



STRATHMORE LAW SCHOOL
MASTER OF LAW (LL.M)
SUPPLEMENTARY EXAMINATION
LLM 8315: TAXATION OF FINANCIAL INSTITUTIONS

Date: **Tuesday, 7th May 2024**

Time: 3 Hours

Instructions

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.
3. This is a/closed-book examination.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

Question 1 (COMPULSORY)

- a) Harambee Investment Bank (HIB), a leading financial institution in Kenya, is launching a new suite of innovative financial products aimed at attracting a diverse range of clients. These products include:

Islamic Investment Funds: Sharia-compliant funds catering to Muslim investors seeking ethical and faith-based investment options.

Microinsurance Products: Affordable insurance products designed to provide financial protection to low-income individuals and communities.

Green Bonds: Debt instruments financing environmentally sustainable projects, offering investors exposure to both financial returns and positive environmental impact.

HIB is committed to responsible business practices and ensuring legal compliance within the Kenyan regulatory framework. However, they are also keen on maximizing the tax efficiency of their offerings while remaining competitive in the market.

You are a legal advisor specializing in financial products and taxation. Harambee Investment Bank has approached you for comprehensive legal and tax advice regarding the following:

- i. Analyse the relevant Kenyan legal and regulatory framework surrounding the launch of each new product category (Islamic Investment Funds, Microinsurance Products, Green Bonds). Identify any specific legal and regulatory hurdles HIB might face and propose solutions to overcome them. **(10 marks)**.
- ii. Discuss the key tax considerations associated with each product category. Examine how HIB can structure these products to optimize tax efficiency while complying with applicable tax laws and regulations in Kenya. Consider both direct and indirect taxes, as well as potential double taxation issues. **(10 marks)**.

- b) Fahari Financial, seeking your expertise in navigating various tax issues related to their diverse product portfolio. Fahari Financial offers:

Mutual Funds: A range of open-ended and closed-ended funds catering to different investor profiles.

REITs: Investing in various commercial and residential properties across Kenya.

Insurance Products: Traditional life insurance, microinsurance, and innovative parametric insurance solutions.

The company is concerned about maximizing tax efficiency while staying compliant with Kenyan regulations and ethical considerations. Additionally, they are looking to expand their offerings and require guidance on the potential tax implications.

Critically assess the tax efficiency of Fahari Financials' existing mutual fund structures, considering investor profiles and relevant Kenyan tax regulations (Income Tax Act). **(5 Marks)**.

Discuss potential optimization strategies, like utilizing tax-efficient instruments within each asset class. **(5 Marks)**.

QUESTION 2

Developing Country X has recently experienced a significant decline in tax revenues, and the government suspects that Base Erosion and Profit Shifting (BEPS) activities by multinational enterprises may be a contributing factor. As a tax policy advisor, you have been asked to analyse the situation and propose recommendations.

Discuss the strategies employed by multinational enterprises to shift profits and exploit tax loopholes, leading to revenue losses for the respective countries. **(8 Marks)**.

Evaluate the potential impact of BEPS on the country's tax base, public services, and socio-economic development **(5 Marks)**.

Discuss two recommendations for Developing Country X to strengthen its regulatory framework and mitigate the impact of BEPS. Consider the need for international collaboration, capacity building, and policy adjustments to address the challenges posed by BEPS. **(2 Marks)**.

QUESTION 3

You are a legal advisor to a group of high-net-worth investors seeking to establish a tax-efficient investment vehicle. They are interested in a balanced portfolio with 60% allocation to domestic equities, 20% to international fixed income, and 20% to alternative investments like private equity. Discuss the key considerations and potential structures for achieving tax efficiency in this context, drawing upon relevant legal principles and practical applications. **(15 Marks)**.

QUESTION 4

Acme Ltd., a Kenyan multinational enterprise (MNE) specializing in manufacturing consumer goods, operates subsidiaries in three African countries: Tanzania, Uganda, and Zambia. The company is considering restructuring its international group structure to optimize its tax position while complying with Kenyan and international tax regulations.

Current Structure:

- i. Acme Ltd. (Kenya) acts as the parent company, generating income from domestic operations and managing its subsidiaries.
- ii. Each subsidiary operates independently in its respective country, with profits taxed under the local tax regime.
- iii. Transfer pricing arrangements are in place for transactions between Acme Ltd. and its subsidiaries.

Challenges:

- i. Acme Ltd. is concerned about potential double taxation of profits earned by its subsidiaries.
- ii. Transfer pricing arrangements face increasing scrutiny from Kenyan tax authorities, raising concerns about potential adjustments and tax liabilities.
- iii. The company wants to explore opportunities for utilizing intangible assets (e.g., trademarks, patents) more strategically.

Advise Acme Ltd. on the following, drawing upon relevant Kenyan and international tax law:

- a) Analyse the key tax challenges and opportunities associated with Acme Ltd.'s current international group structure. **(6 Marks)**.
- b) Discuss three potential restructuring options for Acme Ltd., considering aspects like centralized vs. regionalized approaches, utilizing low-tax jurisdictions, and managing transfer pricing risks. **(6 Marks)**.
- c) Evaluate the legal and practical considerations for Acme Ltd. when implementing each proposed restructuring option, including compliance with Kenyan and international tax regulations, potential treaty benefits, and administrative complexity. **(3 marks)**.

QUESTION 5

Kilimanjaro Ltd., a Kenyan agricultural conglomerate, exports various cash crops to international markets. The company is concerned about the recent volatility in global commodity prices and potential fluctuations in foreign exchange rates impacting their profitability. They are considering implementing a hedging strategy to manage these risks. As a legal advisor specializing in international trade and taxation, advise Kilimanjaro Ltd. on the following aspects of developing and implementing a hedging strategy:

Explain the relevant tax implications of using hedging instruments under Kenyan and international tax law and advise on the most efficient tax optimization strategy **(15 Marks)**.