

Tax Professional

2013 Knowledge Competency Assessment

Paper 2: Solution

Suggested Solutions

Question	Topic	Marks
1	Individual Tax	40
2	Trust Estate Duty and Donations Tax	50
3	Partnership	30
4	Tax Administration	40

Total marks: 160

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

Question 1

40 marks

Part A

35 marks

Normal tax calculation of Mr. Bonges for the year ended 28 February 2014

Item	Reason / Calculation	Lump sum withdrawal benefit	Effect on Taxable Income
Gross Income			
Salary	par (c) gross income definition - given on IRP5		419 295 (½)
Annual Payment	par (c) gross income definition - given on IRP5		21 649 (½)
Employer Medical Aid	par (i) fringe benefit read with 7th Schedule - given on IRP5		17 500 (½)
Right to use motor vehicle	par (i) fringe benefit read with 7th Schedule - given on IRP5 (280 000 x 85%) x 3.25% x 7 months If par 7(7) and 7(8) adjustments made against fringe benefit under gross income, half mark not awarded.		54 145 (½)

*Marks for calculation
of adjustments still
awarded.*

Income from client sessions	par (c) gross income definition		500 000	(½)
Lump sum received	par (e) gross income definition	500 000		(½)
	Alternative (R500 000 + R67 321) = R567 321 (Candidates may have interpreted that gross amount is R567 321 rather than R500 000. Both options marked.)			
	Deduction allowed: Cumulative pension fund contributions (no amount added for current year as full contribution deducted)	-45 680		(½)
	Amount transferred from PF to RAF (paragraph 6 of Second Schedule)	-400 000		(½)
	Mark awarded for inclusion of net amount in correct column.		54 320	(½)

Income		54 320	1 012 589
Less			
Deductions			
Miscellaneous business expenditure	Section 11 (a) deduction	-124 000	(½)
Legal Costs	Not incurred in the course of ordinary operations of the taxpayer's trade. Does not comply with the requirements of section 11 (c) <i>No nil effect amounts were required, therefore bonus marks</i>	0	(½)
			<i>Bonus</i>
Repairs	Section 11(d) - Required repair of property occupied for trade purposes. The house is mainly occupied for private purposes and therefore a section 11(d) deduction not allowed. <i>No nil effect amounts were required, therefore bonus marks</i>	0	(½)
			<i>Bonus</i>

Property maintenance expenditure	<p>Portion of property maintenance expenditure relating to private maintenance prohibited in terms of section 23(b). Home office deduction on proportionate expenditure incurred for business purposes allowed in terms of section 11(a).</p> <p>$R35\,600 \times 40m/500m$</p>	-2 848	(1)
Cell phone	<p>Section 11 (e) deduction allowed on cost of asset used for business purposes - $R8\,000/2 \left(\frac{1}{2}\right) \times 80\%$ $\left(\frac{1}{2}\right)$</p> <p>Call costs and data usage - 11(a) deduction as incurred in production of income. Portion used for private purposes prohibited in terms of section 23</p> <p>Full contract value = $R800 \times 24 = R19\,200$ - $R8\,000$ (asset cost) =</p>	-3 200	(1)
		-4 480	(1)

	R11 200 / 2 (2 year contract) = R5 600 * 80% (business use)		
	(½) awarded for excluding asset value of R8 000 and (½) awarded for x 80%: Principle marks		
Laptop	Section 11 (e) deduction as asset used for business purposes - asset value less than R7 000. Full write off on acquisition	-5 500	(1)
Motor vehicle costs	Section 11 (e) deduction as asset used for business purposes. Deduction allowed to the extent that asset is used for business purposes. $R395\,000 / 5$ $(\frac{1}{2}) * 5/12$ or $151/365$ $(\frac{1}{2}) * 4000 \text{ km} / 10\,000 \text{ km}$ (½)	-13 167	(1½)
	Fuel costs - section 11(a) deduction read with section 23 (g).	-6 160	(1)

	Only allowed to extent that cost is incurred for trade purposes.		
	R15 400 * 4 000km/10 000km		
	Finance cost - section 11(a) deduction read with section 23(g).	-4 000	(1)
	R2 000 x 5 months x 4 000 km/10 000 km		
Right to use motor vehicle - adjustments upon assessment	Par 7(7) and 7(8) adjustments of Seventh Schedule Alternative: If candidate clearly states that it is accepted that Commissioner did not grant the adjustments: 2 marks awarded.		
	>Par 7(7) adjustment : "Value of private use"(indicated above) x 5 000km/15 000km adjusted for business km	-18 048	(1)
	Less: Par 7(8) applicable private km	-11 360	(1)

adjustment (Fuel cost) > 10000km x R1,136 (Gazetted tables for rate per km on car value of R280 000)

Alternative 1: R3.24 (fixed tariff allowed as bus km less than 8 000) x 10 000 km = R32 400 limited to actual costs of R17 200 (1)

Alternative 2: 10 000 km x R0.987 (if value of R280 000 x 85% was used value of vehicle on fixed cost table) (1)

Alternative 3: If 2013 table used = rate of R1. 027 for fuel (1)

Sub-total 1

819 826

Pension Fund section 11(k)
Actual Contribution = R25 158
limited to the greater of:

(i) R1 750;

(ii) R31 447 (7.5% x

(½)

(1)

	R419 295 (given))		
	Deduction allowed	-25 158	(½)

Sub-total 2 794 668

RAF Contributions	section 11(n)		
	Actual Contribution =		(½)
	R5 500 x 5 = R27 500		
	limited to highest of		
	(i) R1 750		(½)
	(ii) R3 500 - R25 158		
	(limited to R0)		(½)
	(iii) 15% of Non-RFEI		
	R60 719 (15% (0.5) x		(1½)
	(Subtotal 2 - RFEI +		
	PF deduction:		
	R794 668 (0.5) - (419		
	295 + 25 158) (0.5))		
	OR Subtotal 1 - RFEI)		
	Deduction allowed	-27 500	(½)

Taxable portion of allowances included in term of section 8(1)

Subsistence allowance	Awarded: R6 100 (as per IRP5)	6 100	
	Deduction: Biggest of actual or deemed costs	-5 700	(½)
	Actual: R5 700		(½)
	Deemed: R319 x 10 = R3 190		(½)

	Inclusion of net effect	400	(½)
Sub-total 3		767 568	
Less Medical Aid	Section 18	-	-
	Employer Contribution (given)	17 500	(½)
	Taxpayer Contribution ((R24 500 - R17 500) + (R3 500 x 5))	24 500	(½)
	Total (Alternative: full mark awarded for R42 000)	42 000	
	Less 4 times s6A med aid credit 4 (½)x ((242+242 +162+162) (½) x 12 (½))	-38 784	(1½)
		3 216	
	Plus qualifying med aid expenditure		
	Cosmetic procedure paid from savings account	40 000	(½)
	Alternative: Could also be zero / indication of no inclusion - information not clear enough		
		43 216	
	less 7.5% (0.5) of sub-total 3 (0.5) (above)	57 568	(1)

	Medical Aid (as per section 18)	-14 352		
	Deduction allowed		0	(½)
Taxable Income		54 320	767 568	
Tax per tables on withdrawal benefit	(R54 320 - R22 500) x 18%	5 728		(1)
less primary rebate	Only awarded if deducted from taxable income		-12 080	(½)
Sub total		5 728	224 712	
ADD tax on withdrawal lump sum and tax on taxable income			230 440	(½)
less section 6A medical credit	((R242 + R242) + R162 + R162) * 12 (same as above)		-9 696	(1)
Less Employees tax	On salary: (given - IRP 5)		-128 166	(½)
	On withdrawal lump sum		-67 321	(½)
Alternative: 1 mark for R195 487 (R128 166 +				

R67 321)

Less	First provisional		
Provisional	payment: R nil (given)		
Tax payments			
	Second provisional tax		
	payment		
	Use 2013 year of	576 000	(1)
	assessment taxable		
	income as basic		
	amount (received more		
	than 14 days before		
	estimate date). No		
	increase. Basic amount		
	excludes prior year		
	CGT:		
	R626 000 (½)- R50 000		
	(½)		
	Tax per tables: R132	161 417	(½)
	894 + (R576 000 -		
	R500 940) x 38%		
	Less: Primary rebate	-12 080	(½)
	Less: Medical 6A credit	-9 696	(½)
	Less: Employees' Tax	-128 166	(½)
	Less: First provisional	0	
	tax payment		
	Second provisional tax	11 475	-11 475 (½)
	payment (Net amount)		

Tax due to SARS 463 206 (½)

Available 36
Max 35

- 1 for VAT consequences indicated
- 1 for incorrect order of deductions: if order is NOT PF, RAF, Allowance, Medical

Part B

5 marks

- No, currently you will not incur an underestimate penalty if you use your basic amount. (½)
- As your taxable income is less than R1 million, you will not incur an underestimate penalty if the basic amount is used as an estimate for the second provisional tax payment. (½)
- However, as soon as your taxable income exceeds R1 million (½) you will incur an underestimate penalty if the estimate is less than 80% of the actual assessed taxable income. (½)
- As per the 2014 year of assessment tax calculation, you have a significant amount to pay to SARS. This is due to the fact that your business grew significantly this year, and the basic amount was not an accurate estimate of your actual taxable income. For cash flow purposes, you might consider to use an estimate of actual taxable income for the second provisional payment rather than the basic amount. (1)
- Any other valid mark: Student should show insight. (1)
- Provisional tax and employees' tax are not separate taxes (1), but merely a pre-payment (1) of the income tax liability. You are therefore not paying three separate taxes, but only one type of tax, being income tax, and you are paying it using two methods of pre-payment. The prepaid taxes are deducted from your final tax liability. (2)

Maximum 5

Question 2

50 marks

Part A

20 marks

	R	R
Net rentals		
Rentals (vest)		92 000 (½)
Less		
• interest paid (R900 000 × 9% × 9 / 12) Note: Also accept R81 000		-60 750 (½)
• other expenses		<u>-9 250</u> (½)
Net income		<u>22 000</u>
Taxable income		

	Trust		Carl Non- resident		Joe major
Dividends received	120000 (½)				
Distributed	-120000 (½)				
Local dividends of R120 000 (vest – s 25B(1))			48 000 (½)		36 000 (½)
Less exemption (section 10(1)(k))			<u>-48 000</u> (½)		<u>-36 000</u> (½)
	0		-		-
Interest received	18000 (½)				
Distributed	-18000 (½)				
Interest of R18 000 (vests – s25B(1))			7 200 (½)		5 400 (½)

Rentals received	22 000	(½)		
Distributed	-22 000	(½)		
Net rentals – income of R22 000 (see above – s 25B(1) and (3))			<u>8 800</u>	(½) <u>6 600</u> (½)
			16 000	12 000
Interest - unit trust return of R27 000	27000	(½)		
• Amount distributed R22 000 (s 25B(2))	-22 000	(½)		
• Interest			4 000	(½) 3 000 (½)
Less section 7(3) application (see below)			-	-
Less section 7(5) application (1)	-5000	(1)		
	0		16 000	15 000
Less section 10(1)(h) exemption			-7 200	(1) -
Less first R23 800 of not otherwise exempt interest (section 10(1)(i))			-4 000	(½) -8 400 (½)
Taxable income	0		8 800	6 600
P: (1)		(5)		(4½) (3)

	Ken minor		Martin minor		Sheila
Dividends received					
Distributed					
Local dividends of R120 000 (vest – s 25B(1))	24 000	(½)	12 000	(½)	
Less exemption (section 10(1)(k))	<u>-24 000</u>	(½)	<u>-12 000</u>	(½)	
	-		-		
Interest received					
Distributed					
Interest of R18 000 (vests – s 25B(1))	3 600	(½)	1 800	(½)	
Rentals received					
Distributed					
Net rentals – income of R22 000 (see above – s 25B(1) and (3))	<u>4 400</u>	(½)	<u>2 200</u>	(½)	
	8 000		4 000		
Interest - unit trust return of R27 000					
• Amount distributed R22 000 (s 25B(2))					
• Interest	2 000	(½)	13 000	(½)	
Less section 7(3) application (see below)	-2 000	(½)	-13 000	(½)	15 000 (½)
Less section 7(5) application					5 000 (½)

	8 000		4 000		20 000
Less section 10(1)(h) exemption	-		-		
Less first R23 800 of not otherwise exempt interest (section 10(1)(i))	-3 600	(½)	-1 800	(½)	-20000 (½)
Taxable income	4 400		2 200		20 000
P: (1)		(3½)		(3½)	(1½)
					Available 23.5 Maximum 20

Part B

10 marks

Tax consequences of donations trust

- Donation of cash (which constitutes “property”) (1)
- will be subject to donations tax at 20%. (1)
- Rupert gets R100 000 exemption for donations tax , therefore donations tax (1)
- of $(R1m - 100\ 000) \times 20\% =$
- $R900\ 000 \times 20\% = R180\ 000$ will be payable. (Principle mark) (1)
- The donation to the PBO is exempt from donations tax and therefore does not utilize any portion of the R100 000 general exemption. (1)
- The donations tax is payable by the end of November 2013. (1)
- Since the amount is cash, which is not an “asset” for CGT purposes, (1)
- there will be no CGT consequences. (1)
- Since you have two minor children as beneficiaries in the trust, the income earned as a result of the donation in the (1)
- trust that vests in their hands, will be included in your gross

income in terms of section 7(3).

- Income earned in the trust on this capital will retain its nature in the hands of the beneficiaries (conduit pipe principle). (1)
- Any other valid comment (1)

Available 11
Maximum 10

Part C

20 marks

If you should die tomorrow, there will be estate duty, capital gains tax and income tax consequences:

Income tax calculation for final period until date of death:

Interest from trust (1)	52 373	(1)
R900 000 x 9% ^(1/2) x 236/365 ^(1/2)		
Fees earned (1/2)	790 000	(1/2)
	842 151	
Less: interest exemption (1/2)	-23 800	(1/2)

Plus: taxable capital gain: deemed disposal of “assets” at death:

• Loan:	Proceeds	900 000	(1/2)
	Base cost	900 000	(1/2)
Capital gain/loss		-	
• Primary residence	Proceeds	7 000 000	(1/2)
	Base cost	3 200 000	(1/2)
		3 800 000	
Less: primary residence exclusion (proceeds > R2m)		-2 000 000	(1)
Capital gain/loss		1 800 000	

<ul style="list-style-type: none"> • Money market acc and bank acc = cash, not assets for CGT purposes 		-		(½)
Total capital gain		1 800 000		
Less: exemption year of death				
		-300 000		(1)
Taxable capital gain	33,30%	1 500 000	499 500	(1)
			2 160 224	
Less: s18A donation of R10 000, limited to 10% of taxable income = maximum R2 160 224; those fully ded.				
			-10 000	(1)
Taxable Income			2 150 224	
 Tax per schedule:				
R 185 205		185 205		(½)
+ 40% x (2 150 224 – 638 600)				
		244 650		(1)
		429 855		
Less: primary rebate:				
R12 080 x 236/365		-7 778		(1)
		422 077		
Less: provisional tax paid		-122 000		(½)
Inc. Tax due to SARS		300 077		

Estate Duty calculation:

Loan account	900 000		(1/2)
Primary residence	7 000 000		(1/2)
Money market account (R1.5m – R1m)	500 000		(1/2)
A: Cheque Account	467 000		(1/2)
B: Cheque account (R467 000 - R180 000 DT) = R287 000			(1)
	8 867 000		
Less: liabilities	-1 191 022		
Mortgage bond	-300 000		(1/2)
Executor's remuneration: R9 867 000 - 1 000 000 = 8 867 000 x 3.5%	-310 345		(1)
Master's fees (1/2)	-600		(1/2)
Bequests to spouse (1/2)s 4(q)	-100 000		(1/2)
A: Donations tax liability SARS	-180 000	P	(1/2)
Income tax liability SARS	-300 077	P	(1/2)
	7 675 978		
Less: s 4A abatement	-3 500 000		(1/2)
Dutiable estate	4 175 978		
Estate duty @ 20%	835 196	P	(1/2)

Thus: cash needed after death to settle liabilities:

Liabilities as stated in estate	1 191 022	P	(½)
duty calc:			
Plus: estate duty liability:	835 196	P	(½)
	2 026 218		

Total liabilities to be paid exceed cash. It is clear that there is not enough cash in the estate to pay liabilities. (½)

Suggestions to solve liquidity problem in estate after death:

- Take out life insurance policy on your life. (½)
- Remember that the proceeds on this policy will be deemed property in the estate and will further increase the estate duty by 20% on the proceeds from the policy. (1)
- Thus, the amount of the policy should be $R2\ 056\ 658 \times 100/80 = R2\ 570\ 823$. (1)
- You should also provide for funeral expenses to be paid out of the estate, which cannot accurately be determined at this point. (½)
- Require of your mother (and other beneficiaries) to pay a bequest price to the estate, to cover the total liabilities due. (½)
- Bequeathing more to your spouse could reduce the taxable estate and the estate duty liability. (½)
- Other valid suggestion. (½)

Available 24
Maximum 20

Question 3

30 marks

Part A

18 marks

(a) Taxable income of Portos for the year of assessment ended
28 February 2014

R

Adjustment of the partnership profit:

Profit (given)	1 336 000	
Less Irrecoverable debt recovered (adjustment for each partner, no adjustment here)	nil	
Salaries & allowances paid:		
– Porthos	-350 000	(½)
– Aramis	-150 000	(½)
Drawings:		
– Porthos(capital in nature)	nil	
– Aramis(capital in nature)	nil	
Interest – Porthos	-48 000	(½)
Retirement annuity fund contributions:		
– Porthos	-37 000	(½)
– Aramis	-25 000	(½)
Pension fund contributions of Aramis - s 11(l) Actual = R45 000 (10% of approved remuneration (salary of R150 000) allowed) = R15 000 Practice of SARS to limit to 20%, thus 20% of R150 000 = R30 000	-30 000	(1)
The RFE income of R300 000 is not used for calculating the s 11(l) deduction of the partnership, only for calculating		

the 7,5% when calculating the s 11(n) deduction for Aramis.

Adjusted net profit from partnership 696 000

Porthos's taxable income for the current year of assessment:

Share of profit from partnership (R696 000 × 60%)	417 600	(1)
Plus: Irrecoverable debts from former partnership recouped (s8(4))	12 000	(1)
(R30 000 × 60% = R18 000 received, but recoupment is limited to the profit-sharing ratio of 40% x R30 000 = R12 000 representing the amount previously deducted as irrecoverable, but now recouped)		
Plus: Drawings (capital in nature) (mark already given)	nil	
Plus: Interest from the partnership	48 000	(½)
Less: basic interest exemption	-23 800	24 200 (1)
Plus: Salary + travel allowance from the partnership	350 000	(½)
Plus: Retirement annuity fund contributions paid by the partnership	37 000	(1)
Porthos's personal income from partnership	840 800	

Less: Business expenses in respect of motor vehicle (Actual cost per kilometre and not deemed cost per kilometre can be claimed!)

Wear and tear (s 11(e)) (not limited to R480 000 over 7 years as per s 8(1)): R513 000 / 5	102 600	(1)
Finance charges (s 11(a)) (not limited to an amount which would have been incurred if the original debt had been R480 000 as per s 8(1))	87 210	(½)
Fuel cost (s 11(a))	28 000	(½)
Maintenance cost (s 11(a))	12 000	(½)

Insurance premiums and licence fees (s 11(a))		9 600		(½)
Total vehicle expenses for the year		239 410		
Cost per kilometre	239410 /	8,5504		(½)
	28 000 =			
Business kilometres:				
Total kilometres travelled (given)		28 000		
Less: Private kilometres travelled (given)		-18 000		
Business kilometres		10 000		
Deduction for business travel	x 8,55 =		-85 504	(½)
Not limited to travel allowance of	R50 000			
			769 900	
Less: loss from guesthouse - ring-fenced (see below)			0	(1)
Less: Retirement annuity fund contributions, actual R37 000: deduction limited to the greatest of -				
15% x		769 900	115485	(1)
R3 500 – Rnil = R3 500; or				(½)
R 1 750				(½)
therefore allow actual			-37 000	(1)
Porthos's taxable income			732 900	(1)

Available 18
Max 18

Part B

12 marks

(b) Tax implications of losses from guesthouse

- Since Porthos is a natural person he will be allowed to set off a loss from one trade (guesthouse) against a profit from another trade (even if one trade is a partnership) (s 20(1)(b)). (2)
- But he is prohibited from setting off an assessed loss incurred in one trade against income derived from another trade during the same year of assessment if s 20A applies. (1)
- Section 20A must be considered as Porthos falls in the maximum tax bracket (1)
- Two circumstances under which s20A will apply is:
 - If this is a suspect trade
Guesthouse trade is not a suspect trade: although it is residential accommodation it is not rented out to relatives. (1)
 - If guesthouse suffered losses for 3 out of 5 years
This is the third year that Porthos made a loss in this trade. If a natural person suffers losses from a trade for three out of 5 years, the loss will be ring-fenced from the third year. (1)

Conclusion:

The loss from the guesthouse of R12 000 will therefore be ring-fenced for the first time in the 2014 year of assessment unless Porthos can pass the facts and circumstances test. (2)

Facts and circumstances test

(escape hatch):

If the taxpayer can prove that there is a reasonable expectation of deriving taxable income within a reasonable period, the loss will be allowed.

(1)

Circumstances test.

There is nothing in the question to support the facts and circumstances test; therefore it is assumed that it will not apply and the loss will be ring-fenced.

(1)

Potential future losses:

The assessed loss will continue to be ring-fenced in all tax years from 2014 onwards. What this means is that 'ring-fenced' losses are ring-fenced forever and may only ever be set off against income from guesthouse.

(2)

Available 12

Maximum 12

Question 4

40 marks

Part A

13 marks

Dispute Resolution

- As SARS has not supplied adequate reasons to enable the taxpayer to file an objection the taxpayer must submit a request for reasons in terms of rule 3(1)(a) of the rules issued under s 107A of the ITA read with section 269 TAA. (1)
- This must be submitted within 30 business days (1)
- s 1 of the TAA read with 270(1) of the TAA) from the “date of assessment” (1)
- which in terms of the definition in s 1 of the TAA is the date of issue of the assessment (1)
- SARS then has 60 business days (½)
- from receipt of the taxpayer’s request (½)
- to provide the relevant reasons in terms of rule 3(3) (½)
- or 30 days from such date of receipt of the request (½)
- to notify the taxpayer that adequate reasons have been provided in the opinion of CSARS (½)
- The taxpayer then has 30 business days (½)
- from the date of the notice of the adequate reasons to lodge an objection. (1)
- Where the taxpayers objection does not conform to rule 4(d) &(b) (signed in writing grounds specified)CSARS must in terms of rule 5(1)(a) (½)
- within 60 business days (½)
- notify the taxpayer that the objection is invalid, (½)
- Where after the taxpayer must submit a valid objection within 10 business days. (1)
- SARS must then in terms of rule 5(3)(b) within 90 days from receipt of the valid objection (½)

- partially or in full allow or disallow the objection. (½)
- The taxpayer must then in terms of rule 6(2) within 30 days from the date of the notice (½)
- disallowing the objection, deliver a notice of appeal to CSARS . (½)
- Steps regarding payment (irreparable hardships) Section 164(1) (1)
- of the TAA provides that the obligation to pay the assessment is not suspended by any objection or appeal. (1)
- The taxpayer will have to submit a request to SARS under section 164(2) (½)
- To suspend the payment till finalisation of the dispute. (½)
- The Taxpayer will have to satisfy the SARS official that (½)
- there is irreparable financial hardship as per section 164(3)(e). (½)
- This application should be made before the due date for payment indicated on the assessment. (½)

Available 17
Maximum 13

Part B

12 marks

- A “reportable arrangement” is defined in s 35(1) of the TAA as (½)
- any “arrangement” listed in s 35(2). (½)
- An “arrangement” is defined in section 34 as “any transaction or agreement” and would include a hybrid equity instrument. (1)
- Alt: The notice for the purposes of section 35(2) includes a section 8E hybrid equity instrument. (1)
- The “arrangement” will therefore constitute a “reportable arrangement” unless it is an excluded arrangement in terms of section 36 of the TAA. (1)
- The arrangement that Brass Pty Ltd entered into is therefore a reportable arrangement as it is listed in the notice and it does not qualify for the exclusion in s 36(3) & (4) (1)

- as its main purpose is to obtain a tax benefit (½)
- and it will lead to an undue tax benefit . (½)
- The obligation to report will be on all the participants (1)
- in terms of s 37(2) (1), (½)
- which is Brass (Pty) Ltd (½)
- as the promoter is not SA resident. (½)
- Brass Pty Ltd must disclose the required information in terms of s 37(4) (1) within 45 business days after the amount was first received, (1)
- thus within 6 months and 45 business days after the arrangement was entered into. (1)
- If a reportable arrangement is not reported within the time period prescribed in s 37(4), a monthly penalty (1)
- may be imposed in terms of s 212(1) on the participant (½)
- of R50 000 for each month that the participant fails to report. (1)
- Section 212(2) triples the amount of the penalty if the tax benefit exceeded R10m. (1)
- The penalty would be for 2 months, therefore R300 000 as there were only 2 completed months from the time that the obligation to report arose till when the arrangement was reported $(10,5 - 6 - 2 \text{ (45 business days)} = 2.5 \text{ months})$ (1)

Available 12.5
 Bonus 2.5
 Maximum 12

Part C

15 marks

- Section 240(1) of the TAA provides that (1)
- every natural person who provides (½)
- advice to another person in respect to the application of a tax Act (½)
- or completes or assists in completing a return by another person (½)
- must register with a recognized controlling body (½)
- and with SARS. (½)

Mr Carl Ludike

- Mr Carl Ludike does not perform any tax services and is therefore not required to register. (1)

Mrs Goldblum

- Section 240(2)(d) excludes from registration as a tax practitioner, persons who provide advice or assistance to the person's employer or a connected person to that employer by whom that person is employed full time. (1)
- Mrs. Goldblum is in full time employment at Brass Pty Ltd (1)
- Bennie Q Pty Ltd is a “connected person” to Brass Pty Ltd as defined in s 1 of the ITA (1)
- as Brass Pty Ltd owns 20% or more of the equity shares and no other shareholder holds a majority interest. (1)
- Therefore the completion of the return of Brass Pty Ltd and Bennie Q Pty Ltd will not require Mrs G to register as a tax practitioner in terms of s 240(2)(d). (1)
- However, Tempe Pty Ltd is not a “connected person” to Brass Pty Ltd as defined in s 1 of the ITA (1)
- as it does not own 20% or more of the “equity shares” (as defined in s 1 of the ITA) as the preference shares do not carry any right to participate in a distribution beyond a specified amount as pertain both returns of capital or dividends . (1)

- For this service she will have to register as a tax practitioner. (1)

Mr Olsen

- Section 240(2)(c) excludes from registration as a tax practitioner, persons who provide tax advice or assistance solely as an incidental part of providing goods and services. (1)
- Mr. Olsen's assistance of calculating the taxable income as part of the audit will constitute advice on a tax act but is an incidental part to the audit service (1)
- and will therefore exclude Mr Olsen from having to register as a tax practitioner in terms of s 240(2)(c) of the TAA. (1)
- However the training and assistance in completing the annual employees' tax reconciliation does not qualify for exclusion in terms of section 240(2) (1) (1)
- and he would therefore have to register as a tax practitioner. (1)

Conclusion

- Olsen and Goldblum must register with both the recognised controlling body and SARS within 21 business days after the date on which s/he first provides advice or assistance that brings them within the registration requirement. (1)

Available 18.5
Maximum 15