



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

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AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

EVENING PROGRAMME

CLS 311: REVENUE AND TAXATION LAW

Date: DECEMBER 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) Corruption, Tax evasion and avoidance in the Kenya's tax administration framework has been identified as key contributors of illicit financial flows leading up to immense losses on resources that could be used to finance public expenditure. There are several frameworks, processes, instruments and institutions that have been developed and should further be enhanced as these issues take the center stage towards reducing the public burden of over taxation and increasing public debts. Discuss **(16 marks)**
- b) Aggrey a Maritime Consultant from Canada was engaged by Kenya Revenue Authority for a contract at the Customs Department that lasted from 31st March, 2010 to 4th July, 2012. Aggrey has been residing in Mombasa after the expiry of the consultancy contract upto 4th July, 2017. A transfer of Kshs 1, 000,000 was made to his account. Aggrey was in shock as his contractual price was Kshs 2, 000, 000. As an explanation, he is told that a deduction of 30% was made for Income tax and 20% for withholding tax. He is not satisfied with this explanation and feels that he is not eligible to these taxes since his country of origin is Germany. He comes to you for legal advice, advise him accordingly. **(14marks)**
- Q2. a) The source principle regulates the taxation of individuals and corporates bodies and mostly dwells on the location and state of the tax base. Gains and profit (income) derived from business has different approaches as, outlined by the various provisions of the income tax Act, case law and judicial precedent.

Critically analyze this position. **(13 marks)**

- b) Gains from money laundering, boot legging, prostitution, gambling and betting have been identified as illegal activities in different jurisdictions. However, gains from betting for example are taxable among others in Kenya. With the use of the relevant provisions and case law, examine the relevance and position in as far as taxation of illegal and legal businesses is concerned. **(7marks)**
- Q3. a) Section 2 of the Income Tax Act defines 'business' to include trade, profession, vocation, every manufacture and concern in the nature of trade but does not include employment. Gains and profits from business are consequently taxable and whether the business is being conducted or not is a subjective matter as set out in the principles (badge of trade). Trade in itself presupposes a customer. For purposes of taxation, the Income Tax Act has provided for different schedules in effecting taxation of 'business'. Discuss and analyze this position **(10marks)**
- b) Explain and critically discuss direct and indirect taxes. Identify advantages and disadvantages of direct highlighting the various types of tax bases under direct and indirect taxes. **(10marks)**
- Q4. a) Taxation in Kenya has its history dates back to the pre-colonial period where Kenya and its East African neighbors conducted trade, and its Political, Social, Economic organization was well defined. Discuss and Explain the historical background of Revenue and taxation in Kenya. **(15marks)**
- b) Critically analyse the basic concepts of Income tax as per the Constitution and the Income Tax Act **(5marks)**
- Q5. a) Revenue and Taxation laws in Kenya provides for the administration, assessment, levying, remitting and enforcement mechanisms anchored in a set of principles. Explain this position. **(12marks)**
- b) The scheduler system as provided for in the Income Tax Act regulates the rates applicable in the determination of tax payable. These different schedules were initially borrowed from Kenya's pre-colonial masters. Discuss. **(8 marks)**

END