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 consult any materials in the writing of the examination.
6. This paper consists of FOUR(4) pages; please see that you have them all.
QUESTION ONE (30 marks)

Over his working life extending over some 30 years, Zeke, a salaried schoolteacher, had built up a substantial portfolio of shares. In the early years of building up his share portfolio, the main consideration which he took into account when deciding whether to purchase a share was not whether he believed he would be able to resell it at a profit in the short term, but rather the amount of dividend income that the share was likely to yield. He would sell a share only if its dividend yield had dropped and a higher dividend could be obtained from buying other shares. During this period, his sales of shares were few and far between.

Soon after he retired in 2005 at age 60, his health declined, and he started incurring heavy medical expenses, and he needed funds to pay these recurrent bills. He decided to reduce his investment in shares and instead to invest in interest-bearing investments because interest rates had risen and were now generally higher than the dividends he was deriving from shares. To achieve these new objectives, he started to buy and sell shares far more frequently (and always at a profit) but still seeking to acquire and retain those shares which paid high dividends. He kept his share portfolio under constant scrutiny. If a share failed to yield a good dividend, he would immediately sell it. He made a substantial profit on the sale of shares during the period 2005 to 2010 (in other words, the selling price of the shares far exceeded their purchase price.) He has now revised assessments to income tax from 2005 - 2010 which reflects that he is being taxed on the proceeds of all shares sold by him during that period.

Zeke has asked you for advice on his prospects of success if he were to object to the assessment and take the matter on appeal to the courts.

Give full advice, explaining the relevant legal principles and concepts, including the issue of a taxpayer’s ‘secondary intention’.
QUESTION TWO (30 marks)

It used to be widely believed, amongst tax lawyers, that (in situations not falling within the scope of the fringe benefits provisions of the Income Tax Act) an amount, received by or accruing to a taxpayer did not have to be included in the taxpayer’s “gross income” in terms of the Income Tax Act unless it was either money, or capable of being turned into money.

YOU ARE REQUIRED TO –

(a) explain the basis of the aforementioned belief, in other words, on what legal principles or decisions of the courts was it based?

(b) explain whether (and if so how) the law in this regard has been changed by the 2007 decision of the Supreme Court of Appeal in Commissioner for the South African Revenue Service v Brummeria Renaissance (Pty) Ltd.

(There is no division of marks between (a) and (b) and the answer will be marked as a whole.)
QUESTION THREE (30 marks)

Bus Transport (Pty) Ltd owns and operates a fleet of buses and employs a number of drivers to drive them.

One of the buses went out of control while descending a steep hill because the brakes had failed. (It was subsequently ascertained that the company had been negligent in failing to properly maintain its fleet of buses in a safe and roadworthy condition). The driver lost control of the bus and it crashed into a new BMW sedan parked at the side of the road.

The bus driver was injured in the accident and incurred heavy medical expenses. He sued Bus Transport (Pty) Ltd for damages in terms the Compensation for Occupational Injuries and Diseases Act (which replaced the Workmen’s Compensation Act) in terms of which an employer is liable for financial loss sustained by an employee as a result of injury in the course of the latter’s employment (irrespective of the negligence of the employee) and obtained judgement against the company for R300 000. The owner of the BMW sued Bus Transport (Pty) Ltd for the value of his car which had been damaged beyond repair and obtained judgement against the company for R500 000.

Bus Transport (Pty) Ltd seeks your advice as to whether it is entitled to a deduction in terms of section 11(a) in respect of:
(a) the damages of R300 000; and
(b) the damages of R500 000.

Give full advice, explaining the relevant principles of income tax law. Illustrate your answer with reference to the cases of Port Elizabeth Electric Tramway Co v CIR and Joffe and Co (Pty) Ltd v CIR.