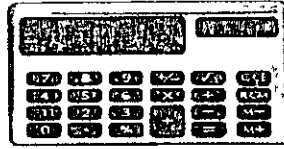


UNIVERSITY EXAMINATIONS



UNIVERSITEITSEKSAMENS

UNISA  university  
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**TAX3704**

May/June 2016

**TAX ADMINISTRATION**

Duration 2 Hours

100 Marks

**EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT**

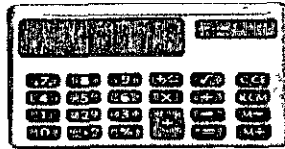
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**Use of a non-programmable pocket calculator is permissible**

**Closed book examination**

**This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue**

**[TURN OVER]**

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**THIS PAPER CONSISTS OF SIX (6) PAGES.****IMPORTANT INSTRUCTIONS:**

1. The South African Revenue Service = "SARS"
2. Tax Administration Act 28 of 2011 (as amended) – "the Tax Administration Act"

The answering of this paper

- 1 This paper consists of four (4) questions
- 2 Answer all the questions
- 3 Start each question on a new (separate) page
- 4 Please complete the cover page of the answer book in full and in pen
- 5 You are reminded that answers may **NOT** be written in pencil
- 6 Proposed timetable (**try not to deviate from this timetable as far as possible**):

QUESTION	TOPIC	MARKS	TIME IN MINUTES
1	Various administrative issues	30	36
2	Various administrative issues	30	36
3	Various administrative issues	20	24
4	Understatement penalties, tax offences and onus of proof	20	24
	<b>TOTAL</b>	<b>100</b>	<b>120</b>

**[TURN OVER]**

**QUESTION 1 (30 marks, 36 minutes)****PART A (15 marks, 18 minutes)**

Mr John Kohl, a South African resident, was selected for an audit by SARS. He owns a small construction business. Mr Kohl believes that SARS simply wants to inspect his business premises for the purpose of prying into his personal affairs. He maintains that there is no reason why SARS should target his business as his neighbour is actually the one who should be investigated for not paying his taxes and E-toll account. Mr Kohl has instructed you to notify SARS that his tax affairs are in order and that his neighbour should be investigated. As a seasoned tax practitioner, you advise him on the different aspects related to his request.

REQUIRED	MARKS
a Explain to Mr Kohl what the difference is between an inspection, an investigation and an audit as described under the Tax Administration Act	3
b Inform Mr Kohl of the important aspects that relate to a "field audit" and what reasonable assistance must be provided by the taxpayer to SARS in this regard?	10
c Advise Mr Kohl upon whom he can call to vindicate any of his rights as a taxpayer if the audit takes an unnecessarily long time to complete. Provide a reason for your answer	2

**PART B (13 marks, 16 minutes)**

Ms Yolanda Clegg is the representative taxpayer for a large auditing firm. As part of her duties, she advises management on all aspects related to the Tax Administration Act. During a discussion with Prof Moseneng, a member of top management, she is requested to explain some of the concepts covered under the Tax Administration Act.

REQUIRED	MARKS
a Inform Prof Moseneng which persons the Commissioner for SARS may request, by public notice, to submit a return by a specified date as a third party (section 26 of the Tax Administration Act)	4
b Explain to Prof Moseneng what information a notice of assessment must contain	4
c Advise Prof Moseneng of the important aspects related to a request by SARS for "relevant material"	3
d Explain to Prof Moseneng what "date of assessment" means in the case of an assessment issued by SARS and in the case of a self-assessment by the taxpayer	2

**[TURN OVER]**

**QUESTION 1 (continued)****PART C (2 marks, 2 minutes)**

Mr Rick van Bruggen, a Belgian resident, is planning a "proposed transaction" as defined under section 75 of the Tax Administration Act. He is however uncertain about the application of any tax Act on the "proposed transaction". He approaches you for assistance and refers to certain facts and circumstances that SARS needs to take into consideration about the "proposed transaction". Mr Van Bruggen is the promotor of the "proposed transaction". He is currently residing in Gauteng.

REQUIRED.	MARKS
a Inform Mr Van Bruggen what procedure, as described under section 75 of the Tax Administration Act, would be the most appropriate course of action to follow in respect of the proposed transaction. Do not discuss "reportable arrangements".	1
b Advise Mr Van Bruggen what would be the purpose of such a result or decision by SARS.	1

**QUESTION 2 (30 marks, 40 minutes)****PART A (8 marks, 10 minutes)**

The burden to prove that there is an amount to be taxed rests on SARS. The taxpayer however bears the burden to prove that an amount is not taxable. Section 102 of the Tax Administration Act clearly identifies these different aspects. Ms Norah Mayflower received for the 2015 year of assessment a request for verification of certain amounts that she had claimed as expenses. She approaches you for assistance in this regard.

REQUIRED:	MARKS
a Advise Ms Mayflower about the onus of proof resting on the taxpayer, as described under section 102 of the Tax Administration Act.	4
b Inform Ms Mayflower of the circumstances where SARS may issue a reduced assessment.	4

**PART B (10 marks, 12 minutes)**

Advocate Don Pillay was recently appointed as the representative taxpayer for the Gauteng Regional Bar. Due to the recent changes brought about by the Tax Administration Act, he contacts you personally to obtain information concerning his personal liability as representative taxpayer for the Bar. You have carefully studied the Tax Administration Act and are able to provide Advocate Pillay with the necessary information.

[TURN OVER]

**QUESTION 2 (continued)**

REQUIRED	MARKS
a Explain to Advocate Pillay what is meant by the term "taxpayer" (section 151 of the Tax Administration Act)	4
b Explain to Advocate Pillay what is meant by "a person chargeable to tax" (section 152 of the Tax Administration Act)	2
c Describe to Advocate Pillay what is meant by "liability of a representative taxpayer" (section 154 of the Tax Administration Act)	4

**PART C (7 marks, 8 minutes)**

Dr Nicole Williams is a partner in a medical practice. Her practice has suffered due to a loss of income over the past number of years. She has been serving as a medical practitioner in a rural village in Mpumalanga since 2005. Section 167 of the Tax Administration Act grants SARS the power to provide for an instalment payment agreement in respect of a taxpayer's outstanding tax liability. Dr Williams is prepared to approach SARS with the view of arranging for the payment of instalments to help settle her outstanding tax liability. You assist the good doctor (with her consent) by arranging for an instalment payment agreement with SARS.

REQUIRED:	MARKS
a Inform Dr Williams when will SARS modify or terminate an instalment payment agreement	2
b Advise Dr Williams of the criteria SARS will consider for arranging an instalment payment agreement	5

**PART D (5 marks, 6 minutes)**

Ms Joyce Riebe, a South African resident, acting in collaboration with a foreign shareholder, recently acquired a company which manufactures automotive parts for the local market. Ms Riebe intends to approach a number of foreign investors with the view of expanding her business into various overseas markets. She is uncertain about a number of issues in terms of the Tax Administration Act and accordingly approaches you for assistance.

REQUIRED	MARKS
a Advise Ms Riebe who is authorised under the Tax Administration Act to make a written request to a taxpayer to obtain security (from the taxpayer) in order to safeguard the collection of taxes,	1
b Explain to Ms Riebe who may be held liable, other than the taxpayer, for providing the required security (in respect of a taxpayer who is not a natural person)	3
c Explain to Ms Riebe what type of contract SARS may enter into with a taxpayer who is not a natural person, if such a taxpayer is unable to provide the required security	1

**[TURN OVER]**

**QUESTION 3 (20 marks, 24 minutes)****PART A (8 marks, 10 minutes)**

Ms Rebecca Molopo declared a "dispute" with SARS in respect of the notice of assessment she received for the 2015 year of assessment. She realises that SARS has a duty to assess and collect taxes according to the tax laws of South Africa and to not forego a tax which is properly chargeable and payable. However, Ms Molopo's business has suffered excessive financial losses during 2015 and she believes that the assessment raised by SARS has prejudiced her business. SARS had disallowed a number of items claimed as expenditure by Ms Molopo. However, after further discussions with the Revenue Authority, a Senior SARS official decided that the particular matter ("dispute") was not in the best interest of the *fiscus* (to pursue any further) and reached a settlement with Ms Molopo. She enquires from you what would be the correct procedure for reaching a "settlement" and what important issues must be considered by SARS and herself in this matter.

REQUIRED:	MARKS
a Advise Ms Molopo on the aspects related to the procedure for reaching a "settlement" (section 147 of the Tax Administration Act) and inform her of the details which must be included in the agreement reached between herself and SARS	8

**PART B (8 marks, 10 minutes)**

The Tax Administration Act draws a distinction between a temporary and permanent write off. A temporary write off is debt relief provided for under section 195 of the Act. The tax debt must be uneconomical to pursue and does not absolve the taxpayer from paying an outstanding tax liability. A tax debt will be uneconomical to pursue if a senior SARS official is satisfied that the total cost of recovery (to be incurred) of the tax debt will exceed the anticipated amount to be recovered. Ms Malone's business suffers from a deficiency of funds and she approaches SARS with the view of writing off a part of the outstanding tax liability. Your assistance is required by one of the attorneys Ms Malone had consulted with, prior to the request for a write off.

REQUIRED:	MARKS
a Describe the factors that must be taken into account by SARS when deciding to temporarily write off an outstanding tax liability	8

**PART C (4 marks, 4 minutes)**

SARS has imposed Ms Malone with an administrative penalty for non-compliance with a tax Act. She is aggrieved by the penalty assessment and wants to request SARS to remit the penalty.

REQUIRED:	MARKS
a Describe the two (2) types of administrative non-compliance penalties imposed under Chapter 15 of the Tax Administration Act	2
b Inform Ms Malone what exceptional circumstances SARS would consider for the remittance of an administrative penalty	2

[TURN OVER]

**QUESTION 4 (20 marks, 24 minutes)****PART A (10 marks, 12 minutes)**

Mr Sam Parlowe, the owner of a game farm in Limpopo, approaches you with the view of assisting him with the remittance of an understatement penalty imposed by SARS for the 2015 year of assessment. Mr Parlowe is unsure how the understatement penalty regime is applied in practice and enquires from you on whom the onus rests to prove the grounds for the imposition of any penalty percentages.

**Understatement penalty percentage table (section 223 of the Tax Administration Act)**

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a repeat case	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before no- tification of audit
(i)	Substantial understatement	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for tax position taken	50%	75%	25%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax evasion	150%	200%	75%	10%

REQUIRED.	MARKS
a Describe to Mr Parlowe what is meant by an "understatement"	4
b Explain to Mr Parlowe how the above percentage table works	5
c Advise Mr Parlowe on whom the onus rests to prove the grounds for the imposition of the applicable percentages	1

**PART B (10 marks, 12 minutes)**

Ms Joanne Moselle is busy with a research project in order to complete her MCompt degree (limited dissertation) in Taxation. She has reviewed the different criminal offences described under the Tax Administration Act.

REQUIRED:	MARKS
a Inform Ms Moselle of any five (5) of the tax evasion offences listed under section 235 of the Tax Administration Act	5
b Advise Ms Moselle what specific section of the Constitution of South Africa, 1996, provides for the rights of an accused or a person presumed guilty of an offence	1
c Describe to Ms Moselle what information SARS may publish in respect of a tax offender	4

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