

Graded Questions on Income Tax in South Africa 2011

Thirty-Second Edition

Kevin Mitchell

BCom (Natal) BCom (Hons) (Cape Town) CA(SA)
Partner, Mitchells' Chartered Accountants and
Honorary Professor in the School of Law at the
University of KwaZulu-Natal.

Lindsay Mitchell

BCom MAcc DEcon (Natal) CA(SA)
Professor in the Taxation Section of the School of Accounting at the
University of KwaZulu-Natal.

The questions are based on the Income Tax Act 1962, the Value-Added Tax Act 1991 and the Estate Duty Act 1955 – incorporating amendments up to and including the Taxation Laws Amendment Act 7 of 2010 and the Voluntary Disclosure Programme and Taxation Laws Second Amendment Act 8 of 2010.

Suggested solutions are available only to those institutions prescribing this book.

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ASSUMPTIONS

Unless specifically stated to the contrary, the following assumptions must be made when interpreting the questions in this book:

- An amount is expressed in the currency of South Africa.
- A taxpayer is a resident of the Republic.
- A couple is married out of community of property.
- The cost of all purchases made by a registered vendor for value-added tax (VAT) purposes are net of input tax deduction that he is entitled to.
- A taxpayer, a spouse, or a 'qualifying' child is not a 'person with a disability' as 'defined'.
- Medical expenses are 'qualifying' medical expenses in that they satisfy the requirements of section 18.
- The age of the person given is his age on the last day of the year of assessment.
- Reference to a company or person being a 'taxpayer' means that if an amount is deemed to accrue to it or him in terms of 'paragraph (h) of the definition of "gross income" in section 1' this amount will constitute its or his income. In other words it will not be exempt from normal tax.
- Reference to a local dividend means that the dividend does not fall within the definition of a 'foreign dividend' in section 1.
- Reference to a foreign dividend means that the dividend falls within the definition of a 'foreign dividend' in section 1.
- When appropriate, an enterprise is registered as a vendor for VAT purposes.
- The 2011 year of assessment for a non-corporate taxpayer is the year of assessment ending on 28 February 2011 and for a company its financial year ending during the period of 12 months ending on 31 March 2011.
- Calculations of 'taxable income' are in rands only, cents are simply ignored, they are not rounded up or down to the nearest rand.
- Calculations of 'normal tax payable' and 'normal tax liability' are in rands and cents.
- An amount derived in a foreign currency is expressed in its equivalent in the currency of South Africa.
- 'Standard Income Tax on Employees' is referred to as SITE.
- 'Value-Added Tax' is referred to as VAT.
- The 'secondary tax on companies' is referred to as STC.
- 'Capital gains tax' is referred to as CGT.
- 'Employees' tax' is referred to as PAYE.
- Non-residents' shareholders tax is referred to as NRST.
- The South African Revenue Service is referred to as SARS.
- 'The Commissioner' means the Commissioner for the South African Revenue Service.
- A non-resident means a person who is not a resident of the Republic.

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CHAPTER 1
INTERPRETATION AND DISPUTES

1.1 (15 minutes)

This question tests the types of taxes that a country could impose to collect its revenues.

Taxes may be broken down into two general categories, being direct taxation and indirect taxation.

You are required to distinguish between direct taxation and indirect taxation.

1.2 (10 minutes)

This question tests the construction of taxing Acts as set out in *Meyerowitz on Income Tax* in § 3.25. It also tests the judgment from *Israelsohn v CIR* (1952 (3) SA 529 (A), 18 SATC 247).

If a provision of the Income Tax Act is ambiguous, then the contra fiscum rule must be invoked.

You are required to discuss this rule and to state whether it will apply for every provision of a fiscal statute.

1.3 (10 minutes)

This question tests the construction of taxing Acts as set out in *Meyerowitz on Income Tax* in § 3.16 to § 3.24. It also tests the judgments from *Venter v Rex* (1907 TS 910), *Israelsohn v CIR* (1952 (3) SA 529 (A), 18 SATC 247), *CIR v Crown Mines Ltd* (1923 AD 121) and *Isaacs v CIR* (1949 (4) SA 561 (A), 16 SATC 258).

Under the basic rules of the interpretation of fiscal legislation, the courts have conferred a certain latitude for

- anomalies,
- ambiguities,
- omissions (casus omissus), and
- double taxation (hardship).

You are required to discuss these canons of construction in relation to the interpreting of statutory provisions.

1.4 (30 minutes)

This question tests certain economic concepts of taxation.

Arguments, both for and against, have been advanced in relation to each of the following methods of taxation:

- Estate duty.
- Donations tax.
- Normal tax.
- Capital gains tax.
- Value-added tax.
- Excise duty.
- Sales tax.
- Wealth tax.

You are required to discuss each method setting out its advantages and disadvantages.

1.5

(15 minutes)

This question tests the distinction between the statute and case law.

When dealing with statutory provisions, the courts are faced with the task of interpreting the statute.

You are required to distinguish between the statute and case law, detailing the use of case law.

1.6

(30 minutes)

This question tests the objection and appeal procedure available to an aggrieved taxpayer. It tests sections 81, 83(1), 83(1A), 83(17), 83A, 83A(13), 86A(1), 86A(3), 86A(4), 88 and 107A(1) and rules 3(1)(a), 4(b), 5(3), 8 and 17 to 29 of the rules promulgated under the provisions of section 107A.

If a taxpayer is aggrieved with the decision of the Commissioner he may in accordance with the provisions of the Act object to it and if necessary appeal against it.

You are required to set out the obligations and rights of taxpayers for objections to assessments and appeals against the decisions of the Commissioner.

1.7

(30 minutes)

This question tests the objection and appeal procedure available to an aggrieved taxpayer. It tests sections 81, 83(1), 83(1A), 83(17), 83A, 83A(13), 86A(1), 86A(3), 86A(4), 88 and 107A(1) and rules 3(1)(a), 4(b), 5(3), 8 and 17 to 29 of the rules promulgated under the provisions of section 107A.

During the 2010 year of assessment Theo Strand purchased a beach cottage on the lower KwaZulu-Natal South Coast for R870 000.

Due to the increase in the price of petrol and coupled with the fact that his wife wanted to go to church on a Sunday, Theo Strand disposed of this beach cottage for R934 000 during the 2011 year of assessment. He intends, in the near future, to purchase another beach cottage closer to his permanent residence, and closer to the church that his wife attends, both situated in Durban.

He has recently received his assessment for the 2011 year of assessment and is aggrieved with it due to the fact that the Commissioner has included in his taxable income the R64 000 profit he had made on the purchase and sale of the beach cottage. He had expected the profit to be a capital gain which would then have been set off against a capital loss that he had suffered on the disposal of certain shares that he held as an investment.

You are required to advise Theo Strand of the obligations and rights conferred upon him by the Income Tax Act in regard to the assessment he has received.

1.8

(30 minutes)

This question tests the objection and appeal procedure available to an aggrieved taxpayer. It tests sections 81, 83(1), 83(1A), 83(17), 83A, 83A(13), 86A(1), 86A(3), 86A(4), 88 and 107A(1) and rules 3(1)(a), 4(b), 5(3), 8 and 17 to 29 of the rules promulgated under the provisions of section 107A.

Cecil Salisbury has recently received an assessment – its due date is 1 January 2011 and it has a second date of 31 January 2011. He is aggrieved by this assessment as R80 000, being the profit he made on the sale of a business that he owned, has been included in his taxable income.

This profit is clearly of a capital nature and should not have been taxed. A portion of the R80 000 should have been liable for capital gains tax.

You are required to inform Cecil Salisbury of the rights and obligations he has under the provisions of the Income Tax Act in relation to this assessment.

1.9

(15 minutes)

This question tests the provisions of section 79.

Patrick Plott is a property owner who objected, two years previously, to an assessment raised upon him to the extent that it dealt with a profit arising upon the disposal of certain land. His objection was based on the grounds that the profit was one of a capital nature. His objection was allowed and his assessment was amended accordingly.

Patrick Plott has now received an offer for the disposal of a further plot of land, and he is concerned that, if he sells this plot of land at a profit, the Commissioner may regard him as a land-dealer and re-open his previous assessment.

You are required to discuss the Commissioner's rights to raise an additional assessment upon Patrick Plott for the profit that, upon objection, had been agreed to be capital in nature.

1.10

(45 minutes)

This question tests the objection and appeal procedure available to an aggrieved taxpayer. It tests sections 81, 83(1), 83(1A), 83(17), 83A, 83A(13), 86A(1), 86A(3), 86A(4), 88 and 107A(1) and rules 3(1)(a), 4(b), 5(3), 8 and 17 to 29 of the rules promulgated under the provisions of section 107A.

To enable his wife to help maintain her fragile mother, Peter Peace purchased a neighbour's house five years ago for R800 000. His mother-in-law immediately moved into this house and occupied it up to the time of her death. She died during the 2010 year of assessment.

Throughout the 2011 year of assessment Peter derived rentals from a tenant to whom he had let this house for a period of two years. As the revenue expenditure in relation to the letting of this house exceeded the gross rentals by R18 000 for the year, he claimed this loss as a deduction for normal tax purposes.

He recently received his tax assessment for the 2011 year of assessment and discovered that this loss of R18 000 had been disallowed as a deduction by the Commissioner.

You are required to discuss the lines of action open to Peter Peace, who wishes to dispute this assessment raised by the Commissioner, indicating clearly the circumstances under which, and the time limits within which, his rights are exercisable. Also detail the modus operandi (way of operating) of the tax appeals board.

1.11

(15 minutes)

This question tests the provisions of sections 78(2) and 102.

Thieves broke into Mason Lock's shop on Christmas eve (24 December 2010) and not only stole all his trading stock, but also took with them a computer that contained his entire bookkeeping records. As he was unable to determine his profit for the year, he arranged with the Commissioner that his taxable income for the 2011 year of assessment be estimated at R496 000.

Shortly after being assessed, the police arrested a suspect and recovered Mason Lock's computer. He was then able to retrieve most of his books of account. He now has substantive evidence. It establishes that his taxable income for the 2011 year of assessment was R372 000.

You are required to discuss what rights Mason Lock has to be re-assessed to take into account this additional information.

1.12

(50 minutes)

This question tests the meaning of an 'amount', the provisions of sections 82 and 83(1). It also tests the judgments from *CIR v Butcher Bros (Pty) Ltd* (1945 AD 301, 13 SATC 21), *Irvin & Johnson (SA) Ltd v CIR* (1946 AD 483, 14 SATC 24), ITC 892 ((1959) 23 SATC 358), ITC 936 ((1960) 24 SATC 361), *KBI v Transvaalse Suikerkorporasie Beperk* (1985 (2) SA 666 (T), 47 SATC 34), *Shidiack v Union Government (Minister of the Interior)* (1912 AD 642 651), ITC 1400 ((1983) 47 SATC 169) and *Lace Proprietary Mines Ltd v CIR* (1938 AD 267, 9 SATC 349). It is suitable for a student studying towards a Master's (or similar degree) specialising in taxation.

On 31 March 2010 Sextus De Cade retired from the employment of Joanstone Limited having reached the mandatory retirement age of Joanstone Limited of 60 years. (He had attained the age of 60 years on 15 March 2010.)

Sextus De Cade had been a member of Joanstone Limited's deferred compensation scheme since 1 April 2005. In terms of this scheme, if he elected a cash award, he would have been entitled to R130 000 from Joanstone Limited. Instead, he elected the other option under the deferred compensation scheme, namely, to be ceded an insurance policy on his life.

On 1 April 2005 when Sextus De Cade joined its deferred compensation scheme, Joanstone Limited had purchased a 'regulation' insurance policy on his life. (A 'regulation' insurance policy in the sense that it meets all the conditions as prescribed by the Minister of Finance.)

On 31 March 2010 this insurance policy had a surrender value of R140 000 and a market value of R175 000. (Rumours that this insurer would be 'demutualised' and that policyholders may obtain a windfall benefit in the form of bonus shares in a future quoted company being awarded had created a demand for its existing policies with a direct result being that the market value of these policies was well in excess of their surrender values.)

After being ceded this policy Sextus De Cade agreed to extend its duration by a period of five years. He also agreed to pay a premium of R12 000 each year for the five-year period (a total of R60 000). In turn, the insurer agreed to award Sextus De Cade a minimum amount of R250 000 in five years time. But it also stated that, based on current performance, the award was more likely to be R400 000.

When assessing Sextus De Cade for the 2011 year of assessment the Commissioner included in his gross income R192 848 for the deferred compensation award made to him by Joanstone Limited (in the form of the ceded insurance policy) on his retirement from it.

Sextus De Cade objected to the quantum of this (the R192 848) inclusion in his gross income and questioned whether the Commissioner had correctly applied his mind in the determination of this amount.

Correspondence then followed in which the Commissioner revealed that the R192 848 amount had been determined as follows:

The present value at 11% of the expected future benefit: $R400\,000 \times 0,593$	237 200
Less the present value at 11% of the future premiums payable: $R12\,000 \times 3,696$	<u>44 352</u>
Value included in gross income	<u>192 848</u>

This correspondence was followed by a 'section 81(4) notice' from the Commissioner to Sextus De Cade informing him that his objection had been disallowed.

Sextus De Cade being dissatisfied with the decision of the Commissioner as notified to him in terms of section 81(4) appealed to the tax court. (Due to the nature of this dispute it was agreed that this matter would not be heard by the 'tax appeals board'.) Sextus De Cade had also refused the offer to have this dispute resolved under the alternate dispute resolution process and did not enter into a settlement agreement with the Commissioner.

In his letter of objection it is clear that Sextus De Cade questioned whether the Commissioner had,

- first, the power to determine the amount to be included in gross income, and

- secondly, if he had this power, whether the Commissioner had applied his mind correctly in the determination of this amount.

You are employed as a High Court judge. The Judge President of the Provincial Division of the High Court having jurisdiction in the area in which you are employed has seconded you to the tax court for this area.

You have heard evidence and arguments from representatives of Sextus De Cade and the Commissioner. The evidence and arguments have merely confirmed the facts as set out above and the various amounts as detailed above.

You are required to give your judgment to this dispute. In your judgment you must

1. first, detail why you believe that it is competent for your court to give a judgment on this issue, and
2. secondly, you must then decide what amount should have been included in Sextus De Cade's gross income obviously giving reasons for your decision.

1.13

(15 minutes)

This question tests a person's normal tax liability and section 76.

Lester Kirsten is a resident of the Republic. He is 55 years old. He submitted the following information in his 2011 tax return.

Salary	288 000
Annual bonus	24 000
Net rentals	36 000
Gross interest	27 300

Lester Kirsten should have submitted the following information in his 2011 tax return.

Salary	288 000
Annual bonus	24 000
Net rentals	36 000
Gross interest	27 300
Taxable trade profit	15 000

You are required to calculate his normal tax liability including any additional tax payable should the Commissioner apply the provisions of section 76 without any remission.

1.14

(30 minutes)

This question tests the provisions of section 83A.

The Income Tax Act 1991 gave legislative birth to the 'tax appeals board'. The result is that an appeal to the tax court (formerly the special court for hearing income tax appeals) must in the first instance be heard by this 'tax appeals board' unless objection to the jurisdiction of this board to hear the appeal is made before the commencement of the hearing of the appeal.

You are required to write a brief note on the 'tax appeals board' setting out how it operates and what its relationship is with the tax court.

1.15

(60 minutes)

This question tests the alternative dispute resolution procedure.

Section 107A(1) provides that the Minister of Finance may, after consultation with the Minister of Justice, promulgate rules prescribing the procedures to be observed in lodging an objection and noting an appeal against an assessment. These rules will also provide the conduct and hearing of an

appeal before a tax court. And then in terms of s 107A(2), the rules contemplated in s 107A(1) may provide for an alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by an assessment may resolve a dispute.

In Proclamation R467 in *Government Gazette* 24639 of 1 April 2003 the Minister of Finance promulgated the rules prescribing, amongst other things, the procedures for alternative dispute resolution.

You are required to

1. discuss the alternative dispute resolution procedure, and
2. set out the terms that govern the alternative dispute resolution procedure, in other words, the procedure that is to be followed.

1.16

(30 minutes)

This question tests the meaning of certain legal words and terms including evidence, argument, pleadings, common cause, discovery, matter or point in limine, precedent, review, appeal, prescription and jurisdiction. This question is suitable for a student studying towards a Master's (or similar degree) specialising in taxation.

Friedman J who was the President of the Natal Special Court for Hearing Income Tax Appeals for a number of years once said ((2006) 20 *Tax Planning* 151 at 152)

‘[i]t is important to recognise and accept, at the outset, that lawyers and accountants do not practice in competition with each other. At any rate, they ought not to do so and ought not to believe that they are doing so. Each ought to recognise the field of expertise of the other and appreciate that the skills of the one should be used to complement the skills of the other for the ultimate benefit of their client. And this is particularly so in the field of tax law where, if the public is to be properly served, lawyer and accountant must each realise his limitations and seek the assistance of the other, where the client's needs require it.’

He then quoted two examples of an absence of co-operation between accountant and lawyer, a lapse that ended up in the tax court, with disastrous results for the taxpayer. One example is reported as ITC 1407 ((1985) 48 SATC 16).

In relation to tax planning, he went on to say the following ((2006) 20 *Tax Planning* 151 at 155):

‘The field of tax planning is the joint preserve of the accountant and lawyer. . . . I do not mean joint in the sense that both can or should function alone, but rather joint in the sense that they should function together, co-operating with each other in this particular field of expertise. No lawyer should endeavour to advise a client on, for example, a tax avoidance scheme or an estate planning scheme without the assistance of an accountant to access the financial implications of the scheme or the problems which the accountant envisages may arise with the authorities with regard to such a scheme. Similarly no accountant should prepare such a scheme for a client, without the assistance of a lawyer, first, to prepare the necessary legal documentation and, secondly, to advise him on the various legal problems which might arise. And as I have already indicated what applies to general schemes also applies to the particular.’

In line with these views of Friedman J, Arthur Old, a top accounting practice, employed you (a lawyer) to help strengthen its so-called Tax Division.

At meetings within the Tax Division, you have become aware that many of your colleagues are not familiar with the meaning of certain terms and words that are frequently used by lawyers. Words and terms including, evidence, argument, pleadings, common cause, discovery, matter or point in limine, precedent, review, appeal, prescription and jurisdiction seem not to be understood by your colleagues.

The Head of the Tax Section has therefore requested you to prepare an inter-office memorandum. In this memorandum you must explain the meaning of these words and terms.

You are required to briefly explain what is meant by evidence, argument, pleadings, common cause, discovery, matter or point in limine, precedent, review, appeal, prescription and jurisdiction.

1.17

(30 minutes)

This question tests the so-called new approach to interpreting fiscal legislation, that is, to depart from the literal meaning and to give effect to the real intention of the legislature. This question is suitable for a student studying towards a Master's (or similar degree) specialising in taxation.

An agreement between the parties to divorce proceedings in terms of which the husband undertook to pay to the wife maintenance for the minor children of the marriage and for herself was made an order of court. The husband died some years after the decree of divorce had been granted. The administrators of the trust in his estate made monthly payments to the wife in pursuance of the agreement and order of court in accordance with directions given by the husband. The wife claimed that these payments were exempt from tax under section 10(1)(u) of the Income Tax Act. It exempts from normal tax

'any amount received by . . . any person from such person's spouse or former spouse by way of . . . maintenance of such person or any children under an order of . . . divorce'.

The above were the facts in both ITC 1119 ((1968) 30 SATC 159) and ITC 1584 ((1994) 57 SATC 63).

In ITC 1119 the wife's claim was rejected, yet in ITC 1584 her claim was allowed. The judgment in ITC 1119 was given by Kotzen J and in ITC 1584 by Seligson AJ.

The facts in these two cases are not distinguishable. And the law, being the appropriate exemption section (section 10(1)(u) – see the extract above) was identical in the years of assessment in dispute in both cases. But the judgments given were the opposite – the ITC 1119 judgment going against the taxpayer, and the ITC 1584 judgment going in favour of the taxpayer.

You are required to discuss how Seligson AJ (in 1994) came to the opposite conclusion to Kotzen J (in 1968) on an issue involving identical facts and the identical law.

1.18

(60 minutes)

This question tests the quantum of additional tax levied under the provisions of section 76. It also tests section 82 and the judgments from ITC 1486 ((1990) 53 SATC 39), *KBI v Mabotsa* ((NCPD) (1993), 55 SATC 98), ITC 1306 ((1980) 42 SATC 139), ITC 1489 ((1990), 53 SATC 99) and *CIR v Miller* ((CPD) (1993), 56 SATC 1). It is suitable for a student studying towards a Master's (or similar degree) specialising in taxation.

The Judge President of the Provincial Division of the High Court has nominated and seconded you, in terms of section 83(6), to be the President of the tax court having jurisdiction in that Provincial Division.

The facts of a dispute that you have heard include the following:

Miss Muffit has for the past 15 years worked as the barmaid (a woman serving behind the bar of a public house) at the Shootout Pub (a public house). Her son plays football for the Curdswhey Football Club. Miss Muffit is a single parent. The premises of the Shootout Pub and the Curdswhey Football Club are adjacent to each other.

Spider Tuffet is a wealthy local businessman. He has a number of business interests. His son also plays football for the Curdswhey Football Club. Spider Tuffet is also a single parent. His son and Miss Muffit's son are good friends.

Most of the Curdswhey Football Club's players spend a lot of time (and money) at the Shootout Pub.

Eighteen months ago the owner of the Shootout Pub emigrated. To prevent the Shootout Pub from closing down, Spider Tuffet purchased it from its previous owner. He bought the business 'lock, stock and barrel' (in its entirety). He bought it in his own name. He bought it for a number of reasons:

- To prevent it from closing down.
- To ensure that the Curdswhey Football Club players would still be able to spend time in it.
- To ensure that Miss Muffit did not become unemployed.
- And to earn income from it.

From the turnover figures that Spider Tuffet was provided with, he calculated that the return from the capital that he would invest in it, would exceed the interest that he would have earned had this capital been invested in an interest-bearing security.

When Spider Tuffet's accountant prepared the Shootout Pub's statement of comprehensive income for the 2011 year of assessment, it was established that a substantial loss had been suffered. This loss was set-off against the profits made by Spider Tuffet from his other business interests. The overall result was that Spider Tuffet's taxable income for the 2011 year of assessment was less than it had been for the three previous years of assessment. Even though it was less than in the three previous years of assessment, it still caused Spider Tuffet to pay tax at the maximum marginal rate. (Spider Tuffet is a provisional taxpayer.)

The Commissioner suspected that the receipts of the Shootout Pub had been understated. (The Shootout Pub has no accruals as its business is conducted solely on a cash basis.) The Commissioner sent a team of inspectors to drink at the Shootout Pub and to observe the way its business was being carried out. These inspectors determined that the Shootout Pub's receipts had been grossly understated because Miss Muffit was often assisted by volunteers being football players from the Curdswhey Football Club some of whom were not numerate, and most of whom were not sober. The inspectors observed that confusion as to charges and change frequently occurred. Miss Muffit, herself, seemed to be in a similar position to the volunteers.

Using the Shootout Pub's purchases as a base, and increasing this amount by the normal mark-up percentages for the various categories of its trading stock, the Commissioner estimated the Shootout Pub's taxable income to be R250 000 in excess of its 'disclosed' taxable income (according to the information declared by Spider Tuffet). This extra R250 000 taxable income caused Spider Tuffet's normal tax liability to increase by R100 000 (R250 000 at 40%).

In terms of section 76(1), the Commissioner also imposed additional tax of R100 000 on Spider Tuffet. In a letter to Spider Tuffet, the Commissioner indicated that he could have imposed additional tax of R200 000, but that he had remitted half the amount of the possible additional tax because it was clear that extenuating circumstances existed in his (Spider Tuffet's) situation.

It was against both the extra R250 000 inclusion in his taxable income and the additional tax charge of R100 000 that Spider Tuffet unsuccessfully objected. The subsequent appeal to this court is on both the extra R250 000 inclusion in his taxable income and on the quantum of the additional tax.

Counsel for Spider Tuffet argues that the Commissioner's inclusion of R250 000 in Spider Tuffet's *taxable income* is incorrect since it is based on a fundamentally wrong premise. He accepts that the understated receipts calculation has been equitably carried out. But he argues that this R250 000 should be included in Spider Tuffet's *gross income* (and not his *taxable income*). Once this R250 000 has been included in Spider Tuffet's *gross income*, his counsel then argues that Spider Tuffet is entitled to a tax deduction under the provisions of the general deduction formula for the R250 000 of his receipts that have been 'stolen' from him.

Counsel for Spider Tuffet also called for a total remission of the additional tax on the grounds that there was no 'extra' *taxable income* on which to base this additional tax. In the alternative, he argues that the additional tax should be remitted in total because Spider Tuffet

- was in no way whatsoever responsible for the understated receipts,
- was merely an 'innocent' party to the transactions that caused the receipts to be understated. The previous owner of the business (had allowed the control (or rather the lack of control) system to develop),
- never intended to pay less tax than that due by him, and
- had co-operated with the Commissioner in every way required of him.

Counsel for the Commissioner argued that Spider Tuffet was not entitled to a tax deduction for his stolen receipts because he had been negligent in allowing the theft to take place. He also pointed out that in any event Spider Tuffet had failed to prove that his receipts had been stolen.

As far as the additional tax was concerned, counsel for the Commissioner argued that the amount of the additional tax that had been levied had already been substantially remitted in that the legislation actually permitted the Commissioner to levy additional tax equal to double the amount that had been levied. In this instance the additional tax levied could have been R200 000. He also pointed out that to remit this amount any further would cause a loss to the fiscus in that, had the correct information been initially returned by Spider Tuffet, the Commissioner would have been able to collect the correct amount of tax due at an earlier date – and then these funds could have been invested by the fiscus (to earn income) or used by it to settle a loan (to reduce an expense).

Counsel for the taxpayer responded to this latter statement by pointing out that Spider Tuffet was a provisional taxpayer, and a 'third' provisional taxpayer, and that the third-provisional tax system of collecting taxes due ensured that there was no loss of income to the fiscus. It ensures that the fiscus earns interest on any taxes owed by 'third' provisional taxpayers as from 1 October each year.

You are required to write your judgment to this case. Do not write that part of the judgment that deals with the facts and that part in which the arguments of both sides are discussed. Write solely the part in which your actual judgment is given.

CHAPTER 2

GROSS INCOME

2.1

(10 minutes)

This question tests the definition of 'gross income' and, in particular, the term 'period of assessment'.

The following is an extract from the definition of 'gross income':

'Gross income in relation to any year or period of assessment, means, . . . in the case of any resident, the total amount, . . .'

You are required to discuss what is meant by the term 'period of assessment' and to indicate when this will be less, or greater, than a 12-month period.

2.2

(20 minutes)

This question tests the definition of 'gross income' and, in particular, the term 'in cash or otherwise'. It also tests the judgments from *CIR v Delfos* (1933 AD 242, 6 SATC 92), *CIR v Butcher Bros (Pty) Ltd* (1945 AD 301, 13 SATC 21), *Stander v CIR* (1997 (3) SA 617 (C), 59 SATC 212), *Lace Proprietary Mines Ltd v CIR* (1938 AD 267, 9 SATC 349) and *C:SARS v Brummeria Renaissance (Pty) Ltd & others* (2007 (SCA), 69 SATC 205).

An extract from the definition of 'gross income' follows:

'Gross income in relation to any year or period of assessment, means, . . . in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or . . .'

You are required to set out what is meant by the term 'in cash or otherwise'. In addition you should state how the value of a 'non-cash' amount would be determined.

2.3

(20 minutes)

This question tests the definition of 'gross income'.

Twenty statements on the 'gross income' definition follow:

1. If a receipt or an accrual is of a capital nature it is not included in the recipient's gross income.
2. The preamble to the so-called special inclusions to the definition of 'gross income' results in an amount that accrues to a non-resident from a foreign source being taxed in the Republic.
3. The preamble to the so-called special inclusions to the definition of 'gross income' results in an amount that is of a capital nature being included in gross income.
4. All physical receipts received by a taxpayer that are not of a capital nature will be included in the recipient's gross income.
5. The Supreme Court of Appeal (previously the Appellate Division of the Supreme Court) has confirmed that the term 'accrued to' means those amounts that are 'due and payable' to the taxpayer.
6. The term 'capital nature' is defined in the Income Tax Act.
7. The taxpayer's intention in relation to a transaction is of the utmost importance in deciding if a receipt or an accrual from this transaction is of a capital or revenue nature.
8. If a taxpayer has held a share as trading stock for at least five years he can elect that the proceeds from its sale be capital in nature.
9. It would seem that a gain made on the realisation of a bankers' acceptance is gross income.
10. If two provisions could apply to bring an amount into gross income, it would seem that the