UNIVERSITY OF JOHANNESBURG

UNIVERSITY OF JOHANNESBURG

FACULTY OF ECONOMIC AND FINANCIAL SCIENCES

DEPARTMENT OF ACCOUNTANCY

JUNE ASSESSMENT 2014

SUPPLEMENTARY EXAM

COURSE: M.COM (INTERNATIONAL TAXATION)

PAPER: 1st SEMESTER: SUPPLEMENTARY

MARKS: 100 **TIME: 3 HOURS**

ASSESSOR: PROF MICHAEL HONIBALL

MODERATOR: TRUDIE ROHLANDT

NUMBER OF PAGES: 4

INSTRUCTIONS TO CANDIDATES:

- Question papers must be handed in;
- This is an open book assessment;
- This assessment consists of 4 pages;
- Read the questions carefully and answer only what is asked;
- Number your answers clearly;
- Write neatly and legibly;
- Structure your answers by using appropriate heading and sub-heading; and
- The general University of Johannesburg policies, procedures and rules pertaining to written assessments apply to this assessment.

QUESTION 1 **(25 MARKS)**

Explain and discuss the reference to an example and/or case law, and having regarding to the OECD MTC and Commentary, SARS Practice/Interpretation Notes, tax statutes, etc., the following:

1.1 The differences between the ambulatory and the static approach to tax treaty interpretation; [5]

1.2 The term "income from international traffic" as defined in the OECD Model Tax Convention, included what is included and what is excluded; [6]

1.3 Discuss the main differences between the OECD MTC, and the UN MTC, and the reasons for these differences. [10]

1.4 Name two exemptions applicable to Dividends Tax. [2]

1.5 What main change did 2005 OECD MTC update bring about to Article 26? [2]

[25]

QUESTION 2 **(25 MARKS)**

Company A, a non-resident, provides management services to Company B, a resident, and allows Company B to use its trade name in return for a royalty based on 12% of Company B's turnover. Company A and Company B are managed by the same management team, based overseas, in an office of Company A. Company A also sells toys to Company B, which are in turn sold by Company B into the South African market. Company B has taken out a loan from a South African bank and Company A has guaranteed this loan. Company A charges no guarantee fee for this. An offshore trust made a Rand loan to Company B at prime plus 10%, in 1991, and the loan is still in place. Company A is a discretionary beneficiary of the offshore trust. The CEO of Company A spends three months every year working in South Africa for Company B to assist in increasing the sales of toys and to assist in determining distribution and marketing strategies for Company B. Company C is a subsidiary of Company A, which is incorporated and tax resident in the UK, and its primary business is the development, production, and sales of memory boosters. Company C has set up Company D in South

Africa and has funded Company D with R4 million loan funding and R1 million equity funding. Company D has a 1 January to 31 December financial year. The loan agreement was entered into on 4 October 2013. The 2012 financial statements of Company D shows retained profits of R15 million.

2.1 With reference to South African domestic tax law, and with reference to SARS Interpretation Notes, if relevant, discuss, taking all the facts into account, whether Company A and Company B are connected persons. [2]

2.2 Assuming they are connected persons, identify the transactions between Company A and Company B to which Section 31 could apply. [6]

2.3 Name the transfer pricing methods that are acceptable to SARS and discuss any <u>one</u> method by applying "the four-step approach" in relation to any one of the above transactions, which you have identified in (2.2) above. You must give reasons why the method you have selected is most suitable for that particular transaction. [10]

2.4 With relevance to statutes, case law, relevant SARS Practice Notes, the OECD MTC and Commentary and OECD TP Guidelines, as appropriate, discuss whether the interest on the loan to Company B made by the offshore trust is tax deductible in the hands of Company B. [2]

2.5 With reference to the draft interpretation note on thin capitalisation, discuss whether or not the loan of R4 million to Company D constitutes an arm's length debt amount and, if not, in what circumstances would the loan constitute an arm's length debt amount? [5]

[25]

<u>QUESTION 3</u> **(25 MARKS)**

3.1 With specific reference to the OECD MTC and Commentary, discuss the differences between Article 7 before the 2010 update, and after the 2010 update, including a discussion of the reasons for the 2010 update. [15]

3.2 With reference to the relevant case law, statutes, OECD MTC and Commentary, SARS Interpretation Notes, etc., taking all the facts into account, and giving reasons for your answers, discuss what type of profits fall within the category of profits derived from international traffic. [10]

[25]

QUESTION 4 **(25 MARKS)**

Whitewings Ltd is a company which is tax resident in Ireland. It owns two aircraft, Whitewings One and Whitewings Two. Whitewings One is leased to SAA on a so-called bare-boat charter basis, while Whitewings Two is used by Whitewings Ltd to transport cargo and passengers from Cape Town to Cairo, sometimes via Johannesburg. Whitewings Ltd has a branch in Cape Town, and this branch has a bank account which produces R15 million of interest income per annum. SAA uses Whitewings One to transport passengers from Cape Town to London, and Whitewings Ltd receives lease income from South Africa for this per annum. Whitewings One is repaired and serviced in Cape Town and is mainly based here.

With reference to relevant case law, statutes, OECD MTC and Commentary, SARS Interpretation Notes, etc., and giving reasons for your answers, discuss:

4.1 The South African tax implications for Whitewings Ltd in respect of its interest income from the Cape Town branch; [5]

4.2 The South African tax implications for Whitewings Ltd in respect of its income from Whitewings One; [7]

4.3 The South African tax implications for Whitewings Ltd in respect of its income from Whitewings Two; [7]

4.4 Whether your answers in 4.1, 4.2 and 4.3 above would be different, and if so, how different, if South Africa had not signed any tax treaty with any country. [6]

[25]

---o0o---

UNIVERSITY OF JOHANNESBURG – KINGSWAY CAMPUS
SUBMISSION OF SUPPLEMENTARY ASSESSMENT PAPER

DEPARTMENT: Accountancy

NAME OF LECTURER: Prof M. Honiball

TELEPHONE NUMBER: x 3859 (W) CELL: ______

COURSE AND SUBJECT NAME: MCom (Taxation) INTERNATIONAL TAXATION

SUBJECT CODE: INT9X01 DATE OF PAPER: 3 June 2014
ASSESSMENT PERIOD: NOVEMBER 2013

Please indicate the number of answer books required per student and also whether each question should be written in a new book etc.

- Number of answer books per student: 5

IMPORTANT INSTRUCTIONS FOR INVIGILATORS:

- Question(s) per book: ______________________

  ____
  (eg. Question 1 & 2 in one book or each question in a new book)

Open book exam: Y N

Back-to-back: Y N

English from the front, Afrikaans from the back: Y N

If any additional material for instance computer answering sheets, graphic paper, answer sheets etc. will be required during the assessment, please indicate below:

____

____

____

2. Number of assessment papers required: 18
   (NB. – CORRECT NUMBERS PLEASE)

SIGNATURE OF LECTURER: ______________DATE 15 April 2014