on assessable income.

Additionally, the income from foreign source was included at net income instead of at gross income. As a result, a lot of candidates did not gross up the dividend in adding it to income. Others also took 8% withholding tax on the foreign income.

Note that income from foreign sources lose their character and is therefore taxable at the rate(s) the recipient is taxable.

Additionally, the excess income over the written down value was also treated by some candidates as an allowable deduction. This means that some candidates don't take their time to read the questions well.

The most prominent issue that disturbed candidates was the GH¢1,200,000 regarding the MD's residence. Section 130 of Act 896 makes such payments domestic expenditure unless they are added to the income of the employee for tax purposes. The GH¢200,000 was considered by the company and therefore allowable. Therefore, the GH¢1,000,000 should be added to Orga Ltd for tax purposes.

The b) part of this question required the understanding of incorporating an entity in Ghana versus establishing a Permanent Establishment. This was poorly answered. Candidates should endeavour to distinguish the taxation treatment of either of them.

With the c) part, a lot of candidates were not familiar with this area of taxation. It ought to have been low hanging fruits for candidates. But, again, it tells clearly candidates don't understand the principles of tax planning in respect of sole proprietorship. Some candidates linked a sole proprietorship to a mining company which is a different entity in the business space. This means that candidates read without appreciating the basic differences between a company and a sole proprietorship.

QUESTION TWO

- a) Section 27 of GIPC Act 2013, (Act 865), provides that, a person who is not a citizen or an enterprise which is not wholly owned by citizen shall not invest or participate in the following:
- 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 (25) vehicles;
 - the operation of a beauty salon or a barbershop;
 - 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; and
 - all aspects of the pool betting business and lotteries, except football pool.

GRA is right because it has an obligation to assess and collect taxes from persons who engage in business activities. GRA administers taxes and does not regulate business activities.

GUTA may engage Government on its assertions and allow GRA to administer taxes in accordance with its laws.

(6 marks)

- b) The principle is that the price used in invoicing to unrelated person should be used in invoicing to a related party to help reflect the market price. The principle is that prices reflect arm's length transactions. **(4 marks)**
- c) The loan from the parent company to a subsidiary shall be subject to the thin capitalisation rule. The interest on the loan is tax deductible provided it is within the thin capitalisation rule.

With the accumulated interest of \$8,000,000 and a loan amount of \$20 million forgiven by the parent company, both become income in the books of Yelbaheteng Ghana limited and therefore taxable.

Tax implication

The withholding tax on the amount of interest on the loan shall be deducted and paid to the Ghana Revenue Authority in line with the tax provision.

Additionally, the amount of \$800,000 forgiven and the loan of \$20 million shall be treated as income in the company's books for tax purposes.

(6 marks)

- d) *Trading in Ghana* arises where an entity has a presence in Ghana and engages in the economic activity in Ghana and consequently, any profits made by the entity which are attributable to Ghana are subject to tax in Ghana. The entity is said to be doing business, competing in the economic space and making profits in Ghana.

In the case of *trading with Ghana*, the entity does not have any presence in Ghana. Therefore, any profit made is said not to be attributable to trading activity in Ghana and therefore not taxable in Ghana. **(4 marks)**

(Total: 20 marks)

EXAMINER'S COMMENTS

Question two a) was two-pronged. The first part was to identify the area of activities which are a preserve of only Ghanaians and why the commissioner-General would tax all businesses.

Most candidates only looked at one area and left the other area unanswered. In answering questions, it pays to read the questions carefully and respond appropriately.

In fairness, the activities preserved for only Ghanaians were well answered by most candidates, but surprisingly, why the Commissioner-General would collect taxes from both foreign and locals without regard to the nature of businesses was not well answered.

Two b), the concept of Transfer Pricing was well answered by candidates. Other candidates did not attempt it at all.

For sub-question c), a loan was granted by a parent company to its subsidiary. Interest that accrued plus the loan were both given as gratis to the company. No repayment of both loans and interest by the subsidiary. This becomes income and, therefore taxable. Some candidates explained "Thin Capitalisation" and how part of the treatment should be disallowed. Some candidates said the income was not an allowable deduction.

The d) part of the question was "Trading in Ghana and Trading with Ghana", quite popular with candidates. With the exception of a few candidates who got the concept wrong, this question was well answered.

QUESTION THREE

- a) Tax consequences with respect to transfer of assets
- The transfer of the fixed assets and the stock will be treated as deemed sold
 - Partey Ltd is obliged to account for the gains on the realisation of the assets on transfer. The gains on the realisation should be added to the income of Partey limited
 - Partey Ltd would also account for the VAT on the transferred trading stock, where applicable. The transaction should be included in Partey's VAT returns for the month of transfer and the VAT paid to the Ghana Revenue Authority by the last working day of the following month.
 - The deemed sale of the stock should also be included in Partey Ltd's gross income for the year. **(4 marks)**
- b) Gains from realisation of assets
- i) When the proceeds from the realisation of depreciable assets exceed the written down value constitutes income in the company's account. **(1.5 marks)**
 - ii) When the proceeds from realising depreciable assets are less than the written down value, an additional capital allowance shall be granted. **(1.5 marks)**

c) Partey Limited

Computation of Chargeable Income

Year of assessment 2019

Basis Period 1 January to 31 December, 31, 2019

| | | GH¢ |
|------------------------------------|---------|-----------------|
| Net profit for the year before tax | | 560,000 |
| <i>Deduct:</i> | | |
| Rent | 260,000 | |
| Hire of Refining Plants | 110,000 | 370,000 |
| Adjusted Profit | | 190,000 |
| Add Back the following: | | |
| Inventory transferred-Staff | 375,000 | |
| Vehicle Licence Penalty | 7,000 | |
| Legal Fees wrongful Damaged | 118,000 | |
| PAYE on arrears | 45,000 | |
| PAYE Penalty | 47,250 | |
| Software Upgrade | 30,000 | |
| Depreciation | 44,000 | |
| | | <u>291,250</u> |
| | | 481,250 |
| Capital Allowance | | <u>(50,000)</u> |
| | | 431,250 |
| Hire of Refining Plants | | <u>110,000</u> |
| | | 541,250 |
| Assessed Loss | | <u>(45,000)</u> |
| Chargeable Income | | 496,250 |

(8 marks evenly spread)

d) Taxation of Shareholders of a Company

Where a resident company pays a dividend to a shareholder, the resident company is required to withhold tax on the amount of the dividend paid at the rate of 8%.

A dividend is also deemed to have been paid to each shareholder of a company in proportion to the respective interest of the shareholder, if:

1. The dividend consists of profits that are capitalised; or
2. Where the Commissioner-General declares part of the company's income as dividends, where the Commissioner-General is satisfied that a company controlled by not more than five persons and their associates does not distribute to its shareholders as dividends, a reasonable part of the income of the company from all sources for a basis period within a reasonable time after the end of the basis period, the Commissioner-General may, by notice in writing treat as dividend, that part of the income of that company which the Commissioner-General determines to be dividend paid to its shareholders during that period or any other period.

(5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

Question three a) dwelt on tax consequences on the transfer of fixed assets and inventory to employees. Partey Ltd becomes the recipient of the income even though it is a transfer in settlement of employee income. The employer is required to pay the employee. Any transfer of assets in settlement of the employment income is a payment to the employee.

PAYE tax shall therefore be paid by the employer to the Ghana Revenue Authority. Additionally, the market value of the assets and the inventory is the income due to Partey Ltd.

Fixed assets that are not depreciable, the market value shall be determined and pitted against the cost and the gain subject to tax. With depreciable assets, the excess of the market value above the written down value becomes income. In the case of the inventory, the market value becomes the proceeds that should be added to revenue.

The b) part of the question was well answered by candidates.

Sub-question three c), computation of taxable income, was pretty much straight forward. Many candidates got a lot of marks from it. Few candidates used the profit after tax as a basis for adjustment. Candidates must know that it is always the profit before tax that an adjustment is always made on. The software upgrade is a depreciable asset and should not be treated as an expense.

Another challenge for candidates was the finance cost. The question says it relates to loans and payables but not that the finance cost are loans and trade payable. It clearly means it is associated with the loan and payables. So adding it back was wrong.

The assessed loss was only two years old and therefore is still relevant for adjustment. Many candidates did not use it all in their adjustment.

For question three d), shareholders are taxed on dividends if not exempt and capital gains if there is a realisation in the capital assets. In the case of shareholders who are individuals, they can elect to have the gain taxed at 15% or use the graduated tax rates. Candidates should learn to read the tax laws widely.

QUESTION FOUR

a) Akwatia Gold Mine Limited

Computation of Chargeable Income for the year of assessment 2020

| | | GH¢ |
|--|----------------|----------------|
| Net profit before tax | | 344,598,000 |
| Deduct | | |
| Royalty | 12,340,000.00 | |
| Royalty (Diff 40,543135.10-12,340,000) | 28,203,135.10 | |
| Sale of Scraps | 90,500.00 | |
| Gains from exploration assets | 1500,000.00 | |
| Rent on Surplus Office | 500,000.00 | |
| Guest House | 2,500,000.00 | |
| Net Interest | 650,000.00 | |
| | 45,783635.10 | 45,783,635.10 |
| | | 298,814,364.90 |
| Add Back to Income | | |
| Underground Contract | 5,433,400.00 | |
| Stope Preparation and Dev. | 43,333,400.00 | |
| General and Admin Exp | | |
| Provision for Retrenchment | 2,000,000.00 | |
| Depreciation | 9,560,000.00 | |
| Selling and Distribution | | |
| Research and Development | 120,000.00 | |
| Unsuccessful Operation | 230,000.00 | |
| Donation to undisclosed Politician | 100,000.00 | |
| Donation to a political party | 600,000.00 | |
| Special allowance to chief | 15,000.00 | |
| Construction of boreholes | 75,000.00 | |
| Acquisition of mining right | 500,000.00 | |
| Legal fees for new mining lease | 22,000.00 | |
| Termination of Contracts | 5,550,000.00 | |
| Cash gifts to company agents | 330,000.00 | |
| New exploratory and drilling cost | 1,372,870.00 | |
| Depreciation and amortisation | 35,677,800.00 | |
| | 109,524,670.00 | 109,524,670.00 |

| | | |
|------------------------------------|----------------------|-----------------------|
| | | 408,339,034.90 |
| Capital Allowance | | 24,320,500.00 |
| | | 384,018,534.90 |
| Others | | |
| Joint Venture | 96,850,000.00 | |
| Add Depreciation | 13,793,600.00 | |
| | | 110,643,600.00 |
| | | 494,662,134.90 |
| Tax Charged @ 35% | | 173,131,747.21 |
| Add Royalty Charged | 40,543,135.10 | |
| Less Royalty Paid | 12,340,000.00 | |
| | | 28,203,135.10 |
| Tax Payable | | 201,334,882.32 |
| Other Income | | |
| Sale of Scraps | 90,500.00 | |
| Profit from operation -Guest House | 2,500,000.00 | |
| Net Income (650,000+56,521.74) | 706,521.74 | |
| | 3,297,021.74 | 3,297,021.74 |
| Tax Charged @ 25% | | 824,255.43 |
| Less Tax Paid | | 767,733.70 |

(15 marks evenly spread)

- b) Opportunities within the tax laws to assist Akwatia Gold Mines to optimise tax payable include:
- Capitalisation of cost of mining right and cost of prospecting for capital allowance purposes.
 - Retention of a portion of foreign exchange in an external account for the purpose of spare parts and any other inputs required for mining operation.
 - Employees who are provided accommodation at a mine or on-site of mining operations are exempted from payment of PAYE tax on rent element, which is a collateral benefit.
 - Carryover of losses for five years.
 - Exemption from payment of customs import duties in respect of plant, machinery and accessories imported specifically and exclusively for the commencement of the mineral operations may if change in use, the duty becomes payable within Value Added Tax.
 - Mining enterprises can enter into stability agreement with the government to help plan ahead to protect their fiscal package and enhance proper planning. Fiscal certainty is important for businesses.
 - The expatriate staff are allowed personal remittances quota, free from tax imposition by an enactment regulating the transfer of money out of the country. This serves as an incentive for expatriate personnel who come to work in mining activities in the country.
 - Shared Processing Facilities
 - Rehabilitation Fund

- Reduction in Financial Cost

(5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The mining question appeared long but became the saviour of many candidates. Others did not attempt it at all. Candidates who were courageous enough and attempted it scored more than average marks.

Candidates must know that royalty is a tax type, and at the same time, it is also an allowable deduction only in respect of mining. Royalty is also calculated on revenue and not done arbitrarily. Candidates ought to have computed 5% on the total revenue to be sure that the royalty was correct. For the purpose of illustration, $(5\% \times 810,862,702) - 12,340,000$ is the excess royalty payable which should also be granted as additional royalty. Candidates granted only the GH¢ 12,340,000 as royalty, which is not correct.

It is the total royalty that is allowable as a deduction and also as tax from the royalty.

Research and development expenditure is not an allowable deduction for mining. The acquisition of rights to explore new mineral rights was going to be ring-fenced and treated differently and should not under any circumstance be added to the cost in respect of the productive contract.

In determining revenue, some candidates took out the revenue from the Diamond sales. That position was incorrect. Diamond is part of the mineral extraction.

Additionally, the other income-Guest house was taxed at 25% and not 35% as some candidates did. Rent received is an investment income and is subject to final withholding tax as an investment return. Cash gifts were added back to income because they had no relationship with the income statement.

The b) part of the question was averagely answered by candidates.

QUESTION FIVE

a)

i) Surface Rentals

The Government shall also charge surface rentals per square kilometre. The rates charged contractors for such rentals or services shall not exceed the rates charged to other members of the public who receive similar services or rentals. This is to ensure equity for all players.

The surface rental is paid for blocks allocated to the contractor.

The basis of payment is as follows:

| | |
|----------------------------------|------------------------------|
| Phase of operation | Surface rental per annum |
| Initial exploration period | GH¢30 per square kilometers |
| 1 st Extension period | GH¢50 per square kilometers |
| 2 nd Extension Period | GH¢75 per square kilometers |
| Development and production area | GH¢100 per square kilometres |

ii) Stability Agreement

The holder of a mining lease may enter into a stability agreement to ensure that the holder is for a period not exceeding 15 years from the date of the agreement:

Be adversely affected by a new enactment, order instrument or other action made under a new enactment;

Be adversely affected by subsequent changes to:

- The level of and payment of custom duties or other duties relating to the entry of materials, goods, equipment and any other inputs necessary to the mining operations or project.
- The level of and payment of royalties, taxes, fees and other fiscal imports.
- Laws relating to exchange control, transfer of capital and dividend remittance.

The stability agreement must be ratified by PARLIAMENT.

iii) Carried Interest

The Government of Ghana can exercise its participating interest in the oil exploration and production venture by taking a carried interest. Therefore, it is another source of revenue to the state. The rate ranges between 7.5% and 15% in the most oil producing countries.

This entitles the state to a share of the oil produced without making a financial contribution towards exploration and development costs. The government will have to contribute towards production cost being its proportionate representation.

Under the exploration and production Act, 2016 (Act 919), the GNPC shall hold an initial participating interest of at least 15% for exploration and development.

iv) Additional Carried Interest

The Government can avail itself of additional participating interest, requiring the state to pay the proportionate share of only the development and production cost. The state pays no exploration and appraisal cost, it is an option incorporated in the Petroleum Agreement to enhance the state's benefits which are exercisable by the state within say 90 days subject to Petroleum Agreement after the declaration of Commercial Discovery by the venture or the investor company (Contractor).

The state can acquire up to 5% in every commercial discovery. The state represented by GNPC shall pay the percentage exercised of all future costs, including development and production costs approved by the Joint Management Committee (JMC).

The contractor may seek project finance from a Bank or group of banks to finance development operations. If payment is not made, the contractor is entitled to recover the said costs and interest at the specified rate from production revenue due to the government.

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

Additional interest taken by government shall not be deemed as an assignment of interest.

Under the exploration and production Act 2016 Act 919, GNPC shall have the option to acquire an additional participating interest as determined in the petroleum agreement, which:

1. may be exercised within a specified period of time following the declaration of commercial discovery and
2. shall be paying interest in respect of the costs incurred in conducting petroleum activities other than exploration costs.

(10 marks)

b)

Chartered Accountant Students Society
Box 22
Accra

12 January 2021

COMMISSIONER-GENERAL
GHANA REVENUE AUTHORITY
ACCRA

Sir,
TAX COMPLIANCES ISSUES

I write to inform you of the difficulty taxpayers go through in their desire to fulfil their tax payments.

Changes are made in the tax laws, and they are not aware, leading to misunderstanding.

Lack of appreciation of concerns of industries. The issues are not all the same, confronting all industries and the need to appreciate each industry's peculiarity to fashion out a proper tax treatment.

The tax laws are difficult to follow and understand. Engaging tax consultants are equally costly, making taxpayers regret the tax system.

Cumbersome procedures are making taxpayers dread having anything to do with GRA. For example, filling many tax returns with repeated questions.

Imposition of interest and penalty by tax authority increases the burden of taxpayers.

To enhance voluntary compliance, the Commissioner-General should consider the following:

- Simplification of the administrative procedures: taxpayer registration, tax returns filling, payments of tax and refund claims should be simplified to help with compliance. Time they say is money.
- Simple tax laws. Complex tax laws increase compliance costs to the taxpayer and chances are that they may find it difficult to comply if they cannot engage knowledgeable personnel, both internally and externally to help them in their tax matters.
- Provision of tax concessions: tax holidays, exemptions of income tax, locational incentives and personal reliefs, capital allowance, carryover of losses, reduction in corporate, personal and withholding tax rates, expansion of exempt schedule in Value Added Tax, upfront reliefs are but a few that can improve tax compliance.

- Adequate Provision of Taxpayer Service: tax education, educational visits, availability of Enquiries Desks, updated websites, talks/ seminars/workshops for identifiable trade-groups.
- Independent review mechanism: Judicial review to give effect to the provisions of law when there is a dispute between the taxpayer and the tax administrator. The introduction of tax commissioners as done by some countries to serve as an independent review body may also help serve to promote voluntary tax compliance.
- Transparent tax audit: taxpayers comply when they believe that malfeasance on their part will be promptly identified through the audit function. Discussion of audit findings with taxpayers before the report is issued is equally important in ensuring tax compliance.
- Efficient revenue mobilisation: a system to detect non-payment and non-filing early so that tax debt does not build up, making it impossible to pay easily.
- Sanctions and penalty: the imposition of pecuniary penalty and interest in respect of failure to file tax returns or make payment on the due date.
- Tax Amnesty: this is where the taxpayer is forgiven of their tax payment or interest and or penalty when they voluntarily make disclosures. In some cases, taxes are forgiven.

It is hoped that the above will help you in your decision making.

Thank you.
Coke Fanta

(10 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The a) part of the question was on some concepts in petroleum. Candidates prepared so well in that area and gave a good account of themselves. However, others appeared not to have a clue about the subject matter. In truth, this topic is quite familiar to candidates.

Some candidates equated the surface rental to the rent allowance given to staff to look for accommodation. Candidates should read this rudimentary concept.

Some candidates did not state the important feature between the carried interest and additional participating interest. While the state pays for production cost in the carried interest, it pays for both development and production cost in the case of additional participating interest. Some candidates drew a diagram to explain the carried interest and additional participating interest. In both cases, government benefits from the production.

Many candidates did not understand the concept of stability agreement in mining. No one can advise a mining company on tax matters without understanding whether the mining company has a stability agreement or not. The stability agreement protects the mining company from the unfavourable fiscal regime.

The sub-question b) appeared on the surface to be an easy question as it tested candidates on factors that militated against voluntary tax compliance and intervention to improve this part of the administration. However, some candidates gave a poor account of themselves and lost marks. On the other hand, others used it as a launching pad to make a lot of marks.

RECOMMENDATIONS

- Candidates should make it mandatory to read the examiners' report at least twice before the examination to avoid obvious mistakes.
- Candidates with bad handwriting should work on their handwriting. Make the handwriting legible for the markers to mark with ease.
- Tuition Centres should take an interest in candidates' examinations to help increase the pass rate. Some candidates need a little guidance to make the mark.
- We insist that candidates provide "headings" when solving computational questions. Candidates lose marks for failing to provide heading, year of assessment and basis period.
- It is becoming a normal feature in the examination where candidates display poor command of the English language. This diet was no exception. This is becoming worrying, and candidates must know that English is a key criterion of writing examinations.
- The candidate's knowledge of the tax laws continues on a downward trajectory. Candidates should use the manuals of the Institute to gain some understanding of the knowledge of the law. In addition, the tax Acts and the Regulation serve as another source of knowledge in the tax laws.
- Tuition Centres should take up exercises with candidates seriously, including the conduct of mock examination, to get candidates used to the nature of the examination. A minimum of two mock examinations is enough to help candidates gain experience with the examination.
- We also implore the Institute of Chartered Accountants, Ghana, to run intervention classes to help candidates interact with seasoned lecturers to help prepare them adequately for the examinations.
- Examiners should be encouraged to write articles about some difficult subject areas to help contribute to the knowledge of candidates preparing for the examinations.

CONCLUSION

- In conclusion, candidates should give serious thought and attention to their studies in order to help them pass the examination with ease.
- It must be noted that there is no substitute for quality preparation. Candidates should not wait until the examination is close before they begin their studies. Those who study, as a matter of course, find the examination smooth sailing.
- Candidates with illegible handwriting should work hard on their handwriting to help speed up the examination process. Poor handwriting has always held up the marking.
- Candidates are advised to download soft copies of the Acts and Regulation on their phones to serve as support material.

- The Institute of Chartered Accountants, Ghana, remains committed to helping candidates pass the examination. Among others, the timely release of marking schemes, examiners' reports and the results have motivated the candidates.
- In the light of the aforementioned, candidates, Tuition Centres, and the Institute have complementary roles to play in improving the pass rate of candidates.
- Candidates should continue to work hard towards their examinations to pass much more easily.