INSTRUCTIONS TO STUDENTS

1. This paper contains three questions. All references to the Act or to sections of the Act are to the Income Tax Act 58 of 1962.
2. Answer any two questions.
3. When answering questions, refer where appropriate, to relevant decided cases.
4. Do not deal with any capital gains tax issues arising out of the questions.
5. This is a closed book examination, and you are not permitted to take any study materials into the examination room or to consult any such materials when writing the examination.
6. This paper consists of THREE pages.
Question one

A school teacher had, over his working lifetime, built up a valuable portfolio of shares listed on the Johannesburg Stock Exchange using money that he had saved from his salary to purchase the shares. In correspondence with SARS, he explained that his investment strategy was to keep a constant watch on his share portfolio, to sell those shares that were yielding low dividends (that is to say, distributions by the company of its profits) and to reinvest the proceeds in acquiring shares with a higher dividend yield; he said that his decisions to sell shares were never motivated by the profit he would receive on resale.

After his retirement he had sold shares in order to have cash reserves from which to pay medical expenses, as his health was declining.

Discuss the legal principles that determine whether he will be liable to income tax on the proceeds where he has sold shares in these circumstances, and explain (with reference to decided cases involving the acquisition and disposal of shares, such as African Life Investment Co (Pty) Ltd v SIR 1969 (4) SA 259 (A) and SIR v Trust Bank of Africa Ltd 1975 (3) SA 652 (A)) whether different principles apply in this regard where the taxpayer is a company, rather than an individual.

[30 marks]

Question two

“Income means money or that which the taxpayer is able to convert into money”.

In the context of income tax, did this proposition ever accurately reflect the law? Does this proposition accurately express the current law?

Discuss fully, illustrating your answer with reference to decided cases.

[30 marks]
Question three

In Port Elizabeth Electric Tramway Co Ltd v CIR 1936 CPD 241 the taxpayer company was held to be entitled to deduct damages payable by it as the result of a motor accident involving one of its buses. In Joffe and Co (Pty) Ltd v CIR 1946 AD 157 it was held that the taxpayer company was not entitled to deduct damages which became payable as the result of an accident that had occurred in the course of the construction of a building. Explain the principles which underlie the decisions in these two cases and discuss whether these two judgments are in conflict with one another.

[30 marks]

[TOTAL FOR PAPER: 60 MARKS]