

Tax Professional
Paper 2
Solution

June 2015

Suggested Solution

Question	Topic	Marks	Answer Book
1	Business Forms	40	Blue
2	Employee Taxes	40	White
3	Estate Planning	40	Pink
4	Tax Administration	40	Green

Total marks: 160

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

QUESTION 1 (40 Marks):

SUGGESTED SOLUTION: TSHEGO SEBEELA (40 MARKS)		MARKS
(a)	Draft a memorandum to Tshego Sebeela in which you set out whether she can elect to be taxed according to the turnover tax method.	
To:	Tshego Seebela	} <i>Format</i>
From:	SAIT Student	
Re:	Turnover Tax	
Date:	June 2015	
The turnover tax system provides for a single, simplified tax, based upon turnover.		
It is elective (i.e. the taxpayer can choose).		
You can elect to be taxed on the turnover basis as you are a natural person, provided that you comply with the following requirements:		1
1.	Your qualifying turnover exceed R1 000 000 (from business activities, excluding income from investments and receipts of a capital nature).	1
	As your turnover amounts to R495 000 (R450 000 + R45 000), you comply with this requirement.	1
2.	You do not hold shares or interest in any disallowed entity (JSE listed shares are allowed as investments).	1
3.	Investment and professional income not more than 20% of total receipts	1
		R
	Total receipts	531,000
	Professional income (consultations)	45,000
	Investment income	36,000

Professional income and investment income as % of total receipts (R45 000 + R36 000)/R531 000	15%	1
As this does not exceed 20% of total receipts, the requirement is met.		
4. You are not a labour broker.		1
5. Your capital receipt is R60 000 (from the disposal of the VW Polo Vivo) which does not exceed the R1,5 million limit over a three year period.		1
<u>Conclusion:</u> You can elect to be taxed on the turnover regime as a micro business.		1MWE

Available: 10
Maximum: 10

(b) Tshego is unsure whether she should register for VAT. Advise Tshego as to whether she could register for VAT, including specific reference to the accounting basis she should be registered on.	MARKS
Tshego is a person that supplies (to hair salons) goods (hair products) and services (consultation services) in South Africa in the course or furtherance of her enterprise.	$\frac{1}{2} \times 4 = 2$
The goods and services are supplied for a consideration.	$\frac{1}{2}$
Excluded from her enterprise are the interest and dividends that she receives as these constitute exempt supplies.	$\frac{1}{2}$
As her taxable supplies (R495 000) exceed R50 000, Tshego can register voluntarily as a VAT vendor.	1
As she is a natural person whose total value of taxable supplies does not exceed R2,5 million in a 12-month period, she can apply to account for VAT on the payments basis.	2

Available: 6
Maximum: 5

(c) Assuming that Tshego qualifies for the turnover tax regime, advise her whether she should elect to be taxed as a micro business for the 2015 year of assessment. Ignore VAT. Support your advice with detailed calculations.		MARKS
<u>Tax liability if she elects the turnover tax regime:</u> <u>Turnover tax</u> Sales Consulting fees Dividends and interest - excluded from turnover tax regime 50% of capital receipt (R60 000/2) (vehicle used mainly for business purposes) Taxable turnover	<u>R</u> 450,000 45,000 0 30,000 525,000	 1 1 1 1
<u>Turnover tax liability</u> On R500 000 On excess @ 4% (R525 000 - R500 000)	<u>R</u> 5,500 1,000 6,500	 1 1
<u>Normal tax on investment income</u> Local dividends (exempt in terms of s 10(1)(k)) Interest (exempt up to R23 800 in terms of s 10(1)(i)) Taxable income Normal tax liability Total tax liability in respect of turnover tax regime	<u>R</u> 0 0 0 0 6,500	 ½ ½ 1MWE
<u>Tax liability if she does not elect turnover tax regime:</u> Sales - gross income Consultation fees - gross income Dividends (exempt s 10(1)(k)) (R21 600) Interest (first R23 800 exempt s 10(1)(i)) Closing stock (s 22(1)) Purchases (s 11(a)) Opening stock (s 22(2)) Fuel and maintenance (70% x R62 300)	<u>R</u> 450,000 50,000 0 0 5,000 (295,000) (70,000) (43,610)	 0.5 0.5 0.5 0.5 1 1 1 1

Marketing fees		(16,200)	1
Store - no s 13quin as not new and unused		0	1
Vehicle			
Cost	140,000		
s 11(e) 2014 (R140 000/4)	(35,000)		
s 11(e) 2015 (R140 000/4 x 11/12)	(32,083)	(32,083)	1
Tax value	<u>72,917</u>		
<i>Alternative: R140 000 x [(12 + 11) / 48] = R72 917</i>			
Proceeds	60,000		
Less: Tax value	(72,917)		
s 11(o) scrapping allowance	<u>(12,917)</u>	(12,917)	1
<i>Alternative: R140 000 - (R60 000 + R67 083) = R12 917</i>			
<u>Capital Gains Tax</u>			
Proceeds	60,000		
Less: Base cost (R140 000 - R67 083 - R12 917)	(60,000)		
Taxable capital gain [s 26A]	<u>0</u>	0	1
Taxable income		<u>35,190</u>	
Normal tax liability @ 18%		6,334	
Less: Primary rebate		(12,726)	
Total tax liability if turnover tax regime not elected		<u>0</u>	1MWE
<u>Conclusion:</u> Tshego should not elect to be taxed under the turnover regime as she will be paying R6 500 tax instead of R0.			1MWE

Available:	<u>21</u>
Maximum:	<u>20</u>

(d) If Tshego had traded in a company (i.e. her business and her investments were held in a company of which she was the sole holder of shares), how would your answer in (c) above change?	MARKS	
If Tshego traded in a company, the turnover tax calculation would have been:		
	R	
Taxable turnover (as per calculation in (c) above)	525,000	
Interest (specifically included)	14,400	
Taxable turnover	539,400	1
<i>Turnover tax liability</i>		
On R500 000	5,500	
On excess @ 4% (R539 400 - R500 000)	1,576	
Total turnover tax liability	7,076	1
The normal tax calculation would have been:		
Taxable income (as per calculation in (c) above)	35,190	
Plus: Interest (no exemption available for companies)	14,400	
Taxable income	49,590	1
<i>Normal tax @ 28%</i>	13,885	1
<u>Conclusion:</u> Yes, the answer would change. If she trades in a company, then the turnover tax regime would be more beneficial.		1MWE

Available:	5
Maximum:	5

QUESTION 2 (40 Marks):

(a)	(b) Normal tax liability of Mike Haasbroek (42 years old, resident, married out of community)				
Item	Calculation/Reason		Column 2 Amount	Column 3 Amount	Mark
Salary	R15 000 pm x 10 months			150 000	1
Leave pay	Note: this is not a severance benefit, as Mike is only 42 years old / par (c) inclusion in gross income (column 3) as per the Guide for Employers in respect of Employees' Tax			38 900	1
DVD set	Cost to employer (excluding VAT)	11 200			1
	Less: R5 000 for long-service award <i>Note: Mike had worked for 16 years</i>	<u>(5 000)</u>		6 200	1
Resignation lump sum	Lump sum	142 000			1
	Less: Qualifying investments Less: Disallowed contributions	- <u>(69 000)</u>		73 000	1
Fringe benefit: Right of use of vehicle	Cash equivalent: R193 800 x 3.25% x 10 $\frac{1}{2} \quad \frac{1}{2} \quad \frac{1}{2}$			62 985	1½
Fringe benefit: Purchase of vehicle	R91 000 – R60 000			31 000	1

Fringe benefit: low-interest loan	R90 000 x (6.75% - 3%) [1] x 10/12 [$\frac{1}{2}$] <i>Alternative: x 306/365 days [$\frac{1}{2}$] = R2 829</i> <i>Note: official interest rate = repo + 1%</i>			2 813	$\frac{1}{2}$
Fringe benefit: holiday accommodation	R200 per person per day x 4 people x 10 days			8 000	1
Fringe benefit: medical scheme contributions	R2 100 pm x 10 months			21 000	1
Dividends				6 500	$\frac{1}{2}$
Interest				21 200	$\frac{1}{2}$
Gross Income			73000	348	
				598	
Less: Exemptions					
Local dividends				(6 500)	1 m/e
Local interest	Available: R23 800,				$\frac{1}{2}$
	Limited to actual interest received			(21 200)	$\frac{1}{2}$ m/e

Income			73 000	320 898	
Less: Deductions					
Par 7(7) deduction on right of use of a vehicle	Less: business-use reduction R62 985 x (5 000/ 30 000 km) Only Commissioner allowed to make this adjustment on assessment			(10 498)	1m/e

Par 7(8) deduction on right of use of a vehicle	None, as the cost of fuel was paid by the employer and not by the employee				1
Interest	<p>Actually incurred: R90 000 x 3% x 10/12</p> <p>Deemed incurred: (see fringe benefit above)</p> <p><i>Alternative: R90 000 x 3% x 306/365 = R2 263 + Deemed interest R2 829 = R5 092</i></p>	<p>2 250</p> <p><u>2 813</u></p> <p>5 063</p>			<p>1 m/e</p> <p>-</p> <p>1</p>
Provident fund contributions	No available deduction			-	1
Taxable capital gain	<p>Capital gain from disposal of shares</p> <p>Less: Annual exclusion</p> <p>Limited to Rnil</p> <p>Less: assessed capital loss from 2014</p> <p>Net capital loss <i>carried over to 2016</i></p> <p><i>Note: If the candidate applied the inclusion rate of 33.3% to the capital loss and included it in taxable income, deduct 1 mark.</i></p>	<p>29 000</p> <p><u>(30 000)</u></p> <p>-</p> <p><u>(2 500)</u></p> <p>(2 500)</p>			<p>½</p> <p>1</p> <p>½</p> <p>1</p>
Taxable income			73 000	310 400	
Normal tax on taxable income <i>(without retirement lump sum)</i>	<p>Use 2015 tax table</p> <p>$(R310\,400 - R272\,700) \times 30\% + R55\,957$</p>			67 267	1 m/e
Less: primary rebate				(12 726)	1

Plus: Normal tax on retirement lump sum	Use the Retirement fund lump sum withdrawal table = (R73 000 – R25 000) x 18%			8 640	1 m/e
Less: s 6A medical scheme fees rebate	R514 x 10 months			(5 140)	1
Less: s 6B additional medical expenses rebate	Deemed contributions (fringe benefit) Less: 4 x s 6A of R5 140 Excess Add: qualifying medical expenses (R63 100 – R23 000) Less: 7.5% of taxable income (excluding lump sum) = 7.5% x R310 400 s 6B rebate	21 000 <u>(20 560)</u> 440 40 100 <u>(23 280)</u> 17 260 x 25%			½ 1m/e 1 1m/e ½
Total normal tax liability				53 726	

Presentation mark	<ul style="list-style-type: none"> *All items in correct order *All amounts rounded to nearest Rand *All amounts have descriptions *Neat and tidy work 				1
Total marks	Available 32, max				30

Part (b): Employer's duties

Note: the paragraph references to the Fourth Schedule of the Income Tax Act are provided for study purposes, but were not awarded marks.

Register as an employer with SARS (provided an employee is liable for normal tax) – par 15.

Maintain suitable salary records (reflecting necessary info such as employee's income tax number, remuneration, employee's tax calculation etc.) – par 14.

Withhold employees' tax from the remuneration, based on the appropriate tax tables – par 2.

Remit the employees' tax so withheld to the Commissioner within 7 days of end of the month – par2 and par14(2).

Issue employees' tax certificates at the end of the year of assessment – par 13.

Deliver above tax certificates to employees within 60 days of the end of the year – par13.

Maintain control of unissued employees' tax certificates – par13(1) to par13(13).

Prepare the necessary employer's reconciliations as required by the Commissioner – par14.

Max 5 marks

Part (c): Fritz Kotzé register as a provisional taxpayer

Refer to the exemptions provided for in par18(1)(c) of the Fourth Schedule to the Income Tax Act. *Note: the legislation applicable to the 2015 year of assessment should be used (not the amended provisions coming into effect on 1 March 2015).*

Fritz is below 65 years of age (he is 43 years old)

He does not carry on any business

He exceeds the tax threshold (R70 700 for 2015), but his taxable income from interest, foreign dividends and rental from fixed property does not exceed R20 000.

Taxable income from interest = R43 400 – R23 800 exemption = R19 600

Conclusion: Fritz is exempt from registering as a provisional taxpayer

Additional note for study purposes: for the 2016 year of assessment, the discussion would be as follows:

Fritz is a natural person

He does not derive income from carrying on a business

His taxable income exceeds the tax threshold (R73 650 for 2016), but his taxable income from interest, foreign dividends and rental from fixed property does not exceed R30 000.00.

Taxable income from interest = R43 400 – R23 800 exemption = R19 600

Conclusion: Fritz is exempt from registering as a provisional taxpayer

Note: there is no age distinction in the amended provision

Max 5 marks

TOTAL MARKS FOR QUESTION 2:	40
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QUESTION 3 (40 Marks):

E-mail format and presentation	Marks
	1
	1
	1
Total:	<u>3</u>

Part (a)	Amount	Marks
<u>Snack Truck:</u>		
No s 11(e) allowance as the vehicle is fully written off	-	1
No s 8(4)(a) recoupment as the cost/allowances are not recovered when deceased died (see also Interpretation Note: No. 12)	-	1
Ito par 40 the vehicle is deemed to be disposed of to the deceased estate at market value at date of death, thus proceeds = R650 000		1
Base cost ito par 20 = purchase price of R250 000 plus improvements of R110 000 (presuming still reflected in condition of assets as it is still regarded as a specialised vehicle at date of death) = R360 000 LESS: s 11(e) allowances claimed R360 000. Base cost = R0 <i>Alternative: s 11(e) allowance claimed R359 999.</i> <i>Base cost = R1</i>		1 0.5 1
Vehicle is not a personal-use asset as 100% used for business purposes		1
Capital gain = R650 000 - R0 <i>Alternative: Capital gain = R650 000 - R1 = R649 999</i>	650,000	0.5

<u>Sauce-o-Matic machine:</u>		
Cost during 2013 year of assessment:	1,700,000	
Section 12C 2013 year of assessment 40% x R1 700 000	(680,000)	1
Section 12C 2014 year of assessment: 20% x R1 700 000	(340,000)	0.5
Section 12C 2015 period of assessment until death: 20% x R1 700 000	(340,000)	0.5
Tax value at date of death	340,000	
No s 8(4)(a) recoupment (reasons same as for truck)	-	0.5
No s 11(o) allowance as the asset is not lost, destroyed or alienated	-	0.5
Capital gain/loss:		
Proceeds: deemed disposal at market value:	1,930,000	1
Less: Base cost:	340,000	
• purchase price	1,700,000	0.5
• Less: s 12C allowances claimed:	(1,360,000)	0.5
Capital gain	1,590,000	0.5
Aggregate capital gains/losses final period of assessment:		
Gain on truck + capital gain on machine	2,240,000	0.5
The capital gain could qualify for par 57 small business asset exclusion		1
• Market value of all assets less than R10 million? Yes		0.5
• owned and used in business more than 5 years, however 'machine NOT		1
• Gordon was involved actively in the business		0.5
• Death is one of the qualifying scenarios where relief would apply		0.5
• No other assets that would need to be realised in 24 months		0.5
• First time small business asset disposed of, therefore first R1.8m gain is excluded Iro ONLY the truck therefore only	(650,000)	0.5

NET CAPITAL GAIN:	1,590,000	0.5
Less: annual exclusion in year of death	(300,000)	1
	1,290,000	
Taxable capital gain @ 33.3%	429,570	1
<i>Marker comment: If candidate first applied 33.3% and then R300 000, deduct one mark</i>		
Included with other taxable income and subject to natural persons rebate & rates		0.5
	Available:	21
	Maximum:	20

Part (b)	Amount	Marks
Both depreciable assets are sold and s 8(4)(a) recoupments calculated.		0.5
Recoupments would have been income in hands of deceased, therefore section 25 of Income Tax Act needs to be considered.		1
Snack Truck:		
Proceeds, limited to cost (R645 000 limited to R360 000)	360,000	1
Less: tax value (Alternative: R1) (Fully claimed ito s 11(e))	-	1
Recoupment (Alternative: R359 999)	360,000	
Sauce-o-Matic machine:		
Proceeds, limited to cost (R1 980 000 limited to R1 700 000)	1,700,000	1
Less: tax value:	(340,000)	0.5 (MWE)
Recoupment	1,360,000	
As Gordon's son is an ascertained heir, the above recoupments will be taxed in the son's hands (see also Interpretation Note: No.12 for examples)		1

<u>Capital gains tax consequences of disposal of assets:</u>		
Snack Truck:		
Proceeds	645,000	1
Base cost (MV at death)	(650,000)	1
Capital loss	(5,000)	
Sauce-o-Matic machine:		
Proceeds	1,980,000	1
Base cost (MV at death)	(1,930,000)	1
Capital gain	50,000	
Net capital gain = R50 000 - R5 000	45,000	0.5
Less: Annual exclusion (as per natural person)	(30,000)	1
	15,000	
Inclusion into taxable income @ 33.3%	4,995	0.5
The estate will get no personal rebates, but will be taxed at the natural person rates, therefore as taxable income is below the minimum threshold, no income tax payable by estate		0.5
		0.5
Available:		13
Maximum:		12

Part (c)	Amount	Marks
Property		
• Property in estate: vehicle at proceeds	645,000	0.5
• Property in estate: machine at proceeds	1,980,000	0.5
Deemed property: policy exempt:	-	0.5
• Not taken out by Gordon or at his instance		0.5
• No premiums paid by Gordon		0.5
• No proceeds paid to estate, relative or family company (s 3(3)(a)(ii) Estate Duty Act)		0.5
LESS: deductions: liabilities and expenses		
• Funeral and costs of administration of estate (ss 4(a) and 4(c))	(35,000)	0.5
• SA overdraft (not deductible - not paid out of property in estate – s 4(b))	-	1
• Gordon's final income tax liability (to be assessed by SARS)	TBD	0.5
LESS: s 4A abatement	(3,500,000)	0.5
DUTIABLE ESTATE	-	
(Will be nil regardless of the SARS liability)		
Taxed at 20%	-	0.5

Available: 6
Maximum: 5

QUESTION 4 (40 Marks):

Query 1

- | | |
|--|---|
| • It is a SARS requirement for tax practitioners to be tax compliant before attempting to advise or assist the public. | 1 |
| • This requirement is contained in para 45.3 of the SAIT Code of Professional Conduct in relation to Taxation. | 1 |
| • SAIT members are therefore required to obtain tax clearance certificates on an annual basis. | 1 |
| • SARS is allowed to report such non-compliance to SAIT – s241 (1)(c) of the TAA | 1 |
| • This may result in disciplinary action being instituted against the member. | 1 |

Marks	5
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Query 2

Note: section references to the Tax Administration Act are provided for study purposes and were not awarded marks.

Type of penalty

- Non-compliance is the failure to comply with an obligation that is imposed by a tax Act – s210(2)
- As your client has an obligation to submit annual income tax returns, failure to do so results in a non-compliance incidence in terms of the TAA
- SARS must impose an appropriate penalty – s210(1)
- In this case, the fixed amount penalty of s211 is applicable
- In practice, only one incidence of non-compliance is subject to the fixed-amount penalty, and that is where a natural person has failed to submit two or more outstanding income tax returns.

Remittance of the penalty

- Sections 217 and 218 deal with the remittance of penalties
- A fixed-amount penalty is not remitted just because you fixed (or remedied) the non-compliance.
- They are imposed for each month that the non-compliance continues.
- When you ultimately remedy the non-compliance by submitting the outstanding tax returns, it does not alter the fact that your client was non-compliant for all those previous months.
- That is most likely why SARS rejected your remittance request.

- Furthermore, s217(1) sets out when the fixed-amount penalty can be remitted:
 - If it is a first-incident of non-compliance or
 - if the duration of the non-compliance is less than five business days
- First incidence' is defined in s208 as an incidence where no penalty assessment was issued during the preceding 36 months...
 - As your client has received penalty assessments every year for the past three years, this is clearly not a first incidence.
 - Also, the duration obviously exceeds five business days.

- Another option that you could try, is in terms of s218, which provides for the remittance of a penalty in exceptional circumstances (e.g. natural disaster or financial hardship)
- However, from the information provided, it seems highly unlikely that your client will meet any of these circumstances.

Conclusion

- SARS was correct in denying the request for remittance.

Presentation (neat, logical lay-out)

1

Marks (1 mark for each bullet), MAX

15

Query 3

Note: section references to the Tax Administration Act are provided for study purposes and were not awarded marks.

Type of penalty

Background explanation as to why this is an understatement penalty (for study purposes)

- An understatement penalty is charged in terms of s 222 of the TAA.
- An 'understatement' is defined in s 221 and means any prejudice to SARS or the fiscus as a result of an omission from a return
- As Mr Z has omitted his taxable income of the photography trade from his 2015 income tax return, this is an understatement.

- This is not a 'repeat case', as Mr Z has previously included the taxable income from the photography trade in previous tax returns.
- His intention was to evade tax (as he wanted to save money for his own wedding) 1
- Using the table in s 223, this is a 'standard case' of 'intentional tax evasion' 1
- and thus the penalty of 150% applies

Calculation of penalty

- The shortfall and penalty are calculated as follows:

Item	Amount	Mark
Taxable income as disclosed	410 000	½
Normal tax per the 2015 table (R410 000 – R377 450) x 35% + R87 382	98 775	1
Less: Primary rebate	<u>(12 726)</u>	1
Normal tax liability	86 049	

Taxable income as disclosed	410 000	½
Add: net income from photography business	209 000	1
Add back: fines – prohibited by s23(o)	<u>8 000</u>	1
Correct taxable income	627 000	
Normal tax per the 2015 table (R627 000 – R528 000) x 38% + R140 074	177 694	1m/e
Less: Primary rebate	<u>(12 726)</u>	1
Normal tax liability	164 968	
Shortfall (R164 968 – R86 049)	78 919	1m/e
Penalty rate	x 150%	1m/e
Penalty	118 379	
Other consequences		
<ul style="list-style-type: none"> ● Tax evasion is a criminal offence under chapter 17 of the TAA 		1
<ul style="list-style-type: none"> ● Mr Z is guilty of an offence 		1
<ul style="list-style-type: none"> ● and is subject to a fine or to imprisonment for up to five years – s 235 		1
Available marks: 16, MAX		15

Query 4

- Normally, Mr S would have to claim a travel expense in terms of the general deduction formula of s 11(a) of the Income Tax Act 1
- As it is an amount actually incurred, in the production of income (commission), in the carrying on of a trade and not of a capital nature. 1
- As he does not receive a travel allowance, he would be unable to claim travel expenses in terms of s8(1)(b) of the Income Tax Act. 1
- However, the burden of proof rests on the taxpayer in terms of s 102 of the TAA 1
- to prove the amount of an expense 1
- Therefore, without the petrol slips, Mr S would not be able to prove the amount 1
- And hence would be unable to claim any travel expenses. 1

Available marks: 6, MAX	5
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TOTAL MARKS FOR QUESTION 4	40
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