

1 Background

Itumeleng Kabelo, a 45-year-old male South African resident, divorced his wife, Grace (also a South African resident), on 31 August 2022. Grace is 31 years of age. They had been married for 11 years, out of community of property, with the accrual system applicable to their marriage. Their legal teams agree that the accrual in Itumeleng's estate from the date of marriage until the date of divorce amounts to R9,8 million, and the accrual in Grace's estate during the same period amounts to R50 000.

In terms of the agreement between the parties (which was later made an order of the court), Itumeleng had to transfer some of his assets, as well as pay a cash amount to settle the accrual claim by 1 February 2023. Itumeleng and Grace have only one child, Lerato (ten years of age). All maintenance payments (see section 2 below) must be paid to Grace and would cease in the event of Itumeleng's death.

The parties noted that in terms of the law in South Africa, former spouses are not considered relatives (family members) after a divorce.

2 The maintenance order in terms of the divorce agreement

In terms of the court order (divorce agreement), Itumeleng had to make the following payments with effect from 1 September 2022:

- 2.1 Maintenance of R15 000 per month towards the general living expenses of Grace and R5 000 per month towards the general living expenses of Lerato. Itumeleng must pay the maintenance and other living expenses to Grace until she remarries, and he must contribute to the maintenance of Lerato until he reaches the age of 21 years or becomes self-supporting, whichever occurs first.
- 2.2 Medical aid scheme contributions of R3 000 per month for Grace as a dependent member of Itumeleng's medical aid scheme, as well as all other medical expenses in private health care not covered by the medical aid scheme. (See note 7.4 for more information on Grace as a dependent of Itumeleng's medical aid scheme.) Lerato was a dependent member of Itumeleng's medical aid before and since the divorce.

3 The settlement of the accrual claim

In settling the accrual claim, Itumeleng was ordered to transfer certain assets to Grace as set out in sections 3.1–3.3. The pension interest was dealt with separately in the divorce agreement and not as part of the accrual claim (see section 4). The transfer of the share portfolio and the private residence took effect on 31 August 2022. The balance, a cash payment, was only transferred on 1 February 2023.

3.1 Share portfolio

Itumeleng has been carrying out share-dealing activities for several years. He was ordered to transfer the following shares (included in his opening stock for the year of assessment ended 28 February 2022) to Grace:

- 500 shares in Astra Ltd, a South African company listed on the Johannesburg Stock Exchange.
 - Itumeleng acquired these shares for purely speculation purposes on the following dates:
 - 200 shares on 1 February 2021 at R180 per share;
 - 160 shares on 1 July 2021 at R200 per share; and
 - 140 shares on 1 February 2022 at R140 per share.
 - On 31 August 2022 the market value of the shares was R190 per share.
- 4 000 shares in Bailey Ltd, a South African unlisted company.
 - Itumeleng acquired these shares for purely speculation purposes on 1 September 2019 at R40 per share.
 - On 31 August 2022 the market value of the shares was R65 per share.

3.2 Private residence

Itumeleng acquired the house on 1 October 2009 at a cost of R2 280 000, inclusive of transfer duty. In 2009, shortly after the acquisition, the kitchen and bathrooms were renovated for an amount of R314 000 (including VAT). Itumeleng (and later Grace and Lerato) have resided in the house since 1 October 2010. On 31 August 2022 the market value of the house was R4,5 million.

3.3 The balance of the accrual claim

Itumeleng had to settle the balance of the accrual claim in cash by 1 February 2023.

4 Pension interest in the ABASA Pension Fund

Itumeleng's total pension interest in the ABASA Pension Fund amounted to R2,2 million on 31 August 2023, of which 50% was awarded to Grace in terms of section 37D(4)(b)(ii) of the Pension Funds Act. Grace elected that R850 000 of the amount she was entitled to be transferred to her Pension Preservation Fund and the balance be paid to her in cash.

By 1 March 2022, Itumeleng had not previously deducted R50 000 of his contributions (excess contributions) to the ABASA Pension Fund for tax purposes. Itumeleng had by that date not yet received any severance benefits or lump sums from retirement funds.

Grace's previous contributions to funds had been allowed as tax deductions. In September 2018, Grace was retrenched in terms of a general reduction in personnel by her employer. She did not hold any shares in the employer's company. She received a lump sum of R150 000 from the pension fund she belonged to at the time of her retrenchment and a severance benefit of R120 000 from her employer.

5 Legal costs in terms of the divorce agreement

In terms of the divorce agreement, Itumeleng was ordered to contribute R200 000 towards Grace's legal fees relating to the divorce proceedings.

6 Life policy on Itumeleng's life

Grace knew that all maintenance payments would cease in the event of Itumeleng's death and that she was dependent on the maintenance payments from Itumeleng for her survival. She therefore decided to take out a life policy from a South African insurer on Itumeleng's life as a means of securing the continuation of this stream of income after his death. The life policy was issued in the Republic of South Africa. Grace is the sole beneficiary of the policy and pays all the premiums.

7 Income and expenses of Grace for the 2023 year of assessment

Grace's income and expenses for the 2023 year of assessment were as follows:

	Section/ Note	R
Maintenance amounts	2	?
Accrual claim	3	?
50% of pension interest	4	?
Proceeds from disposal of share portfolio	7.1	?
Commission earned as estate agent	7.2	225 000
Lerato's after-school care	7.3	(1 920)
Qualifying medical expenditure not recovered from medical aid	7.4	(30 000)
Legal cost	7.5	(320 000)
Life policy premiums	6	(65 000)
Employees' tax in respect of lump sum benefit from Itumeleng's pension interest		(40 000)
Employees' tax in respect of commission earned as estate agent		(42 500)

Notes

- 7.1 Grace struggled to survive on her maintenance payments. On 1 October 2022, she managed to sell all the shares in the share portfolio transferred from Itumeleng in terms of the divorce order (see section 3.1). She sold the Astra Ltd shares for R200 per share and the Bailey Ltd shares for R70 per share. Grace is not a share dealer.
- 7.2 To earn additional monthly income, Grace started working as a full-time estate agent on 1 November 2022. Her remuneration consists solely of commission, and she earns 2,5% commission on every property she sells. Unfortunately, she only sold two properties during the 2023 year of assessment, for which she received commission of R225 000. This amount was paid into her bank account on 28 February 2023.
- 7.3 Grace had to place Lerato in an after-school care facility from 1 November 2022. If she had not done so, she would not have been able to take on a full-time position as an estate agent. She regards the payment of R480 per month as a deductible expense for income tax purposes.
- 7.4 In terms of the scheme's rules, the medical scheme recognised Grace as a dependent of Itumeleng. Due to her financial concerns, Grace started suffering from anxiety attacks, for which she regularly visited a registered psychiatrist. However, she paid for the visits herself and refused to claim the cost from the medical aid scheme as she did not want Itumeleng to know about the anxiety attacks.
- 7.5 Grace received an account of R320 000 from the divorce attorney, of which Itumeleng had to pay R200 000 in terms of the divorce order (see section 5).

INITIAL TEST OF COMPETENCE, JUNE 2024

PROFESSIONAL PAPER 2

This paper consists of two questions.

Answer each question in a separate answer book.

PAPER 2 QUESTION 2 – REQUIRED		Marks	
		Sub-total	Total
(a)	Calculate the accrual claim and state why the claim belongs to Grace.	3	3
(b)	Discuss the estate duty implications (including liability for payment) of the life policy taken out by Grace on Itumeleng’s life in the event of his death. <i>Communication skills – clarity of expression</i>	4 1	5
(c)	Calculate the normal tax payable (if any) by Itumeleng and Grace in respect of the lump sums awarded to Grace in terms of section 37D(4)(b)(ii) of the Pension Funds Act from Itumeleng’s ABASA Pension Fund.	8	8
(d)	Calculate the effects of the divorce agreement (only in respect of notes 2.1 and 2.2, and sections 3 and 5 of the scenario) on the taxable income of Itumeleng for his 2023 year of assessment. • Provide reasons for nil effects.	7	7
(e)	Calculate the normal tax payable by or refundable to Grace for the 2023 year of assessment. • Provide reasons for nil effects. • Where an amount is fully exempt, include a reference to the legislation for both the gross income inclusion and the subsequent exemption. • Exclude all amounts calculated in part (d). <i>Communication skills – layout and structure; logical argument</i>	23 2	25
Total for question 2			50
TOTAL FOR PAPER 2			100

Extracts from Act No. 19 of 2022: Rates and monetary amounts and amendment of Revenue Laws Act, 2022

Section 6(2)

In the case of a natural person there shall, subject to the provisions of subsection (4), be allowed by way of –

- (a) a primary rebate, an amount of R16 425;*
- (b) a secondary rebate, if the taxpayer was or, had he or she lived, would have been 65 years of age or older on the last day of the year of assessment, an amount of R9 000; and*
- (c) a tertiary rebate if the taxpayer was or, had he or she lived, would have been 75 years of age or older on the last day of the year of assessment, an amount of R2 997.*

Section 6A(2)(b)

The amount of the medical scheme fees tax credit must be –

- (i) (aa) R347, in respect of benefits to the person, or if the person is not a member of a medical scheme or fund in respect of benefits to a dependant who is a member of a medical scheme or fund or a dependant of a member of a medical scheme or fund;*
- (bb) R694, in respect of benefits to the person, and one dependant; or*
- (cc) R694, in respect of benefits to two dependants; and*
- (ii) R234, in respect of benefits to each additional dependant, for each month in that year of assessment in respect of which those fees are paid.*

The following table must be used for the calculation of the employees' tax for all years of assessment:

**Schedule I
(Section 1)**

RATES OF NORMAL TAX

1. The rate of tax referred to in section 1(1) to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit) of any natural person, deceased estate, insolvent estate or special trust in respect of any year of assessment commencing on or after 1 March 2022 is set out in the table below:

Taxable income	Rate of tax
Not exceeding R226 000	18 per cent of taxable income
Exceeding R226 000 but not exceeding R353 100	R40 680 plus 26 per cent of amount by which taxable income exceeds R226 000
Exceeding R353 100 but not exceeding R488 700	R73 726 plus 31 per cent of amount by which taxable income exceeds R353 100
Exceeding R488 700 but not exceeding R641 400	R115 762 plus 36 per cent of amount by which taxable income exceeds R488 700
Exceeding R641 400 but not exceeding R817 600	R170 734 plus 39 per cent of amount by which taxable income exceeds R641 400
Exceeding R817 600 but not exceeding R1 731 600	R239 452 plus 41 per cent of amount by which taxable income exceeds R817 600
Exceeding R1 731 600	R614 192 plus 45 per cent of amount by which taxable income exceeds R1 731 600

12(a) (i) If a retirement fund lump sum withdrawal benefit accrues to a person in any year of assessment commencing on or after 1 March 2022, the rate of tax referred to in section 2(1) to be levied on that person in respect of taxable income comprising the aggregate of-

- (aa) that retirement fund lump sum withdrawal benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa);
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa); and
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa), is set out in the table below:

Taxable income from lump sum benefits	Rate of tax
Not exceeding R25 000	0 per cent of taxable income
Exceeding R25 000 but not exceeding R660 000	18 per cent of amount by which taxable income exceeds R25 000
Exceeding R660 000 but not exceeding R990 000	R114 300 plus 27 per cent of amount by which taxable income exceeds R660 000
Exceeding R990 000	R203 400 plus 36 per cent of amount by which taxable income exceeds R990 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of-

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa).

(b) (i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2022, the rate of tax referred to in section 1(1) to be levied on that person in respect of taxable income comprising the aggregate of-

- (aa) that retirement fund lump sum benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa);
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa); and
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa), is set out in the table below:

Taxable income from lump sum benefits	Rate of tax
Not exceeding R500 000	0 per cent of taxable income
Exceeding R500 000 but not exceeding R700 000	18 per cent of amount by which taxable income exceeds R500 000
Exceeding R700 000 but not exceeding R1 050 000	R36 000 plus 27 per cent of amount by which taxable income exceeds R700 000
Exceeding R1 050 000	R130 500 plus 36 per cent of amount by which taxable income exceeds R1 050 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of-

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa).