

PROGRAMME : LLB
SUBJECT : TAX LAW
CODE : TLW41A0/BRE0011
ASSESSMENT : EXAMINATION
DURATION : 2 hours
TOTAL MARKS : 50



EXAMINER PROF T LEGWAILA
MODERATOR PROF J CALITZ
EXTERNAL EXAMINER PROF C FRITZ (UNIVERSITY OF THE WITWATERSRAND)
INSTRUCTIONS Question papers must be handed in.

QUESTION 1 (20 marks)

With reference to applicable case law, discuss the doctrine of “substance over form” and whether recent case law has changed the jurisprudence that has been developed over more than a century.

QUESTION 2 (30 marks)

Neil is a Moroccan national, born and grew up in Morocco. Neil came to South Africa on 5 March 2019 and has been in South Africa ever since. His presence in South Africa is for various reasons, from medical treatment, business opportunities, research and consulting. He is planning to return to Morocco on 1 January 2023. In 2012 Neil bought a block of flats in Sea Point, Cape Town, South Africa at a cost of R40 million. He also spent R50 000 on registration costs, and R 4 million on tax in the form of transfer duty. On 15 January 2020, Neil agreed to sell the property to Neo, a South African tax resident, and the parties signed a contract on that day. The agreed purchase price is R 50 million. On 15 February 2020 Neo paid Neil R30 million as part of the purchase price. The

property was registered in Neo's name on 1 October 2020. Neo paid the remaining R30 million on 15 March 2021.

Neo is a property developer. Neo renovated the block of flats, and sold it to ResCo, a South African resident company that provides student accommodation in the close vicinity of South African universities. ResCo bought the block of flats at R60 million. The parties agreed that the purchase price will be paid by way of cash of R40 million, and the remaining R20 million would be by issue of shares in ResCo to Neo, to the value of R25 million.

Advise the parties on the tax implications of the above transactions.