

# Tax Professional Knowledge Competency Assessment

November 2014

Paper 2: Solution

## Suggested Solutions

Question	Topic	Marks
1	Value-Added Tax	40
2	Individual	40
3	Farming	40
4	Estate Duty and Donations Tax calculations in a Deceased Estate	40

Total marks: 160

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

## Question 1

40 Marks

### VAT TRANSACTION 1

7 Marks

In terms of the definition of input tax in section 1 a vendor can claim a notional input tax on the purchase of second hand goods from non-vendors situated in South Africa

(½)

based on the lesser of the consideration paid or the open market value.

(½)

*Marker comment:* Not lesser of cost or open market value!

A notional input tax deduction of R7 600 [(½)] x 14/114 [(½)] = R933.33 will be allowed to be claimed by All-parts.

(1)

The right of use of the car jack given to John will give rise to a section 18(3) deemed supply/supply of fringe benefit

(½)

The value of the supply in terms of section 10(13)

(½)

is the cash equivalent of the benefit as per the 7th Schedule of the Income Tax Act.

(½)

In terms of the 7th Schedule to the Income Tax Act the cash equivalent is equal to

(½)

15 per cent per year of use,

(½)

based on the lesser of cost or market value.

(½)

The section 18(3) deemed supply will therefore be equal to R7 200 [(½)] x 100/114 [(½)] x 14/114 [(½)] x 15/100 (or 15%) [(½)] x 2/12 [(½)] = R19.39.

(2½)

The return of the car jack will not trigger any VAT consequences.

(½)

Available: 8

Max: 7

## VAT TRANSACTION 2

14 Marks

In terms of section 7(1)(a)

(½)

VAT is levied on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;

(½)

*It is therefore necessary to determine what goods or services is supplied by All-parts.*

In CSARS v British Airways Plc

(1)

the court found that the fare separately included in the invoice to costumers is designed to cover operating costs and would therefore form part of the main supply made *(or similar statement)*.

(1)

Therefore, the reimbursement of the air fare and travel cost is not a supply made by All-parts,

(1)

but rather forms part of the cost structure or operating costs of the installation service supplied.

(1)

It is therefore only the installation service that would constitute a supply that VAT needs to be levied on. The consideration for this supply will be R15 900, being the total cost for supplying the service.

(1)

(½)

In terms of section 11(2)(k)

services physically rendered elsewhere than in the Republic will be zero-rated. It is evident that it is not a requirement that the services should be supplied to a non-resident.

(½)

(1)

The supply of the installation service is physically rendered in Botswana and the service will therefore be zero-rated in terms of section 11(2)(k).

(1)

The VAT output is therefore $R15\,900 \times 0\% = R0$ .	(1)
As the flight from SA to BWA and from BWA to SA will be zero-rated in terms of section 11(2)(a)	1)
the input tax deductible by All-parts will be limited to R0.	(1)
Input tax of $R150 \times 14/100 = R21$ will be deductible on the travel costs in SA ( <i>assuming VAT was charged on these supplies</i> )	(½)
in terms of section 16(3)(a)	(½)
read with the definition of input tax in <a href="#">section 1</a>	(½)
No input tax is deductible on the travel costs in Botswana	(1)
as no VAT would have been charged in terms of section 7(1)(a) on this supply (definition of input tax).	(1) Reason
Available:	14.5
Max:	14

### VAT TRANSACTION 3

10 Marks

*There are three supplies: the first transmission, the second transmission and the transportation cost.*

#### *First transmission*

VAT **output** will be levied in terms of section 7(1)(a) on this supply. (½)

In terms of section 11(1)(a) if a supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of "exported" in section 1, (½)

that supply will be zero-rated. (½)

As possession of the goods changed hands in South Africa and the goods was not exported by the recipients carriage contractor by sea or air, (½)

this transaction will be an indirect export (1)

and will therefore not be zero-rated in terms of section 11(1)(a). (paragraph (d) of the definition of exported and Part 2 of the Export Incentive Scheme) (½)

The supply would therefore be a standard rated supply and the VAT consequences of this supply is  $R80\,000 \times 14/100 = R11\,200$ . (1)

#### *Second transmission*

VAT **output** will be levied in terms of section 7(1)(a) on this supply. (½)

In terms of paragraph (a) of the definition of "exported", country as evidenced by documentary proof acceptable to the Commissioner (½)

exported means consigned or delivered by the vendor to the recipient at an address in an export country (½)

*It is therefore not required that goods enter South Africa to enable those goods to be exported.*

In terms of Interpretation Note 30 (½)

it is evident that this delivery can also be made by a cartage contractor and it is not a requirement that the delivery should physically be made by the vendor. (½)

The second transmission will therefore be exported as defined and can be zero-rated in terms of section 11(1)(a). (1)

*In terms of paragraph 6.4 of Interpretation Note 30, in addition to a tax invoice the following documentary proof is required:*

the recipient's order or the contract between the recipient and the supplying vendor; (½)

proof that the movable goods are situated outside the Republic at the time of supply; and (½)

proof of payment. (½)

The VAT consequences for this supply is therefore  $R80\,000 \times 0\% = R0$  (½)

*Transportation cost*

VAT <b>output</b> will be levied at the standard rate on this transportation service supplied in terms of section 7(1)(a).	(½)
The VAT consequences for this supply is therefore $R800 \times 14/100 = R112$ .	(1)
Available:	11.5
Maximum:	10

VAT TRANSACTION 4

9 Marks

*It is firstly required to determine whether the supply of the go-kart will be a taxable supply in terms of section 7(1)(a).*

VAT is charged in terms of section 7(1)(a)	(½)
on the supply of goods or services by a vendor in the course or furtherance of his enterprise.	(½)
As the go-kart is a good, supplied by a vendor, the question remains whether the supply is in the course or furtherance of All-parts enterprise.	(1)
In terms of the definition of enterprise in section 1,	(½)
an enterprise is any activity carried on continuously or regularly in the Republic or partly in the Republic, in the course and furtherance of which goods and services are supplied to any other person for a consideration, whether or not for profit.	(½)
The go-kart is supplied for a consideration,	(1)



but it is submitted that the activity of building go-karts is not carried on continuously or regularly by All-parts as it is made clear that this is a once-off supply. (1)

The supply of the go-kart would therefore not be in the course or furtherance of All-parts enterprise and section 7(1)(a) will not be applicable to the supply, (1)  
meaning no VAT will be levied on the supply to Peter. (1)

*Since input tax was initially claimed on the parts used in building the go-kart, a correction needs to be made.*

In terms of section 18(1), (1/2)

where goods or services have been supplied to or imported by a vendor...for the purposes of making taxable supplies and are subsequently applied for a purpose other than the said purpose (such goods or services shall) be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise.

All-parts would therefore be required to pay an output tax on the change in use of the parts used in building the go-kart. (1/2)

Output tax: R25 000 [0.5] x 14/100 [0.5] = R3 500 (1)

Available: 10  
Max: 9

Question 2

40 Marks

Part 1

TAXABLE INCOME OF FRANCINE FORBES (45 year old resident)		R	25 MARKS
1	Salary - services rendered par (c) - Gross income, section 1		(1/2)
	Bonus	480,000	(1/2)
		48,000	(1/2)
2	House at hostel - fringe benefit (A - B) x C/100 x D/12 Seventh Schedule, par 2(d) / GI, par (i)		(1/2)
	(R450 000 [0.5] - R70 700 [0.5]) x 18/100 [0.5] x 12/12 [0.5]	68,274	(2)
3	Right of use of vehicle Seventh Schedule, par 7 / GI, par (i)		(1/2)
	R228 000 x 85% x 85% [0.5] x 3.5% pm [0.5] x 12 months [0.5]	69,187	(1/2)
4	Office at the college Not taxable as fringe benefit Not gross income	Nil	(1/2)
5	Laptop - R1 200/month Not taxable as used primarily for work/ private use is incidental to business use	Nil	(1/2)

6	Meals at hostel - R1 000/month	Seventh Schedule, par 2(b) / par 6(4) Could be considered part of her job as responsible for students in the hostel Consumed on work property Supplied during her normal working hours Seventh Schedule, par 2(c) / par 8	Nil	( $\frac{1}{2}$ ) ( $\frac{1}{2}$ ) ( $\frac{1}{2}$ ) ( $\frac{1}{2}$ ) ( $\frac{1}{2}$ )
9	Medical aid - Fringe Benefit R2 800 x 12 OR [(R5 600/2) x 12]	Seventh Schedule, par 12A / GI, par (i)	33,600	( $\frac{1}{2}$ ) ( $\frac{1}{2}$ )
11	Income - private practice Fees written and sales (R850 000 + R160 000)	Definition of gross income, <i>section 1</i>	1,010,000	( $\frac{1}{2}$ ) ( $\frac{1}{2}$ )
12	Trust income			
	Annuity received	Gross income special inclusion par (a)	28,000	( $\frac{1}{2}$ )
	<u>Discretionary payment:</u>			
	South African dividends	30/166 x R42 000	7,590	( $\frac{1}{2}$ )
	Interest	70/166 x R42 000	17,711	( $\frac{1}{2}$ )
	Rental income	66/166 x R42 000	16,699	( $\frac{1}{2}$ )
13	Patent - sale	Capital	0	( $\frac{1}{2}$ )
	Patent - royalties	Def of Gross income	49,000	( $\frac{1}{2}$ )
	<b>GROSS INCOME</b>		<b>1,828,061</b>	
	<b>LESS EXEMPTIONS:</b>			
	Dividend income	Section 10 (1)(k)	-7,590	( $\frac{1}{2}$ )
	Interest income	Section 10(1)(i)		( $\frac{1}{2}$ )
		R23 800 limited to actual	-17,711	( $\frac{1}{2}$ )
	<b>INCOME</b>		<b>1,802,760</b>	

11	Closing stock (private practice)	Section 22(1)		(1/2)
			56,000	(1/2)
	<i>Sub-total 1:</i>		1,858,760	
	LESS DEDUCTIONS:			
3	Adjustments for the right of use of a vehicle	Seventh Schedule, par 7(7)		(1/2)
			-	
	Logbook kept for actual distances:	R69 187 x (3 150 km* / 21 000 km)	10,378	(1/2)
	<i>Alternative:</i>	<i>R69 187 x 15% = R10 378</i>		
	<i>*21 000 km x 15% = 3 150 km (business)</i>			
		Seventh Schedule, par 7(8)		(1/2)
	Maintenance (Francine paid in full)	R4 800 x 85% (private)	4,080	(1/2)
	<i>Alternative:</i>	<i>R4 800 x (17 850 km / 21 000 km)</i>		
	Licence (paid by Francine)	R 420 x 85%	-357	(1/2)
	<i>Alternative:</i>	<i>R420 x (17 850 km / 21 000 km)</i>		
	Fuel (paid by Francine)	Two options available:		
		<i>Option 1:</i> 21 000 x 85% x R1.12 (table)	19,992	(1/2)
		<i>Option 2:</i> 21 000 x 85% x R3.30 p/km	-58,905	(1/2)
	Deduction of R58 905 should be limited to the actual expense ( <i>not provided?</i> )		?	
4	Home Study - Not deductible	Section 23(b)		
	She does not work for commission			
	She already has an office at the college		0	(1/2)
7	Additional food - not deductible	Section 23(b)	0	(1/2)
	Personal expenditure			
8	Au pair - not deductible	Section 23(b)	0	(1/2)

Personal expenditure				
11	Costs - Private practice			
	Salaries	Section 11(a)/General deduction formula	-320,000	(1/2)
	Materials and trading stock purchased	Section 11(a)/General deduction formula	-64,000	(1/2)
	Rental paid	Section 11(a)/General deduction formula	-24,000	(1/2)
	Sewing machine - wear-and-tear	R67 000/ 5 (Section 11(e))	-13,400	(1/2)
	Insurance	Section 23H		(1/2)
	More than 6 months after year-end			(1/2)
	More than R100 000			(1/2)
	R120 000 x 2/24		-10,000	(1/2)
	<i>Sub-total 2:</i>		1,412,545	
10	Contributions to pension fund	Section 11(k)		(1/2)
	R2 240 pm x 12 months = R26 880			
	Limited to <u>the greater of:</u>			
	R1 750; or			(1/2)
	7.5% x R480 000 (Retirement Funding Employment) = R36 000			(1/2)
	but limited to the actual contribution		-26,880	(1/2)
	<i>Sub-total 3:</i>		2,798,209	
10	Contributions to RAF	Section 11(n)		(1/2)
	R3 500 pm x 12 months = R42 000			
	Limited to <u>the greater of:</u>			
	R1 750; or			(1/2)
	R3 500 - Pension fund deduction R26 880 = nil, or			(1/2)
	15% of [R1 412 545 (sub-total 2) - R480 000 (salary)] = R139 882			(1)
	limited to actual contribution		-42,000	(1/2)

TAXABLE INCOME

2,756,209

Available: 30  
Max: 25

**Part B**

**15 Marks**

Dear Mrs Forbes

Date

I have received your letter re the minimising of your tax liability and respond to your specific queries as follows:

Your specific questions are discussed below:

Letter Format (1)

2.1 ***The deductibility of the au pair's costs.*** MARKS

The au pair's cost is a private expense and the deduction of private expenses is specifically prohibited in terms of Section 23(b) of the Income Tax Act  
Therefore the expenses may not be deducted.

(1)

(1)

Available: 3

Max: 2

2.2 ***Tax implications if the au pair were to be employed by the business:*** MARKS

The cost would be allowed as a deduction if all the requirements of the general deduction formula are met [s 11(a) read together with s 23(b)].  
As the business is conducted as a sole trader (sole proprietor), the business and yourself are one and the same person.

(1)

(1)

The *au pair* works for you in your personal capacity and she looks after your daughter. (1)

This means that her expense is private and personal and as such not deductible for tax purposes. (1)

Available: 4  
Maximum: 3

2.3 **Reduction of her business taxable income and willingness to do tax return?** MARKS

Your question regarding *inflating the business costs to reduce the taxable income from it is not clear to me.*

The Income Tax Act only allows cost *incurred (in terms of the general deduction formula)* and if it was not so incurred it would not be deductible. (1)

If incorrect information is deliberately supplied on a tax return it would be fraudulent and could lead to criminal prosecution. (1)

As I belong to a professional body and are ruled by their conduct rules I would no longer be able to complete your return. (1)

Tax evasion is a criminal offence in terms of Section 235 of the TAA. (1)

Available: 4  
Maximum: 3

2.4 **Tax consequences if patent is donated to the trust.** MARKS

If you donate the intellectual property to the trust it would be considered a *donation, settlement or other disposition* (1)

A donation is subject to donations tax at the rate of 20% on the value of the donation, (1)

except for the annual exemption of R100 000. (1)

If the patent is owned by the trust, royalty income accruing to the trust would be taxed in the trust subject to the provisions of s 25B, which is subject to the provisions of s 7.	(1)
Any royalty income of the trust that is distributed to you in the same year of assessment would be taxable in your hands.	(1)
Any royalty income of the trust that is distributed to your adult daughter in the same year of assessment would be taxable in her hands.	(1)
Any royalty income distributed by the trust to your minor child would still be taxable in your hands in terms of section 7(3).	(1)
Any royalties not distributed from the trust would be taxed in your hands in terms of section 7(5).	(1)
There is a risk that SARS could challenge the transaction as a scheme in terms of section 80A, in which case they would tax the royalties in your hands as if you had not made the donation.	(1)
Available:	9
Maximum:	6



### Question 3

40 Marks

Nkosi Mkele (42 year old farmer)

Grazing fees

*(In terms of the practice of SARS, grazing fees constitute taxable income derived from farming operations)*

R	Marks
21,000	(1)

Livestock sales		831,000	(1)
Produce privately consumed (recoup at cost)	par 11(a) First Schedule	3,500	(1)
Livestock donated to church & school (recoup at market value – not PBOs)	par 11(c)(i) First Schedule	10,800	(1)
Produce sales		114,220	(1)
Sub-total:		980,520	
CLOSING STOCK ADJUSTMENTS:			

Add: Livestock on hand at 28 February 2015 / Closing stock <i>(at standard values fixed by regulation)</i>		
1 500 ewes @ R6	9,000	(1)
250 rams @ R6	1,500	(1)
400 lambs @ R2	800	(1)
	11,300	11,300

Add: Produce on hand at 28 February 2015 / Closing stock <i>At lower of cost (R9 100) or market value (R18 200)</i>	9,100	(1)
--	-------	-----

FARMING INCOME	1,000,920	
Less: Livestock inherited from uncle (25 August 2014) <i>(1 800 ewes, 200 rams, 400 lambs at current market value)</i>	-650,000	(1)
Less: Livestock received as donation from father (26 Nov 2014) <i>(600 ewes and 100 rams at market value on date of donation)</i>	-200,000	(1)
<i>Sub-total:</i>	150,920	

LESS: FARMING EXPENSES  
Livestock purchases:  
Livestock purchases of R34 200 is limited in terms of the  
*"Livestock ring-fencing provision" [par 8, First Schedule] as follows*

	<u>R</u>	
Farming income	1,000,920	(1)
Plus: Closing stock at standard value	11,300	(1)
Less: Opening stock at standard value <i>- inherited</i>	-650,000	(1)

- received as donation		-200,000	(1)
		162,220	
<i>Thus, the full purchases expense of R34 200 is deductible</i>		-34,200	(1)
Fertilizers and manures	s 11(a)	-5,250	(1)
Food for livestock	s 11(a)	-9,360	(1)
General farming expenses	s 11(a)	-3,960	(1)
Interest payable (Landbank)	s 11(a)	-16,340	(1)
Repair of damaged fencing	s 11(d)	-3,900	(1)
Seeds	s 11(a)	-2,980	(1)
Wages and rations	s 11(a)	-11,556	(1)
Wear-and-tear ( <i>indicated as 'all deductible'</i> )		-14,800	(1)
Second-hand Harvest machine			
Capital allowance	s 12B		
R30 000 x 50% (year 1) = R15 000		-15,000	(1)
<i>No apportionment between farming trade and rental trade, as lessee is taxed on trade income.</i>			
<i>Also no monthly apportionment (acquired 1 September 2014).</i>			
<b>Sub-total:</b>		<b>33,574</b>	
<u><i>Less: Development Expenditure ito par 12(1)(a) &amp; (b) of First Schedule:</i></u>			

Soil-erosion works par 12(1)(b) -7,500 (1)  
*(deductible in full, but only for own farmland used for farming)*  
*If added to R5 000 of farmland rented out, no mark!*

**Sub-total:** 26,074

Less: Development expenditure ito par 12(1)(c) to (i) of First Schedule:

New irrigation equipment -25,000 (1)

Dams and boreholes -12,360 (1)

Establishment of orchards -13,600 (1)

New fencing -3,420 (1)

Road-making -15,340 (1)

**Excess (not allowed to create an assessed loss)** -43,646

Excess development expenditure added back to farming income 43,646 (1)

**TAXABLE INCOME FROM FARMING** Rnil (1)

Excess development expenditure to be carried forward to the 2016 year of assessment. 43,646 (1)

**OTHER (NON-FARMING) TAXABLE INCOME:** R MARKS

Rentals earned from letting farm land (not farming income) 60,000 (1)

Fee for letting of Harvest machine (not farming income) 9,600 (1)

Interest received		1,920	(1)
<b>GROSS INCOME</b>		<b>71,520</b>	
<b>LESS: EXEMPT INCOME</b>			
Limited interest exemption	s 10(1)(i)	-1,920	(1)
<b>INCOME</b>		<b>69,600</b>	
<b>LESS: DEDUCTIONS</b>			
Soil erosion works on farm land rented out		-5,000	(1)
<i>Add: Net capital gain on farm acquired in terms of land restitution process (excluded in terms of par 64A of Eighth Schedule).</i>		0	(1)
<i>Less: Donations deduction s 18A (not qualifying PBOs)</i>		0	(1)
<b>TAXABLE INCOME</b>		<b>64,600</b>	
		Available:	41
		Max:	40

Question 4

40 Marks

*Date*

*Mr Executor*  
*Client Contact Details*

Dear Mr Executor

RE: ESTATE PHILIP  
MAPFUMO

Details of Tax Professional (including registration number)

Format of tax opinion (1)

OPINION ON THE ESTATE DUTY CALCULATIONS AND DONATIONS TAX CONSEQUENCES (1)

We refer to the e-mail received on 31 August 2014 from you in respect of the estate duty and donations tax consequences in the deceased estate of the late Philip Mapfumo (PM), who passed away on 1 June 2014. You have requested us to analyse your provisional estate duty calculation and suggest corrections where relevant.

(1)

We set out below our understanding of the facts and tax consequences of the estate.

Our views expressed below are subject to the provisions of the limited liability clause set out in Annexure A.

Our opinion is based on the facts provided to us by you in the e-mail. Please advise us of any additional information that you may be aware of, if our understanding of the facts is incorrect, as this may impact on our advice given.

(1)

#### Background

PM died on 1 June 2014 with a valid will. He was married out of community of property to Lilian Mapfumo and was previously married to Esther Mapfumo, who died two years ago. PM is survived by his wife Lilian and two sons (the three beneficiaries in terms of PM's will). The beneficiaries entered into a valid re-distribution agreement.

(1)

References to section numbers refer to sections of the Estate Duty Act 45 of 1955, unless otherwise stated.

Total - layout and presentation: 5

#### ISSUE 1: Corrections in respect of estate duty calculations.

Marks

##### *1.1 Shares in Cool Shades (Pty) Ltd*

The shares in Cool Shades (Pty) Ltd (unlisted shares) must be included in the estate's property at its value at the date of death, and not its proceeds (section 5(1)(f)(bis).

(1)

This means that an additional amount/adjustment will be added to your calculation of property and deemed property, of:

$(R2.4 \text{ million} \times 50\%) [0.5] - R990\,000 [0.5] = R210\,000.$

(1/2)

(1)

### 1.2 Life insurance policy on Philip's life

The policy proceeds of R1 million paid out to Ben Baker must be included in deemed property (s 3(3)(a)), resulting in an addition/adjustment to your calculations of R1 million.

(1)

These proceeds will not be exempt as the deceased paid part of the premiums

(1)

(s 3(3)(iA)), even though the policy was taken out in order to enable a co-shareholder to purchase the deceased's shares.

The premiums paid by Ben, amounting to R50 000, may be deducted from the policy proceeds and the net amount of the adjustment is therefore R1 million minus R50 000 = R950 000.

(1)

### 1.3 Shares in night club in London, UK

The shares in the night club in the UK are correctly included in property as the deceased was a South African resident and therefore should include world-wide property in the estate (s 3(1)).

However, since the shares were inherited from a non-South African resident, it will qualify for deduction (s 4(e)(ii)(bb)).

(1)

This means that the net value of the estate will be reduced by a deduction of R600 000.

(1)

### 1.4 Fixed property (a flat) in Argentina



The fixed property in Argentina is similarly included in the property of the estate (see 1.3 above).

However, since the deceased was always a resident of South Africa and purchased the property with his own funds, the estate will not qualify for a deduction.

(1)

Therefore the deduction of R1 550 000 must be added back to your calculation.

(1)

However, since there were foreign death duties payable in Argentina in respect of the property, the estate will qualify for an estate duty rebate equal to the R150 000 paid in Argentina.

(1)

However, this rebate will be limited to the South African estate duty attributable to the fixed property (s 16(c)).

(1)

This rebate will therefore need to be calculated (see our calculation below).

### 1.5 Usufruct calculation

Although your calculation of the usufruct is correct (correct present value factor used based on Olivia's current life expectancy), the value so calculated must be limited in terms of proviso (ii) of section 5(1)(b)

(1)

The value cannot exceed the difference between the current market value of R1 500 000

(½)

and the value of the bare dominium at creation.

(½)

(R900 000 MV [0.5] then less (R900 000 [0.5] x 12% [0.5] x 7.23234 [0.5])

(2)

the factor for a male aged 55, being PM age next birthday at that stage)).

Thus the value cannot exceed R1 500 000 – R118 907 = R1 381 093.

This means that there will be a reduction in the dutiable amount that you calculated of R1 403 937 – 1 381 093 = R22 844.

(1)

**1.6 Bank overdraft: London, UK**

The amount of the deduction of foreign debts is limited to the amount not paid out of non-taxable foreign property. (1)

Therefore, the deduction will be limited to R700 000 minus R600 000 (the foreign shares whose value was not included in the estate due to the deduction mentioned in 1.3 above (s 4(f)).

This results in an addition to your calculation of R600 000. (1)

**1.7 The section 4(q) deduction**

The section 4(q) deduction will only be R500 000 as this amount cannot be increased as a result of the re-distribution agreement.

The amount that “accrues” to the spouse in terms of the will was R500 000. (1)

This will result in an addition to your calculation of R100 000. (1)

**1.8 The section 4A abatement**

The section 4A abatement that the estate is entitled to, is R7 million, as the unused abatement of Esther’s estate is carried forward to PM’s estate, (1)

since she left her entire estate to PM, reducing the net estate before the abatement to Rnil.

This results in a decrease in your dutiable amount of R3.5 million (1)

You will need to provide a copy of Esther’s estate duty return to the Commissioner in order to claim the additional rebate, which should be possible as you indicated that you still have Esther’s file.

(1)  
Available: 23.5  
Max: 22

ISSUE 2: Apportionment of the estate duty liability.

Marks

2.1 We will first calculate the adjusted estate duty liability before we can indicate the apportionment thereof to the relevant beneficiaries:

	<u>R</u>	
Dutiable amount as per your calculation	4,426,985	
<i>Adjustments as per part 1:</i>		
1.1	210,000	(½)
1.2	950,000	(½)
1.3	-600,000	(½)
1.4	1,550,000	(½)
1.5	-22,824	(½)
1.6	600,000	(½)
1.7	100,000	(½)
1.8	-3,500,000	(½)
Adjusted dutiable amount	3,714,161	
Estate duty on adjusted amount @ 20%	742,832	(½)
Less: foreign tax rebate of R150 000, limited to SA estate duty attributable to the foreign property:		(½)
R1 550 000 [0.5] / (R3 714 161 + R7m) [0.5P] x R742 832 [0.5P]	-107,464	(1½)
<i>(the fixed property value divided by the estate value before s 4A x SA estate duty)</i>		
Net estate duty payable	635,368	

2.2. Apportionment of the estate duty as calculated in 2.1 above:		MARKS
<i>Items iro which estate duty can be recovered from beneficiaries (s 13):</i>		
1. Policy (s 11(b)(i)): Ben Baker ( R950 000 [0.5P] / R10 714 161 [0.5P] x R635 368 [0.5P]	56,337	(½) (1½)
2. Usufruct (s 11(a)): Olivia R1 381 093 [0.5P] / R10 714 161 x R635 368 [0.5P]	81,901	(½) 1
3. Estate for the rest	497,130	(½)
Total estate duty payable to SARS	635,368	
	Available:	10.5
	Max:	10

ISSUE 3: Donations Tax consequences.	MARKS
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In terms of section 55(1) of the Income Tax Act each beneficiary obtains a right to the bequests as stipulated in the deceased's will; those rights will constitute property as defined.	(1)
If a beneficiary waives any part of a right in exchange for no or inadequate consideration, there will be a deemed donation in terms of section 58.	(1)
Therefore, since Tayo accepts a reduced percentage of the net estate, he is making a deemed donation and donations tax will be levied at 20%	(½)

of the reduction in his benefit (10% of the net estate)

(1/2)

*(mark through with candidate's calcs of net estate).*

Tayo will be entitled to an annual rebate of R100 000 in terms of section 56(2)(b).

(1/2)

Therefore, the portion of his annual rebate of R100 000 which he has not utilized yet, will reduce the taxable amount of the donation.

(1/2)

Available:	4
Max:	3

### Conclusion

The adjustments identified above therefore reduce the estate duty payable in the estate from R885 397 per your calculation to R635 368.

We have also indicated who will be liable for the duty as well as the donations tax consequences of the re-distribution agreement.

We trust that this is of assistance to you. Please do not hesitate to contact us should you require more assistance in this regard.

Yours sincerely

Tax consultant