



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



FPSA FISA BOARD EXAMINATION

Examination date/Eksamendatum: 25 NOVEMBER 2013
Time/Tyd: 9:00 – 11:15 (2 hours/ure and 15 min.)
Total marks/Totale punte: 50

Examination paper: Estate Planning

This examination paper comprises 6 pages and 4 main questions. Answer all the questions. The examiners are aware that there is not necessarily only one correct answer to certain questions in this examination paper. You are therefore expected to fully motivate all your answers, where applicable.

Only answers in your own handwriting in the official answer book will be considered.

QUESTION 1

State whether the following statements are true or false and motivate your answer. Refer to applicable legislation where relevant.

- 1.1 Mark's last will and testament provides that the residue of his estate (calculated to be R3 000 000) is bequeathed to his spouse, Joanne. This bequest is subject to a condition that Joanne pays R20 000 per year to Mark's mother for a period of two years after Mark's death. The amount that will qualify as a section 4(q) of the Estate Duty Act deduction is R3 000 000. (2)
- 1.2 The trustees of the Not-so-Jolly Trust invested some of the trust funds in a "pyramid" scheme. When the scheme collapsed, most of the funds were lost. The trust deed contains a clause that indemnifies the trustees against damages suffered as a result of their decisions and actions. The trustees will not be liable for any damages suffered by the trust as a result of the failed investment. (2)
- 1.3 The deduction that is available under section 4(p) of the Estate Duty Act, 45 of 1955, will not be applicable if the proceeds of a life policy that was paid out to a company, of which the deceased was a shareholder, were not actually taken into consideration in determining the value of shares for estate duty purposes. (2)
- 1.4 The trustees of a discretionary testamentary trust decide to distribute the income earned by this trust during the year of assessment to a beneficiary who is a South African resident. The trust remains liable for the income tax on the income earned. (2)
- 1.5 If all the members of a close corporation decide on the value of their members' interests for the purposes of a buy-and-sell agreement, this value will be binding on the executor of the estate of a member for estate duty purposes. (2)

[10]

QUESTION 2

David and Victoria are married out of community of property with the inclusion of the accrual system. David is contemplating a divorce, but is concerned about the financial impact this might have on him. He approaches you to determine whether Victoria will have an accrual claim against him in the event of a divorce. The following facts apply:

1. In terms of the antenuptial contract, David declared the commencement value of his estate to be R0. Victoria declared the commencement value of her estate as R20 000, consisting of shares listed on the JSE.
2. Victoria excluded a townhouse to the value of R2 000 000 from the accrual.
3. The antenuptial contract provides that the accrual will be split 60:40 between Victoria and David.

4. **David** has the following assets and liabilities:

| Assets | R |
|--|-----------|
| Family home | 2 650 000 |
| Vacant land | 800 000 |
| Shares listed on JSE | 2 800 000 |
| Loan account in family trust | 4 310 000 |
| Investment | 2 360 000 |
| Vehicles | 450 000 |
| Life policy (no beneficiary) | 2 000 000 |
| Life policy (Victoria is beneficiary) | 1 000 000 |
| Life policy (children are beneficiaries) | 400 000 |
| Money market | 80 000 |
| Liabilities | |
| Mortgage bond on family home | 800 000 |
| Mortgage bond on vacant land | 600 000 |

Victoria has the following assets and liabilities:

| Assets | |
|----------------------------|-----------|
| Townhouse ¹ | 4 000 000 |
| Holiday house ² | 3 400 000 |
| Unit trusts | 3 200 000 |
| Shares listed on JSE | 3 080 000 |
| Money market | 200 000 |
| Furniture and paintings | 220 000 |
| Vehicles | 200 000 |

1. The townhouse is excluded from the accrual system in terms of the ANC.
2. Victoria inherited the holiday house from her father four months before they were married. Her father died intestate.

Liabilities

None

5. Assume that the CPI at the time of the marriage in May 1994 was 40.

6. Assume that the CPI at the time of your calculation is 129.

Calculate the accrual claim, showing all your calculations. Motivate the inclusion or exclusion of any assets.

[8]

QUESTION 3

The Jolly Jammer Trust, a discretionary *inter vivos* trust, inherited the following assets from the estate of its founder in 2007 (the values are as reflected in the Liquidation and Distribution Account):

| | R |
|--------------------|-----------|
| Immovable property | 1 000 000 |
| Vehicle | 100 000 |
| Art collection | 200 000 |
| Listed shares | 600 000 |
| Cash | 400 000 |
| Yacht of 9 metres | 200 000 |

In terms of the trust deed, the distribution of income and capital is entirely at the discretion of the trustees.

One of the beneficiaries lives in the immovable property and uses it as his primary residence. He also uses the vehicle and is the regular driver.

In 2013, the trustees decide to terminate the trust and, after consultation with the heirs, decide to realise all the assets. In order to achieve a better price for the yacht, they spend R10 000 to upgrade the navigation equipment.

The assets are sold for:

| | R |
|--------------------|-----------|
| Immovable property | 2 300 000 |
| Vehicle | 70 000 |
| Art collection | 800 000 |
| Listed shares | 900 000 |
| Yacht of 9 metres | 230 000 |

The trust now holds cash of R600 000.

Calculate the taxable capital gain that must be included in the trust income during the 2013/2014 year of assessment. Show all calculations and motivate the inclusion or exclusion of any amounts.

[8]

QUESTION 4

Roger Whitley (age 66) is married to Betty (age 63) and they have three major children, Derek, Russell and Cindy. They are married out of community of property, without the inclusion of the accrual system.

Roger's **assets** comprise of the following:

| | R |
|---|-----------|
| Family home | 2 400 000 |
| Holiday home ¹ | 1 200 000 |
| Shares in ACB (Pty) Ltd ² | 8 000 000 |
| Loan account in ACB (Pty) Ltd | 700 000 |
| Motor vehicle | 140 000 |
| 1 000 shares in SAB Miller @ 52 000 cps | |
| Unit trusts | 366 000 |
| Loan to Derek | 200 000 |
| Cash | 300 000 |
| Old Mutual policy 77510 ³ | 100 000 |
| Sanlam life policy ⁴ | 200 000 |
| Old Mutual policy 33456 ⁵ | 110 000 |
| Momentum life policy on Roger's life ⁶ | 250 000 |

Notes

| | |
|---|---|
| 1 | Roger and Betty signed an offer of purchase for the holiday home, which was accepted. All conditions in the offer have been fulfilled and the full purchase price has been paid, but transfer to their names has not yet taken place. |
| 2 | Roger owns all the shares in ACB (Pty) Ltd. |
| 3 | Cindy is the beneficiary of the Old Mutual policy 77510. |
| 4 | Betty is the beneficiary of the Sanlam policy. |
| 5 | The Old Mutual policy 33456 is a credit life policy taken out in favour of Wesbank to cover the outstanding balance under an instalment sale agreement for the vehicle. |
| 6 | ACB (Pty) Ltd is the owner of the policy. The death value is R250 000. |

On 1 April 2013, SAB Miller declared a dividend of 1 400 cents per share. The last day to register, was 1 June 2013 and the dividend was payable on 15 July 2013.

| | |
|---|---------|
| Roger's liabilities comprise: | R |
| Wesbank instalment sale agreement (vehicle) | 110 000 |
| Outstanding accounts | 12 000 |

Roger was previously married to Jane, who died in 1986. In terms of her will, she left a legacy of R100 000 to her parents and the residue of her estate (R500 000) to Roger.

Roger's **will** reads as follows:

LAST WILL AND TESTAMENT

I, Roger Whitley, married out of community of property to Betty Whitley, declare this to be my last will and hereby revoke any previous testamentary dispositions.

1

I bequeath my family home to my spouse, Betty, with the power of alienation, subject thereto that so much as remains on her death, shall devolve on our children by

representation. I direct that my spouse shall not be required to lodge security with the Master of the High Court.

2

I bequeath my motor vehicle, furniture and R100 000 to my spouse, Betty.

3

I bequeath my shares and loan account in ACB (Pty) Ltd to my son, Russell.

4

I bequeath the outstanding loan owing to me by my son, Derek, to my said son Derek.

5

I bequeath the residue of my estate to those of my grandchildren who are alive at the time of my death. I direct that, should any of my grandchildren be a minor at the time of my death, their inheritance shall be handed over to their guardians to administer on their behalf until they attain the age of majority. I direct that the said guardians shall not be required to lodge security with the Master of the High Court.

6

I nominate my accountant, Kevin Small, and my spouse, Betty, as executors of my estate and I direct that they shall not be required to lodge security with the Master of the High Court for acting in such capacity.

I direct that Kevin Small shall solely be entitled to the executor's fee, which shall be limited to 1.5% of the value of my estate.

The will was duly executed by Roger on 18 November 2011.

Question 4.1

Roger dies on 14 June 2013. Calculate his estate duty liability. Show all your calculations and refer to authority, where applicable.

Assume the following:

- Administration costs (including funeral costs and conveyancing fees) amount to R100 000
 - Capital Gains Tax amounts to R20 000
 - No other income tax is payable
 - Kevin Small is a registered VAT vendor
- (14)

Question 4.2

Assume that the dutiable estate (after the section 4A rebate) amounts to R2 100 000 and that the total estate duty amounts to R420 000. Calculate the estate duty payable by the estate and the total duty payable by other parties. (5)

Question 4.3

Comment on the capital gains tax implications of the bequest in clause 4 of Roger's will. Refer to authority.

Would your answer be different if Roger had died in 2012? (5)

[24]

[Total 50]