

ADVANCE TAX NOVEMBER 2009

SOLUTION 1

- a) Commentary should cover the following areas:
- i. **Definition of Market Value.** For example, the prevailing market price of an article or commodity at a given date. The market value is used in cases where the actual price or value of an article or commodity cannot be ascertained and is regarded as a fair and acceptable value. This value is then used in computing the tax or duty payable.
 - ii. **Market Value in income taxation.** For example, the determination of the value of a gift given in kind to an employee by his employer.
 - iii. **Market Value under the Gift Tax Law.** For example, section 107 provides that for the purposes of the imposition of the tax, the value of a taxable gift is the market value of the gift at the time of the receipt.
 - iv. **Market Value under the Capital Gains Tax Law.** Section 100 (2) of Act 592 provides that where a person who owns a chargeable asset realises it by way of transfer to an associate or in a non-arms-length transaction, that person is treated as having received consideration from the realisation of an amount equal to the market value of the asset at the time of the realisation.
 - v. **Market Value under VAT.** For example, where the consideration for supply is not wholly in money e.g. as in a barter transaction or part exchanges, the consideration should be at the market value.
 - vi. **Market Value under CEPS Law PNDC Law 330.** Under this law market value has been referred to as the commissioner's value, transaction value or customs value and serves the same purposes.
- b) One of the general principles in the assessment of income for tax purposes in Ghana is that all income must have a source. This source should be established before such income could be brought to charge. This is why the Ghana tax system is referred to as having a source jurisdiction. Accordingly, the Internal Revenue Act, 2000 (Act 592) clearly defines the sources of all incomes chargeable to tax under section 63 (Geographic source of income) to obviate any misinterpretations.

Accruing in and derived from refer to income with sources in Ghana. Such income is assessable to tax in the hands of both residents and non-residents unless specifically exempted. A source may be of various kinds:

- i. an actual right to receive payment;
- ii. an income producing activity; or
- iii. an income producing asset

Section 63, referred to above, provides the basis for the assessment of all incomes arising from employment, business (trades, professions and vocations included) and investment covering dividends, interests etc. It explains that once the activity is performed or carried on in Ghana, the income arising therefrom should be deemed as accruing in or derived from Ghana and taxed no matter where payment is made. For example, where an employee of a parent company in Tokyo is seconded to a subsidiary in Ghana for any period of time, he becomes liable to tax in Ghana no matter where he is paid. This is so because his employment is carried on in Ghana.

Brought into or received in Ghana refer to incomes with sources outside Ghana. They operate to charge income which is remitted or brought into by resident persons. For examples, where a resident person brings in income from an activity carried on outside Ghana, that income becomes assessable to tax. Non-residents are not taxable on incomes brought into or received in Ghana.

QUESTION 2

- (a) Produce his passport for examination to confirm date of return to
- (b) Produce Certificate of Registration of Business
- (c) Invite officer to inspect Clinic to see if business has commenced.

RULES

Tax is paid quarterly in arrears in a Year of Assessment when business is in progress. In this case taxpayer has not started yet.

He has not earned any income; hence he has no tax to pay. His capital is not his income. It is his savings which has accumulated during the time he worked in the U. S. A.

Income brought into Ghana by a non-resident is not taxable in Ghana.

But even the money in question is his capital which has already suffered tax in the U. S. A. where he was resident for the past 30 years.

The money he has is not income but capital which can not be taxed.

The provisional assessment is therefore irregular and must be obliged to with a view to being cancelled.

If in the course of 2008, he commences work, then he will begin to pay quarterly tax in arrears. Now, it is not certain when work will commence.

APPEALS

In case the officer does not agree, appeals can be made to the Commissioner then to the High Court and finally the Supreme Court on matters of law only.

QUESTION 3

Net profit as per accounts	GH¢	GH¢
		24,000
<u>Add:</u>		
Drawings (Alice)	26,400	
Drawing (Julie)	18,000	
Entertainments	3,500	
Donations	1,000	
Medical	4,200	
Donations	<u>1,100</u>	<u>54,200</u>
Adjustment Profit		78,200
<u>Less:</u> Capital Allowance		<u>16,300</u>
Chargeable Income		<u>61,900</u>

Appropriation Account:

	<u>Alice</u>	<u>Julie</u>
Drawings	26,400	18,000
Share of Profits	<u>10,500</u>	<u>7,000</u>
	36,900	25,000
<u>Less Reliefs:</u>		
Marriage - 30		
Children - <u>24</u>		
	<u>54</u>	<u>54</u>
Chargeable Income	GH¢ <u>36,846</u>	<u>24,946</u>

Capital Allowance Computation:

	<u>Class 2</u>	Class 4	
b/f	26,000	8,000	
adds	<u>23,000</u>	=	
	49,000	8,000	
d/Allce.	<u>14,700</u>	<u>1,600</u>	
c/f	<u>34,300</u>	<u>6,400</u>	= <u>16,300</u>

QUESTION 4

(a) Transfer Pricing

Transfer pricing is one term used to refer to the value attached to goods, services and intangibles transferred Between part of a single organisation ... between members of a multinational groups of companies who are associated directly or indirectly through management control or capital.

For tax purposes

Transfer pricing refers to the practice of shifting profit from one jurisdiction to another through the manipulation of prices paid for goods, services and intangibles, generally between associated parties.

Income Splitting

A person is treated as being attempted to split income where

- a. that person transfers income, directly or indirectly, to an association
- b. that person transfers property including money, to an associate with the result that the associate receives or enjoys the income from that property and the reasons for the transfer is to have the tax payable by that person and the associate.

(b) In transactions between persons who are associates, the Commissioner may distribute, apportion, or allocate inclusions income, deductions, credits or personal reliefs between those persons as is necessary to reflect the changeable income on tax payable which would arisen for those persons if the transactions has been conducted at arm length.

(c) Areas where transfer prices

- a. Price manipulations.
Goods and services are transferred to and from one affiliate member to another on from the parent to its subsidiaries in another country as supplied or inflated prices depending on the situation.
- b. Abuse of tax incentive
Companies enjoying pioneering tax incentives e.g. Tax holidays. Once the tax holiday expires new subsidiaries will be incorporated to enjoy new tax incentives.
- c. Excessive payments to Parent Companies
 - management fees
 - royalties
 - interest on loans to parent/subsidiaries in low tax countries.

Subsidiaries are incorporated for the purpose of supplying the parent company the goods it requires for its own business activities as in manufacturing it finished products.

Prices set for supplies shipped to other subsidiaries do not permit a profit margin.

QUESTION 5

A. Madam Okailey Armah will pay gift tax as follows:

	GH¢
Market Quens	1,000
Commercial Bank	5,000
Gbese Traditional Council	500
Father-in-law	500
Anonymous	<u>1,000</u>
	8,000
<u>Less: Tax Free Element</u>	<u>50</u>
	<u>7,985</u>

Tax at 10% = GH¢795

Commentary:

- i. The donors do not qualify for exemption.
- ii. All the recipients are exempt from tax.

That is, those who donated to Madam Armah do not qualify for exemption under the Act. Secondly those who received her donations are also not taxable.

- B. It cannot be disputed that the Customs, Excise and Preventive Service is one of the major revenue collecting agencies for government. Apart from this, the service also helps in promoting good social and moral standards.

Required:

To comment on how far these standards have been achieved giving reasons.

Commentary should cover the following:

a. Revue Collection:

CEPS is indeed one of the major revenue collecting agencies for government. The department collects the highest revenue each year.

b. Promotion of goods social and moral standards:

- i. By prohibition of indecent and obscene prints, paintings, photographs, books, cards or any other obscene and indecent articles;
- ii. Prohibition of knives such as flick knives and paper knives which in the opinion of the IGP are considered to be dangerous weapons;
- iii. All other goods the importation of which is prohibited by any law in Ghana.
- iv. Smuggling
- v. Books, newspapers and printed matter which in the opinion of the Commissioner are defamatory, scandalous or demoralising.
- vi. Weapons of any description.

These prohibitions, in a sense, serve to mould or shape the character or morals of the people from engaging in immoral activities thereby promoting good social values.