

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATION

L5317 – TAXATION

JANUARY 2024

MARKS: 100

3 HOURS

INSTRUCTIONS:

1. Answer any **FOUR (4)** questions, including **QUESTION 3**.
 2. Answers **MUST** be legibly and neatly written.
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QUESTION 1

Tax jurisprudence in Lesotho on interpretation of fiscal legislation has tended to be highly conservative.

Critically discuss this statement in the light of trends in the interpretation of tax legislation in the UK and South Africa.

[25 MARKS]

QUESTION 2

- (a) The principle of tax neutrality teaches us that tax should never be a factor in business decision-making.

With reference to any two examples, discuss this statement in relation to tax discrimination that Lesotho has deliberately adopted.

15 Marks

- (b) With illustrative examples in relation to taxpayers in different income levels, distinguish the concepts of progressivity and regressivity in taxation.

10 Marks

[25 MARKS]

QUESTION 3

From April 2016 to March 2018, TP was involved in property development through a company in which he held 100% shareholding. Following fears that

the RSL might assess him on ordinary business income on the profits he made, TP dissolved the company and incorporated 50 other companies with which he continued his involvement in property development. For the period from May 2018 to March 2023, each acquisition of property by the group has been effected by a different company. Thus, each company in the group of 50 companies has been involved in only one acquisition, development and sale of property. Over the last 5 years from May 2018, the companies have made profits totalling more than M50 million from the development and sale of properties.

With the support of case law, critically discuss how the M50 million should be treated in terms of section 17(1) of the Income Tax Act, 1993.

[25 MARKS]

QUESTION 4

With the help of decided cases you are aware of, critically distinguish between *locatio conductio operarum* and *locatio conductio operis*. In your answer, indicate how income classified under each, if there is any distinction, is taxable under the Income Tax Act 1993.

[25 MARKS]

QUESTION 5

TP, a Lesotho citizen who works for a mining company in Mokhotlong, is transferred to Sydney, Australia, where his employer's parent company is headquartered, for a temporary work assignment for a period of 2 years,

intending to return to Lesotho at the end. He is not accompanied by his wife as they have been having marriage difficulties and they have decided to spend some time apart. One month after TP's departure, the marriage breaks down. TP is attracted to the culture and lifestyle of Australia and decides to start a new life there, with no immediate plans to return to Lesotho to live. He starts exploring opportunities to gain a permanent position in Australia and, after 6 months of his stay in Australia, he obtains a promotion to a permanent role in Sydney. The role requires some regional travel in Australia, New Zealand and nearby Pacific Ocean islands but he spends the majority of his time at the office in Sydney. After obtaining the permanent position, he sells his car in Lesotho and sells the family home in Lesotho that he owned with his wife. He remains in employer-provided accommodation until his Lesotho home sells and then uses his proceeds to purchase an apartment in Sydney, which he lives in. TP joins a golf club in Sydney and a Baptist Church nearby his apartment. He returns to Lesotho twice in 2 years – the first time is 3 months after his initial departure to collect his belongings after the separation from his wife. He takes most of these with him to Australia but leaves a few keepsakes at his parents' house. The second time, he returns for his father's funeral, 2 years after his initial departure. His father leaves behind a family business, and after a month-long thought, TP, who was staying in a hotel and working for his employer in Australia remotely, decides to resign from his job in Australia and stay permanently in Lesotho to run the business.

With the support of decided cases, critically discuss whether TP would be considered a Lesotho resident for tax purposes in respect of the 2 years he spent in Australia.

[25 MARKS]

QUESTION 6

TP is a highly skilled computer specialist who is involved in supervising installation of major information management systems which his employer, CBX, provides for its clients. From June 2022 to February 2023, TP was involved in installation of a cutting-edge banking information management system at newly established Basotho-owned bank, Moruo Development Bank, in Maseru. The assignment required TP to be on call 24 hours a day. He, however, still physically reported to work during workdays from 0800-1700 hours like everybody else. In order to address teething installation issues while he is at home after normal working hours, TP's employer installed specialised equipment at his home. For issues that he cannot resolve using the equipment, TP travels to the office to progress the work further.

For the year of assessment ended March 2023, TP, who commutes from Morija to Maseru, incurred M70,201 in commuting expenses in respect of normal working hours, and M21,560 in commuting expenses in respect of travel after normal working hours to resolve issues which could not be resolved from home using the specialised equipment.

TP wishes to deduct all his commuting expenses from his annual employment income of M1,200,000 on the ground that his home constituted his workplace in the same way as his office as he was on duty 24 hours a day.

With the help of decided cases and relevant legislation, advise TP as to the deductibility of the said expenses from his employment income.

[25 MARKS]