



RHODES UNIVERSITY

LAW OF TAXATION AND ESTATE PLANNING

LECTURER: MR RICHARD POOLE

1. INTRODUCTION

1.1 Overview

Law of Taxation and Estate Planning is a single semester course aimed at providing students with a working, theoretical knowledge of certain aspects of the Income Tax Act No. 58 of 1962 (“the Act”). In particular, attention is drawn to the following:

- Gross Income Definition (S1)
- Special inclusion (S1)
- Trade deductions (S11(a))
- “Sniper” provisions (S23)
- Special deductions (S11, 11B, 11D, S12C, S12E)
- Revenue Laws Act amendments
- Ring fencing of certain assessed losses (S20A)
- Tax planning and anti-avoidance provisions (S80A-L) +S 103(2))
- Anti-avoidance in estate planning (S7 + S25B)
- Donations tax (S54 - 56)

The purpose of the course is to provide students with a basic knowledge of how the income tax system in South Africa operates. Knowledge in this area is becoming increasingly sought after in the profession.

The course is offered at post-graduate level in the Law Faculty.

1.2 Credit Value

This course has a credit value of 30. Students will be expected to spend at least 300 hours of study time on this course, although extra time is recommended and encouraged. This includes time spent in lectures.

Assumptions of Prior Learning

It is assumed that students have the ability to present an informed, logical argument, given a specific set of circumstances. As the course is theoretically founded, students are not required to be proficient in the use of financial calculators, nor are students required to perform detailed calculations. Basic calculations may be required from time to time in order to support or substantiate an argument.

2. OUTCOMES

2.1 Critical Cross-Field Outcomes

Students will be able to:

- a) identify and solve problems
- b) collect, analyze and evaluate information
- c) communicate effectively
- d) recognize problem solving contexts
- e) explore education and career opportunities
- f) develop entrepreneurial opportunities

2.2 Specific Intended Outcomes

On completion of this course students will be able to:

- o Interpret the Gross Income Definition contained in Section 1 of the Income Tax Act (as it applies to residents and non-residents) and determine the taxability of a receipt and the nature of such receipt.

- Identify special inclusions in Gross Income.
 - Determine whether certain expenditure is deductible in carrying on a trade.
 - Determine what special capital and other allowances are available to taxpayers and in what circumstances such deductions are available.
 - Determine the applicability of ring-fencing provisions contained in Section 20A to assessed losses from certain trades.
 - Discuss certain anti-avoidance provisions contained in Ss 7, 23 and 80A-L, 103(2) & (5), and their applicability in different circumstances.
 - Discuss the applicability and effect of the provisions of Ss 7 and 25B on the use of trusts in estate planning.
 - Discuss the incidence of donations tax as contemplated in Ss 54 to 56 of the Act.
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3. TEACHING METHODS

The course will consist of two 45-minute lectures per week. In addition, students will write a class test and be required to submit an assignment in the form of an essay. A 2-hour examination will be sat at the end of the semester.

4. COURSE/MODULE CONTENT

The following topics are examined in Law of Tax and Estate Planning:

- **Section 1: Meaning of "Gross Income"**

- The total amount
 - In cash or otherwise
 - Received by or accrued to
 - During the year of assessment
 - Capital v Revenue

- **Section 10: Exempt Income**

- Interest from local and foreign investments
 - Dividends

- **Section 11(a): The General Deduction Formula**

- Expenditure and losses
 - Actually incurred
 - During the year of assessment
 - In the production of income
 - Capital v Revenue

- **Recoupments and other special inclusions**

- **Section 11: Other Specific Allowances**

- Pre-production interest
 - Repairs
 - Wear and tear allowances
 - Lease premiums
 - Leasehold improvements
 - Intellectual property
 - Scrapping allowances
 - Bad and doubtful debt allowances

Donations to educational institutions

Assessed losses

Section 20A: Ring Fencing of Losses from Certain Trades

Section 11A: Pre-Trade Expenditure

- **Section 11B: Research and Development**
- **Section 11D: Scientific Research and Development**
- **Section 13(1): Industrial Buildings**
- **Section 13quat: Urban Redevelopment Zones**
- **Section 13quin: Commercial Buildings**
- **Section 13sex: Residential Units Used in Trade**
- **Section 13sept: Low Cost Residential Housing on Loan Account**
- **Section 23: Prohibited deductions**

All expenditure and losses specifically disallowed in terms of section 23(a)-(m)

- **Anti-Avoidance Provisions**

Sections 80A-I, 103(2) & (5)

Section 7(1)-(10)

Section 25B

- **Donations Tax**

 - Rate of tax

 - Exemptions

 - Liability for and due date of payment

- **Objection and Appeal**

- **Selected amendments from the latest Revenue Laws Amendment Act**

5. RESOURCES

The reference texts used in this course are as follows:

Koekemoer A, van Schalkwyk L, Wilcocks JS, de Swardt RD, Jordaan, K (2009): SILKE: South African Income Tax 2010/11, LexisNexisButterworths, Durban

SAICA Legislation Handbook 2010/2011, Lexis Nexis Butterworths, Durban

Silke on South African Income Tax, Lexis Nexis Butterworths, Durban

Williams, R C (2006): Income Tax in South Africa: Cases and Materials, Lexis Nexis Butterworths, Durban

Huxham K, Haupt, P (2005): Notes on South African Income Tax, Hedron, Cape Town

These texts are available on short loan in the Law library.

6. STUDENT ASSESSMENT

Please complete the following table. Assessment criteria should be specified for each learning outcome. It is useful to think of assessment criteria as *WHAT* you need to see in order to be sure that students can meet the specified outcomes. Assessment tasks refer to *HOW* the evidence will be collected.

Specific Outcomes	Assessment Criteria	Assessment Tasks
<ul style="list-style-type: none"> ○ Interpret the Gross Income Definition contained in Section 1 of the Income Tax Act (as it applies to residents and non-residents) and determine the taxability of a receipt and the nature of such receipt. 	<p>Students are expected to demonstrate knowledge of the gross income definition and its application by formulating answers to tutorial and test questions and application of case law to scenario analyses.</p>	<p>Submit answers to tutorial and test questions (summative)</p> <p>Submission of solutions to questions from past exam papers (summative)</p> <p>Class discussion(formative)</p> <p>Possible essay topic (formative)</p>
<ul style="list-style-type: none"> ○ Identify special inclusions in Gross Income. 	<p>Students must demonstrate knowledge of the special inclusions by reference to the sections in terms of which they are included, and by correct application of knowledge to scenario analyses.</p>	<p>Submit answers to tutorial and test questions (summative)</p> <p>Submission of solutions to questions from past exam papers (summative)</p> <p>Class discussion(formative)</p> <p>Possible essay topic (formative)</p>

<p>Identify amounts that are exempt from taxation.</p>	<p>Students are required to demonstrate their knowledge of the exemptions granted in the Act by reference to correct sections of the Act and their applicability in scenario analyses.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative) Possible essay topic (formative)</p>
<ul style="list-style-type: none"> ○ Determine whether certain expenditure is deductible in carrying on a trade. 	<p>Students must demonstrate knowledge of what constitutes a trade and the deductions that are available to taxpayers carrying on a trade. Students are also required to demonstrate knowledge of applicable case law to support all contentions made.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative) Possible essay topic (formative)</p>
<ul style="list-style-type: none"> ○ Determine what special capital and other allowances are available to taxpayers and in what circumstances such deductions are available. 	<p>Students must demonstrate knowledge of what special deductions are available to employed taxpayers and taxpayers carrying on a trade. Students are also required to demonstrate knowledge of applicable case law to support all contentions made.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative) Possible essay topic (formative)</p>

<ul style="list-style-type: none"> ○ Determine the applicability of ring-fencing provisions contained in Section 20A to assessed losses from certain trades. 	<p>Students must demonstrate knowledge of the circumstances in which the ring fencing provisions of section 20A apply and should be able to identify trades that have been specifically identified as “suspect”.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative)</p>
<ul style="list-style-type: none"> ○ Discuss certain anti-avoidance provisions contained in ss23 and 80A-L, s103(2), and their application. 	<p>Students are required to demonstrate knowledge and applicability of the various anti avoidance sections of the Act and their applicability in practical situations.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative)</p>
<ul style="list-style-type: none"> ○ Discuss the applicability and effect of the provisions of Ss 7 and 25B on the use of trusts in estate planning 	<p>Students are required to demonstrate an ability to apply the provisions of these sections to scenarios in the context of tax and estate planning undertaken by individuals and others.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative)</p>
<ul style="list-style-type: none"> ○ Discuss the incidence of donations tax as contemplated in Ss 55 and 56 of the Act. 	<p>Students are required to demonstrate knowledge of the rules governing donations and an ability to apply the provisions of the relevant sections to scenarios in the context of tax and estate planning undertaken by individuals and others.</p>	<p>Submit answers to tutorial and test questions (summative) Submission of solutions to questions from past exam papers (summative) Class discussion(formative)</p>

Students' final mark will be weighted as follows:

Test	20%
Essay assignment	10%
June examination	<u>70%</u>
Total	<u>100%</u>

7. EVALUATION

The course will be evaluated by peer evaluation and correspondence with the class. This will give the lecturer insight as to how the course can be improved. Students and peers will also have the opportunity to give feedback on how the course was structured and how the teaching styles and presentation techniques could be altered to improve the structure of the course and its delivery. Thus it is hoped that not only will the students be benefiting from the evaluation process, but also the lecturer will be in a position to improve his/her teaching ability.

HEQC audits are evidence based. Once the template has been completed, it is necessary to collect evidence to substantiate the claims made. This evidence could be collected in a box file and could include, for example, course guides, lecture notes, assessment tasks (including some marked examples), student evaluations or evaluation analyses. Any action resulting from evaluation could also be noted.