INSTRUCTIONS

1. This paper contains THREE pages. Please ensure that you have all of the pages.
2. There are four questions. Please answer all four questions. All questions carry equal marks. Where a question is divided into parts, marks have not been allocated to the various parts, and your answer to the question will be marked as a whole.
3. Where appropriate, refer in your answers to relevant decided cases.
4. This is a closed book examination; no materials of any kind may be brought into the examination venue or consulted during the examination.
5. All references to the Income Tax Act are to the Income Tax Act 58 of 1962, as amended.
Question 1

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 that were yielding low dividends and to reinvest the proceeds in acquiring shares with a higher dividend yield; he said his decisions to sell shares were never motivated by the profit he would receive on resale.

After his retirement he also sold shares for the further reason of having 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 *Afri
can 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.

[Total Q1: 20 marks]

Question 2

It used to be widely believed, amongst tax lawyers, that an amount, received by or accruing to a taxpayer, did not have the quality of “income” (and therefore did not have to be included in the taxpayer’s gross income) and was also not an “amount” that had accrued to the taxpayer unless it was either money or capable of being turned into money.

You are required to –

(a) explain the basis of the aforementioned belief, namely, that a non-monetary receipt or accrual was not taxable unless it was money or capable of being turned into money. On what legal principles or judicial decisions was this view based?

(b) explain whether (and if so in what respect) the law in this regard has been changed by the decision of the Supreme Court of Appeal in *Commissioner for the South African Revenue Service v Brummeria Rennaissance (Pty) Ltd* 2007 SCA 99 (RSA).

[Total Q2: 20 marks]
Question 3

In *Natal Estates Ltd v SIR* 1975 (4) SA 177 (A) a taxpayer who subdivided farm land and sold the erven was held to be liable for income tax on the proceeds. In *Berea West Estates (Pty) Ltd v CIR* 1976 (2) SA 614 (A) a company that subdivided land and sold it was held not to be liable for income tax on the proceeds. In *Elandsheuwel Farming Edms Bpk v SBI* 1978 (1) SA 101 (A) a company that sold a farm without sub-dividing it was held to be liable for income tax on the proceeds. Explain the *ratio decidendi* of each of these three decisions and discuss the extent (if any) to which these decisions are in conflict with each other.

[Total Q3: 20 marks]

Question 4

Explain the relevance, for purposes of the Income Tax Act, of whether an amount has been “received by” or has “accrued to” the taxpayer in a given year of assessment and explain what is meant by “accrued” in this context. Include in your answer an explanation of the income tax principles that apply where an amount of say R1 000 accrues to a taxpayer in year 1, but is only *payable* to him or her in a subsequent year.

[Total Q4: 20 marks]

[TOTAL FOR PAPER: 80 MARKS]