

Tax Professional Knowledge Competency Assessment

June 2014

Paper 2: Solution

Suggested Solutions

Question	Topic	Marks
1	Taxable Income	40
2	Calculate Estate Duty	40
3	Explain Tax Implications & Liabilities	40
4	Income Tax Consequences	40

Total marks: 160

The marks specified are an indication of the expected length and detail of your response.

Question 1

marks 20

Part A

Taxable Income

Item / Calculation	Alternative Solution	Amount
Partnership taxable income		820 727
Gross income from trading (no adjustment)		0 (½)
Interest received on credit balance of bank account (1/3 falls into the hands of each partner – see split at the end)	-3 200 (½)	0 (½)
Dividends (1/3 falls into the hands of each partner – see split at the end)	-260 000 (½)	0 (½)
Salaries and allowances (no adjustment)		0 (½)
Add back: Drawings (capital of nature and not deductible)		39 000 (1)
UIF & SDL in respect of employees (no adjustment)		0 (½)
Add back: Contribution to employees’ pension fund (test s 11(l) limit – see calculation below)	172 000 (1½)	25 600 (½)
Add back: Contribution to partners’ pension fund (test s 11(L) limit – see calculation below)		50 400 (½)

Add back: Contribution to medical scheme (test s 11(l) limit – see calculation below) 96 000 (½)

Less: Maximum s 11(l) deduction for employees (½)

Actual contributions: R85 600 consisting of : (Alt R102 150)

Employee’s pension fund.....R25 600 (Alt:R42 150.96) (½)

Employee’s medical scheme.....((R96 000 less (3 x R12 000))...R60 000

These are limited to employee’s salaries of R526 887 (R1 156 887 less R630 000) (1)

In practice SARS allows $R526\,887 \times 20\% = R105\,377$

Alternative: $R526\,887 \times 10\% = R52\,688$ (1)

Thus: therefore the full R85 600 will be allowed (WM) Alt: R102 150 (WM) (½)

Less: Maximum s 11(l) deduction for partners

Actual contributions : R86 400 consisting of : -85 600 (½)

Partner’s pension fund (R630 000 x 8%).....R50 400

Partner’s medical scheme (3 x R12 000)R36 000 (½)

These are limited to the partner’s salaries of $R630\,000 \times 10\% = R63\,000$

In practice SARS allows 20% (½)

Therefore the full R86 400 will be allowed in practice. (application) (½)

			-86 400	(½)
Short-term insurance premiums (no adjustment; S 11(a) deduction)			0	(½)
Add back: Life insurance premiums on the lives of partners (no deduction allowed – capital of nature)			3 600	(½)
Add back: Depreciation on office furniture	726 350	(1½)	18 750	(½)
Less: s 11(e) wear-and-tear (Binding General Ruling : No. 7 (R75 000/6)				
Net amount: R6 250 for 1 mark			-12 500	(½)
Add back: Depreciation on delivery vehicle	0		57 600	(½)
Less: s 11(e) wear-and-tear (Binding General Ruling : No 7)				
(R288 000/4 (½) x 4/12 (1))			-24 000	(1½)
Alternative: (R288 000/4 (½) x 122/365 days (1) = -R24 066				
Net amount:R33 600 for 2 marks				
Depreciation on factory building	0		0	(1)
Less:s 13(1) Building allowance : R6 500 000 x 5%			-325 000	
Add back depreciation on Machine A	0		650 000	(½)
Cost Price = Purchase price :(€250 000 x R10,70 (s 25D)) = R2 675 000				(1)
Plus: Import Duties	R 25 000			
Plus: Foundation	<u>R 17 500</u>			
	R2 717 500			(½)
Less: s 12C allowance: Total cost of R2 717 500 x 40% (1)				(½)
Marker comments: If candidate apportioned the s 12C allowance, no mark!				

Alt: 20% if assumption was made that machine is second –hand			
Net deduction: R437 000 for 3.5 Marks			
No foreign exchange differences in terms of s 24I since paid on transaction date (15 Nov 2013)		-1 087 000	(1)
		0	(½)
Interest paid in respect of partners' capital accounts (no adjustment)		0	(½)
Add back: Provision for leave pay (increase in leave pay provision, not deductible (s 23(e))		99 500	(1)
PARTNERSHIP TAXABLE INCOME	<u>-22 523</u>	<u>240 677</u>	(1)
Partnership taxable income per partner (R240 677 / 3)	80 226	80 226	(1)

Available 23.5
Maximum 20

Part B

marks 15

Robin's share in partnership taxable income	-7 508	(½)	<u>80 226</u>	(½) WM
Interest income (R3 200/3) – include in partnership share R1 067	1 067	(1)		
Dividend income (R260 000/3) – included in partnership share	nil			
R86 667				
Trade income/(loss) (R80 226-R1 067-R86 667)-R7 507.67				
balancing figure				
Add partner's personal income from partnership:				
Salary from partnership			200 000	(1)
Interest received from partnership			4 300	(1)
Contributions to pension fund paid by partnership (R200 000 x			16 000	(1)
8%)			12 000	(1)
Contributions to medical aid scheme paid by partnership (R1 000 x			<u>36 000</u>	(1)
12)			348 526	
Net rental income (only received by Robin)				
Income	-5 367	(2)	-5 367	(3)
Claim exemptions and deductions per partner				
Less: Interest exemption in terms of s 10(1)(i) (R1 067 (2) + R4			<u>-86 667</u>	(1)
300 (1))				

	256 492	
Less: Dividend exemption in terms of s 10(1)(k)(i)		
Alt: Dividend already exempt in partnership calc = 1 mark		(½)
Subtotal 1		
	<u>-9 000</u>	(1½)
Less: Contributions to pension fund: Actual = R16 000 (R200 000 x 8%)	247 492	
Deduction is the greater of:- R 1 750; or		
<ul style="list-style-type: none"> • 7.5% (½) x (R200 000 limited to R120 000) (1) = R9000 		
Subtotal 2		
Less: Contributions to retirement annuity fund: Actual = R8 160 (R680 pm x 12 months)	-8 160	(1½)
Deduction is the greater of:		(½)
<ul style="list-style-type: none"> • 15% of his income derived from non-retirement funding employment : R256 492 (subtotal 1) (½ WM) – R120 000 (RFE) (½ WM) x 15% (½) = R20 747 limited to actual of R8 160; or 	239 332	(½)
<ul style="list-style-type: none"> • R3 500 less the deductible pension fund contribution = Rnil (R3 500 – R9 000 (WM)); or 		(1)
<ul style="list-style-type: none"> • R1 750 		(1)

Subtotal 3	0	(1)
Less: Medical deduction s 18	<u>239 332</u>	
Medical scheme contributions $(R12\ 000 \times \frac{1}{2}) + (R850 \times 12) = R10\ 200$		
Actual = R22 200		
Less: 6A credit $x\ 4\ (R242 \times 12 \times 4) = R11\ 616$		
= R10 584		
Less: 7.5% $(\frac{1}{2})$ of R239 332 (subtotal 3) $(\frac{1}{2}WM) = R\ 17\ 949$		
TAXABLE INCOME		
	Available	17
	Maximum	15

Part C

Marks 5

- The deduction could be limited in terms of s 24H of the Income Tax Act (1)
- The Income Tax Act (s 24H(3)) limits claimable allowances and deductions (1)
- The amount of an allowance or deduction that may be granted to a taxpayer under any provision of the Act in connection with a trade carried on by him in a partnership of which he is a limited partner may not in the aggregate exceed (1)
- The sum of: (1)
- Specified amount of capital contributed by Chester and (1)
 - Any income received by or accrued to him from the partnership (1)

Available 6

Maximum 5

Question 2

Marks 10

Part A

Normal Tax Liability for Anthony Collins

1 March 2013 to 20 January 2014

	Amount	
Rental taxable income: holiday apartment	25 000	(½)
Salary earned: 1 March 2013 to 20 January 2014 (11 months) R55 000 pm x 11 months	605 000	(1)
Dividend on LS shares (325 shares x R2 500 per share)	812 500	(½)
Rent received: farm ito father's will (R15 000 pm x 10 months) + (R15 000 pm x 20/31 days)	159 677	(1)
GROSS INCOME	1 602 177	
LESS: EXEMPTIONS: Exemption for local dividends (s 10(1)(k))	(812 500)	(½)WM
INCOME	789 677	
Plus: Taxable capital gain – see calculation below	2 086 547	
TAXABLE INCOME	<u>2 867 224</u>	

Tax per income tax tables:

On first R638 600

On the rest: at 40%

Less : Primary rebate: R12 080 x 326/365 days (SARS practice)

Less: Employees' tax : (R16 147 pm x 11 months)

Less: Provisional tax payments

185 205	(½)
895 050	(½)
<u>(10 789)</u>	(1)
1 069 465	
(177 617)	(1)
(35 000)	(½)

NORMAL TAX LIABILITY

856 848

CGT CALCULATIONS:ANTHONY

MV death

Base cost

**Capital
gain/loss**

Primary residence: Full market value

7 100 000

4 000 000

(1)

Less: Usufruct value bequeathed to spouse (roll over)

(6 787 177)

(3 648 965)

(2)

(BC:R4m x 12% factor male aged 50: 7.60201

312 823

351 035

(38 212)

Less: primary residence exclusion :R2 million (P)

38 212

(½)

(½) Mark P for R6.787m (calc 2), 1.5 for calc of R3 648 965

Calc of usufruct base cost: R4m x 12% x 7.60201

Alternative: R4m x R6 787 177 / R7 100 000

Furniture and effects (personal-use assets)

-

(½)

Holiday apartment

4 000 000

2 500 000

1 500 000

(1)

Vehicle: Mercedes Benz (personal –use asset)

- (½)

LS shares (325 shares x R1 000 per share)	3 500 000	325 000	3 175 000	(1)
Usufruct (calc 1)	-	1 890 906	1 890 906	(1) P
Solo Ltd shares:				
<ul style="list-style-type: none"> Solo Ltd (accrues to spouse after repudiation = roll-over relief) 	180 000	180 000	-	(½)
Sum of capital gains/(losses)			6 565 906	
Less: Annual exclusion in year of death			<u>(300 000)</u>	(½)
Aggregate capital gain /(loss)			6 265 906	
Less: Assessed capital loss carried forward from 2013			0	
Net capital gain			<u>6 265 906</u>	
Inclusion rate for individual:			X 33.3%	(½)
Taxable capital gain (to be included in taxable income)			2 086 547	
			Available	16
			Maximum	10

Part B

Marks 30

Estate Duty Calculation

	Rand	Amount
Property:		18 137 436
1. Primary residence : valuation on date of death	7 100 000	(½)
2. Holiday apartment Mossel Bay: at proceeds	4 300 000	(½)
3. Furniture and household effects at valuation	799 000	(½)
4. Motor vehicle (Mercedes Benz) at valuation	299 000	(½)
5. Shares in Landscaping Solutions (Pty) Ltd	3 500 000	(½)
<p>50% interest in Landscaping Solutions (Pty) Ltd had to be sold at market value to Tom Greco in terms of a buy-and-sell agreement and 400 000 of the proceeds awarded to Cynthia. 400 000 to trust.</p>		
6. Landscaping Solutions one month's salary to 20 Jan 2014 (R55 000-16147)	38 853	(1)
7. Rent for last month before death: R15 000 x 20/31	9 677	(1)
8. Shares: Solo Ltd (2 000 Shares x R100 per share)	200 000	(½)
9. Usufruct (see calc 1 below)	1 890 906	
Plus deemed property:		3 482 000
1. Policy A	2 500 000	(½)

2. Policy B	0	(1/2)
3. Policy C	1 000 000	(1/2)
Less: Premiums paid by beneficiary: R36 000 / 2	-18 000	(1/2)
Gross value of property	21 619 436	
Less: Deductions	-12 753 828	
1. Valuation	18 000	(1/2)
2. Transfer costs	35 000	(1/2)
3. Advertising costs	350	(1/2)
4. Auctioneer's commission	155 000	(1/2)
5. Bank charges	1 200	(1/2)
6. Accrual claim Cynthia (see calc 3)	1 857 477	(see calc 3)
7. Master's fee	600	(1/2)
8. Executor's fee: sum of items 1-8 of PROPERTY	568 629	(1)
16 246 531 x 3.5%		
9. Funeral expenses	25 000	(1/2)
10. Mortgage Loan	3 063 276	(1/2)
11. SARS: income tax: Deceased Anthony (incl CGT) (Part (a))	856 848	(1/2)WM
Deceased estate (incl CGT)(calc 4)	16 724	(see calc 4)
12. Section 4(q) spouse accruals:	5 435 724	

Usufruct iro residence (see calc 2)	4 036 724	(½) P
Furniture and personal effects	799 000	(½)
Proceeds from sale of shares	400 000	(½)
Listed shares: repudiated by descendant thus accrues to spouse iro s	200 000	(1)
13. Section 4(p) policy proceeds included in valuation of shares	720 000	
Proceeds paid to company: Policy C	1 000 000	(½)
Less: Company tax to be paid @ 28%	(280 000)	(½)
Net value of the estate		8 865 609
Less: section 4A abatement:		-7 000 000
Anthony	3 500 000	(½)
Anne (her entire estate qualified for s 4(q))	3 500 000	(½)
Dutiable amount		1 865 609
Estate duty rate		X20% (½)
Estate Duty		373 122
Calculation 1 of usufruct value enjoyed by Anthony:		
Usufruct value:		
MV (R2.8m x 70%) x 12%	235 200	(1)
To: beneficiary Jake : aged 30	8.22 694	(½)
Value	1 934 976	

2 nd proviso limit		1 890 906	
Current MV R2.8m x 70%	1 960 000		(½)
Less: Bare dominium when created	(69 094)		
MV R1.6m x 70%	1 120 000		(½)
X 12%	134 400		(½)
Male aged 46: Anthony factor	7.81924		(½)
UF	1 050 906		
Thus BD: 1.6m – UF =	69 094		(½)

Calculation 2 of usufruct to spouse Cynthia:			
MV R7.1m x 12%		852 000	(½)
X factor for female aged 49		7.96617	(½)
UF bequeathed		6 787 177	
However, cannot exceed property included in estate: value – bond			
R7.1m LESS R3 063 276		4 036 724	(½)

Marks for Estate Duty Calc: 23

Marks from Calculation 3: 8.5

Marks from calculation 3: 3.5

Available: 35

Maximum: 30

Calculation 3

Marks 8.5

Accrual Claim:

	Anthony	Cynthia	
Closing value of estates:	14 040 103	677 000	
Primary residence at valuation date of death	7 100 000	-	(1/2)
○ Holiday apartment in Mossel Bay – at proceeds	4 300 000	-	(1/2)
○ Motor Vehicle	299 000		(1/2)
○ Usufruct over farm (personal right)		-	
○ Furniture and household effects / jewelry	799 000	677 000	(1/2)
○ Shares:			
● LS	3 500 000	-	(1/2)
● Solo	200 000	-	(1/2)
○ O/s claims:			
● Salary Due	38 853	-	(1/2)
● Rent Due	9 677	-	(1/2)
Liabilities:			
○ Mortgage Bond	(3 063 276)	-	(1/2)
○ SARS from income tax	856 848	-	(1/2)

Less: Donation received by spouse:

R450 000 x 106.1/97.8	-	(488 190)	(1)
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Less: Opening values of estates:

R8 659 000 x 106.1/89.6	(10 253 570)		(1)
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R99 000 x x106.1/89.6		(117 231)	(½)
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Accrual	3 786 532	71 579	
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Difference in accruals	3 714 954		(½)
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One half = claim against Anthony's estate	1 857 477		(½)
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Maximum	8.5
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Calculation 4

Marks 3.5

Normal Tax Liability

Holiday apartment : proceeds	4 300 000	(½)
Less: base cost: MV date of death	(4 000 000)	(½)
Capital gain	300 000	
Less: Annual exclusion	(30 000)	(½)
	270 000	
Multiply with inclusion rate	X 33.3%	(½)
Taxable capital gain	89 910	
Application of s 25 (1):		
Farming income after death received by executor: to son Jake	-	
Rental income holiday apartment (no established beneficiaries as sold and liabilities paid):	3 000	
-Rent received	20 000	(½)
• Expenses (assume this includes 6% executor's fee)	(17 000)	(½)
Taxable income	92 910	
Taxable @ 18%, no personal rebates	16 724	(½)
	Maximum	3.5

Question 3

Marks 3

Part A

Tax Implications:

Explain the tax implications of the lump sum received by Antonio's from Employer A

Tax implications for Antonio:

The lump sum is a 'severance benefit' as defined in s1 due to the fact that it was paid as a result of a general personnel reduction. (2)

The R600 000 must be included in gross income in terms of par (d) of the definition of gross income (1)

No deductions in terms of par 5/6 of the Second Schedule will be available as it is a lump sum received from an employer and not from a fund. (1)

It will be taxed separately in terms of the tax table applicable to severance benefits (1)

The first R315 000 of the lump sum will be taxed at 0% assuming he has never received such amounts before. (1)

Tax implications for Employer A:

Employer A must apply for a tax directive in terms of par 9(3) of the Fourth Schedule regarding the employees' tax it must withhold since the lump sum is 'remuneration' as defined. (1)

Employer A can deduct the lump sum in terms of par 11(a) in the calculation of its taxable income (1)

Available	8
Maximum	3

Part B

Marks 18

Antonios (RSA resident, 46 years old with one minor dependent)

Employer B Ltd

• Salary (R25 000pm x 10 months)	250 000	(½)
• Company car (fringe benefit) (3.5% pm (½) x R456 000 (½) x 10 months (½) = R159 600)	159 600	(½)
• Holiday accommodation (fringe benefit) Par 9(4) benefit for employee: R200 pp per day x 10 days x 1 person	2 000	
Par 16(1)(b) benefit for others : R200 pp per day x 10 days x 3 persons	<u>6 000</u>	
	<u>8000</u>	(1)
• Medical aid fund contribution (fringe benefit) (R1 400 pm x 10 months)	14 000	(1)
Interest received (R30 000 (½) + R15 000 (½))	45 000	(1)
Dividends received (R15 000 (½) + R30 000 (½) (i.t.o s 7(3)))	45 000	(1)
Royalties received (taxed on worldwide income) (no mark if exemption is claimed)	120 000	(1)
Gross Income	521 600	
Less: Exempt income		
RSA interest – s 10(1)(i)	-23 800	(1)

Foreign dividends : (s 10B(3)) R45 000 x 25/40	-28 125	(1)
Income	469 675	
Less: Expenditure incurred		
Par 7(7) deduction for right of use of vehicle :R 159 600 (½) WM x (14 000 km/20 000 km) (1)		
Par 7(8) deduction for paying the fuel: 6 000 km x R1.477 (reading from travel cost scale for fuel)	-111 720	(1½)
Please note: the par 7(7) and par 7(8) adjustment should be made on assessment and cannot be set off against the cash equivalent of the par 7 fringe benefits.	-8 862	(1)
 Expenses i.r.o royalty (s 11(a))		
	-40 000	(1)
Taxable income before deduction the s 18 deduction	309 093	
Less: Medical Expenses		
Medical aid fund contributions made by Employer B and taxed as fringe benefit		
0	14 000	(½)WM
Less: 4 x (R484 pm x 10 months)	<u>-19 360</u>	(1)
Difference limited to Rnil	Nil	(½)
Plus: Qualifying medical expenditure		
Operation: Lena (not a dependent) -		(½)
Operation: Altus	15 000	(½)
Non-prescription medication	<u> </u>	(½)

	15 000	
Less: 7.5% (1/2) x R361 268 (1/2)WM	-23 182	(1) WM
	-	(1/2)
Nil		
Taxable income	309 093	
Normal tax per table		
On R358 110	53 096	
On (R309 093 – R258 751) @ 30%	15 103	
Normal tax payable per table	68 199	(1/2) WM
Less: Primary rebate	-12 080	(1/2)
S 6 A rebate – R484 pm x 10 months	-4 840	(1)
Normal tax liability (excluding lump sum)	51 279	
	Available	19
	Maximum	18

Anzel (non-resident , 40 years old with one disabled minor dependent)

Salary – s 9 (2)(h) (R30 000 pm x 12 Months)	360 000	(1/2)
Residential accommodation (fringe benefit)		
The par 9(7) (a) the ‘no rental value-rule’ does not apply since Anzel was physically present in the RSA for longer than 90 days in the 2014 year of assessment.		
The rental value is the greater of :		
<ul style="list-style-type: none"> R20 000 pm x 3 months = R60 000; or 	60 000	(1)
<ul style="list-style-type: none"> Formula = $(R250\,000 \times \frac{1}{2}) - R67\,111 \times \frac{1}{2} \times 19\% \times \frac{3}{12} = R8\,687$ 		(2)
Maintenance paid to Antonios from her minimum individual reserve (s 7(11))		
$(R200\,000 \times \frac{1}{2}) + (25\% \times R200\,000) \times \frac{1}{2}$	250 000	(1)
Alternative : $R200\,000 / 75\% = R266\,667$		
RSA Interest received (s 7(4))	10 000	(1)
Royalty Received (s 9 (2) (d))	80 000	(1)
Annuity – RSA interest	60 000	(1/2)
<ul style="list-style-type: none"> RSA dividends 	20 000	(1/2)
Gross income	840 000	
Less: Exempt income		
RSA interest (via Lena) – s 10(1)(h)	-10 000	(1)
Royalties – a 10(1) (e)	-80 000	(1)
Annuity (no 10(1)(k) due to s 10(2)(i) still allowed, see below)	-	(1)

RSA interest – s 10(1)(i)	-23 800	(1)
Income	726 200	
Less : deductions		
Expenses i.r.o royalty (no deductible because subject to s 35) (mark only awarded if show that expenses cannot be claimed)	-	(½)
Pension fund contributions: R360 000 x 8% = R28 800		(½)
Deduction limited to the greater of:		
-R1 750; or		(½)
-7.5% x R360 000 (RFE) = R27 000		(1)
Thus, the greater option is R27 000	(27 000)	(½)
Add: Taxable capital gain		
((R3.5m(½) – R1m (½) – R30 000 (½) x 33.3% (½))	822 510	(2)
Taxable income before s 18	1 548 710	
Less: Medical costs		
Medical fund contributions (R2 000 pm x 12 months)	24 000	(½)
Less: 4 x (R484 pm x 12 months)	<u>-23 232</u>	(1)
Difference	<u>768</u>	
Plus: Qualifying medical expenditure		
Operation: mother	40 000	(½)
Wheelchair: Lena	<u>20 000</u>	(½)
	<u>60 768</u>	(½)
No 7.5 % limitation due to disabled family member (Less 1 mark if reduced by 7.5%)		

Taxable income	1 487 942	
Normal tax per table		
On R638 600	185 205	
On (R1 487 942 – R638 600) @ 40%	<u>339 737</u>	
	524 942	(½)
		WM
Less: Primary rebate	-12 080	(½)
S 6A rebate (R484 pm x 12 months)	<u>-5 808</u>	(1)
Normal tax liability	507 054	
Less: Withholding tax on immovable property in SA: s 35A		
(R3.5m x 5% = R175 000) (Seller is a natural person, thus 5%)	<u>-175 000</u>	(1)
It should be paid to SARS within 14 days after 1 April 2013 / or 14 April 2013		(1)
	332 054	
Less: Employees' tax (given)	-126 047	(½)
Normal tax due by Anzel	206 007	
Withholding tax – s 35 : 12% x R80 000		
	9 600	(1)

Paid over to SARS within 14 days after the end of the month in which the royalty was paid to Anzel.	(1)
	Available 26
	Maximum 18

Marker comment: Deduct 1 mark at Anzel's calculation if order of PF, CGT and Medical is not correct.

Subtotal to Part (b) 36

Part C

mark 1

The various employers of Anzel are:

The SA Government (i.r.o the salary and residential accommodation),	(½)
The Pension Fund (i.r.o the reduction in her minimum individual reserve),	(½)

Maximum	1
Total for question 3	40

Question 4

Marks 13

Part A

Deduction:

For an amount to be deductible it has to meet all of the following:

- Positive test (s11a): Expenditure and losses, actually incurred, in the production of income, during the year of assessment, not of a capital nature (general deduction formula) (1)
- {Negative test: s23(g): deductible to the extent it was laid out or expended for trade (Note: was not relevant to this question) } (1)

All the requirements are met, but whether it is in the production of income should be investigated. (1)

S102 of Tax Administration Act – the onus/burden of proof of deductibility is on the taxpayer (1)

The meaning of the expression “in the production of income” was considered in Port Elizabeth Electric Tramway case, the judge formulated two questions that should be asked: (1)B

- What *action* gave rise to the expenditure
 - Is this action *closely connected* with the income earning activities? (1)
- (1)

The action giving rise to the expenditure was to employ a happy and contented work force that will enter and to retain employees,	(1)
And this is closely connected to the manufacturing business	(1)
Which will lead to the production of income	(1)
benefits increase with the length of service is a further incentive that will create conditions to produce income	(1)
[Provider]	(1)B
The fact that a payment is made without any preceding contractual obligation cannot lead to the conclusion that it is not deductible for taxation purposes.	(1)
These payments are not simply a gratitude for past services (which would not be in the production of income)	(1)
(WF Johnstone)	(1)B
Conclusion: The amounts paid should be deductible for tax purposes (mark if conclusion is in line with the arguments)	(1)WM

Available	16
Maximum	13

Part B

Marks 7

Benefit / bonus received:

An amount is included in gross income if it meets the requirements of the gross income definition, also taking into account the specific inclusions to that definition. (1)

Life assurance Benefit paid to dependents

Will be included in taxable income of deceased employee in terms of par (c) or (d) of gross income definition. (1)

It was received by the dependent

For services rendered by the deceased (1)

Even though it a voluntary payment, as par (c) of the gross income definition specifically (1)

includes voluntary payments

(1)

Service Bonus received by employee

Will be included in taxable income of employee in terms of par (c) or (d) of gross income definition (1)

Even though it a voluntary payment, as par (c) and (d) of the gross income definition specifically includes voluntary payments

(1)

Profit Incentive Scheme

Will be included in taxable income in 2014 of employee in terms of par (c) of Gross income definition	(1)
Only once the condition (still in employment by end of Feb) is met	
Unconditional entitlement	(1)
Ochberg OR Mooi	(1)
	(1)B
Available	11
Maximum	7

Part C

Marks 3

Provision for profit Incentive Scheme:

For an amount to be deductible it must meet the requirements of the general deduction formula (s 11(a)), including the negative provisions of s 23.	(1)
The relevant requirement is that expenditure must have been actually incurred during the year of assessment, which is not the case for a provision.	(1)
Provisions are not deductible (section 23(e))	(1)
There is still a condition that should be met	(1)
Available	4
Maximum	3

Part D

Marks 6

Deductibility of audit fee:

For an amount to be deductible it must meet the requirements of the general deduction formula. (1)

In the case of audit fees, the question is whether the expenditure has been incurred in the production of income.

(1)

Bonus Mark: recent unreported case: MTN case

(1)B

Top Steel Ltd earns taxable income from the sale of steel (60%)

(1)

And exempt income in the form of dividends from the SA subs (40%)

(1)

The audit fee was incurred for a dual or mixed purpose

(1)

And must therefore be apportioned in terms of s11(a) and 23(g)

(1)

Commissioner for Inland Revenue v Nemojim (Pty) Ltd, Commissioner for Inland Revenue v Standard Bank of SA Ltd and Joffe & Co Ltd v Commissioner for Inland Revenue. (any one case)

(1)B

Amount EXCLUDING VAT can be deducted

(1)

Available 9

Maximum 6

Part E

Marks 7

Profit made by Trust:

For an amount to be included in Gross Income as defined in section 1, it has to meet the following: (1)

- Total Amount
- Cash or otherwise
- Received by or accrued
- During the year of assessment
- Not of a capital nature

All the requirements are met, but whether the profit is of capital nature should be investigated. (1)

S102 of Tax Administration Act – the onus/burden of proof of the capital nature rests upon the taxpayer (1)

- In CIR v Pick ‘n Pay Employee Share Purchase Trust, was a similar situation (1)B
- The trust is not a share dealer and the selling of shares is therefore purely coincidental and not part of a profit-making scheme (1)
- The profits are purely fortuitous in the sense of being a by-product of the incentive scheme (1)
- and therefore of a capital nature (1)

Amounts of capital nature will however be included in capital gains tax calculation: (1)

Proceeds less base cost = capital gain

For trusts the aggregate capital gain will be included at 66, 6% in taxable income. (1)

Available	9
Maximum	7

Part F

Marks 4

Dividends tax implications:

The dividends will be exempt from dividends tax (1)

Where the beneficial owner of the dividends in this instance is (1)

Top Steel Ltd which is a South African resident company (1)

In order to qualify for the exemption the company must submit the declaration and written undertaking before the dividend is paid or the date announced (s 64G). (1)

ALTERNATIVE FOR LAST TWO MARKS

Where the companies form part of the same group of companies and then no declaration or written undertaking is necessary.

Available 6

Maximum 4