

## MARKING SCHEME(1)

CHARTERED INSTITUTE OF TAXATION, GHANA (CITG)

PROFESSIONAL EXAMINATION

FEBRUARY 2020

PROFESSIONAL LEVEL

BUSINESS AND REVENUE LAW

PAPER 5

TIME ALLOWED: 3 HOURS

ATTEMPT QUESTION ONE AND ANY OTHER FOUR

Question 1.

David, Letsa and Inoos soon after graduation jointly incorporated a profit making enterprise under the Incorporated Private Partnership Act, 1962 (Act 152). They are into the provision of luxury transport services for executives and tourists who desire to travel by road from Accra to Kumasi/Tamale. Letsa identified a luxury coach that can be utilised in their business and informed the David and Inoos that it will cost GH¢950,000 to acquire it. Having secured their consent Letsa went ahead and secured a bank loan to purchase the bus. In reality and unknown to the two, Letsa had negotiated and got the coach at GH¢850,000. When the sale was completed, Levy paid the seller GH¢850,000 and managed to transfer the difference of GH¢100,000 into his private bank account. Upon discovering Letsa's misrepresentation to them, David and Inoos sued Letsa for both actual and punitive damages on the theory of loyalty and good faith.

Required

Answer the following questions for 8 marks each.

- a) Briefly describe the business entity incorporated under the Act 152 and explain why the conduct of Letsa is so objectionable to David and Inoos that they had to sue him.

(i) Answer:

*Identify the type of entity and briefly state some of the basic features*

- *The firm incorporated under the Incorporated Private Partnership Act, 1962 (Act 152) is a partnership enterprise.*
- *Partnership is a contractually based entity and usually requires the creation of Articles of Association also known as Partnership Deed.*
- *Any person with capacity to contract can be a partner in a partnership entity with membership being two or more and not more than 20 individuals.*

- *Partnership is formed with the aim of making a profit which is shared in accordance with the contributions made to the partnership capital or resources*
- *A partnership can be trading or a no trading entity.*
- *.Partnership creates a community of interest, in sharing of profit and joint performance of the important functions of management etc*

- (ii) *Partners stand in fiduciary relationship towards the firm and their co-partners. By this every partner is required to work in the interest of every other partner and the partnership.*
- (iii) *Fiduciary relationship is based on loyalty and good faith. So each partner has a duty of loyalty and good faith to the partnership as an entity and to each partner. A partner is required to disclose any profit made out of partnership business to other partners.*
- (iv) *The secret profit made by Letsa for his personal enjoyment is dishonesty and lack of transparency. That amounts to a breach of duty of loyalty and good faith the partners owe another. The breach goes to the root of the partnership agreement they signed as partners. This explains the conduct of Letsa is so objectionable to Inoos and David.*

**b) Briefly explain why the charge of breach of a duty for good faith and loyalty is appropriate for the offence of Letsa?**

*Answer:*

*Duty of good and loyalty implies fiduciary relationship. Each partner is a keeper of the other. Each party is to demonstrate utmost good faith when carrying any responsibility in the name of the firm. Nothing should be hidden from other partners. No making of secret profits. Any conduct that is contrary to these basic principles underlying partnership amounts to a breach of duty of good faith and loyalty.*

*The amount of money Letsa kept for his sole benefit should have been made known to the other partners. Keeping it to himself is a breach of the duty of good faith and loyalty they owe each other. The charge against him is therefore appropriate.*

**c) Explain the corporate management theory of loyalty and good faith as applicable to the entity type incorporated by Letsa, David and Inoos.**

*Answer:*

*The entity incorporated by the three partners is partnership. Partnership is an agreement and the duty of loyalty and good faith goes to the root of the agreement. There is fiduciary relationship among the partners as individuals and the partners as a group and the partnership firm. Each partner is expected to be loyal to the other individual partners and to the partnership firm. By loyalty and good faith, nothing should be hidden from any one, whether good or bad. This is the spirit behind partnership.*

- d) Discuss the nature of the relationship between the business as an entity and Letsa, David and Inoos on one side and the relationship among the individual as co-owners of the business.

Ans:

- (i) Letsa, David and Inoos are co-owners of the Partnership business and so are Partners.
- (ii) By Partnership theory the partners are agents of each other; the acts of each partner are binding on the other partners.
- (iii) Each partner owes a duty of care to the other partners. Each partner has a duty to protect the interest of the partnership by applying the skills and expertise in roles played, disclosing all gains made in partnership transactions and equally entitled to reimbursement for any expense incurred in carrying out partnership duties. These call for the duty to be faithful and loyal to the partnership.
- (iv) The duty to be loyal and faithful to the Partnership is therefore critical to the survival of the partnership; each partner is to be reliable enough for the others to depend on their word and acts.

The duty of good faith and loyalty prevails between the partnership firm and the partners as individuals. Letsa, David and Inoos are partners in a partnership.

- (i) By Section 12 of the Act 152, the partnership becomes a corporate body under the firm name, distinct from the partners of whom it is composed and capable of exercising all the powers of a natural person of full capacity so far as such powers can be exercised by a body corporate. No matter the changes made to the partnership agreement, the partnership shall remain a body corporate.
- (ii) Every partner is the agent of the partnership and of the other partners. This means that each partner has the power to bind all partners to business transactions entered into within their actual or apparent authority. Any legitimate business entered into by any partner binds each of the other partners and anyone who suffers such act can pursue the partners as individuals or collectively.
- (iii) By section 12(3) of the Act 152, notwithstanding that the firm is a body corporate each partner therein, shall be liable without limitation for the debts and obligations of the firm debts, but can be entitled to an indemnity from the firm and to contribution from his co-partners in accordance with his rights under the partnership agreement.
- (iv) Every partner in the firm shall be jointly and severally liable with the firm and other partners for all the debts and obligations of the firm incurred while he is a partner

From the above, the principle of fiduciary relationship exists the firm and the partners constituting it. Each partner is to act for the benefit of the firm. No partner in his

*individual capacity is should compete with the firm in business. Any profit made when doing the business of the firm should be declared to the firm. There should be total loyalty to the firm.*

- e) Briefly explain the procedure for assessing each of Letsa, David and Inoos to tax on their income from their business.

**Answer:**

**Ans.**

- (i) *Partnership is a pass through entity. It is essentially a conduit through which income is passed to the proprietors of the partnership enterprise.*
- (ii) *Even though Partnership is body corporate separate from the partners, partnership income does not belong to the firm as an entity but to the partners as individuals.*
- (iii) *At the end of the year, the partnership income is shared among the partners in proportion to the individual contribution to the partnership capital or resources.*
- (iv) *Income from partnership business is taxed in the hands of the partners. Each partner pays tax on his share of the partnership income. Each partner is assessed to tax on his or her share of the partnership income.*
- (v) *By this, the partnership is not tax paying entity on its own*

## Question 2

A contract must be an agreement but an agreement need not be a contract. Answer the following questions:

- a) What is a contract and how does it differ from an agreement?

**Ans:**

- *Whenever two or more persons' minds meet upon any subject, no matter how trivial, an agreement results. Where the agreement is not intended to be legally binding, it does not make it a contract. For instance, if Kofi invites Ama to a dinner at 6pm and Ama agrees to the invitation, an agreement is formed. If Ama fails to turn up for the dinner, Kofi will have not any ground to seek redress or compensation basically because the agreement was not intended to be legally binding on them. This is common with in social relations.*
- *A contract on the other hand is defined as a legally enforceable agreement between two or more competent persons. In the case of a contract, an agreement is intended to be legally binding. One party makes an offer which is accepted by the other party. The acceptance is backed by a consideration. An example of this is where Kofi requests Amaa to prepare a meal for him for which Kofi will pay 50 cedis. If Kofi fails to pay the amount after the meal has been prepared, Ama can sue*

*Kofi for a breach of the agreement. The agreement in this case was intended to be legally enforceable.*

- *A contract is an agreement that is intended to be legally binding.*

2 marks

b) Briefly explain the five factors required to make a contract enforceable by a court of competent jurisdiction

Ans.

Factors required to make a contract valid and enforceable by a court of competent jurisdiction are:

Ans.

- *Agreement ( offer and acceptance);*
- *Valuable Consideration;*
- *Intention to create legal relations;*
- *Capacity of the parties;*
- *Legality of the subject matter of the contract*
- *Complying with certain formal requirements, eg, to be writing or under a seal.*
- *CONCENSUS AD IDEM*
- *Sufficient certainty of terms*

*Brief and accurate explanation of any five factors for 2 points each.*

10 marks

c) Briefly explain why the adage” actions speak louder than words appropriately describe implied contracts?

Ans.

- *Implied contract is contract founded on the assumed intension of the parties. This is situation in which the parties by their actions have indicated that they have agreed on what is to be done. No terms of the agreement are expressly stated. If you go to your dentist for treatment, ordinarily you would not expressly state the terms of your mutual agreement beforehand, although it is clear that you do, in fact, have an agreement. A court would infer a promise on the part of your dentist to use reasonable care in treating you and a promise on your part to pay a reasonable fee for the dentist’s services.*
- *This state of affairs is manifested by the actions of the parties. Their actions as indicated in the above example expresses the existence of an agreement of what each party is to do; hence, the adage “actions speak louder than words”*

3 marks

### Question 3

The Supreme Court of the United States of America observed in the case of Interstate Transit Lines vrs Commissioner , 319 US 590 , 593 (1943) thus:

“ An income tax deduction is a matter of legislative grace” and “ the burden of clearly showing the right to the claimed deduction is on the taxpayer”.

Is the above observation a relevant guide to taxpayers in respect of tax deductible expenses, under the Income Tax Act, 2015(Act 896)

**Answer:**

The quotation referenced in the tax case above is to the effect that even though the tax law generally allows business expenses to be deducted from business income for purposes of tax, the taxpayer may still be required to prove that he is entitled to that deduction in some cases. The candidate is required to explain this observation as guide to taxpayers in the context of the Income Tax Act, 2015(Act 896).

- i. *State the relevant provisions of the Act 896 that deal with deduction of expenses for purposes of tax.*
  - *The Act 896 provides general deduction principles and residual deduction rule. Candidates should state each of the two rules and explain their effect.*
  - *Section 8 of Act 896 provides general principles for deduction of expenses. The provision provides that no deduction is allowed for determining the taxable income of an employee. It further provides that deduction shall not be allowed in respect of domestic or excluded expenses incurred by a person. Another general principle provided is that a specific deduction rule prevails where more than one deduction rule applies.* 2marks
  - *The effect of the general principles is that in all circumstances the general principles will apply. For instance, in determining the taxable income of an employee, no deduction will be allowed for expenses incurred by the employee in the course of performing his or her duties as an employee. Similarly, in all cases, no deduction shall be allowed for domestic expenses of a taxpayer or expenses specifically excluded as tax deductible.* 1marks
  - *Section of Act 896 provides the residual rule for tax deduction. Section 9(1) of the Act provides that in determining the taxable income of a person for a year of assessment or a part of the year, a deduction shall be allowed from the income of the period, an expense to the extent that the expense is wholly, necessarily and exclusively incurred in the production of the income from investment and business. The residual rule a general or basic rule to all taxpayers in investment and business. Section 9(2) goes further to provide that a deduction not allowed under subsection (1) is expense of capital nature. Subsection 9(3) explains expense of capital nature to mean expense that secures a benefit that lasts for more than twelve months.* 3marks

- Sections 10 to 17 of the Act, specifically name various expenses that are tax deductible and provides guides as to how the deduction shall be applied even though these are not the only expenses incurred in the production of investment and business income. There are numerous other expenses incurred by persons in business and investment some of which are unique to the type of enterprise undertaken.

.By the grace of sections 8 and 9 of Act 896 in reference above all expenses incurred are tax deductible apart from those specifically excluded. There is, however, a caveat to this gracious grant of deductible expenses: that it is left to persons liable to pay tax on the income from business, or investment to justify their entitlement to the deduction by indicating that the particular expense to be deducted has been incurred wholly, exclusive briefly explain each of wholly, exclusively and necessarily as applicable to the income to be taxed.

- Wholly :

The total amount of the expense should be incurred for the purpose of producing the income. In strict interpretation of the law, the entire amount is disallowed if part of the expense is not related to the production of the income. However GRA in most cases apply a more liberal interpretation of the law by which the expense is apportioned to allow for deduction only the portion relevant to the production of the income, especially where personal element is involved. 2 marks

- Exclusively:

The expense should be relevant to the actual operations of the business. There should directly contribute to the production of the taxable income of the business. 2 marks

- Necessarily:

This requirement implies that without incurring the expense the business operation will be impaired and the income cannot be earned.

2marks

15 marks

#### QUESTION 4

- a) In not more than half a page, explain the view that in theory Value Added Tax has neutral effect on business costs.

Ans.

- Explain the concept of Value Added Tax.

Value Added tax (VAT) is a tax on goods and services consumed within the jurisdiction it is administered and is thus classified as an indirect tax. The consumers, known as taxable persons under VAT Law, pay the tax but the supplier

of the goods and services, has the responsibility to collect tax. VAT is therefore a consumption tax.

- Since the economic purpose of VAT is to tax personal consumption of goods and services it is therefore necessary to ensure that VAT does not enter into business cost. This is done by providing taxable persons with a credit mechanism whereby they are able to recover the VAT they have paid. The VAT paid by the taxable persons is input VAT and it represents tax paid by them on input supplied to them by their suppliers who are also taxable persons. Taxable persons also collect VAT from customers who purchase supplies (output) from them. The VAT collected is output VAT which is VAT on output.
- From the above, the taxable person pays input tax on supplies to him and similarly collects output on his supplies to his customers. The input tax is a credit to the taxable person whereas the output tax is what is to be paid to the tax office. However, the VAT law allows the taxable person to set-off the input tax (which is a credit to him) from the output tax which is due the tax office. By this process, the VAT in theory is said not to enter the business cost.

5 marks

b) Supply must meet the following conditions before it is within the scope of Value Added Tax:

- i) It must be made by a taxable person.
- ii) It must be made for a consideration
- iii) It must be made in Ghana
- iv) It must be made in the course or in furtherance of business.

Explain each of the above 4 conditions for 2.5 marks each.

ANS.

- i) It must be made by a taxable person:

*A taxable person is defined under Section 4 of the VAT Act, 2013(Act 870) as a person who is registered for purposes of the VAT Act. There are conditions under the VAT Act to be met by a person for registration as a taxable person. The taxable person has the responsibility to charge and collect the tax on sales to others for onward transmission to the tax office. Similarly, the taxable person pays tax on supplies from others which is kept as a credit. Tax paid by the taxable person is input tax whereas tax charged and collected from others is output tax. The tax paid to the tax office by the taxable person is the excess of the output tax over the input tax. The VAT as a mechanism for taxation is possible because of the supplies made by one taxable person to another taxable person. Where a person makes only supplies exempt from VAT there is no requirement for the person to register for VAT because the person can neither charge VAT nor claim VAT paid on purchases.*

- ii) It must be made for a consideration:

*Section 65 of the VAT Act 870 describes consideration in relation to a supply as the total amount in money or in kind paid or payable for the supply of goods or services. A transaction is taxable under VAT law only when it adds value. In economic sense goods and services are paid for because they add value. Since VAT is paid on the value of goods or services supplied, consideration which serves as the price of the goods or services becomes the tax base. For the a consideration paid for goods or services to be taxable under VAT, there must be a direct link between the consideration and the goods or services. A supply of goods or services is only subject to VAT if it is made for consideration or is deemed to made for consideration.*

iii) It must be made in Ghana:

*The imposition of VAT in Ghana under Section 1(1) provides as follows:*

*“ There is imposed by this Act a tax to be known as the value added tax which is to be charged on the (a) supply of goods or services made in the country other than exempt goods or services; ... “*

*By this provision, supply of goods or services made outside Ghana is outside the scope of VAT in Ghana. Goods are supplied in Ghana if they are located in Ghana and moved to another location in Ghana.*

iv) It must be made in the course or in furtherance of business:

*Under Subsection 2 of Section 1 of Act 870, is provided as follow: “ unless otherwise provided in this Act, the tax is charged on the supply of goods or services where the supply is ... (b) made by the taxable person in the course of the taxable activity of that person”. Taxable activity is described to mean an activity carried on by a person in Ghana or partly in Ghana that involves the supply of goods or services to another person for consideration. By this any supply that does not involve consideration from is outside the scope of VAT. In order to prevent evasion of the tax, stock taken for own consumption or as gift attracts VAT. It is only where a supply is made for consideration that the taxable person can charge and collect the tax applicable.*

10 marks

## QUESTION 5

a) Discuss the conditions under which the assessable income of the folowing persons from investment, business and employment are subject to tax in Ghana.

i) A resident person:

*By Subsection 3 (2)(a) of Act 896 the assessable income of a resident person from business, employment or investment is taxable in Ghana whether or not the source from which the income is derived has ceased. Subsection 3(3)*

*of Act 896 explains the income of a person from investment, business or employment which has a source in Ghana to mean income that accrues in or derived from Ghana. In addition, Section 111(1) of Act 896 also provides that the income of a resident person derived from a foreign source is taxable. The implication of this provision is that foreign sourced income of a resident person is taxable in Ghana. By this, when sections 3(2)(a) and 111(1) are read together, the meaning conveys is that a resident person in Ghana is subject to tax on worldwide.*

2.5

ii) **A non-resident person:**

iii) *A non-resident person is subject to tax in Ghana in respect of income from business, employment or investment is subject to tax in Ghana to the extent to which income has a source in Ghana. . Thus if the income of a non-resident person has no source in Ghana it cannot be taxed in Ghana even when it is brought into Ghana.*

2.5 marks

- a) The UN Industrial Development Organization report in 2004 explained: “Long term financing in terms of equity capital, needed by growth-oriented mainly small and medium companies, is virtually non-existence. The Ghanaian government in the same year enacted the Venture Capital Trust Fund Act (VCTF), 2004 (Act 680) to fill this gap.

**Required:**

- i) Based on the above, briefly explain the nature of venture capital as a source of funding to businesses.

**Answer:**

**What Venture Capital is;**

Venture capital is an investment funding mostly accessed by start-ups as well as small companies not big enough, successful enough and grown enough to raise capital in the public equity market. Such start-up firms or firms in financial trouble are often considered too risky to attract funding from the public equity market where they can access the traditional forms of debt such as bank loans or public debt. Venture capitalists

People who invest in Venture capital are known as venture capitalists. These are those wealthy investors who have already made a mark and have a good amount of money to invest. The investors include wealthy families, Investment banks and, other financial institutions. There are also individuals referred to as angels who provide venture capital as individuals rather than belonging to venture capital firms. Venture capitalist when invests in the risky but potentially promising firm would often like to acquire a controlling interest in the firm. By this, not only wealth is brought into the business, but also valuable connections through the venture capitalist who can bring in technical, marketing or strategic expertise which can help a less experienced business person to make his business more successful. Financing is done by way of equity so the burden which a business faces is less compared to when it borrows money. In this case there is no obligation to repay the

money. It must, however be noted that autonomy gets lost as investors become part owners. Due to their substantial stake, they try to have a say in business decisions.

ii.) State five (5) incentives available to stakeholders in the Venture Capital industry

**Answer:**

**Tax Incentives for stakeholders under the Venture capital Trust Fund**

- The Trust is exempt from payment of any form of tax.
- Upfront relief from stamp duty in each year on subscriptions for new equity shares in venture funds.
- A loss incurred by a venture capital financing company from disposal of shares in any venture capital investment shall be carried forward for a period of 5 years after the date of disposal.
- Interest or dividends paid or credited to a person who has invested in a venture capital financing company shall be exempt from tax for 10 years.
- A venture capital financing company shall enjoy such tax incentives as shall be provided in the Internal Revenue Act, 2000 (Act 529);
- The total amount invested in a venture capital financing company by any person shall be allowed as a deduction in ascertaining his income.
- Income of a venture capital financing company under the VCTF Act shall be exempt from tax for from the year of commencement

For maximum of five incentives stated, award 1 mark for each.      5marks

## QUESTION 6

- a) Section 12(2) of the Labour Act, 2003(Act 651) provides that a contract of employment shall express in clear terms the rights and obligations of the parties. State and briefly explain any 5 duties of an employer as provided under the Act 651.

**Answer**

**Duties of the employer:**

- (a) provide work and appropriate raw materials, machinery, equipment and tools;
- (b) pay the agreed remuneration at the time and place agreed on in the contract of employment or collective bargaining agreement or by law or agreed between the employer and the worker;
- (c) take all practicable steps to ensure that the worker is free from risk of personal injury or damage to his or her health during and in the course of the worker's employment or while lawfully on the employer's premises;
- (d) develop the human resources by way of training and retaining of the workers;

- (e) provide and ensure the operation of an adequate procedure for discipline of the workers;
- (f) furnish the worker with a copy of the worker's contract of employment;
- (g) keep open the channels of communication with the workers; and
- (h) protect the interests of the

Award 5 marks for any 5 of the above stated.

5 marks

- b) State and explain 5 prohibited restrictive conditions on employment

Ans.

*An employer shall not in respect of any person seeking employment, or of persons already in his employment*

- (a) require that person to form or join a trade union or to refrain from forming or joining a trade union of his or her choice;*
- (b) require that person to participate or refrain from participating in the lawful activities of a trade union;*
- (c) refuse to employ the person because of that person's membership of a trade union;*
- (d) promise the person any benefit or advantage for not participating in trade union activities; or*
- (e) discriminate against the person on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status, disability or politics*

*Each of the 5 points above stated and briefly explained for a mark.*

5 marks

- c) Briefly explain the five grounds by which an employment can be lawfully terminated in Ghana.

Ans.

*A contract of employment may be terminated in Ghana on any of the following:*

- (a) by mutual agreement between the employer and the worker;*
- (b) by the worker on grounds of ill-treatment or sexual harassment;*
- (c) by the employer on the death of the worker before the expiration of the period of employment;*
- (d) by the employer if the worker is found on medical examination to be unfit for employment;*
- (e) by the employer because of the inability of the worker to carry out his or her work due to*
  - (i) sickness or accident; or*
  - (ii) the incompetence of the worker; or*
  - (iii) proven misconduct of the worker.*

*Each of the above points stated and briefly explained for a 1 mark*

5 marks

#### QUESTION 7,

- a) State and explain briefly the four main functions of the Customs Division of Ghana Revenue Authority.

Ans.

*The 4 main functions of the Customs Division of Ghana Revenue Authority are:*

- i) *Revenue mobilisation: Collection of taxes such as import duties, export duties, import VAT, Petroleum tax.*
  - ii) *Anti Smuggling activities*
  - iii) *Performance of agency duties on behalf of other state agencies by seeing to the enforcement of laws on import restrictions and prohibitions*
  - iv) *Is a key player in the defence of the territorial integrity of the state at the frontiers of Ghana.*
- Each point mentioned and explained for 1 mark and a bonus mark for accurate explanation* *5 marks*

- b) It is lawful for a person to be granted permission for temporary importation of goods into Ghana. Explain temporary importation, state 4 conditions to be fulfilled by the importer and provide 4 examples of the items permitted to be imported under this scheme.

*Ans,*

*Explanation for temporary importation.*

- i) *Temporary importation is a customs procedure under which certain goods can be brought into the country and conditionally be relieved from payment of import duties and other related taxes.*
- ii) *The goods are imported for specified purposes and intended for re-exportation within three months or after having undergone certain specified processing or repair.*

*2 marks*

*Conditions under which goods are imported temporarily*

- i) *The goods at the time of importation must be declared as temporarily imported*
- ii) *A cash payment or a bond to cover the potential duty and tax liability must be given*
- iii) *Goods to be re-exported within three months*
- iv) *Commissioner for Customs to give consent before disposal of goods in Ghana.*

*4 marks*

*Examples of temporary imported goods:*

- i) *Commercial traveller's sample goods*
- ii) *Goods for local exhibition or entertainment or stage properties*
- iii) *Goods imported solely for repair or renovation*
- iv) *Goods imported by tourists and intended for personal use, convenience and comfort while in the country but not for personal consumption while in the country.*

*4 marks*

**GOOD LUCK**