



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW AND LEGAL SERVICES

EXAMINATION PAPER

COURSE CODE : LLB 026

COURSE TITLE : Tax Law

DURATION : 3 Hours

LEVEL : 5.1

14 APR 2023

INSTRUCTIONS TO CANDIDATES:

1. This exam is out of 70. Answer Three questions.
2. SECTION A is compulsory.
3. Choose any two questions from SECTION B.
4. Notes, handouts and textbooks are not allowed into the examination.
5. Cellphones are not allowed into the examination room.
6. Begin each answer to a full question on a fresh page

**NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING
UNTIL INSTRUCTED TO DO SO. UNTIL INSTRUCTED TO DO SO.**

SECTION A

Answer all questions in this section

Question One

Mr Nelson is a Zimbabwean citizen and major shareholder of Zim-Minerals which is incorporated in Zimbabwe. In 2023, He received a promisory note equivalent to 30 000\$ from Zim-Minerals as part of his share in the annual profits of the company. Following this development, he immediately ceded the promisory note to Byron, a Zambian citizen, in exchange for an 18 Seater Omnibus which he intends to use as the primary business asset in his newly incorporated transport business.

The basis upon which the promisory note was issued to Mr Nelson is that Zim-Minerals had mined 500000 tonnes of ore in Zimbabwe which was then processed and refined in Zambia leading to the discovery of 2 kgs of pure gold with a fair total market value of 120 000\$. Furthermore, the promisory note was issued to Mr Nelson in Zambia wherein he then proceeded to enter into a contract with Mr Byron for the Omnibus.

ZIMRA has inspected the financial accounts of Zim-Minerals and discovered this development. ZIMRA is aware that Zim-Minerals has not declared tax returns on this transaction.

- i. You have been approached by ZIMRA to offer legal advice as to whether Zim-Minerals and/or Mr Nelson and Mr Byron owe ZIMRA accumulated any income that qualifies for taxation under gross income.

[20 Marks]

- ii. You have been approached by ZIMRA seeking clarity on the terms Tax avoidance and Tax evasion. Of particular note, your advice should carefully consider these facts and establish whether there are any signs or symptoms of tax evasion or tax avoidance in these set of facts. **[10 Marks]**

SECTION B (Answer any two questions from this section)

Question Two

There are inherent differences between a source based tax regime *viz-a-vis* a residence based tax regime system. Taking into account these differences, you have been requested to make a presentation in Parliament moving a motion for a tax regime that you think is more desirable taking into account the lived realities of the Zimbabwean economic landscape.

[20 Marks]

Question Three

Xinai Private Limited is a duly registered company in Zimbabwe with business interests in the Platinum Group of Metals (PGM). In 2023 ZIMRA discovered that this company was involved in a scheme whereby it sold PGM ore to its parent Company incorporated in China for an undervalued market price. The parent company will then process the PGM ore and make a ten-fold profit from this scheme. To this end, ZIMRA further discovered that Xinai Private Limited has successfully evaded paying full taxes for a period exceeding 2 years. However, Xinai Private Limited alleges, rightly so, that they have not avoided paying any taxes since this was a scheme involved elements of money laundering and illicit financial flows for ZIMRA to levy a tax. The case has been brought before the High Court for deliberation.

You have been approached by a High Court Judge to write a legal opinion of the following topic.

'As a general rule, the source of income (whether legal or illegal) should be immaterial in the determination of gross income as per section 8 of the Income Tax Act'. Discuss this assertion in context of the decided cases such as COT v G, the two MP Finance cases and any other relevant case law.

[20 Marks]

Question Four

(i) The determination of taxable income in the Income tax Act is primarily depended on the definition of gross income. With reference to decided cases, write an article interpreting the relevant key aspects that make up this definition **[15 Marks]**

(ii) Discuss the composition, role and function of ZIMRA **[5 Marks]**