

Part (a) Calculate the taxable income of the Trust, and that of each of its individual beneficiaries, for the 2022 year of assessment, based on the information in section 2.				Marks
<ul style="list-style-type: none"> Indicate each item not included in or removed from the Trust's taxable income calculation. Provide a brief reason for the accrual or attribution of any amounts, where applicable. 				
Note		Reason	Amount R	
2.1.1	Cash distribution received from Fruities			
	Return of capital R200 000	Capital	nil	1
	Dividend Gross income, s1, par (k)	(R300 000 – R200 000)	100 000	1
2.2.1	Distribution to beneficiaries	$R50\ 000 \div 5$	(50 000)	1
	Remaining R50 000	Dividend retained in the Trust attributed to Elvis in terms of s7(5).	(50 000)	$\frac{1}{2}$ $\frac{1}{2}$
2.1.2	Rental income earned (office building in Kimberly) Gross income, s1 • Distribution to Hope Remaining R880 000	Attributed to gross income of Vincent in terms of s7(8). Rental income retained in the Trust attributed to Vincent in terms of s7(5).	960 000 (80 000) (880 000)	1
	No s13quin capital allowance allowed.	Building not new and unused or no cost.	nil	1B
3.4	Interest received on a loan granted to Vincent	$R600\ 000 \times 10\% \times 365/365\ \text{days} = R60\ 000$ <u>Note:</u> No mark if interest is also exempted under s10(1)(i)	60 000	1
	No consequence from Prop (Pty) Ltd		nil	1B
	Taxable income Trust		60 000	
	Dividend Candice	Attributed to gross income of Candice in terms of s25B(1), who obtained a vested right to the dividend.	10 000	$\frac{1}{2}$ $\frac{1}{2}$
	s10(1)(k) exemption		(10 000)	1
	Taxable income Candice		0	
	Dividend to Vincent	Attributed to gross income of Vincent in terms of s25B(1), who obtained a vested right to the dividend.	10 000	$\frac{1}{2}$ $\frac{1}{2}$
	s10(1)(k) exemption		(10 000)	1
	Rental income attributed from Hope	Attributed to gross income of Vincent in terms of s7(8).	80 000	$\frac{1}{2}$ $\frac{1}{2}$

Rental income attributed from trust	Rental income retained in the Trust attributed to Vincent in terms of s7(5) .	880 000	½ ½
Taxable income Vincent		960 000	
Dividend Gift	Attributed to gross income of Gift in terms of s25B(1) , who obtained a vested right to the dividend.	10 000	½ ½
s10(1)(k) exemption		(10 000)	1
Taxable income Gift		0	
Taxable income Joy	Attributed to gross income of Elvis in terms of s7(3) read with s25B(1) as Joy is a minor who obtained a vested right to the dividend.	0	½ ½
Dividend to Hope	Attributed to gross income of Hope in terms of s25B(1) who obtained a vested right to the dividend. S7(8) is not applicable because the local dividend would not have constituted 'income' in her hands as it would have been exempted in terms of s10(1)(k). <i>Alternative:</i> The dividend is attributed to Elvis in terms of s7(8) , as Hope is a non-resident taxed in the hands of Elvis	10 000	½ ½
s10(1)(k) exemption	<i>Alternative:</i> The dividend is attributed to Elvis in terms of s7(8), as Hope is a non-resident taxed in the hands of Elvis, therefore no exemption.	(10 000)	1
Rental income to Hope	Attributed to gross income of Vincent in terms of s7(8) Note: mark awarded under Vincent's taxable income	-	
Taxable income Hope		0	
		Available	17
		Maximum	17
		Communication skills – layout and structure	1
		Total for part (a)	18

Part (b) Calculate the effect of note 3.3 on Vincent's taxable income for his 2022 year of assessment.				Marks
<ul style="list-style-type: none"> Show all nil effect items, supported with a reason. Ignore the effect of any double tax agreements. 				
Note		Marker key	Amount R	
3.3.1	Foreign cash dividend received	$R6\ 300 \div 0.9$ or $6\ 300 \times 100/90$	7 000	1
3.3.1	Tablet received as dividend <i>in specie</i> gross income', s1, par (k)		20 000	1
3.3.3	Foreign interest received on fixed deposit held at a US Bank.	$US\$31\ 250 \times 1,8\% \times 365/365$ days = $US\$562,50 \times R15,05$ <i>Note: No mark for R15,05 if foreign interest also exempted in terms of s10(1)(i).</i>	8 466	1 1P
	Gross income		35 466	
	Less: Exemptions			
3.3.1	Foreign dividend on listed share paid in cash + Tablet received	s10B(3) applies as follows: (R20 000 + R7 000) x 25/45 <i>Alt: Section 10B(2)(a) exemption and the full R27 000 is exempt</i>	(15 000)	1
	Less: Deductions			
3.3.2	Acquisition of any of the 3 foreign assets	No s11(a) deduction as expenditure of a capital nature since held for long term investment / <i>No capital allowances allowed to be claimed on shares or crypto assets held</i>	Nil	1
	Net effect on taxable income		20 466	
			Available	6
			Maximum	6
			Total for part (b)	6

<p>Part (c) Indicate which option outlined in note 3.4 is the most tax beneficial for Vincent.</p> <ul style="list-style-type: none"> • Support your answer with an explanation of the different tax implications for Vincent of the two options. • Do not provide calculations. 	<p>Marks</p>
<p>OPTION 1</p>	
<p><i>If Vincent receives a trust distribution from the Trust to finance his foreign investments, the following income tax consequences will arise</i></p>	
<p>To the extent that any portion of the R600 000 distribution made to Vincent is financed out of the dividend income earned on the shares held in Fruities the results will be the same as his current tax position –he will need to include the dividends in his gross income in terms of s25B(1) and they would be exempt in terms of s10(1)(k).</p>	<p>1</p>
<p>To the extent that any portion of the R600 000 distribution made to Vincent is financed from the rental income that the Trust earned from letting the office building in Kimberley, he will need to include such amount in his gross income in terms of s25B(1).</p>	<p>1</p>
<p>If the distribution of R600 000 is made on 1 March 2021, it would be distributed from income retained in the trust in prior years, which would have already been taxed in prior years and will thus not have any tax consequences for Vincent.</p>	<p>1</p>
<p>OPTION 2</p>	
<p><i>If Vincent obtains a loan of R600 000 from the Bala Family Trust at a market-related annual interest rate of 10%, it will have the following income tax implications in his hands</i></p>	
<ul style="list-style-type: none"> • The receipt of a loan amount of R600 000 from the Trust will not be included in Vincent’s gross income because he is not unconditionally entitled to it due to the obligation to repay the loan. 	<p>1</p>
<ul style="list-style-type: none"> • He will be the issuer of an instrument (interest-bearing loan) and will incur interest on a day-to-day basis in terms of the effective interest rate (<i>Alternative: yield to maturity</i>) method in terms of s24J(2) of the Income Tax Act which can be deducted provided that he is carrying on a trade. An investment in shares, crypto assets and a fixed deposit which generate passive income is not considered to be carrying on a trade (ITC 1275 (1978)). 	<p>1</p>
<ul style="list-style-type: none"> • However, in practice SARS considers borrowing capital to reinvest in interest bearing instruments to be carrying on a trade (Practice Note 31). 	<p>1</p>
<ul style="list-style-type: none"> • Vincent cannot deduct the portion of interest on the loan that relates to the receipt of foreign dividends because of the prohibition in s23(q). The portion of interest that relates to the foreign dividends which will be exempt in terms of s10B(3) will not be allowed as a deduction because these will not constitute ‘income’ as defined in s1. (s23(f) and s24J(2)) 	<p>1</p>
<ul style="list-style-type: none"> • The portion of interest that relates to financing of crypto assets which are capital in nature will also not be allowed as a deduction, because these will not constitute ‘income’ as defined in s1. (s23(f) and s24J(2)) 	<p>1</p>

<ul style="list-style-type: none"> The portion of the interest on the loan that relates to the foreign fixed deposit held at a US Bank will qualify for a deduction in terms of s24J(2) because it will constitute 'income' as defined since foreign interest does not qualify for an exemption in terms of s10(1)(i). The deduction will be limited to the extent of the interest income. 	1
<ul style="list-style-type: none"> Vincent will be allowed to capitalise one third of the s24J(2) non-deductible interest incurred to acquire the shares in DiT Plc as part of the base cost of these foreign shares because they are listed on a 'recognised exchange' as defined in para 20(1)(g) of the Eighth Schedule. 	1
<p>CONCLUSION</p> <p>From an income tax perspective, it is much more tax beneficial for Vincent to make use of finance option 1 provided that the distribution is from the Trust's retained income, Option 2 carries some risk as he might not be seen as carrying on a trade and therefore lose out on the s24J deduction.</p>	1P
<p>Further considerations such as after tax cashflows would have to be considered to fully assess all options.</p>	1B
Available (c)	12
Maximum (c)	7
Communication skills – logical argument	1
Total for part (c)	8

<p>Part (d) Assume for this part only that Vincent died on 28 February 2022.</p> <p>Explain the following tax consequences for Vincent, supported by calculations where relevant, that would have been triggered by his death:</p> <p>(i) Income tax consequences in his last income tax calculation; and</p>	Marks									
<p>In terms of s9HA(1) there will be a deemed disposal at market value of all Vincent's assets on the date of his death (28 February 2022) which will trigger the following capital gains tax consequences:</p>	1									
<p>3.1 Life insurance policy taken out by Vincent on the life of his father (Elvis) Any capital gain/loss realised on this life insurance policy needs to be disregarded in terms of para. 55 of the Eighth Schedule. Hence there will be no deemed disposal of this life insurance policy as it is specifically excluded from the scope of assets falling under s9HA [see s9HA(1)(b)].</p>	1									
<p>3.2 Life insurance policy taken out by Hope on Vincent's life Although this long-term insurance policy is taken out on Vincent's life, it is an asset in the hands of his sister who is the policy beneficiary. It does not constitute an 'asset' as defined in terms of para. 1 of the Eighth Schedule in the hands of Vincent. Hence, no income tax effect is triggered in terms of s9HA.</p>	1									
<p>3.3.1 Interest in DiT Plc</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">R</td> <td></td> </tr> <tr> <td>Proceeds (market value on 28 February 2022)</td> <td style="text-align: center;">78 000</td> <td style="text-align: center;">1</td> </tr> <tr> <td>Less: Base cost (cost on 1 March 2021)</td> <td style="text-align: center;">(60 000)</td> <td style="text-align: center;">1</td> </tr> </table>		R		Proceeds (market value on 28 February 2022)	78 000	1	Less: Base cost (cost on 1 March 2021)	(60 000)	1	
	R									
Proceeds (market value on 28 February 2022)	78 000	1								
Less: Base cost (cost on 1 March 2021)	(60 000)	1								

Note: The base cost would have to be increased by a third of the interest from the loan from the Trust relating to the acquisition of the shares in DiT Plc		1
Capital gain	18 000	
Any capital gain/loss from the tablet received from DiT Plc is disregarded for CGT purposes as it is a personal use asset (para 53(2) of Eighth Schedule).	-	1
3.3.2 Crypto assets		
Proceeds (market value on 28 February 2022)	35 000	1
Less: Base cost (cost on 1 March 2021)	(40 000)	1
Capital loss	(5 000)	
3.3.3 Fixed deposit held at the US Bank		
The fixed deposit in the US Bank is not currency as it is a right to receive currency which is an "asset" as defined in terms of paragraph 1 of the Eighth Schedule.		1
Proceeds in USD (market value on 28 February 2022) [para. 43(5)]	US\$31 250	1
Less: Base cost Cost invested on 1 March 2021 in USD [para. 43(5)]	US\$31 250	1
Capital loss	nil	
Sum of capital gains/losses due to death	13 000	
Less: Annual exclusion in year of death (R300 000 limited to R13 000)	(13 000)	1P
	Available	13
	Maximum	8
	Total for part (d)(i)	8

Part (d) Assume for this part only that Vincent died on 28 February 2022.	
Explain the following tax consequences for Vincent, supported by calculations where relevant, that would have been triggered by his death:	Marks
(ii) Estate duty consequences for his deceased estate	
3.1 The domestic life insurance policy held by Vincent on his father's (Elvis) life is not property or deemed property in Vincent's deceased estate, as it is not held on Vincent's life.	1
3.2 The life insurance policy held by Vincent's sister, Hope, on his life is not deemed to be property in Vincent's deceased estate, because it is not a domestic insurance policy (or from a local insurer). Hope took out the policy with an insurer in Namibia [s3(3)(a) of the Estate Duty Act].	1
3.3.1 The DiT shares will be included as property in Vincent's estate at the market value of R78 000 [s5(1)(g) of the Estate Duty Act].	1
The tablet received from DiT Plc will be included as property in Vincent's estate at its market value of R20 000 on 28 February 2022.	1
3.3.2 The crypto assets will be included as property in Vincent's estate at their market value of R35 000 [s5(1)(g) of the Estate Duty Act].	1

3.3.3 The fixed deposit will be included as property in Vincent's deceased estate its market value of R475 000 (i.e. USD31 250 x ZAR15,200) converted using the spot rate on the date of death	1
<i>(Note: The Estate Duty Act does not prescribe what rate should be used for the foreign currency conversion, however, the spot rate at the date of death is considered as the most appropriate reflection of the value of the property for estate duty purposes.)</i>	
2.1.3 Vincent cannot bequeath or transfer the right of use/occupation of the house owned by Prop (Pty) Ltd upon his death, hence there will be no value in his deceased estate as there is no wealth to be transferred.	1
Vincent will have a reduction in his estate if he still owes the Trust the loan of R600 000 . [(s 4(b) of the Estate Duty Act]	1
Any tax liability from the 2022 tax year would also reduce the value of his estate . [(s 4(b) of the Estate Duty Act]	1
The net value of Vincent's estate will be reduced by an abatement amount of R3.5million [s4A(1) of Estate Duty Act] and estate duty will be levied at 20% (if the value of property is < R30 million) or at 25% (if the value of the estate exceeds R30 million)	½ ½
Available	10
Maximum	4
Total for part (d)(i)	4
Communication skills – clarity of expression	1
Total for part (d)	13

Part (e) Discuss whether you agree or disagree with the additional assessment SARS issued to Vincent for his 2021 year of assessment.	Marks
<ul style="list-style-type: none"> • Ignore the penalty imposed by SARS. • Do not criticize the calculation. 	
The burden to prove that an amount is not taxable rests upon Vincent (the taxpayer) in terms of s102 of the Tax Administration Act.	1
In terms of s99(1)(a) of the Tax Administration Act, SARS has a right to issue an additional assessment within 3 years of the original assessment, the additional assessment was made within 6 months of the end of the tax year and is therefore valid.	1
An employer-employee relationship exists between Vincent and Prop (Pty) Ltd therefore the this right of use could be a fringe benefit in terms of the Seventh Schedule.	1
The question is whether the right of use was given to Vincent for his status as an employee or rather for his status as a beneficiary of the Trust.	1
Although Vincent requires sign off by the trustees on all decisions, he is still the sole director of the company and presumably there would be an employment contract in place detailing his benefits. It could be argued that this benefit was received as a result of his status as an employee of Prop (Pty) Ltd is.	1
Alternatively, it can be argued that Vincent was granted the right of use of this property due to his status as a beneficiary of the Trust , not by virtue of his employment since the trustees would have weighed in on the decision . Even if anyone else had been appointed as director, Vincent would have received the same right.	1
Conclusion	

I do not agree with SARS's additional assessment issued to Vincent as the benefit cannot qualify as a taxable benefit in Vincent's hands.	1P
Available	7
Maximum	5
Total for part (e)	5
TOTAL FOR QUESTION 1	50