

LEARNING UNIT 6:



CAPITAL GAINS TAX



LEARNING OUTCOMES AND ASSESSMENT CRITERIA

The content of this learning unit (“LU”) is based on the following learning outcomes and assessment criteria of the module:

Learning outcome(s)	Assessment criteria
1. Assess the tax profile of a taxpayer to determine the various taxes payable by a taxpayer.	<ul style="list-style-type: none"> • Conclude on the legal form, business structure and residence status of a taxpayer to determine the types of taxes payable (e.g. value-added tax, donations tax, estate duty, normal tax (including capital gains tax), prepaid taxes, dividends tax, withholding tax). • Assess information needed to determine the various tax liabilities, including <ul style="list-style-type: none"> • the role-players in the tax landscape, • the types of taxes and their interaction and • the underlying principles of a tax system. • Determine the various tax liabilities and to provide reasons for the inclusion or exclusion of amounts. • Interpret the tax treatment of a transaction with reference to legislation, double tax agreements and case law. • Determine the taxation payable/refundable of income in the Republic by non-residents.
2. Advise taxpayers on the tax effect of transactions, operations, schemes, agreements or events and calculate the tax consequences thereof, taking into account the various taxes payable.	<ul style="list-style-type: none"> • Evaluate transactions to determine the effect on an individual or corporate taxpayer’s tax liability. • Determine the tax consequences of emigrating from the Republic (e.g. deemed disposals) or immigrating to the Republic of South Africa.
3. Advise on specific tax and financial planning opportunities for individuals as well as for business entities.	<ul style="list-style-type: none"> • Assess the normal tax and VAT consequences for the business and the investor of the investment and financial planning tactics being considered and advise the taxpayer on possible alternatives. • Reflect on the tax consequences of shifting income between connected persons by making use of

Learning outcome(s)	Assessment criteria
	<p>donations, interest free loans and trusts (e.g. section 7 and the attribution rules) or entities (e.g. tax avoidance rules).</p> <ul style="list-style-type: none"> • Critique the available options for a specific decision-making situation to establish the most suitable option and compose a suitable response of the information to the taxpayer if within the field of speciality or refer to an appropriate expert if necessary.

STUDY PROGRAMME AND TIME FRAME



A total of 18 hours of your study time is allocated to LU 6.

Your time should be divided between two aspects:

- **Obtaining the required knowledge**
This entails working through this LU **and** the textbooks (SAICA Student Handbook and SILKE), underlining, making summaries and familiarising yourself with capital gains tax, including the determination of taxable capital gains and assessed capital losses.
- **Application of knowledge**
This entails the completion of the examples and integrated activities included in this LU. Please note that the integrated activities will not only cover LU 6 but will also integrate your knowledge obtained during your undergraduate studies and in LU 1 to 5. It will provide you with an opportunity to revise your prior knowledge, identify areas for further study and will test your decision making and integrated thinking skills. Included in these activities you will find prior year assessment questions which should provide you with an opportunity to evaluate whether your knowledge is on the desired level and if you have met the outcomes and assessment criteria set at the start of this LU.



The following time allocation is recommended:

Capital gains tax		Minutes
	Learning outcomes and assessment criteria	5
6.1	Background	10
6.2	Beancounter scenario	5
6.3	Content of learning unit	5
6.4	Important law amendments	10
6.5	Additional notes to this learning unit	
6.5.1	Part I and II of the Eighth Schedule (par 1 – 10) (including Activity 6.1 (20 minutes))	50
6.5.2	Part III of the Eighth Schedule – disposal of assets (par 11 – 14) (including Activity 6.2 (15 minutes))	110
6.5.3	Part IV of the Eighth Schedule – limitation of losses (par 15, 53 and 56)	30
6.5.4	Part V of the Eighth Schedule – base cost (par 20 – 34) (including Activities 6.3 and 6.4 (20 minutes))	70
6.5.5	Part VI of the Eighth Schedule – proceeds (par 35 – 43A) (including Activity 6.5 (30 minutes))	45
6.5.6	Part VII of the Eighth Schedule – primary residence exclusion (par 44 – 50) (including Activity 6.6 (25 minutes))	60
6.5.7	Part VIII of the Eighth Schedule – other exclusions (par 52 – 64B)	30
6.5.8	Part IX of the Eighth Schedule – roll-overs (par 65 – 66), s 9HB	30
6.5.9	Parts dealt with in later LU's	
6.6	Outcomes of the Beancounter scenario – discussion activity	15
6.7	Summary of LU 6	5
6.8	Integrated activities 6.7 to 6.13	600
	Total (18 hours)	1080



Note that there is a lot of work to master in the allocated time, however you have covered all facets of capital gains tax in your undergraduate studies. The level of detail in which you covered the paragraphs of the Eighth Schedule might have differed, as well as the depth of the application of the knowledge obtained to practical scenarios. During your studies this year, we will stretch your decision making- and critical thinking skills with the types of questions, as well as the integration of your knowledge of the various tax topics. To facilitate this process, the time in this LU will be allocated to additional notes and activities to deepen your understanding of difficult concepts. Where necessary, you will have to refresh your memory regarding sections and paragraphs you already covered in your prior studies **in your own time**.

6.1 BACKGROUND



The first thing to remember is that capital gains tax is not a separate tax and reference to "capital gains tax (CGT)" in textbooks and notes (also in these notes) is for practical purposes only. CGT should be understood in the context of the Eighth Schedule to the Income Tax Act.

A taxable capital gain will first be determined in terms of the rules of the Eighth Schedule to the Income Tax Act. It will be included in the calculation of normal tax of a person through section 26A. A taxable capital gain is taxed and an assessed capital loss ring-fenced. Ring-fencing means that losses are limited to the capital gains. The balance of the capital loss will be carried forward to the following year of assessment to be set off against the aggregate capital gain of that year of assessment. Thus, an **assessed capital loss** will **not** be included in the calculation of taxable income of a person.

CGT became effective from 1 October 2001 and deals with the disposal of assets on or after the **valuation date** (the value of an asset on 1 October 2001), irrespective of whether the asset had been acquired before or after this date. The **date of disposal** (and not the date of acquisition) will thus determine whether the proceeds on the disposal of the relevant asset are subject to CGT. If an asset was disposed of on or after 1 October 2001, only such portion of the capital gain or capital loss that relates to the period of holding the asset after this date will be taken into account for CGT purposes. This effectively means that the portion relating to the holding period before the valuation date will be ignored in calculating the capital gain or capital loss.

The Eighth Schedule determines that if, by definition, there was a **disposal** of an asset, **an event** has occurred for CGT purposes. The first basic principle of the calculation of CGT is to determine the amount of the capital gain or loss by subtracting the base cost from the proceeds for every asset disposed of.

From the wording of the above paragraph, **four key definitions** contained in the Eighth Schedule can be identified. These definitions form the basic building blocks for the determination of a capital gain or capital loss of a taxpayer:

- asset
- disposal
- proceeds
- base cost

Remember the normal tax framework, which was provided to you in previous LU's. Use this framework again and note **WHERE** the calculated taxable capital gain should fit into your calculation of the taxable income of a person.

The normal tax framework for calculating taxable income

GROSS INCOME (defined in section 1) LESS: Exempt income (section 10, 10A - 10C, 12T) INCOME (defined in section 1) LESS: Deductions ADD: Amounts to be included in taxable income including TAXABLE CAPITAL GAIN LESS: Qualifying donations (section 18A) = TAXABLE INCOME (defined in section 1)
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Various definitions in the Eighth Schedule must be used to determine the assessed capital loss or the taxable capital gain. The stage of the calculation and where the taxable capital gain fits into the normal tax framework are shown in the CGT process flow chart in SILKE 17.5.

6.1.1 UNGC Principle 10

The UNGC principles were introduced in LU 2. Compliance with the laws and regulations is the basis on which the taxation legislation is founded.

UNGC principle 10 states that businesses should work against corruption in all its forms, including extortion and bribery. The definition of corruption includes dishonest or fraudulent conduct. Tax evasion would fall within the ambit of corruption. Taxpayers must always keep in mind that when an asset is disposed of, the nature of the disposal can either be revenue or capital. If the disposal is in fact revenue in nature, the amount received should be added to the gross income of the taxpayer.

It is important to take note of the UNGC principle 10 not only when studying, but more importantly when applying the CGT principles as entailed in the Eighth Schedule. This means that if an asset is sold, it cannot simply be ignored when doing your tax calculation. You need to be able to calculate the correct aggregate capital gain and/or loss and include it in your taxable income. It also needs to be declared on your annual tax assessment.

6.2 BEANCOUNTER SCENARIO



Before you start studying the detailed provisions of the Income Tax Act, read the following scenario relating to the Beancounter family or watch the [video](#). The scenario requires you to read through the information provided. As you study the different income tax provisions relating to CGT, you should analyse areas of concern that should be brought to the attention of the Beancounter family and the impact thereof on their taxes due.

Barry and Bizzie Beancounter (married in community of property) own a primary residence and Barry owns a beach cottage. He inherited the beach cottage from Exotic, who died on 10 March 2023. As you already know, Exotic did not like Bizzie and she put a clause in her will that this beach cottage would be excluded from their joint estate.

Barry donated the beach cottage to his son Soya (who immigrated to Spain in 2017) on 30 September 2023. He hopes that this will prompt Soya to come and visit more often. The market value of the beach house was R1 360 000 on 30 September 2023.

Exotic purchased the beach cottage on 10 January 2003 for R600 000. On the date of Exotic's death, the beach cottage had a market value of R1 200 000. For the past six years a net annual rental income of R24 000 has been received from letting the beach cottage.

On 30 September 2023 Barry and Bizzie sold their primary residence to the Butterbean testamentary trust at a market-related value.

The primary residence (450 m²) was bought in November 2002 for the amount of R1 200 000 (inclusive of transfer duty). In June 2010 they extended the house by 195 m² (at a cost of R600 000), to enable Barry to dabble in the design of a new clothing range. His business occupied 30% of the house. He declared his income from the clothing business in his income tax return of every year and claimed his current costs as a business expense against his business income for tax purposes. No valuation for tax purposes was done on the house. On 30 September 2023, the market value of the house was R2.2 million. The sale will be funded with an interest-free loan account in both their names in the trust.

Barry would like you to reflect on the information provided to you and assess whether there will be any donations tax payable or a possible taxable capital gain as result of the above transactions.



Discussion Activity

Before attempting to help Barry with his queries, work through and master LU 6. Only then will you be ready to address Barry's queries and you can share this on **Discussion Forum 6.1**. The outcomes (solution) for the Beancounter scenario will be made available during your study week for this Topic.

6.3 CONTENT OF LEARNING UNIT 6

6.3.1 Study approach

In this LU, we will provide you with a Table of Reference for each part of the Eighth Schedule as it is a long LU. Refer to LU 4, note 4.3 for an outline of the study approach followed for Topic 2.

We will enhance your understanding of some concepts with activities in the LU. The time provided for each activity (question or example) is calculated as 6 minutes per page of reading time for each activity, 1.5 minute for every mark and then 6 minutes per page of the solution, for you to review your answer against the solution provided.

6.4 IMPORTANT LAW AMENDMENTS

Before continuing with LU 6, take note of the following amendment to the Income Tax Act, which is contained in the Taxation Laws Amendment Act 17 of 2023. Certain amendments that were enacted in the prior year's Taxation Laws Amendment Act 20 of 2022 are also summarised for your reference.



Law amendments enacted by the Taxation Laws Amendment Act 17 of 2023:

Par 12A(6)(d)

Concession or compromise in respect of a debt

There are certain situations where the debt concession or compromise provisions provided for in par 12A (and section 19) will not apply to a debt benefit. One of these situations is if a debt that is waived, is owed by a person to another company in the same group and the company (referred to as the dormant company) owing the debt has not carried on a trade in the current or previous year of assessment (par 12A(6)(d)). The dormant company exclusion will however not apply to a debt

- used to fund an asset that was disposed of, **before or after that debt benefit arises**, in terms of a corporate reorganisation transaction (as part of an asset-for-share, amalgamation, intragroup transaction or a liquidation distribution under ss 42, 44, 45 or 47 respectively (see Topic 5)), or
- that was incurred by the dormant company to refinance another debt owed between companies that form part of the same group of companies.

The amendment clarified when the dormant company exclusion will not apply to a specific debt by clarifying the timing of the disposal of the asset in relation to the debt benefit. It firstly clarified that for corporate reorganisation transactions the asset could be disposed of before or after the debt benefit arose (previously it only referred to assets disposed of **after** the debt benefit arises) for the dormant company exclusion to not apply.



Law amendments enacted by the Taxation Laws Amendment Act 17 of 2023:

	<p>It further clarified that for years of assessment commencing from 1 January 2024, if this debt benefit arises at any time before the disposal of the asset, the debt benefit must be treated as if it occurred immediately before the date of disposal.</p>
<p>Par 64B(1)(b)</p>	<p>Disposal of equity shares in foreign companies</p> <p>Paragraph 64B(1) disregards the capital gain or loss on the disposal of foreign equity shares by a resident provided certain requirements are met, this exemption is known as the general participation exemption. This exemption will not apply if a person disposes of foreign equity shares to:</p> <ul style="list-style-type: none"> i. a controlled foreign company (CFC) or a connected person in relation to the person disposing of the shares; ii. a non-resident company that formed part of the same group of companies as the company disposing of the shares at any time during the 18 months before that disposal; or iii. a non-resident company of which the shareholders, immediately after the disposal, are substantially the same as the shareholders of any company in the group of companies disposing of the shares (s 64B(1)(b)(i) – (b)(iii)). <p>The main aim of the exemption of the capital gain or loss on the sale of foreign equity shares by residents, is to encourage the reinvestment in South Africa of the proceeds on the disposal of the shares in foreign companies to non-connected non-residents. Two additional exclusions (ii and iii) from the participation exemption, have been added to the section, effective from 1 November 2023 and is applicable to any disposals from that date. These additional exclusions have been included to assist in curbing the unintended application (misuse) of this general participation exemption.</p>
<p>Par 66(1)(a), (1)(c) & (4)</p>	<p>Reinvestment in replacement assets</p> <p>In the case of a disposal of an asset, the taxpayer can elect that par 66 of the Eighth Schedule should apply if reinvesting in a replacement asset and if certain requirements are met. If elected, section 8(4)(e) and par 66 will provide for a delayed taxation of the recoupment (see SILKE par 13.10.3) and the capital gain on the asset sold in proportion to the capital allowances claimed on the replacement asset (par 66(4)). Effective from 1 March 2023, the election of par 66 will also be available for movable assets used in the generation of renewable energy, where allowances were claimed under section 12BA (see Topic 3). This proviso is also explained in par 17.10.3.2 in SILKE and its application will be discussed in detail in Topic 3.</p>



Law amendments enacted by the Taxation Laws Amendment Act 20 of 2022:

Par 5	<p>Annual exclusion</p> <p>A proviso has been added to par 5(1) that provides that where any person's year of assessment is less than a period of 12 months, the total annual exclusions for years of assessments during the period of 12 months commencing in March and ending at the end of February the immediately following calendar year must not exceed R40 000 (for example when a person emigrates and there will be two years of assessment in a twelve month tax period).</p> <p>This proviso applies with effect from 1 March 2023 and will affect an individual's 2024 year of assessment. This proviso is also explained in par 17.5 in SILKE.</p>
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Use the following link to access to the newly published Acts:
<https://www.sars.gov.za/legal-counsel/primary-legislation/amendment-acts/>

6.5 ADDITIONAL NOTES TO LEARNING UNIT 6

6.5.1 PARTS I AND II OF THE EIGHTH SCHEDULE



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below.
- Revise the paragraphs in SILKE (as indicated below) and read through any notes provided. You would have covered some of these paragraphs already in previous LU's (for example SILKE par 17.3.3 covering withholding tax on the disposal of immovable property by non-residents covered in LU 5) and only need to revise the content if you lack understanding of the topic.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 1	17.1, 17.2, 17.4 & 17.6	Definitions and scope (excluding Value Shifting Agreement)	6.5.1	Yes No
par 2	17.3	Application (persons liable for CGT)		Yes
par 3 – 10	17.5	Capital gain and assessed capital losses	6.5.1	Yes



All examples in SILKE chapter 17 are based on the assumption that the receipt or accrual is of a capital nature and therefore not gross income as defined.

Interaction between the normal tax framework and CGT

We recommend that you interpret the interaction between the normal tax framework (the process of calculating taxable income) and the application of the Eighth Schedule as follows:

The definition of asset

"Asset" is defined in paragraph 1 of the Eighth Schedule and includes – "property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and a right or interest of whatever nature to or in such property". It also includes crypto currency.

The definition of asset is wide and includes all assets, regardless of their nature (whether revenue or capital). For example, for tax purposes trading stock is revenue in nature but also an asset in terms of the Eighth Schedule. Remember that the gain or loss of every asset needs to be determined separately. When trading stock is sold, the amount received will be gross income in terms of the definition in the Income Tax Act, but also proceeds in terms of the definition in the Eighth Schedule. When calculating proceeds, paragraph 35(3)(a) of the Eighth Schedule excludes all amounts that must be taken into account as gross income or in the calculation of taxable income before the inclusion of a taxable capital gain. Proceeds will thus have a nil value in the calculation of a capital gain or loss.

The acquisition of trading stock is an allowable expense in terms of section 11(a) of the Income Tax Act. In terms of paragraph 20 of the Eighth Schedule, the base cost of trading stock will be the cost of acquisition, BUT paragraph 20(3)(a) excludes expenditure allowed or allowable as a deduction in the calculation of taxable income before the inclusion of taxable capital gain from the CGT calculation. The base cost will have a Rnil value and there will be no capital gain or loss. The purpose is not to tax the same amount twice or to allow a double deduction.

Although there might not be an actual disposal of an asset, there might be a deeming provision applicable, deeming an asset to be disposed of (paragraphs 12 and 12A of the Eighth Schedule respectively and section 9H of the Income Tax Act). For example, when a capital asset becomes trading stock, a deemed disposal takes place (the asset has not actually been disposed of, but its nature has changed (from being capital in nature to revenue in nature). A capital gain/loss therefore has to be calculated. At the same time, a deemed acquisition takes place (which will also be taken into account for the purposes of section 22 of the Income Tax Act (the trading stock valuation section)).



Activity 6.1 (20 minutes)



To better grasp the interaction between the normal tax framework and CGT, work through Example 6.1 and Example 6.2



Example 6.1: Trading stock

Facts: A taxpayer purchased trading stock worth R1 200 during the current year of assessment and sold it for R2 000.

Result: An "event" has occurred for CGT purposes (disposal of an asset) and the provisions of the Eighth Schedule must be applied. At the same time, the amount received will be gross income in terms of the Income Tax Act.

Determination of taxable income

		R
Sales	(gross income definition)	2 000
<u>Less:</u> Purchases	(section 11(a))	(1 200)
<u>Plus:</u> Taxable capital gain	(section 26A) – see calculation below	nil
Taxable income		800

Calculation of taxable capital gain

	R	R
Proceeds		nil
Selling price	2 000	
Less: Reduced by amounts taken into account in the calculation of taxable income (gross income as defined) before the inclusion of taxable capital gain (par 35(3)(a))	(2 000)	
 <u>Less:</u> Base cost		 nil
Purchase price	1 200	
Less: Reduced by amounts taken into account in the calculation of taxable income (s 11(a)) before the inclusion of taxable capital gain (par 20(3)(a))	(1 200)	
Taxable capital gain		Nil



Example 6.2: Recoupment of an asset

Facts: All amounts exclude VAT and paragraphs 65 and 66 of the Eighth Schedule (roll-over provisions) (refer to Topic 3 for more extensive examples) are not applicable. The cost price of a second-hand machine was R100 000. Section 12C allowances in terms of the Income Tax Act (for the current and previous years of assessment) amounted to R40 000. The **tax value** is thus R60 000 (R100 000 – R40 000). The company sold the asset for R120 000.

Result: An "event" has occurred for CGT purposes (disposal of an asset) and the provisions of the Eighth Schedule must be applied. At the same time, a portion of the amount received will be a recoupment in terms of section 8(4)(a) of the Act. So:

The determination of taxable income

		R
Recoupment (section 8(4)(a) (R100 000 – R60 000))	❶	40 000
<u>Less:</u> Section 12C allowance (for the current year of assessment (20% x R100 000))	❷	(20 000)
<u>Plus:</u> Taxable capital gain (in terms of section 26A (see – calculation below))		16 000
Taxable income		<u><u>36 000</u></u>

Calculation of taxable capital gain

	R	R
Proceeds		
Selling price	120 000	
Less: Reduced by amounts taken into account in the calculation of taxable income before the inclusion of taxable capital gain (section 8(4)(a) in this example) Recoupment	❶ (40 000)	80 000
<u>Less:</u> Base cost		
Purchase price	100 000	
Less: Reduced by amounts taken into account in the calculation of taxable income before the inclusion of taxable capital gain (section 12C: previous year R20 000 and R20 000❷ for current year)	(40 000)	60 000
Capital gain		<u><u>20 000</u></u>
Taxable capital gain (R20 000 x 80% inclusion rate for companies)		<u><u>16 000</u></u>

Remember:

1. For each asset disposed of, a capital gain or loss is determined (calculated) **separately** during a year of assessment. A capital loss or gain is calculated by deducting the **base cost** of the asset from the **proceeds** of the asset. If the proceeds exceed the base cost, it will be a capital gain; if not (if the proceeds are less than the base cost), it will be a capital loss.
2. A natural person and a special trust are entitled to an annual exclusion of R40 000, but the annual exclusion is **not available to companies and other trusts**. From 1 March 2023 this exclusion is apportioned when the individual emigrates.
3. A capital loss is **reduced** by the annual exclusion before it will be carried forward to the next year of assessment.
4. You **first** have to make use of the annual exclusion **before** you apply the applicable inclusion rate.

A **non-resident** will not be liable for CGT except on the disposal of

- immovable property situated in South Africa and any interest (see SILKE 17.3.2) in it (paragraph 2(1)(b)(i))
- assets effectively connected with a permanent establishment through which the non-resident carries on business in South Africa (paragraph 2(1)(b)(ii))

A **non-resident** who disposes of any immovable property in the Republic, the proceeds of which exceed R2 million, will be subject to withholding tax in terms of section 35A of the Income Tax Act – refer to LU 5. This withholding tax is a prepayment of the non-resident's normal tax and must be withheld by the purchaser.

6.5.2 PART III OF THE EIGHTH SCHEDULE – DISPOSAL OF ASSETS



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table of reference below.
- Revise SILKE (as indicated below) and read through the notes provided.

Legislation 8 th Schedule/section (All covered in undergrad)	Reference to SILKE	Application	Notes in LU	Examinable
par 11	17.7, 17.7.1, 17.7.2	Disposals and non-disposals	6.5.2	Yes
par 12, 12A & s 9H which was covered in LU 5	17.7.3 17.8.4, 13.10.8	Events treated as disposals and acquisitions (excluding par 12A(5))	6.5.2, 6.5.5 LU 5	Yes No
s 9K		<i>Listing of security on exchange outside Republic</i>		No
par 13	17.7.4	Time of disposal	6.5.2	Yes
par 14	17.7.5	Persons married in community of property	6.5.2	Yes

Interpretation Notes are not included in the SAICA Student Handbook, but to the extent that an Interpretation Note creates a practice generally prevailing (refer to section 5 of the Tax Administration Act), the relevant extract will be provided in the test or examination.

The following Interpretation Note relates to the concession or compromise of a debt:



Interpretation Notes are available at: [Interpretation Notes | South African Revenue Service \(sars.gov.za\)](https://www.sars.gov.za/interpretation-notes)

Interpretation Note:

Interpretation Note: No. 91 (Issue 2). Date: 20 July 2022 - Concession or compromise of a debt (par 12A)

The Eighth Schedule can only apply when there is a **disposal (paragraph 11)** or **deemed disposal (paragraphs 12, 12A and section 9H)** of an **asset**. Every person (as defined in the Income Tax Act) is subject to the CGT rules contained in the Eighth Schedule.

What is meant by a deemed disposal? A deeming provision means that the normal logical rules are disregarded and the exception to the rule must be applied in a certain given situation.

Paragraph 11: disposals

Disposal is defined in paragraph 1 and refers to the comprehensive definition in paragraph 11. This definition boils down to "you had something (an asset), then an event happens and after that event you no longer have the asset or the enjoyment of the asset". A disposal is the event that triggers CGT. An event is usually caused by a change in ownership (for example, selling the asset, donating an asset, loss of the asset, the asset is destroyed or even expropriated). The death of a person will also be a CGT event because the assets are transferred to the estate of the deceased.

On the other hand, a temporary cession of an asset for financial purposes means that you will get your asset back if you fulfil the terms of the agreement. A temporary cession of an asset for financial purposes is therefore not treated as a disposal. CGT is not levied on non-disposals in terms of paragraph 11(2) (see SILKE 17.7.2).

Paragraph 12: events treated as disposals and acquisitions (deemed disposals)

These are deeming provisions and they apply when the situation of the taxpayer changes or where the nature of the asset changes or when an event occurs that may fall outside the CGT net.

- ***An asset ceases to be trading stock (paragraph 12(3))***

The use of the asset changes from speculation (revenue in nature) to investment (capital in nature) purposes. Section 22(8) deems a disposal to have taken place at market value. The cost of the trading stock will be deductible in terms of section 22(2) as opening stock or as purchases if bought during the same year of assessment. A normal tax liability originates and the profit will be taxed at the normal tax rate, although there has been no change in ownership. A deemed acquisition has taken place in terms of paragraph 12(3) of the Eighth Schedule and the value taken into account in section 22(8)(b)(v) of the Income Tax Act will be deemed to be expenditure actually incurred for the purposes of paragraph 20(1)(a) (base cost provision).

If the asset, which is now kept as an investment, is disposed of at a later stage, then a further tax liability may arise in terms of the Eighth Schedule – proceeds less base cost (calculated in terms of section 22(8)).



Trading stock will be discussed in full in Topic 3. Revisit the commentary on the *Natal Estates* case in the [Case Law Guide](#) Chapter 2.

Remember that if paragraph (jA) of the gross income definition applies, trading stock "manufactured" by the taxpayer does not change its nature and will be treated as trading stock until disposed of.

- ***Personal-use asset becomes a trade asset (paragraph 12(2)(d))***

Certain capital gains on personal-use assets are disregarded in terms of paragraph 53 of the Eighth Schedule. A personal-use asset is an asset of a natural person, or a special trust, used mainly for purposes other than the carrying on of a trade. If (for example) a piece of furniture is used in a home for private purposes and the owner decides to use this furniture for trade purposes in his office, the use of the asset changes from a personal-use asset to a trade asset. A deemed disposal takes place at **market value** and a deemed reacquisition of the asset takes place **at market value**.



Activity 6.2 (15 minutes)



Work through Example 6.3 (personal-use assets) and Example 6.4 (change of intention) to enhance your understanding of the topics covered.



Example 6.3: Personal-use asset becomes a trade asset

Facts: Mr Engineer (not a vendor for VAT purposes) resigned from his employment and started his own business. Furniture with a cost price of R7 000 and a market value of R8 000 was moved from his home to his office on 1 March 2023.

Tax effect: A deemed disposal (of the personal-use asset) and immediately thereafter a reacquisition of the trade asset takes place in terms of paragraph 12(2)(d) of the Eighth Schedule.

Calculation of taxable capital gain on deemed disposal

Proceeds	R 8 000
<u>Less: Base cost</u>	<u>(7 000)</u>
Capital gain	1 000
<u>Less: Disregard (par 53(1))</u>	<u>(1 000)</u>
Taxable capital gain	<u>nil</u>

Calculation of taxable income

Assume that the Commissioner will allow a section 11(e) allowance on R8 000 (based on the market value) over a remaining period of two years. Note that the base cost of the asset is R8 000 (market value on day of disposal (par 12(2)(d))).

Gross income	R XXX
<u>Less: Section 11(e) (R8 000/2)</u>	<u>(4 000)</u>
<u>Add: Taxable capital gain</u>	<u>nil</u>

- **Capital asset becomes trading stock (par 12(2)(c))**



Example 6.4:
Change of intention – capital asset to trading stock

Facts: Mr F bought a farm for R5 000 000 on 10 January 2012. The farm was used for farming purposes and all produce was exported. Because of drought, his efforts put into farming activities are no longer worthwhile. He decides to rezone the farm for residential purposes and to develop the farm into a small but exclusive retirement villa. Mr F decides to do the development himself to keep himself busy. He also believes that the return on his surplus funds, which he will invest in this project, will be more than the 5% that he is currently earning. The development will start in January 2024 (after the harvest season) and he believes that the first sales will be made in the following year of assessment. The market value of the farm is R7 000 000 in January 2024. Assume that Mr F will be able to prove the nature of the asset as capital until he changed his intention. He will also be able to prove the market value as R7 000 000 in January 2024.

Result: A deemed disposal of an asset took place. The provisions of the Eighth Schedule must be applied.

Calculation of taxable capital gain

	R
Proceeds (deemed disposal par 12(2)(c))	7 000 000
<u>Less: Base cost (par 20)</u>	<u>(5 000 000)</u>
Capital gain	2 000 000
Taxable capital gain (R2 000 000 – R40 000) x 40% inclusion rate	<u><u>784 000</u></u>

Calculation of taxable income

	R	R
Sales (trading stock - land)		nil
<u>Less: Deemed acquisition cost</u> (section 22(3)(a)(ii))	<u>(7 000 000)</u>	
<u>Plus: Closing stock</u> (section 22(1))	<u>7 000 000</u>	nil
<u>Plus: Taxable capital gain</u> (section 26A)		<u>784 000</u>
Taxable income		<u><u>784 000</u></u>

- **Trade asset becomes a personal-use asset (paragraph 12(2)(e))**

A trade asset is now being used for personal use. A deemed disposal has taken place at market value and a capital gain or loss should be determined. A recoupment in terms of section 8 of the Income Tax Act could also be applicable.

- **Debt benefit and paragraph 12A – also refer to part iv of the 8th Schedule below, SILKE 17.8.4, 13.10.8 and Topic 3**

This is a uniform debt relief system that comes into operation through section 19 of the Income Tax Act, but it also has a CGT effect, which is mainly contained in paragraph 12A of the Eighth Schedule. See the diagram in SILKE 17.8.4 to determine if there is a CGT consequence in respect of the debt. Section 19 (see SILKE chapter 13.10.8) is dealt with in detail in Topic 3. However, you must have a basic understanding of par 12A of the Eighth Schedule (SILKE 17.8.4).

Eighth Schedule	Summary and application of paragraph 12A and s 19	SILKE
12A Debt relief or debt benefit	<p>If the purchase of either an asset (other than an allowance asset) or an allowance asset was funded by a debt and the debt is consequently reduced by the creditor, the reduction amount (in the hands of the debtor) is applied as follows and in the following order:</p> <ul style="list-style-type: none"> • Asset (non-allowance asset) <ul style="list-style-type: none"> ○ Debt benefit applied to reduce base cost (par 12A) ○ Asset disposed of in year prior to when debt benefit arises: <ul style="list-style-type: none"> ○ Difference between the recalculated capital gain or loss (taking into account prior debt benefits) and actual capital gain or loss on disposal included as capital gain in year when debt benefit arises (par 12A) • Allowance asset <ul style="list-style-type: none"> ○ Debt benefit applied to reduce base cost of allowance asset (par 12A) ○ Excess of debt benefit recouped under s 19(6) and s 8(4)(a) ○ Asset disposed of in year prior to when debt benefit arises: <ul style="list-style-type: none"> ○ Difference between the actual recoupment on disposal and the recoupment if the debt benefit was taken into account when calculating this recoupment will be taxed as a recoupment under s 19(6A) and s 8(4)(a) ○ Difference between the recalculated capital gain or loss (taking into account prior debt benefits) and actual capital gain or loss on disposal included as capital gain in year when debt benefit arises (par 12A) • Refer to the flow diagram in SILKE 17.8.4. • See examples 17.15 and 17.16 in SILKE (Examples 17.17 and 17.18 will be discussed in Topic 3). • Par 12A therefore applies to the debtor. Remember, the amount which is outstanding and which is reduced will represent a credit amount in the books of the debtor if you think in accounting terms. 	17.8.4

Paragraph 13: time of the disposal

The general timing rule is that a disposal of an asset and the acquisition of the asset by another person must take place on the same date. Exceptions to this rule occur and you can revisit and study any paragraphs you are not comfortable with in SILKE 17.7.4.



The time of the disposal of an interest in an asset of a trust to a beneficiary when the beneficiary has a vested interest in the asset is the date on which the interest vests. Trusts will be dealt with in detail in Topic 5.

Paragraph 14: disposals by spouses married in community of property

Spouses married in community of property are equal owners of joint property. Disposals of assets (part of the joint estate) are deemed to be made in equal shares unless they were excluded from the joint estate.

6.5.3 PART IV OF THE EIGHTH SCHEDULE – LIMITATION OF LOSSES



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.
- Note that although reference is made to paragraph 39 in the note below, it will be addressed in more detail under note 6.5.5.
- Revisit the definition of a connected person in section 1 of the Income Tax Act.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 53	17.10.2,	Personal-use assets	6.5.2	Yes
par 15	17.10.5 17.10.5.1	Certain personal-use assets		Yes
par 19	17.10.5.5	Losses on disposal of certain shares		No
par 37	17.10.5.6	Assets of trusts and companies		No
par 56	17.10.5.8	Disposal by a creditor of debt owed by a connected person	6.5.2	Yes

Interaction between paragraphs 12A, 39, 56, 20(3) and 35(1)(a)

The following paragraphs deal with the CGT consequences of the reduction of a debt, reduction of base cost, refunds on proceeds and losses between connected persons and the subtle differences between them. You need to understand the link between these paragraphs. The differences between and the application of these paragraphs are summarised in the table below:

Eighth Schedule	Summary and application	SILKE
Par 56 Losses	<ul style="list-style-type: none"> • When a creditor disposes (includes the waiver or cancellation of that debt) of a debt owed by a debtor who is a connected person, any loss on that disposal must be disregarded by that creditor. This paragraph will not apply if par 12A applies (to the debtor). Par 12A will apply if there is an underlying asset linked to the debt. • Par 56(2)(a) therefore applies to the creditor. Remember, the amount disposed of (or written off) will represent a debit amount (hence a loss) in the books of the creditor if you think in accounting terms. • See examples 17.60 and 17.61 in SILKE if you want to review the practical application of the paragraph. 	17.10.5.8
Par 39 Clogged losses	<ul style="list-style-type: none"> • This paragraph ring-fences a capital loss between connected persons. Such losses may only be offset against future capital gains between the same connected persons. These are called clogged losses. If par 56(2)(a) applies, then par 39 will not apply. • Par 39 therefore applies to the seller of the asset. • See example 17.59 in SILKE for an example of a disposal to a connected person. 	17.10.5.7

Eighth Schedule	Summary and application	SILKE
Par 20(3) Base cost	<ul style="list-style-type: none"> This paragraph is only applicable if the base cost of the asset is reduced or recovered. If the asset is no longer on hand, there will be a capital gain. If the reduction or recoupment of expenditure relates to a debt reduction, par 12A applies. See example 17.14 in SILKE if you want to review the practical application of the paragraph. Par 20(3) applies to the buyer of the asset. 	17.8.3
35(3)(b) Proceeds	<ul style="list-style-type: none"> If for some reason the selling price of an asset is reduced, the seller of the asset must reduce the "proceeds" of this asset by that amount. See example 17.39 in SILKE if you want to review the practical application of the paragraph. Par 35(3)(b) applies to the seller of the asset. 	17.9.1

6.5.4 PART V OF THE EIGHTH SCHEDULE – BASE COST



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below. Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and any notes provided.
- Ignore notes on controlled foreign companies. Section 8C in SILKE 17.8.1 will be covered under Topic 4.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU6	Examinable
par 20 & s 23C	17.8, 17.8.1, 17.8.2, 17.8.3, 17.8.4 and 17.8.5	Base cost of an asset	6.5.4 6.5.3	Yes
par 20A		Provisions relating to farming development expenditure	-	No
par 21	17.8.6	Limitation of expenditure	-	Yes
par 22	17.8.7	Amount of donations tax included in base cost	6.5.4	Yes
par 23	17.12.1	Value-shifting arrangement – par 1 definition base cost formula in par 23	-	No
par 24	17.8.8	Base cost of an asset of an immigrant	-	No
par 25(1), 26 & 27	17.8.9	Base cost of pre-valuation date assets	-	No
par 25(2) & (3)	17.13.2	Redetermination of pre-valuation assets		No
par 28	17.8.10	Valuation date value of a section 24J instru- ment (market value will be provided)	-	No
par 29	17.8.11	Market value on valuation date (market value will be provided)	-	No
par 30	17.8.12	Time-apportionment base cost (TAB - amounts will be provided, integration remains important)	-	No
par 31	17.8.13	Market value of assets (Market value will be provided)	-	Yes

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU6	Examinable
par 32	17.8.14	Base cost of identical assets	-	Yes
par 33	17.8.15	Part disposals	-	Yes
par 34	17.8.16	Debt substitution	-	Yes

The following Interpretation Note relates to the deduction of security expenditure:



Interpretation Notes are available at: [Interpretation Notes | South African Revenue Service \(sars.gov.za\)](http://www.sars.gov.za/interpretation-notes)

Interpretation Note:

Interpretation Note: No. 45 (Issue 3). Date: 24 August 2018 - Deduction of security expenditure (par 20 & par 53)

Base cost of an asset – paragraph 20

Base cost consists of all the direct expenditure attributable to get the asset in its current condition. If an asset was acquired by way of an event other than purchase, the market value on the date of the event will usually be taken as the base cost on the date of acquisition. If the asset was acquired on or after 1 October 2001, its base cost is determined in terms of paragraph 20.

Paragraph 20 of the Eighth Schedule provides that if all or a portion of the base cost has already been taken into account in the calculation of taxable income (before the inclusion of any taxable capital gain), the base cost must be reduced by that amount (par 21(1)). If this were not the case, then the taxpayer would have been able to deduct the same amount twice.



Activity 6.3 (10 minutes)



To enhance your understanding of the calculation of the base cost, work through Example 6.5 and Example 6.6.



**Example 6.5:
Calculation of base cost**

A machine was acquired for R100 000 (VAT excluded) for use in a manufacturing process. A section 12C allowance was claimed, which reduced the taxpayer's normal tax liability. When the asset is disposed of, the base cost of that asset must be reduced by amounts already taken into account in terms of the section 12C allowance.



If an input tax credit was **not allowed** in terms of the VAT Act, the VAT cost will form part of the qualifying expenditure of the asset.

The following example (Example 6.6) has been taken from the SARS comprehensive CGT guide and adjusted for amendments to the legislation:



Use the following link to access the comprehensive CGT guide:

<https://www.sars.gov.za/lapd-cgt-g01-comprehensive-guide-to-capital-gains-tax/>



**Example 6.6:
Improvements reflected in state or nature of asset at date of disposal
(paragraph 20(1)(e))**

Ms T acquires a second property at a cost of R300 000 in November 2009, from which she derives rental income. She replaced the kitchen at a cost of R30 000 and installed a security system costing R10 000. In 2012 she installed a jacuzzi in one of the bedrooms at a cost of R25 000. In October 2023, the jacuzzi cracked and all the water leaked out. It was not worth repairing, so she had it removed.

Ms T's base cost will be R300 000 + R10 000 = R310 000. The replacement of the kitchen is not added to the base cost as it is considered to be a repair. The jacuzzi is dealt with as a part disposal (see SILKE 17.8.15) in terms of par 33. The calculation of this will be the portion of the base cost of the house allocated to the part disposed, using the ratio of the market value of the jacuzzi immediately before disposal relative to the market value of the entire house.

The workings of paragraph 22

Formula in terms of paragraph 22 = $[(M - A)/M] \times D$

Where:

M = market value of donated asset

A = all amounts other than donations tax taken into account in determining base cost

D = total amount of donations tax payable



Activity 6.4 (10 minutes)



To enhance your understanding of paragraph 22, work through Example 6.7.



Example 6.7: Donation of a block of flats – paragraph 22

My brother and I wish to donate our block of flats in the Republic to an *inter vivos* trust. The beneficiaries will be our children. My brother is a non-resident. We are both married out of community of property. The rental income will be utilised to pay for our children's university fees. The cost price of the block of flats was R6 000 000 on 1 May 2010, when we acquired it in equal partnership. The market value of the donation will be R8 000 000. We (my brother and I) did not make any other donations for the current year of assessment.

Please determine the capital gain (if any) for both me and my brother on the disposal of the asset to the trust. Assume that the cumulative value of donations up to the date of current donation did not exceed R30 million and that no other donations arose other than mentioned in the question.

Suggested solution

Non-resident – block of flats

Proceeds	50% x R8 000 000	R 4 000 000
<u>Less: Base cost</u>	50% x R6 000 000	<u>(3 000 000)</u>
Capital gain		<u>1 000 000</u>

Resident – block of flats

Proceeds		R 4 000 000
<u>Less: Base cost</u>	R3 mil + (R4 mil – R3 mil/R4 mil x ①R780 000) - Par 22	<u>(3 195 000)</u>
Capital gain		<u>805 000</u>

① Donations tax: (R4 000 000 – R100 000) (par 56(2)(b)) x 20% = R780 000



- The brother is a non-resident and not subject to donations tax.
- The non-resident is liable for CGT (immoveable property situated in RSA).
- Although section 35A (withholding tax) applies to non-resident sellers of South African fixed property (where the selling price exceeds R2 million), it cannot apply in this case as there is no amount payable by the purchaser to the seller.

6.5.5 PART VI OF THE EIGHTH SCHEDULE – PROCEEDS



- Read the applicable paragraphs in the Eighth Schedule to the Act as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.

Legislation 8 th Schedule/section (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 35	17.9, 17.9.1	Proceeds (definition, inclusions and when proceeds must be reduced)	6.5.5	Yes
<i>par 35(2)</i>		<i>Value shifting arrangement</i>		No
<i>par 35A</i>	17.9.2	<i>Disposal of certain debt claims</i>		No
s 24M	17.9.3	Incurred and accrued amounts not quantified	Topic 3	Yes
<i>par 36</i>	17.11.5	<i>Disposal of partnership assets</i>		No
<i>par 37</i>	17.10.5.6	<i>Assets of trusts and companies</i>		No
par 38(1) & par 38(2)(e)	17.9.5	Disposal and donations not at arm's length or to a connected person	6.5.5	Yes
<i>par 38(2)</i>		<i>Subsection link to s 8A, 8B, 10(1)(nE) & 37D that is excluded</i>		No
par 39	17.10.5 17.10.5.7	Capital losses on disposals to connected persons	6.5.3	Yes
par 39A	17.9.4	Disposal of asset for unaccrued amount of proceeds		Yes
<i>par 40</i>		<i>Disposal to and from deceased estate – replaced by s 9HA –see below</i>		No
<i>par 41</i>		<i>Tax payable by heir of deceased estate</i>		No
s 9HA	17.11.4 27.3.2	Disposal by deceased person	6.5.5 Topic 4	Yes
s 9HB	17.10.3.3	Transfer of assets between spouses	6.5.8	Yes
s 25	17.11.4, 27.4	Taxation of deceased estates	6.5.5 Topic 4	Yes
par 42	17.12.2	Short-term disposals and acquisitions of identical financial instruments		No
par 43	17.12.5	Transactions in foreign currency and cryptocurrency	Topic 3	Yes
<i>par 43(7)</i>		<i>“local currency” par (b), (c) & (d)</i>		No
<i>par 43A</i>	17.12.3	<i>Pre-sale dividends treated as proceeds</i>		No
<i>par 43B</i>	17.12.6	<i>Base cost of assets of controlled foreign companies</i>		No

The following Interpretation Note relates to contingent liabilities assumed in the acquisition of a going concern:



Interpretation Notes are available at: [Interpretation Notes | South African Revenue Service \(sars.gov.za\)](http://www.sars.gov.za/interpretation-notes)

Interpretation Note:

Interpretation Note: No. 94. Date: 19 December 2016 - Contingent liabilities assumed in the acquisition of a going concern (par 35(1))

Proceeds (general – paragraph 35)

The amount received by or accrued to the seller will be either the selling price (if it is an arm's-length transaction), or it will be the market value at date of disposal.

Where an amount was already taken into account in taxable income before the inclusion of taxable capital gain, then the proceeds must be reduced by that amount. The same amount should not be taxed twice.

Tax implications of a deceased person and a deceased estate (also refer to Topic 4)

The normal tax implications of deceased persons and estates are determined in terms of the provisions of sections 9HA and 25 of the Income Tax Act. It is important that you understand the link between section 9HA and 25. Chapter 27 in SILKE has a detailed discussion and application of these sections and will be further discussed in Topic 4. In this LU you need to have a basic understanding of section 9HA.



Activity 6.5 (30 minutes)



To clarify your understanding of the application of these two sections, work through this basic example, Example 6.8.



Example 6.8:
Normal tax (income tax and CGT) implications for a deceased person and deceased estate

Mr Expire, who was married out of community of property, died on 5 January 2024, at the age of 60 years.

1. Mr Expire owned the following assets on the date of his death:

	Market value on date of death	Base cost
	R	R
Primary residence	800 000	500 000
Holiday home	360 000	90 000
Shares in listed South African companies	400 000	280 000
Cash	400 000	400 000

Mr Expire's will provides for the following:

- His wife inherited the primary residence and R200 000 cash.
- He left his holiday house to his daughter.
- The executor of the estate had to sell the listed shares, and after paying all liabilities and costs, Mr Expire's daughter inherited the remainder of the estate.

2. The executor sold the listed shares for R500 000 and paid the following amounts/costs and liabilities:

R	
• Costs (excluding executor's remuneration of R68 600 and master's fees of R600)	55 000
• Settling the bond on the holiday house	80 000
• Settling the bond on the primary residence	100 000

3. Mr Expire's wife will be responsible for any cash shortfall in the estate.

4. Mr Expire had no other taxable income up until the date of his death.

REQUIRED:

(a)	Determine the capital gains tax implications for Mr Expire on the date of his death.
(b)	Determine the taxable income of Mr Expire for the 2024 year of assessment. Until the date of his death he received local dividends of R200 000 and a pension of R170 000 for the year of assessment.
(c)	Determine the capital gains tax implications for Mr Expire's estate.

Suggested solution

	R	R
(a) CGT implications for Mr Expire		
Primary residence (bequeathed to wife):		
Proceeds (to spouse at base cost ito section 9HA(2))	500 000	
<u>Less: Base cost</u>	<u>(500 000)</u>	nil
Holiday home to daughter:		
Proceeds (market value ito section 9HA(1))	360 000	
<u>Less: Base cost</u>	<u>(90 000)</u>	270 000
Shares in listed companies (Note 1)		
Proceeds	400 000	120 000
<u>Less: Base cost</u>	<u>(280 000)</u>	nil
Cash (currency not an asset for CGT)		
Capital gain		<u>390 000</u>
Annual exclusion (par 5)		<u>(300 000)</u>
Net capital gain		<u>90 000</u>
Taxable capital gain (40%) (par 10)		<u><u>36 000</u></u>

Note 1:

In Mr Expire's hands it is a deemed disposal of the assets at market value on date of death (section 9HA(2)). The sale of the shares takes place in the estate. The proceeds in the estate for CGT purposes will therefore be the selling price.

	R	R
(b) Income tax liability of Mr Expire		
Pension		170 000
Local dividend	200 000	
<u>Less: Dividend (exempt section 10(1)(k)(i))</u>	<u>(200 000)</u>	nil
Taxable capital gain - see above		<u>36 000</u>
Taxable income		<u><u>206 000</u></u>

(c) CGT implications for the deceased estate

Primary residence to spouse:		
Proceeds (section 25(3)(a))	500 000	
<u>Less: Base cost (section 25(2)(b))</u>	<u>(500 000)</u>	nil
Holiday home to daughter:		
Proceeds (section 25(3)(a))	360 000	
<u>Less: Base cost (section 25(2)(a))</u>	<u>(360 000)</u>	nil
Shares in listed company:		
Proceeds (selling price)	500 000	
<u>Less: Base cost (market value on date of death (s 25(2)(a))</u>	<u>(400 000)</u>	<u>100 000</u>
Capital gain		100 000
<u>Less: Annual exclusion (limited to R40 000) (par 5)</u>		<u>(40 000)</u>
Net capital gain		<u>60 000</u>
Taxable capital gain (40%) (par 10)		<u><u>24 000</u></u>

Note 2:

The liabilities incurred have no effect on the CGT calculation.

6.5.6 PART VII OF THE EIGHTH SCHEDULE – PRIMARY RESIDENCE EXCLUSION

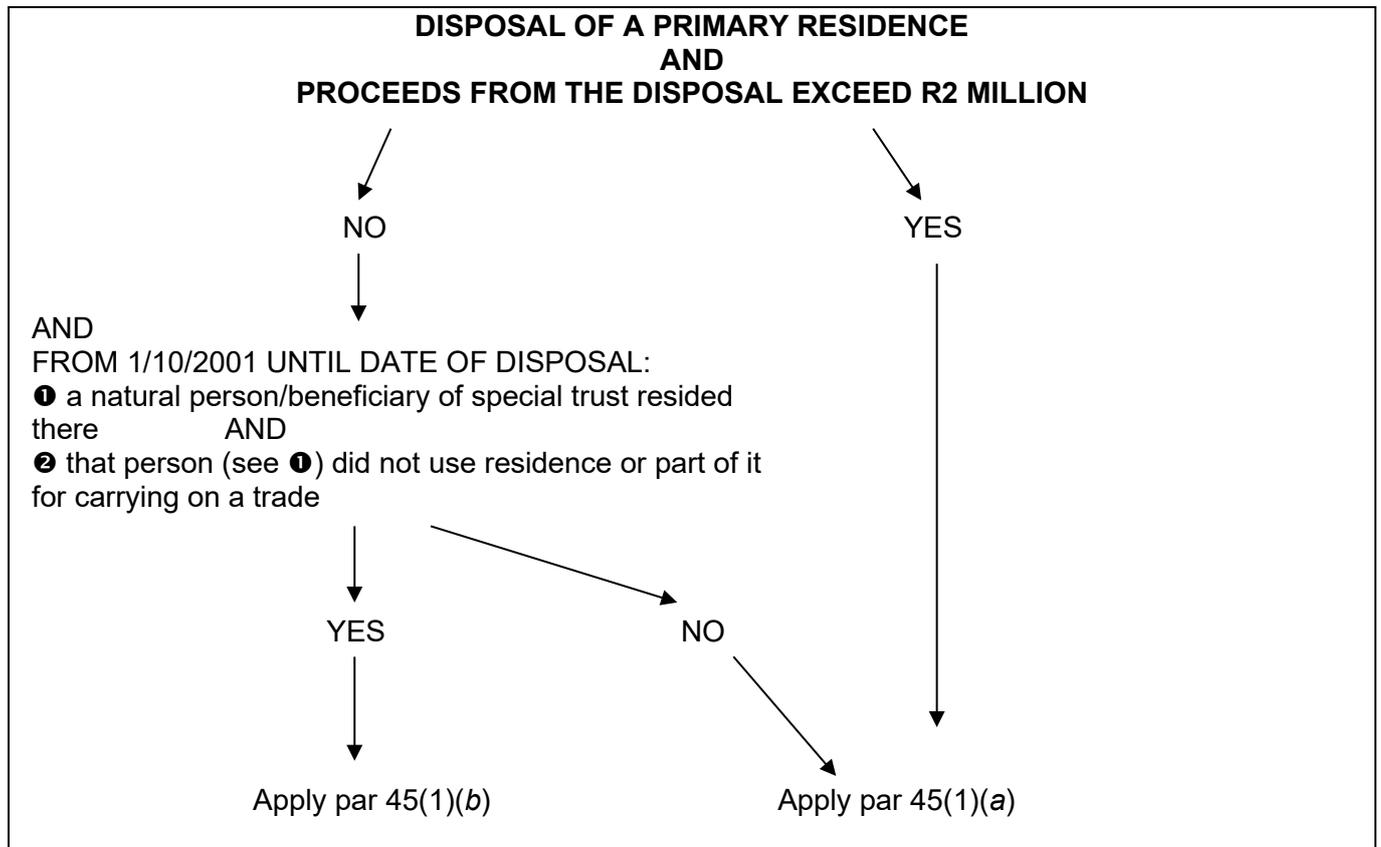


- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 44	17.10.1 17.10.1.1	Definitions (with regard to primary residence exclusions)	6.5.6	Yes
par 45	17.10.1 17.10.1.2	General principles	6.5.6	Yes
par 46	17.10.1.3	Size of residential property qualifying for exclusion	6.5.6	Yes
par 47	17.10.1.3	Apportionment in respect of periods when not ordinarily resident	6.5.6	Yes
par 48	17.10.1.3	Disposal and acquisition of primary residence	6.5.6	Yes
par 49	17.10.1.3	Non-residential use	6.5.6	Yes
par 50	17.10.1.3	Rental periods	6.5.6	Yes
<i>Par 51&51A</i>	<i>17.10.1.4</i>	<i>Transfer of residence from company or trust</i>		<i>No</i>

Primary residence exclusion

The following diagram provides an overview of the primary residence exclusion in terms of par 45:



When the proceeds in respect of the disposal of a primary residence, by a natural person or special trust, are less than or equal to R2 million, any capital gain or loss will be disregarded (paragraph 45(1)(b)). However, paragraph 45(1)(b) will not be applicable if the natural person, or a spouse or beneficiary of a special trust

- did not ordinarily reside there for the full period (from 1 October 2001 until date of disposal); or
- used the residence (or a portion of it) for the purposes of carrying on a trade for any portion of the period commencing from 1 October 2001 until date of disposal.

Primary residence exclusion (general)

Only a natural person or a special trust qualifies for a R2 million exclusion on the capital gain or loss when a primary residence is disposed of. The capital gain or the loss on disposal must first be calculated before the exclusion will apply. A natural person/special trust may only have **one** primary residence per tax period. A primary residence is the place where the taxpayer normally resides. A primary residence may also be a boat or caravan and is not restricted to fixed property.

The R2 million exclusion is not a once-in-a-lifetime exclusion. However, uninterrupted ordinary residence is required (paragraph 47) for use of the full exclusion. So, if a residence is used for part of the period, an adjustment must be made. Par 47 to par 49 also applies for a spouse of that person or beneficiary.

For example: it is possible that a taxpayer may buy a home and use it for, say, five years as a primary residence and then move to another house. This 5-year period will qualify for the primary residence exclusion, even if the taxpayer does not use it for residential purposes anymore. If the asset (home) is then sold (say after 12 years), only a portion (relating to the actual period lived in the house, that is 5/17) of the total capital gain can qualify for the primary residence exclusion.

If a portion of a primary residence is used for trade purposes, the taxpayer can deduct qualifying expenses relating to that portion through the Act, which will reduce the taxable income. When this property is sold, there will be no recoupment of the amounts previously deducted as running costs, as this type of expenditure does not enhance the value of the property. However, the capital gain that will qualify for the primary residence exclusion (in terms of paragraph 49) will be reduced by the portion of the residence that had been used for trade purposes by the natural person (or a spouse of that person or beneficiary). This portion will be subject to CGT.

When a person disposes of a primary residence together with the land on which it is situated, the exclusion of the capital gain or loss will apply only so much of the land as does not exceed two hectares.



Activity 6.6 (25 minutes)



To enhance your understanding of the application of the primary residence exclusion, work through the following three examples (Example 6.9 to 6.11) which were adapted from the **SARS comprehensive guide to CGT (2020)** (adapted for legislative amendments).



Example 6.9: Primary residence

Mr D purchased a residence to be utilised solely as a primary residence on 1 October 2016 at a total cost of R1 250 000. Seven years later (1 October 2023), Mr D sells this primary residence for R3 500 000 in order to purchase another primary residence. Assuming Mr D pays income tax at the maximum marginal rate of 45% and that he has no other capital gains or losses in the year of assessment in question, his additional income tax liability as a result of the capital gain realised is determined as follows:

Proceeds	R 3 500 000
<u>Less: Base cost</u>	<u>(1 250 000)</u>
Capital gain	2 250 000
Disregarded in terms of par 45(1)(a)	(2 000 000)
<u>Less: Annual exclusion (par 5)</u>	<u>(40 000)</u>
Aggregate capital gain	<u>210 000</u>
Taxable capital gain (R210 000 x 40%) (par 10)	<u>84 000</u>
Tax payable (R84 000 x 45%)	<u>37 800</u>

The R2 million exclusion operates on a primary residence basis and not on a person holding an interest in the primary residence basis.



**Example 6.10:
Spouses married in community of property**

The facts are the same as for the above example, except that Mr D is married to Mrs D in **community** of property and the primary residence falls within their **joint** estate. Assuming that Mrs D has no other capital gains or losses in the year of assessment in question, Mr D and Mrs D's taxable capital gains are determined as follows:

	Total R	Mr D R	Mrs D R
Capital gain (apportioned in terms of par 14)	2 250 000	1 125 000	1 125 000
Disregarded in terms of par 45(1)(a)	(2 000 000)	(1 000 000)	(1 000 000)
Annual exclusion		(40 000)	(40 000)
Aggregate capital gain		<u>85 000</u>	<u>85 000</u>
Taxable capital gain (R85 000 x 40%)		<u>34 000</u>	<u>34 000</u>

Non-residential use: paragraph 49

The purpose of this paragraph is to allow the primary residence exclusion only in respect of the portion of the capital gain or capital loss on the disposal of the primary residence that is attributable to any period on or after valuation date during which the taxpayer or a spouse of that person or beneficiary used that residence for domestic purposes as well as to the part used mainly for purposes other than the carrying on of a trade.



**Example 6.11:
Residence used partly for trade purposes and interrupted residence**

Ms Y acquired a residence on valuation date for R350 000 and resided in it for 10 years. During this time, she operated her consulting business from the premises. Approximately 35% of the floor space was used for business purposes. Ms Y also claimed 35% of her current costs as a business expense against her business income for tax purposes. As an opportunity arose for her to expand her business 10 years after she had acquired the property, she purchased another residence in which to live and converted her old residence into business premises. Fifteen years after converting the property, she sold it for R2 650 000. Improvements over the years and all other capital costs associated with the acquisition and disposal of the property amounted to R250 000.

Proceeds upon disposal	R 2 650 000
<u>Less: Base cost (R350 000 + R250 000)</u>	<u>(600 000)</u>
Capital gain	2 050 000
Period not occupied as primary residence (R2 050 000 x 15/25)	<u>(1 230 000)</u>
	820 000
Part partially used for trade purposes (R820 000 x 35%)	<u>(287 000)</u>
Capital gain attributable to being a primary residence	<u>533 000</u>

Ms Y will be able to apply the primary residence exclusion to R533 000 of the total capital gain realised. The balance of R1 517 000 (R1 230 000 + R287 000) will be subject to CGT and will be aggregated by any other capital gains or losses arising in the year of disposal before the R40 000 annual exclusion is applied.

6.5.7 PART VIII OF THE EIGHTH SCHEDULE – OTHER EXCLUSIONS

An exclusion for CGT purposes will disregard a capital gain or loss on an asset. You have to know which assets are excluded from the CGT net, as no capital gain or loss is calculated on the disposal of these assets. Exclusions, limitations of capital losses and the roll-over relief are exceptions to the general rules.



- Read the introduction in SILKE 17.10 (exclusions, roll-overs, attributions and limitations).
- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act as indicated in the table below. Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.
- Note that we already dealt with Part VII of the Eighth Schedule (primary residence exclusion) in the previous note.

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 52	17.10.2	General principles		Yes
par 54	17.10.2, Note 2	Lump-sum retirement benefits of a natural person	6.5.7	Yes
par 55	17.10.2, Note 3	Long-term assurance policies	6.5.7	Yes
par 57	17.10.2, Note 4	Disposal of small business assets of a natural person		Yes
par 57A	17.10.2, Note 5	<i>Disposal of micro business assets</i>		No
par 58	17.10.2, Note 6	Options exclusion		Yes
par 59	17.10.2, Note 7	Compensation for personal injury, illness or defamation		Yes
par 60	17.10.2, Note 8	Gambling, games and competitions		Yes
par 61	17.10.2, Note 9	Collective investment scheme in securities		Yes
par 62	17.10.2, Note 10	Donations and bequests to public benefit organisation (PBO)		Yes
par 63	17.10.2, Note 11	Exempt persons		Yes
par 63A	17.10.2, Note 12	<i>Public benefit organisations</i>		No
par 63B	17.10.2, Note 13	<i>Small business funding entities</i>		No
par 64	17.10.2, Note 14	<i>Assets used to produce exempt income</i>		No
par 64A	17.10.2, Note 15	<i>Awards under the Restitution of the Land Rights Act</i>		No
par 64B(1)	17.10.2, Note 16	Disposal of equity shares in foreign company.	Topic 5	Yes
par 64B(2-6)	17.10.2, Note 16	<i>Disposal of interest in equity share capital of foreign co.</i>		No

Legislation 8 th Schedule (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
par 64C	17.10.2, Note 17	Disposal of restricted equity instruments – only linked to s 8C(4)(a))		No
Par 64D	17.10.2, Note 18	Land donated in terms of land reform measures		No
Par 64E	17.10.2, Note 19	Disposal by trust in terms of a share incentive scheme		No

Note on paragraphs 54 and 55

The right to claim an amount from a retirement fund or insurer is an asset for CGT purposes. This should not be confused with the payment of an insurance or retirement amount. Currency (cash) is excluded from the definition of an asset and will not be subject to CGT. When the right to claim the amount is turned into currency, the disposal of that right is disregarded in terms of paragraphs 54 and 55.

6.5.8 PART IX OF THE EIGHTH SCHEDULE – ROLLOVERS



- Read the applicable paragraphs in the Eighth Schedule to the Income Tax Act, as well as section 9HB, as indicated in the table below.
- Work through SILKE and revisit those paragraphs you are not yet comfortable with (as indicated below) and the notes provided.

Legislation 8 th Schedule/section (All covered in undergrad)	Reference to SILKE	Application	Notes in LU 6	Examinable
Par 65	17.10.3, 17.10.3.1	Involuntary disposal – Exclude par 65B	Topic 3	Yes
Par 65B	17.10.3.4	Disposals by recreational clubs		No
Par 64E	17.10.2	Disposal by trust in term of share incentive scheme		No
Par 66	17.10.3.2	Reinvestment in replacement assets	Topic 3	Yes
S 9HB	17.10.3.3	Transfer of asset between spouses	6.5.8	Yes
Par 67B, C & D	17.10.3.4	Share block companies, Mineral rights and Communication licence conversions		No

Roll-overs (general)

Certain capital gains may be rolled over before determining the aggregate capital gain or loss. Roll-over means that either the base cost is transferred to the new owner (meaning that there is no CGT effect for the person transferring the asset), or the capital gain is spread over a period. These are relief measures.

Section 9HB: Transfer of asset between spouses

In terms of section 9HB, where a person disposes of an asset to his/her spouse, any capital gain or loss is disregarded. The transferee spouse takes over all aspects relating to the asset. The transferee is therefore treated as having acquired the asset

- at the same time,
 - for the same cost
 - in the same currency, and
 - for use in the same manner
- as the transferor during the ownership by the transferor.

The asset is transferred between spouses at base cost. No capital gain or loss is taken into account at the time of the transfer (disposal). When the new owner (spouse) sells the asset, the base cost will be the original base cost for the spouse who transferred the property plus any subsequent qualifying costs (paragraph 20). This provision is subject to the attribution rules (Trusts in Topic 5) in terms of part X in the Eighth Schedule.

6.5.9 DEALT WITH IN LATER TOPICS

Part X: Attribution of capital gains (par 68 – 73) – with trusts (Topic 5)
 Part XI: Company distributions (par 74 – 78) – with dividends (Topic 5)
 Part XII: Trusts and trust beneficiaries (par 80 – 82) – with trusts (Topic 5)

6.6 SOLUTION OF THE BEANCOUNTER SCENARIO



Discussion activity

Read the Beancounter scenario again, or watch the [video](#), and make a rough summary of what your solution would be now that you have studied LU 6 on CGT. Share your solution on the [Discussion Forum 6.1](#), then refer to the [solution](#) that will be made available during the study week for this LU. You need to review the solution to improve your own understanding of the tax principles involved.

The more you actively participate in these discussion forums, the more your communication skills will develop.

6.7 SUMMARY OF LEARNING UNIT 6

This LU introduced you to the content in the CGT as set out in the Eighth Schedule of the Income Tax Act as well as the relevant law amendments. A short table of reference was provided under every part of the Eighth Schedule to guide you through the work. The Eighth Schedule was discussed according to the sequential parts thereof. This ought to provide you with a well-rounded and systematic knowledge base of the four key elements of a CGT event, exclusions, limitation of losses and roll-overs applicable to the CGT calculation.

Ensure that you do not study CGT in isolation and that you consider the impact of CGT on all applicable transactions. You are now ready to apply your knowledge of LU's 4 to 6 by doing the integrated activities below.

6.8 INTEGRATED ACTIVITIES 6.7 – 6.13



Below are seven activities for you to complete. Use these activities to assess your own knowledge, competencies and take responsibility for your own learning experience. The activities will assist you to identify shortcomings in your knowledge relating to Topic 2 and will also serve as a measure of your understanding and ability to apply your tax knowledge obtained in practical situations.

ACTIVITY	CONTENT	MARKS/TIME **
6.7	Discussion question on gross income, exempt income, calculation of CGT	40/90
6.8	Integrated discussion question which includes VAT, the definition of ordinary resident, donations tax, CGT and taxable income	52/114
6.9	Integrated discussion question that includes gross income, resident vs non-resident, donations tax and CGT	49/110
6.10	Calculation of taxable income, CGT, trading stock, discussion of withholding tax	20/60
6.11	Discussion of source rules, ceasing to be a resident and CGT	20/54
6.12	Discussion of gross income, source rules, withholding tax, and calculation of taxable income	20/66
6.13	Calculation of donations tax, discussion of VAT, discussion on resident vs non-resident	40/102

** The time provided for each question is calculated as 6 minutes of reading time for each activity, 1.5 minutes for every mark and then 6 minutes per page of the solution, for you to review your answer against the solution provided.



PLEASE NOTE

The parts in the solutions that are highlighted in grey should not be studied as these parts are excluded from the ITC Tax examinable pronouncements and are only included for completeness sake.

Section 9C will be dealt with in your LU 9. Due to the integrated nature of the questions in this LU, the parts relating to section 9C have not been removed.



ACTIVITY 6.7 (40 marks / 90 minutes)

A junior clerk at your audit firm has approached you regarding the normal tax implications stemming from the information below. Ignore the calculation of VAT in answering the questions.

PART A – MR GEAR BOX

30 marks

Mr Gear Box, a salaried official employed in the diplomatic corps by the South African government, recently inherited an old vintage Lincoln Zephyr (a motor vehicle) under the last will and testament of his aunt, who died a few months earlier. This vehicle was in a spotless condition after his aunt's husband had, in his own words, "spent close to a fortune" overhauling it shortly before his own death. The vehicle was included at its market value of R120 000 (at the date of her death) in the final liquidation and distribution account that was drawn up by the executor of her estate. After driving it for a period of two weeks, Mr Box realised that it would not make any sense to hang on to it as he already owned two other motor vehicles. He therefore decided to dispose of this vehicle by advertising it in *Junk Mail* for R125 000. It was sold for this amount within two days of placing the advertisement.

Mr Box's only other income during the 2024 year of assessment consisted of a monthly salary of R65 000, local interest from a savings account (not a tax-free investment in terms of section 12T) in ABC Bank amounting to R24 000, foreign interest from a fixed deposit amounting to the equivalent of R6 000 and a royalty of R24 000, from a patent for which he had granted permission for its use in the Republic. He had originally developed this patent in the United Kingdom (UK). Mr Box is a resident of the Republic, married out of community of property and 60 years of age.

REQUIRED:		Marks
(a)	Briefly explain (by providing reasons and with reference to case law, where applicable) whether it can be said that an "amount" has been received by or has accrued to Mr Box with regard to the inheritance of the motor vehicle, as required by the general definition of gross income. If so, show the amount.	3
(b)	Determine the nature (capital or revenue) of the inheritance itself and show whether the inheritance should, based on this, be included in Mr Box's gross income.	2

ACTIVITY 6.7 (continued)

(c)	Explain, supported by reference to case law where applicable, the nature of the receipt of R125 000 arising on the disposal of the vintage vehicle and show whether this amount should be included in the gross income of Mr Box.	7
(d)	Critique whether the inheritance of the vehicle as well as its disposal will have any capital gains tax implications for Mr Box.	3
(e)	Conclude on whether Mr Box qualifies for any exemption in terms of section 10 of the Income Tax Act in respect of the amounts listed above in the question and, if so, show the amount.	3
(f)	Briefly assess, supported by reference to case law where applicable, the tax implications for Mr Box on the assumption that he is not a resident of the Republic and that he rendered his services to the South African government outside the borders of the Republic. He paid no foreign taxes on these services rendered. Further assume that he has spent more than 183 days outside the Republic in the preceding 12 months and that more than 60 of these days were consecutive. He did not carry on any business through a permanent establishment in the Republic. Ignore the implications of any double tax agreement.	12

PART B – MR TRIPPLE BLADE**10 marks**

Mr Tripple Blade (a resident of the Republic) is one of your clients and he disposed of the following three capital assets during the 2024 year of assessment:

- The primary residence of the Blade family, situated in Sea Point, Cape Town, that was sold to the Blade Family Trust (a connected person) for its market value of R7.8 million on 29 February 2024. Because of the cold and wet winters in Cape Town, which affected Mr Blade's health, he decided to move back to Gauteng. This property was acquired by Mr Blade as a bequest from his spouse (they were married out of community of property), who died on 1 December 2015. At that stage, this property had a market value of R6.2 million, while the late Mrs Blade had originally acquired it at a cost of R5.6 million on 1 April 2013. Some 8% of the total floor area of this property had, since its original acquisition, been used by Mr Blade for the purposes of carrying on his business. From now on, the trust will lease the full property out for residential purposes. The only improvement effected to the property by Mr Blade since personally becoming the owner was a swimming pool, which was added at a cost of R100 000. This swimming pool overlooks the Atlantic Ocean and is still one of the main features of the property.
- A 12 m yacht, which he sold to his 25-year-old son, who has decided not to join the move to Gauteng because of his love for the ocean. Mr Blade agreed to dispose of it for an amount equal to its current market value (R500 000). This yacht had originally been acquired by Mr Blade for R800 000 and it had always been used solely for the family's pleasure (i.e., not for any trade).
- 10 000 ordinary shares in Red Alert Ltd, which he acquired 3 years prior to its disposal. During the period of holding these shares, the company never found itself in a position to declare or pay any dividends to its shareholders; this was the main contributing factor to the disposal. The original cost of the shares amounted to R200 000, while Mr Blade disposed of them for R175 000 to an independent third party.

ACTIVITY 6.7 (continued)

REQUIRED:	Marks
Determine, supported by reasons where necessary, the amount of the taxable capital gain or loss to be included in the taxable income of Mr Blade for the 2024 year of assessment. Assume that he had no other disposals during the year, nor any assessed capital loss brought forward from the previous year. All assets have been acquired after the valuation date. Ignore any VAT..	10

(UNISA Test 2 2006 - adapted)



Remember that the parts in the solution that are highlighted in grey should not be studied as these are excluded from the ITC Examinable pronouncements and only included for completeness' sake.

ACTIVITY 6.7 – SUGGESTED SOLUTION**PART A**

- (a) The value of every form of property received by a taxpayer (and not only money) has to be included as part of an "amount" in their gross income, provided it has a monetary value (*Lategan v CIR*). So, as long as this property (in this case, the vehicle) has an ascertainable monetary value and can be turned into money, it will constitute an "amount" for the purposes of the definition of gross income (*CIR v Delfos*). Where the receipt (or accrual) is in a form other than money, it has to be valued at the date of receipt or accrual (i.e., in this case the market value will have to be used (R120 000) – *Lace Proprietary Mines Ltd v CIR*). (3)
- (b) An inheritance would normally be considered to be a fortuitous gain and any "amount" received by way of inheritance would therefore **be capital in nature**. The inheritance itself would therefore not form part of gross income (neither covered by the general definition nor any special inclusion).(2)
- (c) On receiving the inheritance (the vehicle), that asset will be capital in nature because of its fortuitous nature. But consideration should also be given to the question whether a change of intention took place before Mr Box disposed of it, as this would mean that its nature would change to revenue. The mere fact that a taxpayer disposes of a capital asset at a profit does not in itself indicate a change of intention. Something more is required to indicate that the taxpayer is engaged in a scheme of profit-making (*John Bell and Co (Pty) Ltd v SIR* and *Natal Estates Ltd v SIR*). (2)

The following factors would tend to support the contention that the nature of the transaction is still capital:

- Mr Box is a salaried employee (diplomat) and not a dealer in motor vehicles. (1)
- Mr Box held ownership in two other vehicles, meaning that he simply disposed of a superfluous vehicle (and did not speculate with it). (1)
- The steps taken (by himself) and the cost to advertise the vehicle (in the *Junk Mail*) would also support the fact that there was no change of intention. (1)
- Although the period of holding the asset was rather short, this factor in itself cannot indicate an intention to speculate – there is no indication that he has ever traded with similar assets and neither is there any indication that he has treated it as part of his trading stock. (1)

The nature of the receipt would therefore be capital and thus the receipt cannot form part of his gross income. (1)

ACTIVITY 6.7 – SUGGESTED SOLUTION (continued)

- (d) The inheritance of the vehicle would simply establish the base cost (R120 000) of the capital asset, while disposal of the vehicle would give rise to a capital gain of R5 000 (R125 000 – R120 000). Although the proceeds do not form part of gross income (capital nature) (which means that it can be subject to CGT), it would further qualify for an exclusion from CGT because it meets the definition of a personal-use asset (paragraph 53 of the Eighth Schedule) – this vehicle was used mainly for purposes other than the carrying on of a trade. There is thus no taxable capital gain arising from the transaction. (3)
- (e) The only exemption he qualifies for is the basic interest exemption provided for in section 10(1)(i). As Mr Box is under 65 years old, a maximum exemption of R23 800 would be available to exempt local interest from normal tax. (3)
- (f) If Mr Box is a non-resident, he will only be taxed on amounts received or accrued in terms of the source rules in section 9 and the relevant case law. Amounts of a capital nature will still be excluded from gross income, except where these amounts are covered by special inclusions in gross income.

Neither the inheritance of the vehicle nor the disposal of the vehicle will constitute gross income as both these amounts will be of a capital nature. In turn, the capital gain realised by the non-resident will not be subject to CGT as it is not an asset in the Republic as defined in paragraphs 2(1)(b) and 2(2) of the Eighth Schedule. (2)

The source of services rendered will be determined by reference to the entity to which the services are rendered. In this case, the services were rendered to the South African government outside the Republic. Section 9(2)(h) would thus deem this income to be from a source within the Republic, as it was for services rendered on behalf of the employers in the public sector and will constitute gross income in his hands. (2)

This remuneration would normally be exempt from normal tax in terms of section 10(1)(o)(ii) as he does meet the 183 days (i.e., he was outside the Republic for more than 183 days in the preceding 12-month period) and 60 days requirements, but the proviso to this section prescribes that this exemption does not extend to amounts paid for services rendered for or on behalf of employers as contemplated in section 9(2)(h). The full amount of R780 000 (R65 000 x 12) would therefore be subject to normal tax in the Republic. (1)

As no tax was paid on this remuneration in the foreign country, section 10(1)(p) cannot apply.

In terms of section 9(2)(b), the source of interest income is determined by the residence of the debtor (e.g., the financial institution in the Republic). In the case of Mr Box, the local interest from the savings account (R24 000) will have its source in the Republic. (1)

Withholding tax on interest in terms of section 50B will not apply as he received it from a bank institution. (1)

As he is a non-resident, section 10(1)(h) will exempt the full amount of interest from normal tax because he was not physically present in the Republic for more than 183 days during the 12 months preceding the accrual of the interest income and neither did he carry on any business through a permanent establishment in the Republic in the preceding 12 months. (2)

In terms of section 9(2)(d), the royalty income is from a South African source as it has been received for the granting of permission to use the intellectual property in the Republic. The R24 000 will therefore constitute gross income in his hands. (2)

ACTIVITY 6.7 – SUGGESTED SOLUTION (continued)

If this is the case and the royalty is to be paid to a non-resident (which it is), the amount will be subject to withholding tax at a rate of 15% of the gross royalty in terms of section 49B(1)(a). The withholding tax is a final tax payable to SARS on the last day of the month following the month in which it is paid. In turn, the full amount of the gross royalties received will be part of gross income but will be exempt in terms of section 10(1)(l) as the requirements of section 49A have been fulfilled.

(2)

Total 31
Limited to 30

PART B

	R	R	
Primary residence			
Proceeds (par 35(1))		7 800 000	
<u>Less: Base cost (par 20(1)(e))</u>			
- Original cost to first spouse (transfer between spouses, section 9HB)	5 600 000		(1)
- Improvement (par 20(1)(e))	100 000	(5 700 000)	(1)
		<u>2 100 000</u>	
<u>Less: Adjustment for trade purposes (par 49)</u>			
- 8% x R2 100 000		(168 000)	(1)
		<u>1 932 000</u>	
<u>Less: Primary residence exclusion (R2 million limited to gain/loss) (par 45)</u>		(1 932 000)	(1)
		nil	
<u>Add back: Non-residential portion</u>		168 000	(1)
Capital gain relating to primary residence		<u>168 000</u>	
Note: No adjustment to proceeds is necessary as they are equal to market value (connected person).			
Yacht		R	
Proceeds		500 000	
<u>Less: Base cost</u>		(800 000)	
Capital loss		<u>(300 000)</u>	(1)
Note: No adjustment (to the proceeds) is necessary as the proceeds are equal to market value (connected person). This yacht is excluded from a personal-use asset (longer than 10 m), but the loss will be disallowed in terms of par 15 of the Eighth Schedule.			(1)
Shares in Red Alert Ltd			
Proceeds		175 000	
<u>Less: Base cost</u>		(200 000)	
Capital loss		<u>(25 000)</u>	(1)
Summary			
Primary residence - capital gain		168 000	
Yacht - capital loss disregarded		-	
Shares in Red Alert Ltd - capital loss allowed		(25 000)	
		<u>143 000</u>	(1)
<u>Less: Annual exclusion (par 5(1))</u>		(40 000)	(1)
Aggregate capital gain		<u>103 000</u>	
Taxable capital gain: 40% (par 10(a)) x R103 000		<u>41 200</u>	(1)
		Total	<u>11</u>
		Limited to	<u>10</u>



ACTIVITY 6.8 (52 marks / 114 minutes)

Brian Technoso (40 years old) is a sole trader and registered as a category B vendor on the invoice basis for VAT purposes. He has accounted for VAT on a 2-monthly basis (tax periods: February, April, June etc.) since 2014. He is an IT specialist working as a consultant for various firms. In July 2023, his wife (they were married out of community of property) divorced him on grounds of irreconcilable differences (he just spent too much time on his work). In the divorce settlement (to which they both agreed) their primary residence was allocated to her estate as a final settlement (they had no children). The primary residence of the Technoso couple is situated in Durban. In July 2023, a sworn appraiser from Brian's bank valued the residence at R3.8 million at no cost. This property was acquired by Brian on 1 May 2016 at a cost of R2.2 million.

Brian had a 15-m yacht, which he sold during the 2024 year of assessment because he had no time to use it. He had originally acquired this yacht for R3 000 000 and it had always been used solely for his own relaxation (i.e. not for any trade). He received R2 160 000 from the sale. He did not sell any other assets in the 2024 year of assessment.

In his spare time Brian developed a computer program that will prevent unauthorised people from logging in on chat rooms.

In August 2023 he received an offer from an Armenian firm to join the firm as a consultant on a 2-year contract (ignore any double tax agreement). Brian saw this as an ideal opportunity to expand his knowledge to an international level, to find a buyer for his computer program as well as to provide for his future retirement. He decided to accept the offer, but only for a 2-year period as he plans to return to Durban (South Africa) to be a full-time pro surfer (he was very good at surfing as a teenager). On 31 August 2023, he decided to cease trading.

He compiled the following list of assets and liabilities as at 31 August 2023:

Assets and liabilities of Brian Technoso business enterprise:

	Note	Cost (excl VAT) R	Open market value R
Assets			
Computers and printers (tax value on 31/08/2023: R45 000)	1	67 000	44 000
Office furniture (tax value on 31/08/2023: R10 000)	1	14 000	8 000
Sedan motor car (40% used for business purposes)	2	170 000	138 000
Money market account	3	-	49 500
Liabilities			
Loan from Adam Technoso	4	-	60 000

Notes

- Brian's former brother-in-law (who is also an IT consultant) bought the computers and printers as well as the office furniture at their open market value of R44 000 from Brian. These computers were sold on the same date that Brian ceased trading.
- Brian felt guilty that he neglected his former wife in all those years of marriage and subsequently gave his car to her on 2 September 2023. He made no other donations in the 2024 year of assessment.

ACTIVITY 6.8 (continued)

3. Brian decided to keep his money market account at Investors Bank. It had a balance of R49 500 on 31 August 2023. He received interest of R3 724 on this account for the 2024 year of assessment.
4. In 2014 Brian's father, Adam, lent him R60 000 interest-free to start his business. On 31 August 2023 Adam wrote off this amount as he felt that he would in any way be able to write it off as a capital loss in his own accounting records.

Brian Technoso previously spent R80 000 of his own money on the patent development cost and registration of his computer program but never claimed any of the patent development cost as a deduction for income tax purposes (and will not do so in the 2024 year of assessment). On 1 December 2023 (after he had deregistered for VAT purposes) he sold his computer patent to a British computer firm (the contract was concluded in the United Kingdom) for a cash payment of R1.5 million (rand equivalent) and annuity payments of R50 000 per year (first payment on 1 January 2024) for the rest of his life.

Brian's other income during this year of assessment consisted of a net trading profit of R180 000 from his business enterprise until 30 August 2023 (before the cessation of his business).

He received a monthly salary of R85 000 (correctly translated to South African rand) from 1 September 2023 from the Armenian firm.

During the 2024 year of assessment Brian only returned to South Africa from 10 December 2023 until 15 January 2024 (36 days) to attend his sister's wedding. He does not expect to return to South Africa until the expiry of his contract with the Armenian firm.

REQUIRED:		Marks
(a)	Determine, supported with reasons, the VAT amount due by Brian Technoso to SARS as a result of the cessation of his business enterprise. Assume that he incurred no transactions other than the items mentioned in the question during the relevant tax period.	6
(b)	Reflect on (with reference to case law) whether Brian Technoso will be regarded as ordinarily resident in the Republic in terms of the definition of resident in the Income Tax Act 58 of 1962. (You do not have to discuss the physical presence test in the case where a natural person is not ordinarily resident in the Republic.)	6
(c)	Discuss and determine (if applicable) any donations tax implications when Brian Technoso gave his car to his ex-wife. You may assume that Brian made no previous donations during his lifetime.	6
(d)	Discuss, with calculations, the capital gains tax (CGT) consequences regarding the assets of Brian Technoso for the 2024 year of assessment.	18
(e)	Determine the taxable income of Brian Technoso for the 2024 year of assessment.	12
(f)	Briefly reflect on the CGT implications for Brian Technoso's ex-wife if she sold the residence in Durban on 1 December 2023 for R3.2 million to enable her to buy a house in a security complex. She paid an amount of 10% commission on the selling price to the estate agent.	4

(UNISA 2008 – adapted)

ACTIVITY 6.8 – SUGGESTED SOLUTION**(a) Calculation of VAT due on 31 August 2023**

Deemed output tax	R	
Computers and printers (lower of cost or open market value = R44 000 x 15/115)	5 739	(2)
Office furniture (lower of cost or open market value = R8 000 x 15/115)	1 043	(1)
Sedan motor car (no deemed output – no input tax was claimed as it is a motor car as defined)	nil	(1)
Money market account (money is not ‘goods’ as defined – no output tax payable)	nil	(1)
Loan from Adam Technoso (not part of Adam's enterprise – no output tax payable)	nil	(1)
	<u>6 782</u>	<u>6</u>

(b) Ordinarily resident in the Republic

The term “ordinarily resident” is not defined in the Income Tax Act and we have to refer to case law in this regard. (1)

In *Cohen v CIR* it was established that physical absence during the whole of the year of assessment was not decisive of the question of ordinary residence. (1)

Brian’s ordinary residence would be in the country to which he would naturally and as a matter of course return to from his wanderings (his usual or principal residence – his real home). (1)

In *CIR v Kuttel* it was made clear that a person's residence must be where they had their usual or principal residence, what may be described as their real home. (1)

In the case of Brian Technoso, he will be absent from the Republic for a period of two years, but he plans to return occasionally (to attend his sister's wedding). The temporary or occasional absences of long or short duration will not affect his status as ordinarily resident. (1)

His intention is still to return after two years and to settle in Durban (South Africa). Brian will therefore be ordinarily resident in South Africa. (1)
6

(c) Donations tax implications

Donations tax is payable on the fair market value of any property gratuitously disposed of by a South African resident. (1)

Any donation made to or for the benefit of a spouse not separated or divorced from the donor will be exempt from donations tax (section 56(1)(b)). Mr and Mrs Technoso’s divorce was finalised in July 2023 and the donation was made on 2 September 2023. The exemption will not be available. (1)

Brian is liable for the payment of donations tax by the end of the month following the month during which the donation took effect, thus by 31 October 2023. (1)

ACTIVITY 6.8 – SUGGESTED SOLUTION (continued)**Calculation of donations tax payable**

	R	
Donation of sedan motor car @ market value	138 000	(1)
<u>Less: Section 56(2)(b) – exemption</u>	<u>(100 000)</u>	(1)
Amount subject to donations tax	<u>38 000</u>	
Donations tax @ 20%	<u>7 600</u>	<u>(1)</u>
		<u>6</u>

(d) CGT consequences**Primary residence**

In terms of section 9HB where a person disposes of an asset to their spouse, any capital gain or loss is disregarded. (1)

In terms of section 9HB, this is a roll-over which will also be allowed in the case of a divorce. (1)

There will thus be no CGT when the primary residence is allocated to his wife. (1)

Yacht

The yacht was a personal-use asset, but in terms of par 53(3)(d) a capital **gain** on a boat longer than 10 m will not be disregarded. (1)

In 2024 a capital loss of R840 000 (Proceeds of R2 160 000 less base cost of R3 000 000) was made. (1)

The capital **loss** will, however, be disregarded in terms of paragraph 15(b) (1)

and there will be no capital loss carried forward to the 2025 year of assessment. (1)

Patent

No deduction in terms of the Income Tax Act had been allowed and no deduction from the base cost in terms of par 20(3)(a) will be made. (1)

Capital gain

	R
Proceeds	1 500 000
<u>Less: Base cost</u>	<u>(80 000)</u>
Capital gain	<u>1 420 000</u>

R1 420 000 capital gain must be included in his other capital gains and losses. (1)

Computer and printers

A capital gain or loss should be calculated in terms of the Eighth Schedule on an asset that has been disposed of:

	R	
Proceeds: $100/115 \times R44\ 000$	38 261	(1)
<u>Less: Base cost (R67 000 – R22 000) ❶ paragraph 20(3)(a)</u>	<u>(45 000)</u>	(1)
Capital loss	<u>(6 739)</u>	

❶ The base cost of an asset should be reduced by expenditure already allowed as a deduction for income tax purposes. Wear and tear of R22 000 (R67 000 – R45 000) has been claimed as a deduction in terms of section 11(e).

A capital loss will be included in the calculation of his aggregate capital gain or assessed capital loss. (1)

Note: Section 11(o) will not be allowed as this is a cessation of a business. (1)

ACTIVITY 6.8 – SUGGESTED SOLUTION (continued)**Office furniture**

A capital gain or loss should be calculated in terms of the Eighth Schedule:

	R	
Proceeds: $100/115 \times R8\,000$	6 957	(1)
<u>Less: Base cost (R14 000 – R4 000) ②</u> paragraph 20(3)(a)	<u>(10 000)</u>	(1)
Capital loss	<u>(3 043)</u>	

② Wear and tear of R4 000 (R14 000 – R10 000) has been claimed in terms of section 11(e). The capital loss will be included in the calculation of his aggregate capital gain or assessed capital loss.

**Note: Capital losses – connected persons**

Paragraph 39 of the Eighth Schedule is not applicable because his ex-brother-in-law is not a connected person (in terms of paragraph 39(3)(a)).

Motor vehicle

It is a personal-use asset and in terms of paragraph 53, the capital gain or loss must be disregarded. (1)

Money market account

His money market account is not a deemed disposal as he does not emigrate. (1)

Loan

The original loan was not originally used to fund an asset, thus paragraph 12A cannot apply. However, it can be seen as a deemed donation by his father and, as such, donations tax will be levied in the hands of the donor. Section 19 does not apply if the debt is reduced by way of a donation (section 19(8)(b)(i)). (2)

Total 19
Limited to 18

(e) Calculation of the taxable income of Brian Technoso for the 2024 year of assessment

	R	
Net trading profit	180 000	(1)
Interest received	3 724	
<u>Less: Exemption section 10(1)(i)</u>	<u>(3 724)</u>	(1)
Salary (R85 000 x 6)	510 000	(1)
Exemption s 10(1)(o)(ii) longer than 183 full days in any 12-month period as well as a continuous period exceeding 60 full days and less than R1.25 million	(510 000)	(1)
Annuity	<u>50 000</u>	(1)
	230 000	
Section 26A – taxable capital gain (see calculation)	<u>548 087</u>	(1)
Taxable income	<u><u>778 087</u></u>	

ACTIVITY 6.8 – SUGGESTED SOLUTION (continued)**CGT calculation**

	R	
Computers and printers*	(6 739)	(1)
Office furniture*	(3 043)	(1)
Sedan motor car – personal-use asset (par 53(3)) – excluded	nil	
Patent	1 420 000	(1)
Loan from Adam Technoso – no deemed disposal	nil	(1)
15-m yacht – personal-use asset (par 53(3)(d) and par 15) – capital gain included but capital loss excluded	nil	(1)
Total capital gains	<u>1 410 218</u>	
<u>Less: Annual exclusion (par 5)</u>	<u>(40 000)</u>	(1)
	<u>1 370 218</u>	
Included in taxable income @ 40% (par 10)	<u>548 087</u>	(1)
	Total	13
	Limited to	12

(f) Mrs Technoso - CGT implications

Mrs Technoso must account for CGT when she sells the primary residence. It is assumed that she purchased the residence on the same date that Brian did and at the same base cost in terms of section 9HB.

	R	
Proceeds*	3 200 000	(1)
<u>Less: Base cost (R1 200 000 + (R3 200 000 x 10% (commission))</u>	<u>(1 520 000)</u>	(2)
Capital gain	1 680 000	
<u>Less: Primary residence exclusion (R2 million limited to actual)</u>	<u>(1 680 000)</u>	(1)
Gain	<u>nil</u>	
	Total	5
	Limited to	4



ACTIVITY 6.9 (49 marks / 110 minutes)

Malcolm Malefo (born in the Republic) is an unmarried 22-year-old up-and-coming soccer star. From 1 March 2023 until 30 April 2023, he played soccer full time for the Sundowns Strikers in Pretoria, earning a gross salary of R24 000 per month. A talent scout from England saw him play in April 2023 and offered him a contract to play in their Future Soccer Stars club in Manchester, England. They offered him a lucrative 6-month contract of £25,000 (pounds) per month. If he fulfils his promise as a soccer star, they will pay him an additional performance lump sum of £50,000 at the end of his 6-month term. He accepted their offer and departed on 1 May 2023 to England. Assume Malcolm uses the average exchange rate for the 2024 year of assessment of £1 = R20,00.

On 1 August 2023, he came back to South Africa to attend the funeral of his grandmother, who died on 31 July 2023. The funeral took place on 8 August 2023. To his surprise, he inherited her house in Bryanston, Gauteng. He has never owned a house before and could not decide if he would like to use it as his residence. His grandmother purchased this residence for R1 200 000 on 1 June 2005. In August 2007 she renovated the kitchen area and added a patio. The cost of the renovations amounted to R150 000 (VAT inclusive). On the date of her death, the residence was valued at R2 200 000 (the market value). Malcolm signed a rental contract with Hirecor on 20 August 2023. Hirecor is an agency that collects rentals on behalf of a number of property owners. From 1 September 2023 Hirecor rented out the house at R8 000 per month and paid the net amount into his local bank account after deducting a 10% administration fee per month until he terminated his rental contract after five months on 30 January 2024.

During the period (1 August 2023 to 20 August 2023) that he was in South Africa, one of the coaches of the Sundowns Strikers approached him with another deal. They proposed that he play three games for the Sundowns Strikers team at R40 000 per appearance. The games would take place on 5, 7 and 9 November 2023. As it would not clash with his other commitments, he accepted.

Malcolm decided on 20 August 2023 (the day before his departure to England) to show ubuntu (compassion and humanity) to his younger sister and donated all his old furniture and Toyota Corolla to her. The furniture was worth R45 000 (he purchased it in 2014 for R70 000) and his Toyota Corolla had a market value of R90 000 (original cost R140 000) on 20 August 2023.

After Malcolm successfully completed his contract with the Future Soccer Stars club (the additional £50,000 was paid into his bank account on 1 November 2023), he returned to South Africa on 1 November 2023. He played the requested games for the Sundowns Strikers. Malcolm needed a holiday and spent his time off in George, Western Cape from 1 December 2023 until 29 February 2024. Loving this part of the country, he decided to sell the house in Bryanston and to buy a property in George.

On 30 January 2024 he terminated the rental contract and sold the Bryanston house on 31 January 2024 for R2 450 000 to Mrs Saxon (a resident in the Republic). He paid 3% sales commission on the gross amount to the estate agent. On 1 February 2024, the estate agent paid the net amount into a newly opened Republic money market account (it is not a tax-free investment account; assume the interest rate to be 7.25% compounded per annum). Until the end of February 2024, he could not find a property to his liking in George.

He had no other assets except a collective investment scheme in securities in the Republic (he invested a lump sum of R100 000 on 1 January 2024) and a savings account at the Bank of England. At the end of the year of assessment local dividends of R4 200 as well as interest of R3 100 (from listed debt) accrued from the CIS in securities and £1,300 interest accrued from the Bank of England (average exchange rate for the 2024 year of assessment was £1 = R20,00).

ACTIVITY 6.9 (continued)

REQUIRED:		Marks
(a)	Determine the South African taxable income arising out of the above transactions for Malcolm Malefo for the 2024 year of assessment. Provide reasons where the Eighth Schedule to the Income Tax Act is applicable but with no effect on your calculations. Assume that Malcolm Malefo is ordinarily resident in the Republic of South Africa and ignore the implications of any double tax agreement.	21
(b)	Discuss the normal tax implications for Malcolm Malefo for the 2024 year of assessment on the assumption that he immigrates to Great Britain on 1 May 2023 . Further assume that he did not carry on any business through a permanent establishment in the Republic. Your discussion should include any withholding taxes payable by the applicable persons as well as the dates these taxes must be paid to SARS. Ignore the implications of any double tax agreement.	19
(c)	Determine any donations tax implications for Malcolm Malefo in respect of the donation of the furniture and motor vehicle to his sister, or provide reasons if there are no donations tax implications for him, where he 1) is a resident (as defined in section 1 of the Income Tax Act) of the Republic 2) is not a resident of the Republic Assume that Malcolm Malefo made no other donations before the date of these donations.	4
(d)	In respect of the amounts received by Hirecor for the house in Bryanston, evaluate, with specific reference to case law, whether these amounts constitute gross income for Hirecor or not.	5

(UNISA 2009 – adapted)

Remember that the parts in the solution that are highlighted in grey should not be studied as these are excluded from the ITC Examinable pronouncements and only included for completeness' sake.

ACTIVITY 6.9 – SUGGESTED SOLUTION**(a) Taxable income of Malcolm Malefo for the 2024 year of assessment**

	R	R	
Salary earned in SA (1/03/2023 to 30/04/2023) (R24 000 x 2 months)		48 000	(1)
Salary earned in England (1/05/2023 to 31/10/2023) (£25,000 x 6 months x R20)		3 000 000	(2)
Foreign employment exemption s10(1)(o)(ii) (refer to note below)		-	
Rental income: residence in Bryanston: R8 000 x 5 months = R40 000		40 000	(1)
<u>Less:</u> 10% admin fee of R40 000 x 10% = R4 000		(4 000)	(1)
Appearance fee paid by Sundowns Strikers (R40 000 x 3 games)		120 000	(1)
Performance lump sum from Future Soccer Stars: £50,000 x R20		1 000 000	(1)
Foreign interest: £1,300 x R20		26 000	(1)
Local dividends	4 200		
Exempt: section 10(1)(k)(i)	(4 200)	nil	(1)
Interest on money market account: R2 450 000 less 3% = R2 376 500 x 7.25% x 29/366		13 652	(2)
Interest: CIS in securities		3 100	(1)
Exempt: section 10(1)(i) (R23 800 limited to amount received)		(16 752)	(1)
Note: no exemption of foreign interest			

Note: For section 10(1)(o)(ii) to apply, both (aa) and (bb) have to apply. For (aa), an employee has to be outside RSA for more than 183 full days in aggregate during a 12-month period; and for (bb) for a continuous period of more than 60 full days during that 12-month period. Malcom was outside the country for 163 days (May to October), which does not meet the more than 183 days requirement.

Subtotal 4 230 000

CGT**Disposal of residence**

Proceeds	2 450 000	(1)
Base cost	(2 273 500)	
- Market value on date of inheritance (s 9HA read with s 25(2)(a))	2 200 000	(1)
- Sales commission paid (R2 450 000 x 3%)	73 500	(1)

No adjustment for the periods that the house was rented out as set out in terms of par 50 of the Eighth Schedule will be allowed, as Malcolm did not reside in the residence for at least one year before the rental contract was concluded.

nil (1)

ACTIVITY 6.9 – SUGGESTED SOLUTION (continued)

	R	R
No primary residence exclusion – Malcolm did not use the house as his primary residence – definition par 44 of the Eighth Schedule.	nil	(1)
Capital gain relating to residence	<u>176 500</u>	
Assets donated		
Furniture donated to sister – par 53 personal-use asset	nil	(½)
Motor vehicle donated to sister – par 53 personal-use asset	<u>nil</u>	(½)
Aggregate capital gain	176 500	
Annual exclusion (par 5)	<u>(40 000)</u>	(1)
	136 500	
Inclusion rate 40% (par 10) x R136 500		<u>54 600</u> (1)
Taxable income		<u>4 284 600</u>
		<u>21</u>

(b) Normal tax implications – emigration

Malcolm Malefo becomes a non-resident on 1 May 2023, the date of emigration in terms of section 9H(2)(b). (1)



The physical presence test only applies to a person who is not ordinarily resident in the Republic at any time during the year of assessment (Interpretation Note 4).

The physical presence test does not apply during the year of assessment that Malcolm Malefo was still ordinarily resident in the Republic, i.e. from 1 March 2023 to 30 April 2023, being his 2024 year of assessment as resident (refer to s 9H(2)(b)).

The physical presence test can be applied from the next succeeding year of assessment, which commences on the day Malcolm ceases to be a resident, i.e. from 1 May 2023 to 29 February 2024, thus his 2024 year of assessment as non-resident (refer to s 9H(2)(c)).

As from 1 May 2023 Malcolm Malefo will be a non-resident, so he will only be taxable on amounts received or accrued from a source within the Republic in terms of section 9 of the Income Tax Act and in terms of the gross income definition. (1)

The true source of services rendered is the place where they are rendered. Malcolm's salary (earned from Sundowns Strikers) of R24 000 x 2 = R48 000 will be included as gross income in his 2024 year of assessment as a resident (before emigration). (1)

The £25,000 (R500 000) per month earned as well as the lump sum of £50,000 (R1 000 000) from Future Soccer Stars will be for services rendered in England, meaning that the actual source of his remuneration is outside the Republic. He will not be taxed in the Republic (after emigration). (1)

The true source of **rental income** received on fixed property is where the fixed property is located. The rental income of R36 000 (R40 000 – 10%) will be taxed in his hands in full, being from a source in the Republic (located in Bryanston, Gauteng). (1)

ACTIVITY 6.9 – SUGGESTED SOLUTION (continued)

The fees paid by Sundowns Strikers of R120 000 between 5 November 2023 and 9 November 2023 will be taxed in terms of sections 47A to K, as Malcolm will be regarded as a foreign sportsperson. As Malcolm is not an employee of a resident employer, section 47B will apply. A **final tax** of 15% should be levied by Sundowns Strikers on the gross revenue of R120 000 (R40 000 x 3 games).

Sundowns Strikers must pay the 15% withholding tax to SARS by the end of the month following the month in which it was paid, i.e. by 31 December 2023.
The R120 000 will be exempt in terms of section 10(1)(IA) as the provisions of sections 47A to K apply.

In terms of section 9(2)(b), the source of **interest received** is the tax residence of the debtor paying. As the CIS is in South Africa, the source of the interest is South Africa. (1)

Section 50B levies a withholding tax on interest at 15% of the amount of interest that is paid to the non-resident, provided that it is from a source within the Republic in terms of section 9(2)(b), unless it qualifies for an exemption from withholding tax in terms of section 50D. Amounts subject to withholding tax will be exempt in terms of section 10(1)(h). (2)

As Malcolm emigrated on 1 May 2023, and he was not physically present in the Republic for more than 183 days (276 days on 1 February 2024 outside of the Republic) in the previous 12 months, section 50D(3) will not apply (so the interest is subject to the withholding tax) but the section 10(1)(h) exemption will apply. (1)

Interest of R13 652 on the money market account will be exempt from withholding tax in terms of section 50D(1)(a)(bb); thus no withholding tax on interest is applicable – the amount will also be exempt in terms of section 10(1)(h). (1)

The *foreign interest* of £1,300 (R26 000) will not be from a source in the Republic in terms of section 9(2)(b) and will not be taxed in the Republic. (1)

Local interest (R3 100) received from the CIS in securities will be included in his gross income in terms of section 9(2)(b), but the interest will qualify for the section 10(1)(h) exemption after he has been out of the country for more than 183 days (31 October 2023). (1)

The source of **dividends received** is, in terms of section 9(2)(a), the residence of the distributing company. (1)

Local dividends (R4 200) received from the CIS in securities (conduit pipe for other resident companies) will be included in his gross income (from a source in the Republic) but are exempt in terms of section 10(1)(k)(i). Local dividends are subject to dividends tax of 20%. The CIS is an intermediary for dividends tax and must withhold dividends tax on behalf of the unit holder. (1)

Capital gains tax

In terms of section 9H(2)(a)(i), there is a deemed disposal when a person ceases to be a resident and all assets will be treated as a disposal at market value. (1)

Section 9H(2) and (3) does not apply in respect of assets listed in section 9H(4).
Malcolm's only other assets on date of emigration are his motor vehicle and furniture, which will be excluded as personal-use assets in terms of par 53 of the Eighth Schedule. (1)

The residence sold is immovable property of a non-resident that is situated in the Republic. It will be a disposal of an asset and CGT will have to be calculated (same calculation as in part a). (1)

ACTIVITY 6.9 – SUGGESTED SOLUTION (continued)

However, section 35A (withholding of amounts from the payments to non-resident sellers of immovable property) will apply. (1)

As the selling price exceeds R2 million (section 35A(14)(a) and therefore section 35A(1)(a) will apply) and the seller is a natural person, the purchaser (Mrs Saxon or any other person on her behalf) must withhold **7.5%** of the selling price of R2 450 000 (R183 750) and pay it over to SARS. (1)

As the purchaser (Mrs Saxon) is a resident, the withholding tax must be paid to SARS within 14 days of it being withheld, i.e. by 14 February 2024 (section 35A(4)(a)). (1)

This tax is not a final tax but merely a **prepayment** of the normal tax liability of a non-resident (the seller – Malcolm Malefo). (1)

Total 21
Limited to 19

(c) Donations tax implications**1) Resident**

	R	
Furniture	45 000	
Toyota	90 000	
	<hr/>	
	135 000	(1)
<u>Less:</u> Exemption (section 56(2)(b))	<u>(100 000)</u>	(1)
	35 000	
Rate (section 64)	<u>x 20%</u>	(1)
	<u>7 000</u>	

2) Non-resident

Donations tax is not applicable to non-residents. (1)
4

(d) Gross income for Hirecor

- The gross income definition, as given in section 1 of the Income Tax Act, is as follows: (1)

In the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident during any year or period of assessment, excluding receipts or accruals of a capital nature.

- Hirecor received R8 000 per month for five months (R40 000) in respect of the house in Bryanston, 10% (R4 000) of which related to an administration fee retained by them.
- The administration fee of R4 000 (R800 per month) was received by Hirecor on "**its own behalf and for its own benefit**" (refer to *Geldenhuys v CIR*). (1)
- The balance of R36 000 (R7 200 per month) was received by Hirecor in the capacity of a trustee (these amounts did not accrue to Hirecor as Hirecor was **not unconditionally entitled** to them) (refer to *WH Lategan v CIR* or *CIR v Peoples Stores* or *Mooi v SIR*), and subsequently paid to Malcolm Malefo, who included the amount in his gross income. (1)

Hirecor therefore did not receive the R36 000 (R7 200 per month) on its own behalf and for its own benefit and will not include it in its gross income. (1)

Hirecor must therefore only include the R4 000 in its gross income as it was part of its business venture and not of a capital nature. (1)
5



ACTIVITY 6.10 (20 marks / 60 minutes)

Eddie Nkosi is a 47-year-old businessman and South African resident, providing financial advisory services in Pretoria. Eddie married Julia Nkosi, a South African resident, on 4 January 2003. They are married out of community of property. Eddie purchased his residence in Centurion, Pretoria on 1 July 2007 for R2 200 000.

Eddie operated his financial advisory services practice from this residence. Approximately 20% of the floor space of this residence is used for business purposes. Eddie claimed 20% of his home office expenses against his business income for tax purposes.

During 2017, Eddie purchased a new family home in Waterkloof, Pretoria for R6 500 000. On 1 July 2017 (the date of transfer), they moved into their new home in Waterkloof. Eddie's financial advisory service practice was also moved to this premises on the same date.

Eddie entered into a lease agreement from 1 July 2017 to rent out the Centurion property for R12 000 per month. A rental escalation of 5% per annum was negotiated. The escalation should be applied after each 12-month period. The rental on 30 June 2022 was R14 586.

The following expenses were incurred during the period 1 March 2023 to 30 June 2023 with regards to the Centurion property, that was rented out:

Expense	Amount
Water and electricity	R10 000
Insurance	R 4 800
Repairs and Maintenance	R 8 000
Property rates	R 9 600

On 1 July 2023 the Centurion property was sold at its market value of R4 000 000 and the rental contract lapsed on 30 June 2023. Improvements to the amount of R500 000 were done on the Centurion property for the period 1 July 2008 to 30 June 2023.

In order to pay for a lavish holiday in the Maldives, Eddie had to dispose of the following assets:

- Eddie's share portfolio for the 2024 year of assessment was as follows (all amounts in Rand or Rand equivalent):

Listed investment	Acquisition date	No. of shares purchased	Cost per share (R)	MV per share on 28/02/2023 (R)	Selling date	No. of shares sold	Selling price per share (R)
Swatsh Ltd	01/12/2016	1 000	8.20	18.00	01/12/2023	*2 000	16.00
Swatsh Ltd	01/02/2021	3 000	12.80	18.00			

*For identical assets, Eddie used the FIFO method to determine the cost of the assets

ACTIVITY 6.10 (continued)

2. A platinum coin collection that was acquired on 1 September 2016 for R35 000. An amount of R65 000 was paid on 15 November 2023 into Eddie's bank account.
3. An Omega watch was sold on 15 October 2023 for R40 000. The watch was inherited from the deceased estate of Eddie's father on 1 July 2013. The market value on 1 July 2013 amounted to R20 000.

REQUIRED		Marks	
(a)	Determine the taxable income for Eddie Nkosi for the 2024 year of assessment. Assume that he had a taxable income of R550 000 before taking into account any information provided in the question and that his shares have been acquired for speculative purposes.		14
(b)	Assume that Eddie and his wife were non-residents and that the property situated in Centurion was sold to a South African resident. Summarize, supported with calculations and reference to relevant legislation, all the tax-related matters arising from the sale transaction to the South African resident. The actual capital gain/loss made, need not be discussed and calculated. <i>Communication skills – logical argument</i>	5 1	6
Total			20

ACTIVITY 6.10 – SUGGESTED SOLUTION

(a) Eddie Nkosi's taxable income for the 2024 year of assessment

	Calcula- tions R	Capital Gains R	Taxable Income R	Marks
Taxable income before transactions	Given		550 000	
Rental income from Centurion property				
Monthly rental (30 June 2022 rental + 5%)	14 586			
<u>Add:</u> Annual escalation 5% (multiply by 1.05) OR add R729,30	x 1.05 15 315			(1)
March 2023 to June 2023 = 4 months	15 315 x 4		61 260	(1)
Expenses from Centurion property - s 11(a)	32 400		(32 400)	
• Water and electricity	10 000			(½)
• Insurance on building	4 800			(½)
• Repairs and maintenance	8 000			(½)
• Property rates	9 600			(½)
Disposal of Centurion property				
Proceeds - market value	4 000 000			
Less: Base Cost	2 700 000			
Original cost	2 200 000			
Plus: Improvements	500 000			(1)
Gain	1 300 000			
Period not occupied as primary residence (par 47) (R1 300 000 x 72/192 or 120/192 months) OR 6/16 years or 10/16 – correctly applied	(487 500)	487 500		(1½)
	812 500			
Part partially used for trade purposes (par 49) R812 500 x 20% OR x 80% - correctly applied	(162 500)	162 500		(1½)
Capital gain attributable to primary residence	650 000			
<u>Less:</u> Primary residence exclusion (R2 000 000) par 45(1)(a), but limited to actual Capital gain	(650 000)			(1)
Capital gain on Centurion house	Rnil			
R487 500 + R162 500 = R650 000		650 000		

ACTIVITY 6.10 – SUGGESTED SOLUTION (continued)

	Calculations R	Capital Gains R	Taxable Income R	Marks
Sale of shares held speculatively - gross income (purchased 01/02/2021) - FIFO 1 000 Shares purchased in 2016 held for >3 years, therefore s 9C applies - seen as capital in nature – LU 9.	1 000 x 16		16 000	(1)
Recoupment: Section 9C(5) application @ cost	1 000 x 8.20		8 200	(1)
Opening stock @ cost	46 600		(46 600)	
Purchased 01/12/2021 [3 000 x R12.80]	38 400			(1)
Purchased 01/12/2016 [1 000 x R8.20]	8 200			(1)
Closing stock @ cost (4 000 - 2 000)	2 000 x R12.80		25 600	(1)
Add: Capital gain				
Proceeds (R16 X 1 000)	16 000			(1)
<u>Less:</u> Base Cost (R8.2 x 1 000)	(8 200)			(1)
Capital Gain	7 800	7 800		
Platinum coins				
Proceeds	65 000			
<u>Less:</u> Base cost	35 000			
Capital Gain	30 000	30 000		(1)
Watch – personal-use asset in terms of par 53		-		(1)
Aggregated capital gains		687 800		(1)
Less: Annual exclusion		(40 000)		(1)
Net capital gain/(loss)		647 800		
Inclusion rate at 40%			259 120	(1)
Taxable income for 2024 year of assessment			841 180	
			Total marks	21
			Limited to	14

ACTIVITY 6.10 – SUGGESTED SOLUTION (continued)**PART B**

	Marks								
The sale of the property situated in Centurion by Eddie will be a disposal of an asset in terms of the Eighth Schedule paragraph (2)(1)(b)(i) (or a disposal for CGT).	(1)								
Section 35A applies , as the purchase price of R4 000 000 exceeds the threshold of R2 000 000 stipulated in section 35A(14)(a).	(1)								
In terms of section 35A, the South African purchaser is obliged to withhold 7.5%, as the seller (Eddie) is a natural person), from the purchase price (R4 000 000 x 7.5% = R300 000) as a withholding tax on the sale of the property.	(1)								
The R300 000 withheld by the South African purchaser must be paid within 14 days of the date on which the amount was withheld (in terms of section 35A(4)(a)) to the Commissioner (SARS) (or 15 July 2023).	(1)								
The R300 000 withholding tax is not a final tax but rather an advanced tax payment and can be deducted from Eddie's final tax liability for the 2024 year of assessment. Any excess will be refunded, provided Eddie submits his tax return for the 2024 year of assessment within 12 months after year-end (by 28 February 2025).	(1)								
	<table border="0" style="margin-left: auto;"> <tr> <td style="text-align: right;">Available</td> <td style="text-align: right; border-top: 1px solid black;">6</td> </tr> <tr> <td style="text-align: right;">Limited to</td> <td style="text-align: right; border-top: 1px solid black;">5</td> </tr> <tr> <td style="text-align: right;">Communication mark</td> <td style="text-align: right; border-top: 1px solid black;">1</td> </tr> <tr> <td style="text-align: right;">Total for part (b)</td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">6</td> </tr> </table>	Available	6	Limited to	5	Communication mark	1	Total for part (b)	6
Available	6								
Limited to	5								
Communication mark	1								
Total for part (b)	6								



ACTIVITY 6.11 (20 marks / 54 minutes)

Naledi Monareng ('Naledi'), aged 34 years and a South African resident, is a successful radio talk show host. Naledi holds a master's degree in broadcasting from the prestigious University of South Africa. Naledi has been employed by Radio 705, a South African resident broadcaster since 1 March 2017. Naledi earned a gross monthly salary of R42 000 for the period 1 March 2023 to 30 May 2023.

In a quest to be globally competitive, Radio 705 seconded Naledi to Dallas, Texas, United States of America ('Dallas') where she fulfilled the role of an assistant producer on the breakfast show at KERA 90.1 for six months (June 2023 to 30 November 2023). During this period Naledi entered into an employment contract with KERA 90.1, in which KERA 90.1 agreed to pay her \$4 000 per month (during this period Naledi did not receive a salary from Radio 705). Since 1 June 2023, Naledi visited South Africa only once for seven days to celebrate the 95th birthday of her grandfather (which took place on 3 September 2023). Naledi returned to South Africa on 10 December 2023 (she was out of the Republic for a total of 186 days from 1 June 2023 to 10 December 2023).

While she was seconded to Dallas her employment with her South African 'employer' was temporarily suspended and re-activated again from 1 December 2023. She continued to work for Radio 705 from 1 December 2023. For the period 1 December to 10 December 2023, Naledi took annual paid leave from Radio 705 that she used to tour the United States of America.

On arriving in Dallas, she re-united with her high school sweetheart, Kagiso Hlaudi ('Kagiso') in June. Kagiso and Naledi were married out of community of property on 15 November 2023. She formally immigrated to the United States of America on 1 February 2024 to be with Kagiso, after resigning from Radio 705 with immediate effect on 31 January 2024. From 1 February 2024, Naledi was resident of the United States of America only.

Naledi owned the following assets in South Africa on 31 January 2024:

	Date of purchase	Purchase price R	Market value on 31 January 2024 R
Mercedes Benz A class	20 April 2021	555 000	504 000
Townhouse in Rosslyn (Pretoria North) (Note 1)	1 June 2019	980 000	1 250 000

Note 1: Naledi sold the townhouse on 15 February 2024 for R1 250 000 to Mr Smith (not a connected person), a South African resident. Prior to her emigration, Naledi used the townhouse as her primary residence from the date of purchase until the end of May 2023 and again for the period from her return to South Africa on 10 December 2023 until 31 January 2024. From 1 June to 30 November 2023, Naledi let the house to her colleague for a market-related rental of R15 000 per month.

Assume the average rate of exchange for the 2023 year of assessment was R17,00 per US dollar.

ACTIVITY 6.11 (continued)

REQUIRED		Marks	
		Sub-total	Total
(a)	Critically evaluate, supported by calculations, the normal tax implications of the salary received by Naledi Monareng from both her South African employer (Radio 705) and her American employer (KERA 90.1) for the 2024 year of assessment. Provide references to relevant legislation. <i>Communication skills - logical argument</i>	7 1	 8
(b)	Briefly reflect on the income tax implications arising from Naledi Monareng's immigration to the United States of America on 1 February 2024. Provide references to relevant legislation.		4
(c)	Discuss, with reference to relevant legislation, whether or not Naledi will qualify for the full primary residence exclusion on the sale of the townhouse. No calculations are required. <i>Communication skills - logical argument</i>	7 1	 8
Total			20

Extract 2020 Test 1 (adapted)

ACTIVITY 6.11 – SUGGESTED SOLUTION

Part (a)	
1 March 2023 to 31 January 2024	
Naledi is a South African resident during this period and her salary will be taxed as she is taxed on her worldwide income (gross income definition par (i) in section 1).	(1)
The gross salary of R210 000 (R42 000 x 5 months (Mar-May, Dec & Jan) earned by Naledi from her South African employer (Radio 705) will be included in gross income.	(1) (½)
The gross monthly salary of R408 000 (\$4 000 x 6 months x R17,00) from her American employer (KERA 90.1) will also be included in gross income as she is still a resident in that period.	(1) (½)
The requirements of section 10(1)(o)(ii) must be investigated to determine whether Naledi qualifies for the section 10(1)(o)(ii) exemption.	(1)
Naledi received a salary in respect of services rendered outside the Republic, during her period of absence, from an employer who is not a resident.	
Naledi was outside the Republic for a period of 186 days (given [193 – 7]), which is more than 183 days during the 12-month period.	(1)
Naledi was also outside the Republic for a continuous period exceeding 60 full days (1 June 2023 to 1 September 2023 > 60 days), Naledi only returned to South Africa for a period of 7 days in, September 2023, during the six months period 1 June 2023 to 10 December 2023.	(1)
In addition, her remuneration is less than R1.25 million for the 2024 year of assessment	(1)
Therefore, the salary from KERA 90.1 of R408 000 will be exempt in terms of section 10(1)(o)(ii).	(1)
	Available 9
	Limited to 7
	Communication skills - logical argument 1
	Total 8
(b)	
When a person ceases to be a resident the person is deemed, in terms of section 9H(2)(a)(i) and (ii), to have disposed of all their assets and reacquired them at market value. The timing of the deemed disposal is on the day immediately before the day that the person ceases to be a resident, i.e., on 31 January 2024.	(1)
Section 9H(4) will not apply in respect of immovable property and any assets of a permanent establishment in the Republic.	(1)
The town house in Rosslyn will thus not be deemed to be disposed of, as it is immovable property in the Republic (<i>section 9H(4)(a)</i>).	(1)
Mercedes Benz A class - a deemed disposal in terms of section 9H but because it is a personal-use asset it is excluded from capital gains tax in terms of par 53 of the 8 th Schedule.	(1)
	Available 5
	Limited to 4

ACTIVITY 6.11 – SUGGESTED SOLUTION (continued)

(c)	
The letting of Naledi's property for the period 1 June to 30 November 2023 constitutes temporary letting of the town house.	
Paragraph 49 of the 8 th Schedule, apportionment for non-residential use of primary residence, read together with Paragraph 50 of the 8 th Schedule, periods of non-residential use deemed to be residential use, must be considered.	(1) (1)
Note: Even though the proceeds of the townhouse is < R2million (par 45(1)(b)), par 45 (4)(b) stipulates that par 45(1)(b) does not apply if a portion of the townhouse was used for business purposes.	
Naledi did not have any other primary residence during the period of the temporary letting (ar 50(b) of the 8 th schedule).	(1)
Naledi was temporarily outside the Republic (in Dallas) during the period of the letting (par 50(c)(i) of the 8 th schedule.)	(1)
Naledi resided in the townhouse as a primary residence for a continuous period of four years prior to the temporary letting and for a continuous period of one month after the temporary letting (compared to a period of 1 year (prior to and after letting) as required by par 50(a) of the 8 th schedule).	(1) (1) (1)
The primary residence exclusion must therefore be apportioned for non-residential use because the requirements of par 50(a) of the 8 th schedule are not met in full.	(1)
	Available
	8
	Limited to
	7
	Communication skills - logical argument
	1
	Total
	8



ACTIVITY 6.12 (20 marks / 66 minutes)

James Scott (38 years old and unmarried) is a home staging consultant who is ordinarily resident in the United Kingdom (UK). His TV show 'Property Staging' has received popularity across the world and he often gets requests for property staging in other countries. James decided to embark on virtual (online) home staging. Clients across the world take snapshots (photographs) of their homes and email these to James, together with the floor plans of their homes. James then creates an interior design layout, using graphic editor software, while in the UK.

For the past seven years, including the current year, James has visited South Africa twice a year, for the months of March and September, to accommodate the clients who prefer in person home staging.

For the period 1 March 2023 to 29 February 2024, he received the following income from South Africa:

Income description	Note	Amount R
Rental income	1	125 000
Virtual home staging service fees		355 000
In person home staging fees		280 000
Interest received	2	72 000
Gross dividends from South African resident companies listed on the JSE	3	12 000

Notes:

1. James purchased a one-bedroom flat in Melrose Arch, Johannesburg in 2019. He leases the flat to tenants during the periods that he is not in South Africa.
2. The lucrative South African interest rates and weak Rand to Pound exchange rate led James to decide to rather invest the rental income earned in South Africa at B Bank (a South African financial services provider). He received interest of R47 000 from B Bank.

The remainder of the interest received of R25 000 was received from Humbelani (Pty) Ltd after he lent the company the money to buy construction equipment. The loan agreement stipulates that should Humbelani (Pty) Ltd fail to pay interest for two consecutive years, the debt will be converted into equity shares. Humbelani (Pty) Ltd is a South African resident company.

3. During the 2024 year of assessment, James sold shares that he held for investment purposes for R82 000 (market value). The cost of these shares determined, using the FIFO method, amounted to R71 900. All these shares were held for longer than three years.

ACTIVITY 6.12 (continued)**ANNEXURE A****EXTRACT FROM THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND****Article 6****Income from Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise.

Article 10**Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends:
 - (a) shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;
 - (b) except as provided in sub-paragraph (a) of this paragraph, may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 of this Convention shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ACTIVITY 6.12 (continued)**Article 13
Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 of this Convention and situated in the other Contracting State may be taxed in that other State.
2. Gains derived by a resident of a Contracting State from the alienation of:
 - (a) shares, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or
 - (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in sub-paragraph (a) of this paragraph, may be taxed in that other State.
3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of that Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.
6. The provisions of paragraph 5 of this Article shall not affect the right of a Contracting State to levy according to its law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the six years immediately preceding the alienation of the property if the property was held by that individual, or by the spouse of that individual, before that individual became a resident of that other State.

ACTIVITY 6.12 (continued)

REQUIRED		Marks	
(i)	<p>Critically evaluate the income tax implications of the rental income received as well as the sale of the shares that were held for investment purposes, for James Scott's 2024 year of assessment. Support your discussion with reasons and or reference to legislation or relevant case law principles.</p> <p>The Double Taxation Agreement (DTA) between South Africa and the UK applies (Refer to Annexure A above).</p> <p><i>Communication – Clarity of expression</i></p>	7	
		1	8
(ii)	<p>Calculate the taxable income of James Scott for the 2024 year of assessment. Address each type of income received and provide a reason or reference to relevant legislation for each type of income.</p> <p>Ignore the DTA between South Africa and the UK.</p>		8
(iii)	<p>Discuss, supported by references to relevant legislation, the withholding tax implications of the interest received by James Scott for his 2024 year of assessment. Ignore the DTA between South Africa and the UK.</p>		4
Total			20

Extract 2021 Test 1 (adapted)

ACTIVITY 6.12 – SUGGESTED SOLUTION

(i)	
James Scott is a non-resident and the source of the income must be determined to evaluate whether it is from a South African source. Amounts from a South African source must be included in James' gross income. <i>Note that the physical presence test will not apply as James has not been in South Africa for more than 91 days in any given year in the past 7 years.</i>	(1)
Rental income	
There is no statutory source rule relating to rental income in section 9 of the Income Tax Act and therefore common law principles as established in case law need to be applied.	
To establish the source of income, the originating cause must be determined. <i>(Lever Brothers and Unilever Ltd case)</i> The originating cause of rental income earned from the letting of immovable property is where the property is used, which in this case is Melrose Arch, Johannesburg, South Africa.	(1½)
The rental income of R125 000 is thus derived from a South African source and constitutes gross income as defined in section 1 (par (ii) of the definition).	(1)
As the income is subject to tax in South Africa, regard must be had to the DTA between South Africa and the UK, because the DTA has the effect of law (<i>overrides the common law or statutory rules</i>) (section 108(2) of the Income Tax Act).	(1)
In terms of paragraph 1 read with paragraph 3 of Article 6 of the DTA, Income derived by a resident of a Contracting State (i.e. James Scott is a resident of the UK) from immovable property (including income from agriculture or forestry) situated in the other Contracting State (i.e. South Africa) may be taxed in that other State (i.e. South Africa). The house (immovable property) is situated in South Africa and therefore, James Scott will be taxed on the rental income in South Africa.	(1)
Disposal of shares	
The original intention of James Scott was to hold the shares as an investment and there was no change in intention. The disposal of the shares will not constitute gross income as this amount will be of a capital nature (<i>CIR v Stott</i>).	(1½)
The capital gain realised by the non-resident will not be subject to CGT as the shares are not immovable property in the Republic, nor connected with a permanent establishment as defined in paragraphs 2(1)(b) (and par 2(2)) of the Eighth Schedule.	(1)
It is not necessary to refer to the DTA between South Africa and the UK at this stage, because if a specific tax does not exist in South Africa, then a DTA cannot create it (s 108(1)).	(1)
	Available
	Limited to
	9
	7
	1
	8
	Communication – Clarity of expression
	1
	Total
	8

ACTIVITY 6.12 – SUGGESTED SOLUTION (continued)

(ii)			
	R	R	
Rental income Source: Immovable property situated in South Africa, South African source –common law principle.		125 000	(1½)
Virtual Home staging service fee Source: Services rendered while in the UK, source will be UK.		-	(½)
In person home staging fee Source: Services rendered while in South Africa, source will be South Africa – common law principle.		280 000	(1½)
Interest received from B Bank Interest received from Humbelani (Pty) Ltd Source: South African source, debtors are South African residents OR (s 9(2)(b) – interest ito s 24J).	47 000 25 000		(1½)
James Scott was not in South Africa for a period of more than 183 days (in South Africa for 61 (31 + 30) days) during the twelve-month period preceding the date on which the interest is received - S 10(1)(h) may apply.	(72 000)	-	(2)
Sale of shares Capital nature, not subject to CGT, not included in terms of paragraphs 2(1)(b) and 2(2) of the Eighth Schedule.		-	(½)
Gross dividends Source: South African source, the residence of the distributing company (s 9(2)(a)).	12 000		(1½)
Local dividends exempt (s10(1)(k))	(12 000)	-	(1½)
Taxable income		405 000	
		Available	10½
		Limited to	8

(iii)	
James will be liable for 15% withholding tax on the interest that he received in terms of section 50B(1) if he does not qualify for a section 50D(1) exemption.	(1)
The interest from B Bank of R47 000 will qualify for the section 50D(1) exemption because the interest is paid by a bank (listed financial institution).	(1)
Humbelani (Pty) Ltd is not a banking institution or a listed financial institution, and withholding tax will apply. Withholding tax at 15% (15% x R25 000 = R3 750) must be withheld by Humbelani (Pty) Ltd and paid over to SARS.	(2)
Total	4



ACTIVITY 6.13 (40 marks / 102 minutes)

You are a tax lecturer at Unisa and received the following e-mail queries from students who are registered for the TAX4862 module. Please ignore any applicable double tax agreements and accept that all persons are ordinarily residents in South Africa, unless otherwise stated.

Query 1 from student 1

11 marks

While preparing for test 1 I tried to answer the following question that I received from my friend who is studying CTA at a residential university:

The Malony Trust (fully discretionary) owns an apartment that was sold to the trust by Jacob Malony (married out of community of property) for R1.8 million on 1 April 2023 when the apartment had a market value of R2 million. The selling price was financed by an interest-free loan account from Jacob to the trust. The apartment is located in Morzine, France and was inherited by Jacob Malony from his late father. His father was a resident of France until he died of a heart attack on 20 December 2021. Jacob's father bought the apartment in 2013 for R890 000 and the market value of the apartment on date of his father's death was R1 500 000. Up to date the Malony Trust has made no repayment on the loan-account. The only beneficiaries of the trust are Jacob's two major sons. For the past 10 years Jacob made an annual donation of R2 500 in September to a local approved public benefit organisation (PBO) for which he received the necessary section 18A receipt and made no other donations during the year of assessment.

The apartment in Morzine, France was used by the Malony family when they went to visit their father and other relatives until the date of sale to the Malony Trust. All foreign amounts were correctly translated to Rands. Assume an annual market-related interest rate of 10% for the twelve months ended on 28 February 2023 and 29 February 2024. Assume the official interest rate for the same period to be 8.75%.

Query 2 from student 2

15 marks

Good morning. I studied LU1 to LU6 and as a result, I need assistance with the following two transactions in the case study please:

Transaction 1 - Sale of furniture to a Botswana company

Exquisite Furniture (Pty) Ltd ("Furniture") is a category C-registered value-added-tax (VAT) vendor, with a March year of assessment. Furniture manufactures furniture to specification and this process is acknowledged as a process of manufacturing by SARS.

Furniture received an order to manufacture four (4) office desks from Gaborone Furniture (Pty) Ltd ("Gaborone Furniture"), a non-resident company from Botswana, on 1 January 2024. On 25 March 2024 the four (4) office desks were completed and delivered directly to Gaborone Furniture on the same date, together with the invoice for the four (4) office desks for R25 000 each (excluding VAT). Although the office desks were delivered, it still reflected in the closing stock value of Furniture. The sale agreement with Gaborone Furniture provided for normal credit repayment terms, that is, 30 days for payment. The sale agreement however contained the following clause:

This agreement is subject to, and conditional upon, the purchaser having the right to return the office furniture if not satisfied, within ten (10) days of receiving the delivery note. No payment of the applicable piece of furniture will then be due.

ACTIVITY 6.13 (continued)

Gaborone Furniture inspected the four office desks and found that one of the desks was damaged during the transport process. They returned the office desk on 4 April 2024 and paid for the other three desks on the same date.

Transaction 2 - Order received from a client in Johannesburg

On 1 April 2024 Furniture received an order from Beautiful Interior (Pty) Ltd ("Beautiful") for a very special set of furniture for which Furniture gave them a quote of R250 000 (including VAT). Beautiful immediately paid Furniture an amount of R50 000 to get the project going. It was determined that Beautiful would pay Furniture another R50 000 when the furniture was 50% complete and R50 000 when the furniture was 75% complete and the last R100 000 on delivery of the furniture and receipt of the invoice. The furniture and its invoice were delivered to Beautiful on 1 July 2024. On inspection of the furniture, Beautiful realised that the furniture delivered differed from the original design it ordered and as a result refused to make any further payment. Furniture and Beautiful reached an agreement on 1 July 2024 that Beautiful would accept the furniture without making any further payment.

Query 3 from student 3**14 marks**

Dear tax lecturers, I am working through my study material and attempted an additional question on the myUnisa platform. I have discussed it in the discussion forum but am getting confused now with all the different replies. Please help!

Nugella Ntuli (42 years old and unmarried) is a well-known freelancer who specialises as a food critic and column writer for the local newspaper. As she does not work for any company, she worked from her own home in Bedfordview, Johannesburg, when she is not travelling. On 1 November 2023, Nugella met with the producers of MRK Australia, and they made her an offer to present a TV-show for the next two years in Australia, starting immediately. Nugella is by nature very indecisive and could not decide if she should immigrate to Australia, or work overseas for two years (without giving up her residency status). At the same time she wants the best possible South African tax outcome for herself.

Nugella has earned a net taxable income amount of R670 000 from 1 March 2023 until 31 October 2023 from work done in South Africa. Nugella would earn R150 000 per episode (24 episodes will be produced from 1 December 2023 until 30 November 2025) of which the first two episodes must be completed at the end of February 2024. Nugella has the following assets/property registered in her name on 1 November 2023:

- Her house in Bedfordview, Johannesburg, Gauteng that she acquired on 1 November 2013 for R1 600 000 (including Transfer Duty). She used 40% of this property for work purposes since purchase date and duly claimed allowable tax expenses every year in her Income Tax Return (ITR12). It had a market value of R3 450 000 on 1 November 2023. She listed this property for sale, fully furnished, and sold it on 1 February 2024 for only R3 200 000 due to a slow seller's market.
- Shares in Foodie Plc a listed Australian company where she owns 12% of the equity. She acquired the shares 10 years ago at a cost of R430 000 and the market value of the shares were R1 185 000 on 1 November 2023. She would like to keep the shares even if she emigrates. She received a net dividend of R130 500 (after a withholding tax of 10%) on 1 February 2024 into her bank account.

ACTIVITY 6.13 (continued)

REQUIRED		Marks	
		Sub-Total	Total
(a)	<p><u>Query 1</u> Critically evaluate, supported by calculations, all the donations tax implications for Jacob Malony for his 2024 year of assessment. Provide short reasons and/or references to applicable legislation in your answer.</p> <p>Ignore any VAT implications and double tax agreements (DTA's) that might be in place.</p> <p><i>Communication skills – clarity of expression</i></p>	10	
		1	11
(b)	<p><u>Query 2 (transactions 1)</u> i) Briefly reflect on whether there are any VAT implications arising from transaction 1 for Exquisite Furniture (Pty) Ltd during March and April 2024.</p> <p>ii) Summarise the normal tax implications for Exquisite Furniture in respect of the sale of office furniture to Gaborone Furniture for the 2024 year of assessment. Refer to applicable case law principles in your answer.</p>	3	
		5	8
(c)	<p><u>Query 2 (transaction 2)</u> Discuss, supported by calculations, the VAT implications for Furniture (Pty) Ltd that occurs due to transaction 2. You should include the time of supply rules in your answer.</p>		7
(d)	<p><u>Query 3</u> Assess whether it would be better for Nugella Ntuli to emigrate on 1 November 2023 or to temporarily work overseas for the two-year time period. Your evaluation should be in the form of a comparative table and should show the calculation of the effect on taxable income for the 2024 year of assessment if Nugella:</p> <ul style="list-style-type: none"> - did not emigrate, or - decided to emigrate. <p>If an asset, or income item has no (a nil) effect on the taxable income of Nugella, you need to provide a reason or applicable reference to relevant legislation. Ignore any VAT implications and double tax agreements (DTA's) that might be in place.</p> <p><i>Communication skills – layout and structure</i></p>	13	
		1	14
Total marks			40

ACTIVITY 6.13 – SUGGESTED SOLUTION

Query 1

Sale of apartment in France for less than market value:	
The difference between the market value of the apartment on the date of the disposal (R2 000 000) and the selling price (R1 800 000) therefore R200 000 is deemed to be a donation (1) (<i>section 58(1)(a)</i>)	(1)
However, Jacob is a resident who inherited an apartment in a foreign country (France) from his father who was not a resident of the Republic (he was a resident of France).	(1)
Therefore the deemed donation is specifically exempt from donations tax as it was an inheritance from his father who was on date of his death not an ordinarily resident in South Africa (<i>section 56(1)(g)(ii)</i>)	(1)
The R2 500 annual donation made to a PBO is exempt in terms of section 56(1)(h) .	(1)
Granting an interest-free loan of R1 800 000 to the Malony Trust:	
Jacob is a natural person who provided an interest-free loan to a trust of which he is a connected person . Jacob and the Malony Trust are connected persons as Jacob's sons are the only beneficiaries of the trust (par (b) of def of connected person in section 1).	(1)
Section 7C is therefore applicable (low interest loan to trust and connected parties) and a deemed donation needs to be calculated.	(1)
The difference between the interest calculated on the loan at the official interest rate (7.5%) and the actual interest paid at 0% is deemed to be a donation for donations tax purposes. (<i>Section 7C(3)</i>)	(1)
The interest needs to be calculated as simple interest calculated daily (<i>Section 7D(b)</i>)	(1)
The amount of the deemed donation is: $R1\,800\,000 \times (8.75\% - 0\%) \times 335/366$ days = R144 160 .	(1)
The deemed donation of R144 160 should be reduced with the basic exemption of R100 000 (<i>Section 56(2)(b)</i>).	(½)
R44 160 (R144 160 – R100 000) will be subject to donations tax at 20% as Jacob has only made donations of less than R30 000 000 ($R44\,160 \times 20\% = R8\,832$).	(1)
The donation is deemed to have been made on 29 February 2024 (on the last day of the year of assessment of the trust) and the donations tax should be paid to SARS on or before 31 March 2024 (<i>Section 7C(3) & section 60(1)</i>)	(1)
	11½
Limited to	10
<i>Communication skills</i>	1
Total	11

ACTIVITY 6.13 – SUGGESTED SOLUTION (continued)

i) VAT implication	
Direct export of furniture (Order from Botswana)	
The furniture is the export of goods that is directly delivered by the vendor to a recipient in an export country (par (a) of definition of exported).	(1)
It is a zero-rated supply and output tax will be levied at 0% (s 11(1)(a)(i)).	(1)
When one of the desks are returned there is no reciprocal input tax on the credit note as the output tax was zero-rated.	(1)
Available part i)	3
ii) Normal tax implications	
Issue	
Exquisite furniture sold the furniture (trading stock) on credit, subject to a condition being met. In terms of the gross income definition in section 1 an amount will be included in gross income at the earlier of receipt or accrual. The <i>crux</i> of the matter is thus if an amount of R100 000 (4 X R25 000) accrues to Exquisite furniture.	(1)
Case law principles	
Accrued means not only entitled to and not only when the amount is received (<i>People's Stores</i>) but also needs to be unconditional (<i>Mooi</i>).	(1)
The onus of proof is on the taxpayer in terms of <i>section 102 of the Tax Administration Act (TAA)</i>	(1)
Application to issue	
The sale agreement came into effect on 25 March 2024, (also the date of delivery of the trading stock) but subject to a condition as Gaborone Furniture had 10 days to accept the consignment.	(1)
The sale condition was only met on 4 April 2024 (2025 year of assessment) and this is the date on which Exquisite Furniture is unconditionally entitled to the R75 000.	(1)
Conclusion	
No accrual takes place in the 2024 year of assessment, as the amount accrues in 2025. Therefore, there is no inclusion in gross income in 2024 i.r.o. the sale of trading stock to Gaborone Furniture.	(1)
Available part ii)	6
Max for part ii)	5
Total Query 2 (transaction 1)	8

ACTIVITY 6.13 – SUGGESTED SOLUTION (continued)**Query 2 (transaction 2)**

Where the consideration for a supply is payable based on the progress made , in other words it is paid in instalments or periodically and in relation to the progressive or periodic supply -(1), the time of supply will be the earliest of the date when payment is due or received , or when the invoice for the payment is issued . (1)	(2)
The time of supply for the first R50 000 received would have been when the R50 000 was paid (1 April 2024) and output tax of R50 000 x 15/115 = R6 522 had to be accounted for on this date.	(1) (1)
The time of supply for the second and third R50 000 would also be on the date of the payment of these amounts . Output tax of R6 522 (i.e. R50 000 x 15/115) had to be accounted for on each payment date.	(1)P
On 1 July 2024 when the furniture was completed and an invoice of R250 000 was issued (1) and delivered together with the furniture, Furniture had to account for a further output tax of R13 043 (R100 000 x 15/115) (1).	(1) (1)
As Furniture agreed with Beautiful that Beautiful did not need to pay the additional R100 000, Furniture had to issue a credit note for R100 000 in terms of section 21(1) .	(1)
After issuing the credit note Furniture could claim input tax of R100 000 x 15/115 = R13 043 .	(1)
Total	9
Limited to	7

ACTIVITY 6.13 – SUGGESTED SOLUTION (continued)

Query 3

	Calculation	Not emigrated – resident	Emigrated – Non-resident	
	R	R	R	
Net income before 1/11/2023		670 000	670 000	(1)
TV –shows: Not from a South African source ito s 9 or common law	150 000 x 2	300 000	nil	(1) (1)
Foreign dividend: Not from a South African source ito s 9 or common law	130 500 x 100/90	145 000	-	(1) (1)
Foreign dividend exemption S 10B(2)(a): > 10% and listed		(145 000)	–	(1P)
CGT:				
Residence:	Proceeds	3 200 000	3 450 000	(2)
	Less: Base cost	<u>(1 600 000)</u>	<u>(1 600 000)</u>	(1)
	Capital gain	1 600 000	1 850 000	
	Less: 40% business use	<u>640 000</u>	<u>(740 000)</u>	(1)
	Net capital gain	960 000	1 110 000	
	Less : R2 m exclusion (par 45(1) of the Eighth Schedule) limited to	<u>(960 000)</u>	<u>(1 110 000)</u>	(1)
Foreign shares: (s 9HA)	Proceeds		1 185 000	
	Less: base cost:		<u>(430 000)</u>	
			755 000	(1)
Aggregate gain (add business use portion of residence)		640 000	1 495 000	
Less: annual exclusion		<u>(40 000)</u>	<u>(40 000)</u>	(½)
		600 000	1 455 000	
Inclusion rate	40%	240 000	582 000	(½)
Taxable income:		1 210 000	1 252 000	
Conclusion: It seems as if there is no conclusive difference (R42 000) between her staying to be a resident or non-resident. What Nugella needs to remember is that Australia may have different taxing rights (not provided in Question) which may affect her decision.				(1)
			Available	14
			Limited to	13
<i>Communication skills – layout and structure</i>				1
			Total for part (e)	14

The table below shows the link between the integrated activities you attempted (Activities 6.7 to 6.13) and the specific outcomes and assessment criteria:

Learning outcome(s)	Assessment criteria	Activity 6.7	Activity 6.8	Activity 6.9	Activity 6.10	Activity 6.11	Activity 6.12	Activity 6.13
1. Assess the tax profile of a taxpayer to determine the various taxes payable by a taxpayer.	<ul style="list-style-type: none"> Conclude on the legal form, business structure and residence status of a taxpayer to determine the types of taxes payable (e.g. value-added tax, donations tax, estate duty, normal tax (including capital gains tax), prepaid taxes, dividends tax, withholding tax). 		√					√
	<ul style="list-style-type: none"> Assess information needed to determine the various tax liabilities, including <ul style="list-style-type: none"> the role-players in the tax landscape, the types of taxes and their interaction and the underlying principles of a tax system. 	√	√	√	√	√	√	√
	<ul style="list-style-type: none"> Determine the various tax liabilities and to provide reasons for the inclusion or exclusion of amounts. 	√	√	√	√	√	√	√
	<ul style="list-style-type: none"> Interpret the tax treatment of a transaction with reference to <i>legislation</i>, double tax agreements and <i>case law</i>. 	√	√	√	√	√	√	√
	<ul style="list-style-type: none"> Determine the taxation payable/ refundable on income in the Republic by non-residents. 	√		√	√	√	√	√
2. Advise taxpayers on the tax effect of transactions, operations, schemes, agreements or events and calculate the tax consequences thereof, taking into account the various taxes payable.	<ul style="list-style-type: none"> Evaluate transactions to determine the effect on an individual or corporate taxpayer's tax liability. 	√	√	√	√	√	√	√
	<ul style="list-style-type: none"> Determine the tax consequences of emigrating from the Republic (e.g. deemed disposals) or immigrating to the Republic of South Africa. 			√		√		√

Learning outcome(s)	Assessment criteria	Activity 6.7	Activity 6.8	Activity 6.9	Activity 6.10	Activity 6.11	Activity 6.12	Activity 6.13
3. Advise on specific tax and financial planning opportunities for individuals as well as for business entities.	<ul style="list-style-type: none"> Assess the normal tax and VAT consequences for the business and the investor of the investment and financial planning tactics being considered and advise the taxpayer on possible alternatives. 							√
	<ul style="list-style-type: none"> Reflect on the tax consequences of shifting income between connected persons by making use of donations, interest free loans and trusts (e.g. section 7 and the attribution rules) or entities (e.g. tax avoidance rules). 							√
	<ul style="list-style-type: none"> Critique the available options for a specific decision-making situation to establish the most suitable option and compose a suitable response of the information to the taxpayer if within the field of speciality or refer to an appropriate expert if necessary. 							√

6.9 LIST OF REFERENCES OF LEARNING UNIT 6

- SAICA. 2024. *SAICA Student Handbook 2023/2024 Volume 3*. Durban, LexisNexis.
- SARS. 2020. SARS Comprehensive CGT guide, Available at: <https://www.sars.gov.za/lapd-cgt-g01-comprehensive-guide-to-capital-gains-tax/>
- South Africa. 2023. *Taxation Laws Amendment Act (Act No. 20 of 2022)*. Cape Town: Government Printer
- South Africa. 2023. *Taxation Laws Amendment Act (Act No. 17 of 2023)*. Cape Town: Government Printer
- Stiglingh, et al. 2024. 'Chapter 17: Capital Gains Tax (CGT)', *Silke: South African Income Tax 2024*. Durban, LexisNexis.

END OF LEARNING UNIT 6

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