**SUGGESTED SOLUTIONS**

**Advanced Diploma in Banking EXAMINATIONS**

**SUBJECT: Taxation 2 IOBM: AD319**

**Date: Wednesday 6th November 2013**

**SECTION A: (60 MARKS)**

**QUESTION 1**

1. Administrative procedures **(1 Mark each)**
2. Every officer [including the Commissioner General] is required to take an oaths of secrecy before a magistrate or commissioner for oaths
3. Anyone who takes office before taking an oath of secrecy shall be liable to a fine of K20
4. If a person who has taken an oath of secrecy reveals any matter to any person which has come to his knowledge in the course of carrying out duties under the Act, he will be liable to a fine of K1, 000 and to imprisonment for two years

Circumstances when secrecy is waived **(1 Mark each)**

1. Where the information is required by the Auditor General or any officer duly authorized by him for the performance of official duties
2. Where information is required by authorized government officers of another country which has a double tax treaty with Malawi to enable it to assess the tax position of a taxpayer
3. Where the information is required by a tax payer or duly authorized agent of the tax payer
4. Where the commissioner wishes to compile and publish statistics about the total amount of income received by any class of persons as declared in returns to the commissioner
5. Where information is required for the purposes of carrying the Act into effect or for the purpose of any prosecution for an offence committed in relation to any tax on income
6. Mining expenditure means capital expenditure incurred in Malawi by a person carrying on or about to carry on mining operations in Malawi **(1 Mark each)**
7. In searching for or discovering and testing or winning access to deposits of minerals
8. In the acquisition of or of rights in or over such deposits other than the acquisition from a person who has carried on mining operations in relation to such deposits
9. In the provision of plant and machinery and industrial buildings which would have little or no value to such person if the mine ceased to be worked
10. On the construction of any buildings or works which would have little or no value if the mine ceased to be worked
11. On development, general administration and management prior to the commencement of mining operations

Allowances which a tax payer cannot claim:

1. Export allowances **(½ Mark)**
2. Transport allowances **(½ Mark)**

Situations where mining allowances are claimable

1. On assets on which capital allowances have been claimed **(½ Mark)**
2. In respect of any expenditure made before 1 November 1969 **(½ Mark)**

**(Total: 15 Marks)**

**QUESTION 2**

Taxable profits for Kandulo

Loss per accounts [26, 900] **[1]**

Less: Profits on sale of fixed assets [456, 900] **[1]**

Add: depreciation 365, 800 **[1]**

Painting owners house 1, 250, 000 **[1]**

Depreciation 450, 100 **[1]**

Traffic fines 650, 000 **[1]**

Donations changoima lea 117, 500 ?? **[1]**

Depreciation 540, 000 **[1]**

Property valuation 456, 000 **[1]**

Fringe benefits tax 375, 000 **[1]**

Gen prov d/debts 337, 200 **[1]**

Interest late payment of tax 225, 000 **[1]**

Depreciation 413, 000 **[1]**

Les: capital allowances [2, 655, 800] **[1]**

Taxable income 1, 500, 000 **[1]**

**(Total: 15 Marks)**

**QUESTION 3**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Housing | Car | Water | Electricity | Telephone |
| General manager  House:  Higher of  150, 000 and 12% of 900, 000=108, 000 **[½]**  Car:  [15% \* 1/12 \* K15, 000, 000] **[½]** | 150, 000 **[½]** | 187, 500 **[½]** | 35, 000 **[½]** | 0 | 27, 000 **[½]** |
| Accountant  Higher of  80, 000 and 10% of 710, 000=71, 000 **[½]** | 80, 000 **[½]** |  | 20, 000 **[½]** | 0 **[½]** | 0 **[½]** |
| Pharmacists  Higher of  60, 000 and 10% of 520, 000=52, 000 **[½]** | 60, 000 **[½]** |  | 16, 500 **[½]** | 0 **[½]** | 0 **[½]** |
| Admin officer  Higher of  20, 000 and 10% of 95, 000=9, 500 **[½]** | 20, 000 **[½]** |  |  |  |  |
| Dispatch rider  Higher of  16, 000 and 10% of 40, 000=4, 000 **[½]** | 16, 000 **[½]** |  |  |  |  |
| Grand total | 326, 000 | 187, 500 | 71, 500 | 0 | 27, 000 |

1. Paying the fringe benefit tax late (**1 Mark)**
2. Penalty = K45, 000

Rate = 20%

Fringe benefit tax paid = [100/20 \* K45, 000] **(½)**

= K225, 000 **(½)**

Fringe benefit tax paid = K225, 000

Tax rate = 30%

Taxable value = [100/30 \* 225, 000] (**½)**

= K750, 000  **(½)**

1. Loans **(½)** = taxable value is the difference in interest rate between the open market rate and the rate provided to the employee **(½)**

Provision of an asset like cell phone or HIFI  **(½)**= taxable value is the cost of the asset to the employer (**½)**

**(Total: 15 Marks)**

**QUESTION 4**

Makawa Sports Club

Bar sales W1 3, 670, 000 (**1)**

Sale of band tickets 480, 000 **(½)**

Restaurant sales 875, 500**(½)**

Drama 105, 000**(½)**

5, 130, 500(**1)**

Taxable income @ 6¼% 320, 656**(1)**

Tax payable @ 30% 96, 197**(1)**

**Working**

Bar sales 250, 000**(½)**

Closing debtors 3, 620, 000**(½)**

Less: opening debtors [200, 000] **(½)**

Bar sales 3, 670, 000 (**1)**

The taxable income of a club is taken as equivalent of 6¼% of all receipts by or accruals to or in favor of **(1)**

it from the sale of goods, cinematography performances, stage plays, and gambling machines and are charged **(1)**

at a rate applicable to companies**(1)**

Therefore the following are not taxable

Income from subscriptions **(½)**

Income from entrance fees **(½)**

Expenses are therefore not considered as a club is not taxed on profits earned from its activities **(1)**

As profits are not considered, therefore creditors for bar subscriptions received in advance and those in arrears will not be considered in working out the taxable income **(1)**

Similarly stocks for bar stock will not be taken into account since it is only the receipts from bar sales that are considered **(1)**

**(TOTAL: 15 Marks)**

**SECTION B: (40 MARKS)**

**QUESTION 5**

1. Testacy means dying having left a will. **(1 Mark)**

Intestacy means dying without leaving a will **(1 Mark)**

1. **Domicile of origin (1 Mark)**

Every person receives at birth a domicile of origin. **(½ Mark)**

A legitimate child born during the lifetime of his father has his or her domicile of origin in the country in which his father was domiciled at the time of birth. (**½ Mark)**

**Domicile of choice**

Every independent person can acquire a domicile of choice by the nation of residence and intention of permanent or indefinite residence, but not otherwise. **(½ Mark)**

A person abandons a domicile of choice in a country by ceasing to reside there, and by ceasing to intend to reside there permanently or indefinitely, and not otherwise. **(½ Mark)**

**Domicile of dependency**

The domicile of a depend person is, in general the same, and changes (if at all) with the domicile of the person on whom he is, as regards his domicile, legally dependent. **(½ Mark)**

In particular, during minority, a child’s domicile of dependency changes to match that of the adult on whom the child is said to be dependent. **(½ Mark)**

1. Similarities and differences withholding taxes and provisional taxes

|  |  |
| --- | --- |
| **similarities**   * Both methods assist government to have income evenly throughout the year **(½)** * Both methods spreads the tax burden for the tax payer **(½)** * Both of them have provisions for exemption in some amounts **(½)** * Provisions for penalties for both **(½)** | **Differences**   * Withholding tax is paid monthly, whereas PT is paid quarterly**(½)** * Withholding tax is not ran by the tax payer [operated on behalf of taxpayer] whereas PT is operated by the taxpayer**(½)** |

Role of employer

* 1. The employer will pay the PAYE that should have been deducted**(½)**
  2. The employer will pay a penalty of 15% of the amount that should have been paid**(½)**
  3. The employer will pay a surcharge of 5% of the accrued amount for each month the PAYE remained unpaid**(½)**
  4. The employer can recover from the employees the amount that was not deducted as PAYE**(½)** but cannot recover from employees the penalty and surcharge**(½)**

PAYE and the four cannons of tax

* 1. Equity **(½)**– rates are increasing and also from 0 to K15,000 no tax**(½)**
  2. Certainty**(½)** – rates of tax are “certain” exact i.e. 0%, 15%, 30%**(½)**
  3. Economy **(½)**– MRA does not spend much as the tax is paid on behalf of staff by employers**(½)**
  4. Convenience**(½)** – tax is paid on 14 days from the end of the month in which employees received their money**(½)**

Bereu Limited

Penalty for provisional tax liability for 2011/2012

Actual tax = 30% \* K20, 700, 504 **(½)**

= K6, 210, 151 **(½)**

Provisional tax liability = 90% \* K6, 210, 151 **(½)**

= K5, 589, 135 **(½)**

Provisional tax unpaid as a percentage of tax liability

= K5, 589, 135/K6, 210, 151 \* 100 **(½)**

= 90% **(½)**

The amount of provisional tax unpaid as a percentage of total tax liability exceeds 50%**(½)** therefore the company is liable to a penalty of 30% of the unpaid provisional tax **(½)**

= 30% \* K5, 589, 135 **(½)**

= K1, 676, 740 **(½)**

**(TOTAL: 20 Marks)**

**QUESTION 6**

1. Vat invoice must have

Vat registration number –[TPIN] **(½)**

Serial number **(½)**

Date of issue **(½)**

Name and address of purchaser **(½)**

Date of supply **(½)**

Description and quantity of goods **(½)**

Total value of goods **(½)**

Registered persons name and address **(½)**

**[Maximum 3 marks]**

The output tax for Bwanje shop which is registered under the special retailers’ scheme is calculated as follows:

* Bwanje shop has to separate the daily gross takings for the month into taxable and exempt supplies **(1 Mark)**
* The output tax will be calculated by deducting the exempt supplies from the total supplies for the month **(1 Mark)**
* The output tax shall be calculated by multiply the difference [found above] **(1 Mark)** by [16½%/116½] (**1 Mark)**

*Output tax for bwanje shop*

Daily gross takings for the month 1, 540, 200 **(1 Mark)**

Less: exempt supplies 710, 310 **(1 Mark)**

Taxable supplies for the month 829, 890 **(1 Mark)**

Output tax {829, 890\*[16½%/116½] **(1 Mark)**  117, 538 **(1 Mark)**

**Or {829, 890\*[100/116**½] = 712, 352. [829, 890 – 712, 352] 117, 538

Bwanje shop VAT return is due for submission by 25th November, 2013 **(2 Marks)**

* It enables the customs officer to establish the correct rate of duty in accordance with preferential provision of the customs tariff**(1 Mark)**

It enables them to establish whether goods are subject to open general license importation that does not require an import license of specific license **(1 Mark)**

It also enables customs officer to correctly collect trade statistics for the national statistical office **(1 Mark)**

* Goods not eligible for duty drawback

Fuel, lubricants or any other goods or materials that are not incorporated into, attached to, or directly consumed in the manufacturing or production process **(1 Mark)**

Any by-product or waste derived from a production process which has commercial value and has not been exported **(1 Mark)**

Any imported goods that are not re-exported **(1 Mark)**

Any imported goods for which a drawback, refund or remission of duty is claimed under any other law **(1 Mark)**

**(Total: 20 Marks)**

**QUESTION 7**

1. Submission of returns
   * A taxpayer is required to submit a return of income within 180 days after the end of the year of assessment **(½)**
   * CG may by notice in writing, require a taxpayer to submit a return of income at any time during the year**(½)**
   * In this case the taxpayer must submit the return within 30 days of the issue of such notice**(½)**

* The rules governing additional assessments of a taxpayer who has committed fraud by himself or on his behalf
* The CG can assess tax payer if he has not been assessed before and fraud was being committed**(½)** – no limit of six years is applicable
* The CG can assess tax payer if he was under assessed and fraud was being committed – no limit of six years is applicable**(½)**
* The CG can assess the estate of the deceased if it was not being assessed and fraud was being committed up to six years from death or **(½)**
* The CG can assess the estate of the deceased if it was being under assessed and fraud was being committed up to six years from death **(½)**
* The distinction between a tax representative and a public officer
* A representative tax payer is a person who acts on behalf of another person as regards matters concerning tax **(½)**
* A public officer is an individual representing a company on tax issues **(½)**

1. Tax submitted

Taxable income as per return = K6, 501, 450 **(½)**

Tax paid [30% \* K6, 501, 450] **(½)** = K1, 950, 435 **(9½)**

* Conditions to meet for transport allowance
  + Must register with MEPC**(½)**
  + Must be an exporter**(½)**
  + Must be exporting nontraditional exports**(½)**
  + Traditional exports include cane sugar, coffee, tea and un manufactured tobacco and tobacco refuse**(½)**
* How much to pay if claimed wrongly an allowance
  + If there was no intention to fraud **(½)**– an amount not exceeding K1, 000 **(½)**plus the difference between the amount of tax he ought to have been charged and the amount he has been charged**(½)**
  + If intention to fraud **(½)**– the greater of **(½)**an amount of K10,000**(½)** or twice the difference between the tax he ought to have been charged and the amount he has been charged**(½)** PLUS the amount underpaid because of claiming an allowance which they were not entitled. **(½)**
* Assessment was

Amount paid = K1, 950, 435 **(½)**

Amount he should have paid

Taxable income per return = K6, 501, 450 **(½)**

Add: transport allowance not entitled = K2, 000, 000 **(½)**

Correct taxable income = K8, 501, 450 **(½)**

Tax should have been [30%\*K8, 501, 450] **(½)** = K2, 550, 435 **(½)**

Penalty = greater of K10, 000 and 2[2, 550, 435 – 1, 950, 435] **(½)**

= greater of K10, 000 and 2[K600, 000] **(½)**

= greater of K10, 000 and K1, 200, 000 **(½)**

= K1, 200, 000 **(½)**

Total penalty payable = K1, 200, 000 + 600, 000 **(½)**

= K1, 800, 000 **(½)**

Additional assessment = K1, 800, 000

* To ensure that there is fairness in all tax assessment procedures **(1 Mark)**

**(Total: 20 Marks)**

**QUESTION 8**

1. Any foreign exchange gain or foreign exchange loss realized in connection with a permanent establishment in Malawi, **(1)**or

* Any foreign exchange gain or foreign exchange loss realized in connection with foreign currency assets or liabilities held in Malawi **(1)**

1. Realized exchange gain of K200, 900 will be fully taxable and therefore added to arrive at taxable income. **(1)**

* Unrealized exchange gain of K95, 300 will not be taxable and therefore will be excluded from taxable income **(1)**
* Unrealized exchange loss of K154, 600 will not be tax deductible and therefore will not be deducted from assessable income when arriving at taxable income **(1)**
* Realized exchange loss of K350, 100 is ordinarily tax deductable but only when there are no unrealized exchange gains, **(1)**
* In this case the amount of realized exchange loss deductible will be the excess of realized exchange loss over net unrealized exchange gain i.e. **(1)**
* i.e. {K350, 000 – [95, 300-154, 600]} since we end up with a net unrealized exchange loss, then the whole realized exchange loss will be deductible i.e. K350, 000 **(1)**

ii) Export allowance is 15% **(½)** of the taxable income derived from export sales of nontraditional exports.

* Country’s traditional exports include:
* unmanufactured tobacco and tobacco refuse ; **(½)**
* tea ; **(½)**
* coffee **(½)**
  + and
* cane sugar **(½)**

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* A taxpayer who incurs international transport costs for his exports is allowed to deduct an additional 25% of the international transportation costs **(½)**
* (the cost must be in respect of non-traditional exports for the taxpayer).
* The following benefits are available;
* No duty on the imports of capital equipment used mainly in the manufacture of exports **(½)**
* No VAT **(½)**
* No excise taxes on purchase of raw materials and packaging materials made in Malawi  **(½)or**
* No duties on capital items and raw materials **(½)**

1. Adjusted basis in respect of an asset on which capital allowances have been claimed, it is the tax written down value, for other assets on which no capital allowances were claimed, it is the cost of the asset as adjusted by any improvement costs or the open market value of the asset as at 1 april 1992 which must have been determined by the commissioner general**(1)**

* Amount realized refers to the disposal proceeds of a capital asset which may be cash received if the asset was sold for cash, the market value of the other asset if the asset is exchanged for another or its open market value if it is disposed of without consideration**(1)**
* Disposal is the transfer of ownership of an asset by whatever means including but not restricted to sale, gift, bequest, distribution or exchange **(1)**

1. Capital loss allowable is limited to the actual realized loss **(1)**and the lower of the realized loss and capital gain **(1)**

**(Total: 20 Marks)**