



## RHODES UNIVERSITY

### **LAW OF TAXATION AND ESTATE PLANNING LECTURER: MR RICHARD POOLE**

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#### **1. INTRODUCTION**

##### **1.1 Overview**

A basic knowledge of taxation is fast becoming a selling point for prospective employers, not just in law firms. Accounting and audit firms are recruiting law graduates with knowledge of taxation for employment in their legal compliance departments. The Law of Taxation and Estate Planning elective is aimed at providing candidates with a basic theoretical knowledge of certain important aspects of the Income Tax Act 58 of 1962, and the Value-Added Tax Act No. 89 of 1991. In particular, attention is drawn to the following:

- Gross Income Definition (Section 1 of the Income Tax Act No 58 of 1962 – “the Act”)
- Special inclusions in gross income (Section 1)
- **Selected** exemptions applicable to individuals
- Trade deductions (specifically Section 11(a))
- Prohibited deductions – (Section 23)
- **Selected** special deductions (contained in Sections 11, 11A,)
- Qualification for taxation as a small business corporation (SBC)
- Introductory elements of capital gains tax, especially with regard to property transactions
- Introductory elements of value-added tax in terms of the Value-Added Tax Act No. 89 of 1991
- Tax planning and anti-avoidance provisions (Sections 80A-L, 103(2) & (5))
- Anti-avoidance in estate planning (Sections 7 & 25B)
- Donations tax (Sections 54 - 56)

The purpose of the course is to provide students with a basic knowledge of the income tax system in South Africa. The course is offered as an elective in the final year of the LLB program 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.

## 1.3 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.

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## 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:

- Interpret the definition of “gross income” 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.
- Identify certain specific exemptions contained in section 10 of the Income Tax Act
- Determine the income tax deductibility of different forms of expenditure in carrying on a trade (the “general deduction formula” in section 11(a)).
- Determine the availability of selected special capital and other allowances are available to taxpayers and in what circumstances such deductions are available (in terms of sections 11 and 11A).
- Determine “income” and “taxable income”.
- Identify a small business corporation for income tax purposes and discuss the various tax concessions that are available to such entities.
- Determine the circumstances in which an individual or corporate would be liable for capital gains tax on the disposal of selected assets (in terms of the eighth schedule to the Act).
- Determine the Value-Added Tax implications of certain selected transactions.

- Discuss certain anti-avoidance provisions contained in sections 7, 23 and 80A-L, 103(2) & (5), and their applicability to individuals in the context of tax planning and tax avoidance.
  - Discuss the applicability and effect of the provisions of sections 7 and 25B on the use of trusts in estate planning.
  - Discuss the incidence of donations tax as contemplated in sections 54 to 56 of the Act.
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### **3. TEACHING METHODS**

The course will consist of two 45-minute lectures per week. A tutorial will be held once a week for the purposes of going through past test, exam and tutorial questions. The tutorial may be used for make-up lecture as required. 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.

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### **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 income v revenue income
- **Source, residency & withholding taxes**
- **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 expenditure v revenue expenditure
- **Special inclusions in “gross income”**

- **Section 11: Specific allowances**

- Legal fees
  - Restraint of trade payments
  - Repairs
  - Bad and doubtful debt allowances
  - Employer contributions to retirement funds
  - Deductions iro broad-based employee share purchase plans
  - Annuities
  - Repayment of employee benefits

- **Section 11A: Pre-trade expenditure**

- **Section 20: Assessed losses**

- **Section 23: Prohibited deductions**

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

- **Eighth schedule: Capital gains tax transactions (with particular application to fixed property disposals)**

- **Value-Added Tax Act : Introduction to value-added tax**

- **Tax Planning, estate planning & anti-avoidance**

- Sections 80A-I, 103(2) & (5)
  - Sections 7(1)-(10)
  - Section 25B

- **Donations tax**

- Rate of tax
  - Exemptions
  - Liability for and due date of payment

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## 5. RESOURCES

There are **no prescribed** texts for this course. However, the following reference texts are as follows:

Stighligh M (Ed.), Koekemoer A, van Zyl L, Wilcocks JS, de Swardt RD (2015): SILKE: South African Income Tax 2016, LexisNexisButterworths, Durban

SAICA Legislation Handbook 2015/16, Lexis Nexis Butterworths, Durban

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

Williams, R C (2015): Income Tax in South Africa: Cases and Materials, 4<sup>th</sup> Ed. (or 3<sup>rd</sup> Ed.) Lexis Nexis Butterworths, Durban

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

## 6. STUDENT ASSESSMENT

Specific Outcomes	Assessment Criteria	Assessment Tasks
<ul style="list-style-type: none"> <li>○ 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/accrual and the nature of such receipt/accrual.</li> </ul>	<ul style="list-style-type: none"> <li>□ 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.</li> </ul>	<ul style="list-style-type: none"> <li>Submit answers to tutorial and test questions (formative)</li> <li>Submission of solutions to questions from past exam papers (formative)</li> <li>Class discussion(formative)</li> <li>Possible essay topic (formative)</li> </ul>
<ul style="list-style-type: none"> <li>○ Determine the residency status of a person</li> </ul>	<ul style="list-style-type: none"> <li>Students must be able to discuss and apply case law and legislation to determine the residency status of a person</li> </ul>	<ul style="list-style-type: none"> <li>Submit answers to tutorial and test questions (formative)</li> <li>Submission of solutions to questions from past exam papers (formative)</li> <li>Class discussion(formative)</li> <li>Possible essay topic (formative)</li> </ul>
<ul style="list-style-type: none"> <li>○ Determine the source of income, and whether a person will have to include an amount in their gross income or not</li> </ul>	<ul style="list-style-type: none"> <li>Students must be able to discuss and apply case law and legislation to determine the residency status of a person</li> </ul>	<ul style="list-style-type: none"> <li>Submit answers to tutorial and test questions (formative)</li> <li>Submission of solutions to questions from past exam papers (formative)</li> <li>Class discussion(formative)</li> <li>Possible essay topic (formative)</li> </ul>
<ul style="list-style-type: none"> <li>○ Determine the applicability of withholding taxes on certain forms of income</li> </ul>	<ul style="list-style-type: none"> <li>Students must demonstrate a knowledge of the withholding taxes on royalties, proceeds from the sale of fixed property, and income accruing to foreign sportspersons and</li> </ul>	<ul style="list-style-type: none"> <li>Submit answers to tutorial and test questions (formative)</li> <li>Submission of solutions to questions from past exam papers (formative)</li> <li>Class discussion(formative)</li> </ul>

	entertainers, and when they are applicable	Possible essay topic (formative)
<ul style="list-style-type: none"> <li>Identify special inclusions in Gross Income.</li> </ul>	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.	Submit answers to tutorial and test questions (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative) Possible essay topic (formative)
<ul style="list-style-type: none"> <li>Identify selected forms of income that amounts that are exempt from taxation.</li> </ul>	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.	Submit answers to tutorial and test questions (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative) Possible essay topic (formative)
<ul style="list-style-type: none"> <li>Determine whether certain expenditure is deductible in carrying on a trade.</li> </ul>	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.	Submit answers to tutorial and test questions (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative) Possible essay topic (formative)
<ul style="list-style-type: none"> <li>Determine the availability of selected special capital and other allowances to taxpayers and in what circumstances such allowances are available.</li> </ul>	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.	Submit answers to tutorial and test questions (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative) Possible essay topic (formative)
<ul style="list-style-type: none"> <li>Determine liability for capital gains tax in relation to selected asset and other property</li> </ul>	Students are required to demonstrate a basic knowledge of the provisions of the eighth schedule to the Act in relation to property disposals	Submit answers to tutorial and test questions (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative)

<ul style="list-style-type: none"> <li>○ Determine the Value-Added Tax consequences of various transactions</li> </ul>	<p>Students must demonstrate a basic knowledge of the provisions of the Value-Added Tax Act and how the provisions thereof may affect certain selected transactions</p>	<p>Submit answers to tutorial and test questions (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative)</p>
<ul style="list-style-type: none"> <li>○ Discuss the applicability and effect of the provisions of sections 7 and 25B on the use of trusts in estate planning</li> </ul>	<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 (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative)</p>
<ul style="list-style-type: none"> <li>○ Discuss the incidence of donations tax as contemplated in Sections 55 through 65 of the Act.</li> </ul>	<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 (formative) Submission of solutions to questions from past exam papers (formative) Class discussion(formative)</p>

Students' final mark will be weighted as follows:

Test (formative)	20%
Essay assignment (formative)	10%
June examination (summative)	<u>70%</u>
<b>Total</b>	<b><u>100%</u></b>

## 6. 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.