

**UNIVERSITY OF FORT HARE**  
**NELSON MANDELA SCHOOL OF LAW**  
(East London)

**Tax Law**  
**LMX 422E**

**DEGREE EXAMINATIONS**  
**November 2019**

.....

<b>Time:</b>	<b>2 hours</b>
<b>Subject:</b>	<b>Tax Law</b>
<b>Marks:</b>	<b>50</b>

**This paper consists of three (3) pages including  
the cover page**

<b>Internal Examiner:</b>	<b>Mr. A van Coller</b>
<b>External Examiner:</b>	<b>Prof M Wandrag</b>

**INSTRUCTIONS**

- a. Answer all the questions;
- b. Each question must be answered as per the instructions provided;
- c. It is in your best interest to write clearly, neatly and legibly;
- d. Rely on relevant case law and statutory provisions where applicable;
- e. Any open spaces in or at the end of your answers must be crossed out and initialed before your answer paper is handed in;
- f. Mark questions accurately and clearly.

## QUESTION 1

[20]

A taxpayer manufactures and distributes building materials, which it sells to various wholesalers in terms of the taxpayer's standard conditions of sale ("SCS"). Clause 1.1 of the SCS reads: - "Unless otherwise stated, all prices are net, and Value Added Tax is additional. Payment must be made by PURCHASER to SELLER without deduction, set off or demand at SELLER's address". Clause 1.3 reads as follows: "Should payment be made by PURCHASER to SELLER not later than the 25th day (or earlier full business day) of the month following the month during which delivery takes place, the PURCHASER shall be regarded as cash and the PURCHASER will be entitled to deduct a settlement discount of 10% from his payment, in accordance with SELLER's discount scheme, which may be revised by SELLER from time to time".

The taxpayer issued a statement of account a customer (B (Pty) Ltd) together with an invoice No 23456 dated 24th June 2019 for R276 000. 00. The taxpayer recorded the gross selling price excluding VAT and deducted the applicable settlement discount of 10% therefrom. The discount was described as "provisions".

The taxpayer, for purposes of calculating its gross income as at the end of June 2019, regarded the net amount after deduction of the discount as reflecting its gross income for that transaction for the year of assessment. The Taxpayer thus assumed that B (Pty) Ltd would pay its account within the stipulated period and therefore be entitled to deduct the settlement discount. The total amount of the so-called provisions as at 30 June 2019 was R27 600. 00.

In respect of the financial year ending 30 June 2019, the Commissioner raised an additional assessment adding back the amount of R27 600. 00 to the taxpayer's gross income. The taxpayer's objection to the additional assessment was disallowed. The matter was then appealed to the Tax Court.

**Required:** Critically evaluate the tax law implications of the so-called settlement discount scheme and whether the Taxpayer should have included the full amount in its calculation of its gross income or whether it was allowed to exclude the possible settlement amount. Refer to case law in your answer.

## QUESTION 2

[20]

The Taxpayer, a Rwandan citizen, who states that his home is in Rwanda, makes a living by selling goods that may be described as counterfeit goods. The taxpayer sells these goods from a premises in East London, South Africa. The Taxpayer has been living in South Africa for a period of seven (7) years and normally was present in the Eastern Cape for at least nine (9) months a year. However, some three (3) years ago he was arrested in Dubai, while buying more goods, and spent eleven (11) months in prison while awaiting trial. He thereafter returned to South Africa. The Taxpayer receives mostly cash as payment for the good sold. The Commissioner is informed of the unlawful activities and is supplied, by an informant, with the detailed record of the transactions concluded by the Taxpayer.

**Required:** The Commissioner approaches you for an opinion and wants to know whether:

- 2.1 The cash involved in the transactions from the sale of counterfeit goods by the Taxpayer qualify as gross income in the hands of the Taxpayer. (10)
- 2.2 The Taxpayer qualify as a taxpayer in South Africa. (10)

## QUESTION 3

[10]

The Taxpayer practiced for 30 years as a chartered accountant and was a long-standing partner in the firm of Walk&SeeMore (WSM). In 2018 WSM and Get&TakeMore entered into a partnership in terms of which G&T came into existence and commenced practice as from 1 February 2018. Internal disagreements regarding the date of his retirement led G&T to request the taxpayer to leave the partnership. Legal advice was that G&T had no right to terminate the Taxpayer's prior agreement with WSM and that the firm had in effect repudiated the earlier agreement. The taxpayer accepted the repudiation and the parties agreed on an amount of R1 million from G&T as "compensation for the premature termination of the taxpayer's right to remain a partner at WSM" to avoid a damages claim. The question then arose whether the amount of R1 million was to be regarded as either income or capital in terms of the definition of 'gross income' in s 1 of the Income Tax Act 58 of 1962.

**Required:** Critically evaluate whether this amount will qualify as a capital receipt by referring to the test(s) applied by the Courts to determine such a question. Refer to case law.

[50]