



POST GRADUATE DIPLOMA IN TAXATION

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PAPER PGDT 2: LAW OF TAXATION

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SERIES: PILOT PAPER 2024

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TOTAL MARKS – 100 TIME ALLOWED: THREE (3) HOURS

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INSTRUCTIONS TO CANDIDATES

1. You have fifteen (15) minutes reading time. Use it to study the examination paper carefully so that you understand what to do in each question. You will be told when to start writing.
2. This question paper is divided into TWO sections.
3. Section A: One Compulsory Question. The question carries **40 marks**.
4. Section B: FOUR (4) Optional Questions. Attempt any THREE (3) questions from section B. Each question carries **20 marks**.
5. Enter your student number and your National Registration Card number on the front of the answer booklet. Your name must NOT appear anywhere on your answer booklet.
6. Do NOT write in pencil.
7. Cell Phones are NOT allowed in the Examination Room.
8. The marks shown against the requirement(s) for each question should be taken as an indication of the expected length and depth of the answer.
9. Present legible and tidy work.

## **QUESTIONS**

### **SECTION A: COMPULSORY QUESTION – 40 Marks**

- 1) The system of constitutional separation of powers, there is the Executive, the Judiciary, and the Legislature as the three arms of Government. Although the Legislature is the principal arm with the function of making laws, there are, nevertheless, other sources of laws.

***Required:***

Discuss, in detail, any two sources of Tax law in Zambia.

### **SECTION B: FOUR (4) Optional Questions. Attempt any THREE (3) questions from section B. Each question carries 20 marks.**

- 2) Mr. Jacket Tembo owned 100 hectares of farm land which was on title assigned to him. He built a retirement farm house on it and started crop and livestock farming.

Six years after settling on the land, Mr. Tembo came across some coloured stones on his land, which, after enquiring from the geological survey department, was said to be emerald.

Mr. Tembo was advised not to mine the emerald without a licence. He was troubled about how he could freely grow plants and rear livestock on his land without licence, excavate mice on it without licence, and yet he was being advised NOT to excavate the coloured stones without licence.

Mr. Tembo just heard that you were in the area for a long weekend. Knowing you are knowledgeable about such issues, he has come to enquire from you about the correctness of the advice he got.

***Required:***

Explain to Mr. Tembo the requirements of the law on Minerals and Mineral Royalties regarding minerals on one's property.

- 3) Discuss the time of importation in relation to goods imported by:
- a) Water transport;
  - b) Air;
  - c) Pipeline; or
  - d) Any other means?
- 4) Give the structure of the appeal process in the administration of tax law Zambia?
- 5) Dr. Habakkuk Hamatwi, a Zambian medical Doctor working in Ghana, established a medical clinic in Ghana. After 15 years of working, Dr. Hamatwi relocated back to Zambia but left his Clinic running in Ghana. Technological advancements in ICT enabled him to continue managing the clinic from Zambia He was able to buy supplies from India and other sources and stocked his clinic in Ghana; and he was able to get updates of his clinic operations in real time.

As a good citizen, Dr. Hamatwi was declaring to the Zambian Government all his business transactions earnings.

***Required:***

Clearly explain whether the income Dr. Hamatwi was earning from his clinic in Ghana is liable to Income Tax in Zambia.

## **ANSWERS**

### **1. Discuss any two sources of Tax law in Zambia.**

- i) **The Constitution** is the most important law in the land and binds all persons in Zambia, as well as all organs of the state. It is the law that is said to come directly from the people and sets out the relationship between the people and the state.

The Constitution is intended to promote the orderly governance of the country. In that respect, the Constitution creates the three wings of Government: the Executive, the Legislature, and the Judiciary, and creates offices of the President as head of the Executive (Article 90), the Speaker as head of the Legislature (Article 61), and the Chief Justice as head of the Judiciary (Article 118). The Constitution further assigns functions to each of the three wings of Government, and specific functions to the heads of the wings.

Among the functions of the legislature is to enact laws through the National Assembly. The laws enacted by the Legislature are known as *principal legislation*, and always assign authority to Ministers of relevant Ministries to issue subsidiary legislations for operationalisation of the principal legislation.

Since the Constitution is the authority under which the National Assembly creates various laws, including taxation laws, the Constitution qualifies as a source of Tax law in Zambia.

#### **ii) Statute Law**

State Law or State legislation is that law that comes from the National Assembly and is assented to by the President. It is called an Act of Parliament and is referred to as the *Principal legislation*. Amendment of an Act of Parliament can only be done by the National Assembly through another Act, in that respect, known as *Amendment Act*.

Principal legislations on Tax are all Statute laws created by the National Assembly. The National Assembly is therefore a *bona fide* source of Taxation law.

### iii) **Delegated Legislation**

This is the law made under the authority of an Act of Parliament which allows a specified authority to create subsequent legislation for implementation of the principal legislation. This is called *Subsidiary Legislation*. Subsidiary legislation can be made by:

- a) the Minister through authority delegated by the relevant principal legislation. This is known as Statutory Instrument (SI). A Statutory Instrument is a set of Regulations made by the relevant Minister to operationalise Sections of the principal legislation, A Statutory Instrument is amended by the Minister through another Statutory Instrument.
- b) the local Government authorities, again through the delegated authority from a relevant principal legislation. The laws passed by local Government authorities are known as by-laws.

Ministers issue Statutory Instruments that operationalise the principal tax laws and the local Government also makes by-laws that impose levies that may rightly qualify as taxes. The delegated authority to Ministers and the Local Government is, therefore, a source of taxation law.

### 1. **Judicial precedent:**

Judicial precedent may be defined as “a judgement or decision of a court of law cited as an authority for deciding a similar set of facts” or as “a case which serves as an authority for the legal principle embodied in its decision”. The doctrine of precedent declares that cases must be decided the same way when their material facts are the same.

**2. Mr. Jacket Tembo:**

**Ownership of minerals**

3. (1) All rights of ownership in searching for minerals, mining and disposing of them wheresoever located in the Republic, vest in the President on behalf of the Republic.

(2) This section has effect notwithstanding any right, title or interest which a person may possess in, or over the soil, or under which minerals are found.

**3. Time of Importation:**

- a) in the case of ships and where goods are imported by ship, at the time when the ship first enters the territorial waters of Zambia whether or not in the course of a journey to Zambia;
- b) in the case of aircraft, and where goods are imported by aircraft, at the time when the aircraft makes its first landing in Zambia;
- c) in the case of trains and where goods are imported by train, at the time when the train crosses the borders of Zambia;
- d) where goods are imported by pipeline, the time when the goods are discharged from the pipeline in Zambia;
- e) where goods are imported by means other than ship, aircraft, train or pipeline, the time when the goods cross the borders of Zambia.

(2) The time of importation of any goods imported into Zambia by post shall be deemed to be the time when the goods arrive at the post office where duty is assessed. (S30)

**4. Give the structure of the appeal process in the administration of tax law Zambia.**

From Manager of the station where the dispute originated, to head office, through the ranks to Commissioner General; then to the Tax Appeals Tribunal, to the Court of Appeal and finally the Supreme Court.

5. Dr. Habakkuk Hamatwi:

***Resident***

(3) In this Act, a person other than an individual is resident in the Republic for any charge year if the control and management of the person's business or affairs are exercised in the Republic for that year. In that respect, Dr. Habakkuk will ideally be liable to some tax obligations in Zambia. However, that would be guided by several factors and details. If there is a Double Taxation Agreement (DTA) between Ghana and Zambia, the details of the DTA will guide on what obligations will apply and how they will apply. If, for instance, the income tax rate in Ghana is 30% and the same in Zambia is 25%, by provision of the DTA Dr. Habakkuk may be advised to be paying the 5% difference.

If, however, there is no DTA, the Zambian Government, through the Zambia Revenue Authority, will guide on how the obligations will be treated. Dr. Habakkuk may even argue that he has not been receiving management reports, as updates, and that the actual management is being done in Ghana, in which case he would not be liable for anything.

In all cases though, as a good citizen desiring to be tax compliant, Dr. Habakkuk will be required to ask for guidance from the Zambia Revenue Authority for clarification of his tax obligation position.