Examiner's report

P6 Advanced Taxation (ZWE)
June 2009

General Comments
The paper consisted of sections A and B. Section A contained two compulsory questions accounting for 60% of the total marks. Section B contained three questions out of which candidates were required to attempt two questions.

Overall, question one and two were well attempted and some very good marks were scored in question two. The choices in the questions attempted in questions three to five were evenly spread although fair marks were scored in question five, while questions three and four were not as well answered. Some candidates seemed not to have fully understood the full requirements, particularly in relation to question four.

The overall performance in this paper was better than expected. However, candidates need to improve on the presentation format and also improve on their writing to facilitate easier reading for the examiner. In terms of presentation, it would be useful to include distinct paragraphing. Candidates should plan their answers and avoid repetition as this will not earn them the marks more than once.

Question One
This 26 mark question required candidates to demonstrate their understanding of the capital gains tax implications of swapping shares. Additionally, candidates were required to demonstrate awareness of the statutory dispensations available to minimise the taxation impact where the swap was undertaken within a group of companies under the same control. Most candidates were able to address this section.

Part (a) also required candidates to comment on the value added tax (VAT) implications of the payment of management fees as well as the requisite registrations. A significant number of candidates merely commented on the corporate tax chargeable on the fees in the hands of the holding company. Only a few candidates commented on the VAT aspects and the registration requirement.

Part (b) and (c) tested the candidates' knowledge of employee's tax on benefits accruing to employees as well as the implications of implementation of policies that are aimed at avoiding taxes. Suggestions on how to rectify the potential tax problems arising from the resolutions were expected from the candidates. Additionally, alternative ways of achieving the desired intentions in a legal way were also expected. A significant number of candidates were able to discuss the penalty aspects of not complying but very few candidates came up with suggestions, such as grossing up, that could be employed to achieve the desired goals in a legal manner.

As mentioned above, candidates tackled this question relatively well.

Question Two
Part (a) of this 34 mark question required candidates to compare and contrast the tax implications of a range of options of raising finance or capital by a company. Specifically the options to be compared included raising a direct loan off shore, issuing redeemable preference shares and the flotation of the company on the Zimbabwe Stock Exchange.

Part (b) of the question required candidates to demonstrate their knowledge of the options available to miners in relation to development and capital expenditure incurred prior to reaching the production stage and after the production stage. In relation to part (c) candidates were expected to comment on the tax treatment of assessed losses for miners in comparison to other traders.

Although a significant number of candidates did fairly well in tackling the requirements of part (a), a good number of the candidates were repetitive in their submissions for the different options. Candidates were expected to include the exchange control aspects in their answers but only a few did.

However, the majority of the candidates were able to support their choice of what they considered the optimal method of raising the finances. In the context of the Zimbabwe operating environment, where the United States Dollar was adopted as the official currency recently (with the local currency being abandoned), this type of question can be expected for a few more sessions as most companies are indeed looking for ways of capitalising themselves after the devastation of capital due to hyper inflation in the past couple of years.

Part (b) was not that well answered as a good number of the candidates spoke about special initial or capital allowances which generally apply to traders other than miners. Miners claim capital redemption allowances which are recomputed annually.

Most candidates were able to adequately answer the requirements of part (c).

Part B - Question Three
This question specifically dealt with the topic of tax avoidance as enshrined in an acquisition transaction that was structured in a way designed to avoid capital gains tax and also externalise foreign currency.

Although most candidates who attempted the question were able to discuss the transaction as an avoidance scheme, they did not discuss the potential downstream implications on the buyer of the specified asset. In general, candidates did not address the point that by issuing new shares, the proceeds from these shares remained company finances and the fact that the outgoing shareholders needed to remain directors in the company in order to access the funds from the disguised disposal. The transaction analysed in this question is a tax planning transaction. In addressing the remedies available to the Commissioner General, a number of candidates referred to the transaction as being illegal although the real point was that the Commissioner General had the discretion to undo the transaction if he/she was convinced that the structure of the transaction was designed in an unusual manner for such transaction and was designed to avoid tax. Of the three optional questions this was the least answered question.

Question Four
The question dealt with the relationship between companies in different tax jurisdictions from a Zimbabwean perspective. A significant number of candidates who tackled this question tackled peripheral issues and did not really address the great potential that the relationship between the companies was a clear disguise of an employer/employee relationship.

There was a general tendency to duplicate the answer required for part (b) for both part (a) and part (b). A fair number of candidates seemed not to have carefully read the requirements and understood what was required. Most candidates who tackled this question missed some of the available marks due to failure to address all the aspects of the requirements.

Question Five
This question, in part (a), dealt with the taxation aspects of a deceased estate before and after confirmation of the liquidation and distribution account. It required candidates to identify assets which would be subject to estate duty and assets which would have income tax implications. Part (b) required candidates to comment on the VAT implications of transactions undertaken without charging the VAT.

Part (a) was not as well answered as expected as a good number of candidates were not able to clearly identify the applicable tax. For instance a number of candidates classified some of the capital assets as being subject to income tax instead of estate duty. In general there was an element of uncertainty in relation to identifying the entity to be taxed.

A few candidates were able to adequately discuss the application of the VAT tax fraction in relation to the transaction referred to in part (b).