

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

EXAMINER'S GENERAL COMMENTS

This was the first diet following the introduction of the 2024-2029 Syllabus. It was observed that fewer candidates sat for the examination as compared to previous diets. The Advanced Taxation paper, unlike other papers, is a creature of statute and also has some level of fiscal policy. Opinions have no place in the taxation space. Candidates must clothe themselves with facts and figures relevant to the tax laws else, it will be difficult passing the tax paper.

STANDARD OF THE PAPER

The paper had the standard required of a final level paper in terms of the coverage of the syllabus and the marks allocation. The marks awarded were condign with the requirements of the questions.

PERFORMANCE OF CANDIDATES

The performance of candidates this diet leaves much to be desired. A lot of them had to apply knowledge in principles of taxation and experience to be able to answer the questions. Many who had exemption with weak foundation in the principles of taxation had terrible challenge.

Some of the responses provided did not convey too well the requirement as provided in the tax laws. On the whole, the examination revealed a certain mind-set that candidates are unable to think laterally or outside the box to provide relevant responses especially as regards fiscal policy.

Candidates did not expect questions from value added tax requiring computation given that it was not in the previous syllabus.

Candidates' performance was below previous diets because they were not abreast with most of the newly introduced topics in the new syllabus as evidenced in the responses provided.

NOTABLE STRENGTHS

It was so visible that some few candidates had so much understanding in mergers and acquisitions and therefore gave a good account of themselves.

NOTABLE WEAKNESSES

Some candidates failed in their ability to contextualize issues and provide real solution to contemporary issues. Examination of accounts did not appear to have yielded itself to easy understanding by candidates. The partnership question provided a launching pad for some candidates to get the pass mark. Others had challenges with "the add backs" as we call it in taxation.

Candidates should note that, partners must not benefit from the running of partnership. Any benefit paid must be disallowed and also added in the determination of the income of the partners for tax purposes.

The procedure in dispute resolution was lost on many candidates hence provided weak answers to a question that should have been a walk in the park.

Most of the questions were answered without the provisions of headings as titles. This obvious aberration is becoming a constant feature of the tax paper. Marks are awarded for the headings i.e. the name of tax payer, computation of tax payable, year of assessment and basis period.

QUESTION ONE

- a) Takyi and Kuro commenced a retail business in Goaso, Ghana on 1 January 2020, with the partnership name Ntaafo LTD, sharing profits and losses equally. On 1 January 2023, Tawia was admitted as a new partner. Takyi, Kuro and Tawia then shared profits and losses in the ratio of 3:2:1 respectively. The partnership prepares its accounts to 31 December annually. Its profit and loss account for the year ended 31 December 2023 is as follows:

	Note	GH¢	GH¢
Gross Trading Profit			4,365,000
Compensation	1)		<u>50,000</u>
			4,415,000
Less Operating Expenses:			
Audit Fees		25,000	
Rent and Rates	2)	348,000	
Wages and Salaries	3)	1,410,000	
Interest on Capital	4)	205,000	
Contribution towards national insurance scheme		111,000	
Trade debts written off (bad debts)		92,000	
Legal Fees	5)	43,000	
Entertainment	6)	270,000	
Motor Expenses	7)	87,000	
Repairs and Maintenance	8)	190,000	
Commission	9)	310,000	
Printing and Stationery		82,000	
Electricity and Telephone		51,000	
Depreciation		123,000	
Sundry Expenses		<u>270,000</u>	
			<u>3,617,000</u>
Net Profit			<u>798,000</u>

Notes:

	GH¢
1) Compensation.	
Compensation received from suppliers for delays in supplies	70,000
Court fines paid to client for negligence on the part of Ntaafo LTD	<u>(20,000)</u>
	<u>50,000</u>
2) Rent and Rates	
Rent for Business premises	180,000
Rent for Takyi's private residence	156,000
Business Operating Permit paid to Goaso Municipal Assembly	<u>12,000</u>
	<u>348,000</u>
3) Wages and Salaries	
Takyi	180,000
Kuro	240,000
Tawia	66,000
Mrs. Takyi (staff)	120,000
Mrs. Tawia (staff)	144,000
Other staff	<u>660,000</u>
	<u>1,410,000</u>

4) Interest on capital	
Takyi	30,000
Kuro	40,000
Tawia	10,000
Bank interest	<u>125,000</u>
	<u>205,000</u>
5) Legal Fees	
Renewal of annual tenancy agreements	8,000
Collection of trade debts	10,000
Preparing contract documents (suppliers and contractors)	5,000
Preparing contract documents to acquire a new company	<u>20,000</u>
	<u>43,000</u>
6) Entertainment	
The entertainment expenses relate to the partner's private enjoyment.	
7) Motor Car Expenses	
Petrol	52,000
Repairs	30,000
Fines for late renewal of vehicle license	<u>5,000</u>
	<u>87,000</u>
8) Repairs and maintenance	
Replacement of bolts and nuts on Plant and Machinery	10,000
Major expenditure on Landscaping and Renovation	<u>180,000</u>
	<u>190,000</u>
9) Commission	
Takyi (for introducing a new customer to the business)	20,000
Salesmen and Saleswomen	230,000
Unidentified recipient	<u>60,000</u>
	<u>310,000</u>

Other information:

The capital allowance agreed with the Ghana Revenue Authority (GRA) was GH¢234,000 for the 2023 year of assessment. This is after considering all the issues in the tax returns submitted by the company.

Required:

Compute the partnership's chargeable income for the 2023 year of assessment.

(15 marks)

- b) Countries, including Ghana, have embarked on various tax reforms geared towards improvement in tax revenue to help provide infrastructure and guarantee sustainable growth. Tax administration in Ghana has therefore seen a number of reforms over the years, including restoring the tax base, improving tax administration, and the integration of the Revenue Agencies to an Authority to act as a one stop shop as per the Ghana Revenue Authority Act, 2009 (Act 791).

Required:

In reference to the statement above, analyse **TWO** challenges (key issues) on tax reforms in Ghana.

(5 marks)

(Total: 20 marks)

QUESTION TWO

- a) Decommissioning Fund has been created to help restore the environment to its supposedly original form after petroleum operations. The upstream contractors are required to contribute towards the fund while Government takes up the responsibility of the decommissioning activities after the operations.

Required:

Explain the tax treatment of decommissioning funds in the petroleum operations. (6 marks)

- b) Tongo LTD (Tongo) is a mining company operating in the Upper East Region of Ghana. The following relates to the operations of Tongo for the 2023 year of assessment.

	GH¢
Revenue (Gross)	200,000,000
Cost of operations	<u>80,000,000</u>
Margin/Profit	<u>120,000,000</u>

Additional Information:

1. TempaneMines LTD acquires 100% interest in Tongo with a consideration of GH¢310,000,000 at the end of 2023.
2. The cost of assets acquired at their acquisition dates are as follows:

2020	GH¢100,000,000
2021	GH¢75,000,000
2023	GH¢50,000,000

Required:

- i) Explain the tax implication of 100% acquisition. (4 marks)
 - ii) Compute the gains from the above acquisition and determine how the gains should be treated. (5 marks)
- c) Akosua Sokode has set up a small business to sell cosmetics in Accra. She just called you, an associate member of the Institute of Chartered Accountants Ghana, to seek your advice on tax returns and payment of taxes. Akosua Sokode told you that she cannot meet her tax payment deadlines and cannot file tax returns by the due dates. She also confided in you that maintenance of documents is a big problem for her.

Required:

Address the concerns of Akosua Sokode by briefing her on the following:

- i) **THREE** factors with regards to the extension of time for filing of tax returns. (3 marks)
- ii) **TWO** circumstances under which the Commissioner-General may request for filing of tax returns before the due date for filing of tax returns. (2 marks)

(Total: 20 marks)

QUESTION THREE

- a) The Directors of Poyooyo LTD have heard of the Maxims of Tax Planning which seeks to outline and explain the variables that persons affected by the tax laws and regulations could take advantage of, to minimise their tax liabilities. In a recent visit to the company from the Domestic Tax Revenue Division of the Ghana Revenue Authority (GRA), specifically the Large Taxpayers Office (LTO) in Accra to conduct a tax audit of the company, some tax assessments were raised against the company for settlements.

Management of the company in their last meeting with the directors to present the outcome of the tax audit, informed the directors that, the assessment was erroneous since the liabilities raised by the tax administrators were as a result of some tax planning variables the company took opportunity of. They were of the strong opinion that the company was at the right side of the law and therefore did not deserve to pay such a liability.

The payment of the liability will take huge cash flow away from the company and it would negatively impact on their operations. The Directors and Management of the company are both at crossroads as to what to do to avert the payment and they have contacted your tax consulting firm for assistance and guidance. The initial tax health check carried out by your firm revealed that the assertions the company was making was right.

Required:

Advise Poyooyo LTD on the provisions of the tax laws that could be taken advantage of to avert the payment of the liability. **(12 marks)**

- b) With reference to the Revenue Administration Act, 2016, (Act 915), what constitute prohibitions on representation and tax advice in relation to tax consultants? **(3 marks)**
- c) Some commentators in Ghana have argued that economic policy makers should allow automatic stabilizers to shape and direct the destiny of the economy rather than discretionary fiscal policies since the latter has failed woefully.

Required:

Distinguish between *automatic stabilizers* and *discretionary fiscal policies* as economic tools. Illustrate with examples. **(5 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) The two scenarios below relate to ClearTel LTD, a VAT registered company in Ghana. Each scenario is an independent scenario, and should be considered separately.

i) **Scenario 1**

ClearTel LTD operates three divisions (XYZ). Division X deals in the sale of computers and mobile phones. Division Y deals in the sale of locally-manufactured sanitary towels. Division Z is into the supply of fertilisers to farmers in Ghana.

Revenue from each division for 2024 is shown below:

	GH¢
Division X - Computers and mobile phones	1,005,700
Division Y - Sale of locally-manufactured sanitary towels	2,500,000
Division Z - Supply of fertilisers to farmers	78,800,000

ClearTel LTD has incurred total input VAT of GH¢50,500,000, and the Finance Manager of the company is unable to determine specifically which Division of the business this input VAT amount relates to.

Required:

Determine the amount of input VAT ClearTel LTD can deduct, in line with the provisions of the Value Added Tax Act, 2013 (Act 870 as amended). Justify your answer.

(10 marks)

ii) **Scenario 2**

ClearTel LTD is into the retail of laptop computers to university students. The company also sells used Android smartphones to university students who are unable to afford brand new phones.

Revenue from each business for 2024 is shown below:

	GH¢
Retail of laptop computers to university students	210,500
Sale of used Android smartphones to university students	245,800

ClearTel LTD had no other revenue sources for the year.

ClearTel LTD has incurred total input VAT of GH¢150,000. GH¢90,000 of this amount relates to the laptop retail business, and the remaining GH¢60,000 relates to the used Android smartphone business.

Required:

Justify the amount of input VAT ClearTel LTD can deduct, in line with the provisions of the Value Added Tax Act, 2013 (Act 870 as amended).

(5 marks)

- b) Expansionary Fiscal Policy has been criticised on the grounds that it can lead to ‘Crowding Out’.

Required:

Explain with appropriate examples what is meant by ‘*Crowding Out*’ as used under Fiscal Policy.

(5 marks)

(Total: 20 marks)

QUESTION FIVE

- a) You are a Senior Transfer Pricing Associate of Fameye and Associates. You have received the email below from a former client, Asew LTD, who has received a Transfer Pricing audit assessment from the Ghana Revenue Authority (GRA) for the 2021, 2022 and 2023 years of assessment.

“Hello Team,

I came to the office today and received a letter from the GRA regarding a tax assessment on transfer pricing issues. According to the letter, our company owes the GRA some penalties for non-compliance with the transfer pricing regulations. I am confused as to what our compliance obligations are. I would need your assistance on how we can comply with the transfer pricing laws of Ghana. I hope to hear from you soon.

Kind regards,

Nii Armaah

Managing Director, Asew LTD”

Required:

In line with the provisions of the Transfer Pricing Regulations, 2020 (L.I. 2412), draft a response for the review of your Tax Partner, covering the following:

- i) The required transfer pricing documentation that must be maintained by companies in Ghana under the three-tier transfer pricing documentation requirements, including the time by which these must be filed with the GRA, where applicable. **(6 marks)**
- ii) **TWO** conditions or circumstances under which a company may be exempted from compliance with any of the above documentation requirements. **(4 marks)**
- b) Baimbil LTD is based in Australia. Its shareholders have decided to acquire a company in Ghana instead of starting it from the scratch.
The shareholders of Borketey LTD, a resident company in Ghana, has decided to offer the company for sale due to prolonged cases of cash flow challenges. The management of Baimbil LTD consequently approached the management of Borketey LTD for the deal and therefore engaged a consultancy firm to do the due diligence checks and thereafter 70% of the equity of Borketey LTD was acquired.

The following is the extract from the books of Borketey LTD for the 2023 year of assessment.

	GH¢
Share Capital	1,000,000
Retained Earnings	(500,000)
Shared Deals	50,000
Bad Debts (Sold to MN LTD, now bankrupt)	1,000,000

Baimbil LTD intends to recapitalise the company to turn around its fortune for better performance.

The following proposals have been tabled for consideration:

- 1) Baimbil LTD to provide GH¢100 million Debt with 2% interest above the market rate.
- 2) Baimbil LTD to provide GH¢100 million as additional equity capital
- 3) Baimbil LTD to provide collateral for a Bank facility of GH¢100 million in Ghana.

Required:

- i) Evaluate the implication of the acquisition of the 70 % equity. **(4 marks)**
- ii) Evaluate the tax implications of the three proposals under consideration. **(6 marks)**

(Total: 20 marks)

SOLUTION

QUESTION ONE

(a)

Takyi, Kuro and Tawia
Computation of Profit for Appropriation
Y/A 2023

Basic period Jan – Dec 2023

	GH¢	GH¢
Net Profit per account		798,000
Adjustments for:		
Court fines	20,000	
Rent for Takyi's residence	156,000	
Deprecation	123,000	
Wages and salaries:		
Takyi	180,000	
Kuro	240,000	
Tawia	66,000	
Interest on Capital		
Takyi	30,000	
Kuro	40,000	
Tawia	10,000	
Legal fees – acquire		
New company	20,000	
Entertainment	270,000	
Sundry Exp	270,000	
Motor expenses – fines	5,000	
Repairs & maintenance	180,000	
Commission	60,000	
Commission-Takyi	20,000	
	1,690,000	1,690,000
		2,488,000
Capital Allowance		<u>(234,000)</u>
Profit for appropriation		2,254,000

Computation of individual chargeable income

(15 marks)

b) Challenges of Tax Reforms

Tax reform, by definition, consists in changing the structure of one or more taxes or the tax system, in order to improve their functioning for achieving their objectives.

The key issues or challenges with tax reforms are:

- **A clear strategic vision and solid tax policy analysis**

As a starting point, governments might try to obtain a consensus on broad, long-term tax reform objectives. These might include reducing the country's debt-to-GDP ratio, increasing domestic saving and investment, attracting foreign investment or increasing the labour supply. A broad consensus on tax reform goals will facilitate the discussion and evaluation of different tax reform proposals that attempt to realise these broad objectives. Clear communication regarding long-term objectives might facilitate the creation of a broad social consensus that favours the introduction of the most desirable tax reform measures.

- **Framing tax policy debates when equity issues arise**
The evaluation of tax policy reform implies addressing the impact of the tax reform on income distribution. However, policy makers should bear in mind – and communicate to the electorate – that distributional goals should not be assessed on a tax-by-tax basis. Alt, Preston and Sibieta (2008) argue that in order to pursue sensible tax policy, it is essential to see the tax system as a system rather than to consider its different elements in isolation. Disconnected tax debates may be particularly counter-productive for the implementation of growth-oriented tax reforms. Broadening the VAT base, for example, might be difficult if the discussion of VAT reduced rates on particular goods takes place in isolation.
- **Advancing reform and *ex ante* (i.e., forecast) constraints**
Accepting certain constraints up front might help governments to build support for tax reform. A government could, for example, commit to implementing only reforms that were judged to be redistribution-neutral, reforms that did not lower total tax revenues or reforms that did not change the favourable treatment of, say, mortgage interest deductions. That said, accepting constraints on the reform process might also make it easier to implement reform. The more negotiable are the reform details, the higher is this incentive, and the greater is the likelihood of delay (Alesina and Drazen, 1991). Thus, governments must sometimes put themselves in a situation where burden shifting across groups is impossible. This is why affirming certain constraints on the reform *ex ante* might make it easier to pursue.
- ***Ex post* evaluation and international dialogue**
Ex post evaluation of tax policy changes might provide valuable insights and offer an opportunity to learn from tax reforms that have been implemented in the past, thereby increasing the probability of better reforms in the future. Countries might evaluate *ex post* whether the tax reforms have achieved their objectives and analyse why certain objectives were or were not met. They might also assess the impact of tax reforms in terms of efficiency, equity, compliance, evasion and revenues. This will offer an opportunity to improve tax reforms that already have been implemented and might yield valuable insights for future tax reforms.
- **The proper timing of reform**
Good reform proposals that are put forward at the wrong moment may be blocked. For instance, politicians will have to decide when to bring the reform proposals to the attention of the broader public, when to explain the impact of the reform and when to implement it.

New governments that have campaigned for election on a platform of tax reform can use their electoral mandates to make rapid progress. Other issues of reform timing, however, may depend more on the state of public finances than the political conjuncture. Experience shows that it might be easier to implement growth-oriented tax reforms when a country is running budget surpluses that could absorb possible revenue losses or could be used to partly compensate the losers from tax reform.

- **“Bundling” reforms into comprehensive packages**

In devising an approach to tax reform, policy makers face a difficult choice between “bundling” and “sequencing” – that is, between attempting to adopt a comprehensive tax reform more or less at once, in what is sometimes referred to as a “big bang” approach and pursuing a more incremental strategy. Both offer advantages and disadvantages, and the question of which is to be preferred depends not only on the institutional and political context, as well as on the goals of the reform and the obstacles that might be foreseen. In general, however, the literature seems to suggest that comprehensive reform is preferable, at least when it is possible.

- **Transitional arrangements**

Governments may sometimes allow for “grandfathering rules” that allow the old tax rules to continue to apply to some existing situations while the new tax rules will apply to all future situations. This strategy might be considered if agents no longer have the opportunity to adjust their behaviour in response to the new tax rules because they are, for example, already retired and therefore no longer have the opportunity to adjust their labour-market behaviour. However, grandfathering rules that are not well-targeted will reduce the gains that can be realised by reforming the tax system, particularly if agents are able to take actions that will lock-in the old rules. Moreover, grandfathering rules increase the complexity of the tax code, which results in increased compliance and enforcement costs. They can create tax evasion opportunities where new and old rules co-exist and they may reduce the revenues gains from growth-oriented tax reform. The old rules might be phased out over time, implying that after a number of years only one set of tax rules will apply. Government would then have to decide upon the proper length of this phase-out period.

- **Communication and the transparency of tax reform processes**

The way that taxation and public spending are perceived by the public or reported by the media may be decisive in winning public support for a particular tax reform. However, voters are typically imperfectly informed and they do not often have the information and/or skills needed to assess the effects of tax policies. Imperfect information may allow politicians to run their own agendas, which may not be in line with the preferences of the median voter.

At the same time, it may also induce voters and other political actors to block beneficial tax policy reforms. A proper tax reform communication strategy and a dialogue with business, unions and other social partners, special interest groups, academics and the broader public may help to overcome the obstacles to the implementation of growth-oriented tax reform. Clear communication about tax reform objectives and measures might facilitate the creation of a broad social consensus that favours the introduction of these

reforms. A proper communication strategy will also help if the impact of the tax reform turns out to be different than foreseen. It will help to point out why the outcome could not have been foreseen and to explain why the outcome differs from the expected outcome.

- **Co-ordination of reform across levels of government**

Sub-central governments in many countries are seeking additional resources for improving the services they provide; channeling these demands into the path of growth-oriented tax reform is a policy challenge. This strategy could help sharing the burden of fundamental tax reforms between the different levels of government, making the implementation of these reforms more politically acceptable. Many obstacles to do so could be envisaged but a justification of tax reform based on the need to be closer to citizens could actually contribute to the success of the tax reform process.

- **Strong leadership**

The implementation of growth-oriented tax reforms might require a political champion who can create circumstances that are favourable to their implementation. A political champion will recognize when there is a tax reform momentum and use this opportunity to introduce a tax reform. Bird (2004) states that the essential requirement for successful tax reform is a strong political will exemplified by one or more political champions who are prepared to put their reputations on the line. Their involvement will very likely increase the support for growth-oriented tax reform. In order to obtain sufficient political support for fundamental tax reforms, politicians may want to identify the winners and losers and the degree to which voters will win or lose as a result of the tax reform. Clear communication about winners and losers might be especially important for the implementation of growth-oriented tax reforms if many taxpayers think they will lose while they effectively will not (or not as much as they expect). In fact, the need for providing good quality information becomes more important the higher the costs for taxpayers to collect information.

(Any two well explained points for 5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

This question was on partnership. The question required reconstruction of the income of the partnership by adding back. Candidates must note that per the income tax laws, no partner is supposed to benefit from the partnership. Any benefit from the partnership must be added back. Interest on capital paid to the partners must be added back. Sundry expenses were allowed by most candidates. It was not allowable. Wages and salaries paid to the partners must be disallowed as well. Rent and rates paid for the partner was not allowable. Fines for late renewable of vehicle license was not allowable as well.

The question 1 (b) required commenting on the challenges of the tax reforms. This question was ambiguous and therefore any challenge was acceptable as correct.

QUESTION TWO

(a)

- Decommissioning funds are funds in an escrow account to be used for the restoration of the area of operation. The decommissioning is treated as a cost of operation and therefore added as part of the cost of operation and allowable deduction for tax purposes.
- The taxable income is reduced by the quantum of the amount set aside into an escrow account pending the restoration activities.
- Although it is a provision, the law allows it as an allowable deduction.
- The provision into the fund is an allowable deduction and therefore, if after the decommissioning, there is excess funds, the excess decommissioning funds shall be subject to tax at the rate of 35%.

(6 marks)

(b)

i)

The acquisition of 100% constitutes change in ownership. However, the realization will not lead to realization of the assets and liabilities.

The business will continue as going concern without any change in the assets and liabilities and that the written down value shall continue to be granted capital allowance until all the written down value is completed capital allowance.

The consideration shall be ignored for capital allowance in respect of the assignee.

(4 marks)

ii)

Tempane Mines LTD
Computation of Gains
Year of assessment 2023
BP January 1-December 31, 2023

	GH¢	GH¢
Profit		120,000,000
Consideration		310,000,000
Deduction		
Cost:	Written Down Value:	
100 Million	20,000,000	
75 Million	30,000,000	
50 Million	40,000,000	
Total Written Down Value		<u>90,000,000</u>
Gain		220,000,000
Chargeable Income		340,000,000
Tax Charged @ 35%		119,000,000

The gain as calculated should be added to income for tax at the rate of 35%.

(5 marks evenly spread using ticks)

c)

i)

Extension of time to file tax return.

Section 30 (1) of the Act says a person who is required to file a tax return under a tax law may apply to the Commissioner-General for an extension of time to file the return.

An application shall:

- a. be in writing.
- b. state the reasons for the request for extension; and
- c. be made before the due date for filing the return.

The Commissioner-General may, by written notice, extend the date by which the return is to be filed if the Commissioner-General is of the opinion that the applicant has shown reasonable cause for the extension.

An extension granted under this section may be subject to the terms and conditions that the Commissioner-General considers appropriate, including the payment of security.

The Commissioner-General may grant multiple extensions, but the extensions shall not in total exceed sixty days from the date the return was originally to be filed.

The grant of an extension of time under this section does not alter the date for payment of tax as specified in the tax law under which the return is to be filed.

(Any 3 relevant points for 3 marks)

ii)

The Commissioner-General may, raise a pre-emptive assessment on any of the following:

1. The person is becoming bankrupt.
2. The person is about to cease business operation.
3. The person is about leaving the country for good

(Any two relevant points for 2 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The question was on decommissioning activities of petroleum operations. Many candidates did so well in the answer they provided. Many others got it wrong by stating that the funds should be used to buy land and petroleum equipment for petroleum operations. Candidates should do well to have mastery over the petroleum operations.

The (b) part of the question required the computation of the gains and how the gains should be taxed. Under mineral and mining operations, the written down value of the assets should be deducted from the consideration to determine the gains in the hands of the assignor. Gains must be added to the profit and a tax at the rate of 35% applied to the entire income.

The question 2 (c) had to do with the circumstances the Commissioner-General should consider before an extension of time for filing of tax returns and also the circumstances under which the Commissioner-General would consider raising a pre-emptive assessment.

QUESTION THREE

a)

Tax planning involves taking advantage of provisions in the tax laws and regulations to minimize a person's tax liability. Thus, there are provisions in the tax laws Poyoooyo LTD could take advantage of when convinced that it has been subject to a wrong tax assessment giving rise to the payment of wrong tax liability. This is discussed under the following three (3) broad headings:

Objection to a tax decision (Section 42 of Act 915)

- A person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the Commissioner-General within 30 days of being notified of the tax decision.
- An objection to a tax decision shall be in writing and state precisely the grounds upon which the objection is made.
- A person may, before the expiration of the period, apply in writing to the Commissioner-General for an extension of time to file an objection. (on grounds of absence from Ghana by the objector, sickness or other reasonable cause.)
- When satisfied there are reasonable grounds for the extension, the Commissioner-General may grant the application for the extension and shall serve notice of the decision on the applicant.
- An objection against a tax decision shall not be entertained unless the person has
 - ✓ in the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and
 - ✓ in the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute.
- The Commissioner-General may however waive, vary or suspend the payment above pending the determination of the objection or take any other action that the Commissioner-General considers appropriate including the deposit of security. Here the Commissioner-General shall consider the need to maintain integrity of the dispute resolution procedure and the need to protect Government revenue and integrity of the tax system as a whole in exercising a discretion.
- A tax decision (i.e. the tax decision objected to, as may have been amended by an objection decision.

Objection decision (Section 43 of Act 915)

After consideration of an objection, the Commissioner-General may vary the tax decision in whole or in part or disallow the objection.

- The Commissioner-General shall, within sixty days of receipt of an objection, serve the objector with notice of the decision including the reasons for the decision.
- Where the Commissioner-General does not serve the person with notice of the decision within sixty days, the person may, by notice in writing to the Commissioner-General, elect to treat the Commissioner-General as having made a decision to disallow the objection.

Appeal against the CG's decision

A decision is made in respect of an objection on the date the person is served with notice of the decision; or if a person makes an election, thirty days from the date the person files

the election with the Commissioner-General. Act 2020, Act 1029 amended section 44 of the Revenue Administration Act 2016, Act 915 as follows:

If the person is still not satisfied with the Commissioner-General's decision, the person may within thirty days, appeal against the decision to the to the Independent Tax Appeals Board also known as the Appeals Board.

Therefore, the objector should not seek redress at the High Court but rather raise an objection to the assessment by writing to the Commissioner – General and later appeal to the Independent Appeals Board if still not satisfied with the outcome of the objection decision.

Appeal against the Tax Appeals Board's Decision (Judicial Procedure)

A person who is dissatisfied with the decision of the Appeals Board may appeal against the decision to the Court within thirty days from the date the decision was served on the person.

NB: The objection can first be lodged at the **High Court** by lodging five copies of the notice of appeal together with five copies of all relevant documents with the Registrar of High Court within **thirty days** after service of notice of the decision.

- A person may lodge a notice of appeal within three months after the date of the service of the decision if that person proves to the satisfaction of the Court that the delay in lodging the notice of appeal is due to absence of that person from the country, sickness or other reasonable cause and that there has not been an unreasonable delay on the part of that person.
- A person who has lodged a notice of appeal with the Registrar of the High Court shall, within five working days of doing so, serve a copy of the notice of appeal on the Commissioner-General.
- The High Court may confirm, reduce, increase or annul the assessment on which the decision is based or make an appropriate order.
- An appeal against a decision of the Commissioner-General shall be instituted against the Attorney-General
- The Commissioner or the appellant may appeal against the decision of the High Court to the **Court of Appeal** on a matters of **law only**.
- An appeal against the decision of the Court of Appeal shall lie as of right to the **Supreme Court**.
- An appeal to the Courts of Appeal or the Supreme Court shall be made within 30 days after the decision to which it pertains.

Effect of Appeal (section 45 of Act 915)

An appeal against an objection decision does not operate as a suspension of the objection decision.

(Any 12 relevant points for 12 marks)

b)

Tax Consultants (Section 18 of the Revenue Administration Act, 2016, Act 915)

For purposes of the tax acts in Ghana, only a person who is an approved tax consultant may

- Represent a taxpayer;
- Provide advice primarily regarding the interpretation or effect of a tax law; or
- Prepare a tax return, appeal or other document under a tax law.

A person who is not an approved tax consultant (**excluding a lawyer performing legal work in relation to a tax law**) shall not

- Represent that, that person is a tax consultant.
- Charge fees to offer assistance with respect to the interpretation of a tax law or prepare a tax return or make an appeal.

(3 marks)

c)

Automatic stabilizers

Automatic stabilizers are economic policies and programmes designed to offset fluctuations in a nation's economic activity without intervention by the government or policy makers on an individual basis.

Thus, some tax and expenditure programmes change automatically with the level of economic activity. These are called Automatic Stabilizers. Automatic stabilizers refer to how fiscal instruments (taxes and government spending) will influence the rate of growth and help counter savings in the economic cycle.

In a period of high economic growth, automatic stabilizers will help to reduce the growth rate. With higher growth, the government will receive more tax revenues; people earn more and so pay more income tax (note the tax rate doesn't change, the amount received just becomes higher). With higher growth, there will also be a fall in unemployment so the government will spend less on unemployment benefits.

In a recession, economic growth becomes negative. However, automatic stabilizers will help to limit the fall in growth. With lower incomes people pay less tax, and government spending on unemployment benefits will increase. This increase in benefit spending and lower tax helps to limit the fall in aggregate demand.

Discretionary Fiscal Policy

Discretionary fiscal policy refers to deliberate changes in taxes or spending. The government cannot control certain aspects of the economy related to fiscal policy. For example, the government can control tax rates but not tax revenue. Tax revenue depends on household income, the size of corporate profits, size and levels of consumption among others. Government spending depends on government decisions and the state of the economy. Discretionary government spending and tax policies can be used to shift aggregate demand.

For example, in a bid to resuscitate a depressed economy the government can spend more than she collects from taxes (expansionary fiscal policy) in order to increase aggregate demand with its resultant multiplier effect of increasing production, increasing income, wealth creation thereby rejuvenating the economy from its depressed state.

(5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

Many candidates misinterpreted the question to mean tax planning because of the preamble of the question. It was actually on dispute resolution mechanism. Few got it right and did justice to it.

Question 3 (c) was on the automatic stabilizers and discretionary fiscal policy. Candidates did so well in this area.

QUESTION FOUR

a)

i) **Scenario 1**

Scenario 1 relates to Section 49 of the Value Added Tax Act, 2013 (Act 870) (Deductible input tax for mixed taxable and exempt supply).

Division X deals in taxable supplies (standard rated)

Division Y deals in taxable supplies (zero rated)

Division Z deals in exempt supplies

To determine the deductible input VAT, we use:

$$A \times (B/C)$$

Where

A is the non-attributable input tax = **GH¢50,500,000**

B is the total taxable supplies = GH¢1,005,700 + GH¢2,500,000 = **GH¢3,505,700**

C is the total supplies (both taxable and exempt supplies) = GH¢1,005,700 + GH¢2,500,000 + GH¢78,800,000 = **GH¢82,305,700**

However, the ratio of taxable supplies to total supplies (B/C) needs to be determined first

$$\text{Deductible input VAT ratio (B/C)} = \text{GH¢}3,505,700 / \text{GH¢}82,305,700 = \mathbf{4.26\%}$$

According to Section 49(3), if the ratio of taxable supplies to total supplies for the tax period is **less than 5%**, the taxable person is not entitled to deduct any input tax for the tax period.

As such, there is no input deduction on the non-attributable input tax

(10 marks)

ii) **Scenario 2**

ClearTel LTD qualifies as a Flat Rate Trader for VAT purposes. As such, the company will apply the VAT Flat Rate Scheme (VFRS).

This is because ClearTel LTD has total turnover of GH¢210,500 + GH¢245,800 = GH¢456,300. This falls within the range of GH¢200,000 and GH¢500,000 for the application of the VFRS.

Under Section 49 of the Value Added Tax Act, 2013 (Act 870), a taxable person to whom the VFRS applies **does not qualify** for an input tax deduction in respect of a supply of goods.

As such, the amount of deductible input tax is not deductible

(5 marks)

b)

Expansionary fiscal policy of increased government spending (G) to increase aggregate demand (AD) may cause “**Crowding out**”. Crowding out occurs when increased government spending results in a decrease in the size of the private sector.

- For example, if the government increase spending it will have to increase taxes or sell bonds and borrow money, both methods reduce private consumption and investment. If this occurs, AD will not increase or increase only very slowly.
- Also, classical economists argue that the government is more inefficient in spending money than the private sector, therefore, there will be a decline in economic welfare.
- Increased government borrowing can also put upward pressure on interest rates. To borrow more money, the interest rate on government securities may have to rise, causing slower growth in the rest of the economy.
- Government excessive borrowing from the commercial banks increases interest rates making it difficult for the private sector to secure loanable funds and thus increasing the cost of doing business.

(5 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

Candidates did not appear prepared for a question on Value Added Tax especially in the partially exempt computation. The question had two scenarios. Both scenarios got candidates a bit confused and therefore rendered poor answers.

The (b) part of the question required candidates to explain the crowding out effect under fiscal policy. The question was rather to explain crowding out with the omission of the effect, which technically got a lot of candidates confused.

QUESTION FIVE

a)

i)

Unless exempted, a person who enters into an arrangement with another person with whom that person has a controlled relationship shall maintain contemporaneous documentation of the arrangement engaged in by that person in each year of assessment.

Under the three-tier transfer pricing documentation requirements, a person must maintain and file with the GRA, the following:

- 1) A master file
- 2) A local file
- 3) A Country-by-Country Report (CbCR)

For the Master File and Local File, a person shall file with the Commissioner-General not later than **four (4) months** after the end of each basis period, an electronic copy of the Master File and the Local File.

For the Country-by-Country Report (CbCR), an Ultimate Parent Entity or a Constituent Entity of a Multinational Enterprise Group that is resident for tax purposes in Ghana shall file with the Commissioner-General not later than **twelve (12) months** after the last day of the reporting fiscal year of the Multinational Enterprise Group, a Country-by-Country Report.

(6 marks)

ii)

Below are some conditions under which a person may be exempted from the filing requirements in (a) above:

- A person who enters into an arrangement with another person with whom that person has a controlled relationship, is exempted from the requirement to maintain and file a Master File and Local File, if the monetary value of the arrangement does not exceed the Ghana Cedi equivalent of two hundred thousand United States Dollars (**\$ 200,000**).
- For the purpose of determining whether an arrangement qualifies, the Commissioner-General may aggregate two or more arrangements among persons in a controlled relationship where the Commissioner-General is satisfied that the arrangements are designed in furtherance of a tax avoidance arrangement.
- A person who enters into a technology transfer agreement with another person with whom that person is in a controlled relationship may, by a notice in writing to the Commissioner-General, elect to be exempted from the requirement to maintain and file a Master File and Local File if
 - 1) the technology transfer agreement is registered with the Ghana Investment Promotion Centre (GIPC); and
 - 2) the amount charged for the technology transferred accords with the ranges specified in the Second Schedule (i.e. not exceeding 2% of net profit for Royalties, Know-how and Management or Technical Fee).

A person who renders or receives low value-adding intra-group services where the cost-plus method applied (with a mark-up of not more than 3%) may, by a notice in writing to the Commissioner-General, elect to be exempted from requirement to maintain and file a Master File and Local File in relation to the mark-up applied on the cost. The notice of election above shall be filed with the Commissioner-General within thirty (30) days of the person entering into the arrangement.

(Any 2 points for 4 marks)

b)
i)

The implication of the acquisition of equity:

The acquisition of equity means changes in ownership of Borketey LTD making it possible to submit two tax returns, one before the change and the other after the change.

The bad debt of 1 million shall not be claimed by Baimbil LTD.

Capital allowance will be computed on the values thereby reducing tax payable and increasing shareholders value.

(6 marks)

ii)

The implication of the proposals

- The provision of GH¢100 million debt by Baimbil LTD will create thin capitalization issue for Borketey LTD. The interest paid above the 3:1 shall be disallowed. The equity is GH¢0.5 million and three times that will GH¢1.5 million as the allowable debt whose interest shall be allowed.
 - ✓ Again, the interest shall be subject to withholding tax at the rate of 8%
 - ✓ Additionally, the 2% interest above the market rate shall be disallowed as well.
- The additional capital from Baimbil LTD, 100 million dollars will provide additional dividend for Baimbil LTD, the prospective owners of Borketey LTD.
- The loan facility from a financial institution with guarantee will not have any thin capitalization. The interest shall be an allowable deduction.

(4 marks)

(Total: 20 marks)

EXAMINER'S COMMENTS

The (a) part of the question required documentation under transfer pricing mechanism. This area of transfer pricing that was examined was alien and therefore got candidates unable to provide answers.

The (b) part of the question was on acquisition of companies with different scenarios on funding of the acquired entity by the parent company. This question reflects life's experience in work environment. Some candidates had difficulty in providing the tax implication of 70% acquisition under section 62 of Act 896 Act 2015. Tuition Centres should continue to emphasize this area as it is a current phenomenon globally so as for students to get to know the tax implication of such arrangements.

CONCLUSION

Tuition Centres should continue to support candidates in their academic journeys with practical mock questions. Candidates should read a lot of novels to build their vocabulary range in order to write convincingly.

Candidates should continue to study texts by association instead of studying in isolation.

Many candidates exhibited bad hand writing. Please, it is in the interest of candidates to write legibly to make marking easy.