Suggested solution

Section A

Question 1

Evante Holdings Group Ltd (Evante)

Memorandum for client file

For	Client file
Client	Evante Holdings Group Ltd (Evante)
Subject	Subsidiary company queries – Income tax and value added tax
Prepared by	Tax senior
Date	1 December 2026

These notes are to be used in preparation for a meeting with the directors of Evante.

(a) Transfer of assets and inventory

Intra-group corporate rule

As these are transactions which appear to be taking place between two group companies, the intra-group transfer corporate rule would apply to these transactions. However, the companies need to be members of the same group of companies, which is a threshold of an effective equity holding of at least 70% in each of the companies by the group. This threshold is met as Evante holds more than 70% of the equity in each company.

It should be noted that the rule applies automatically; no opt-in is necessary. The companies, however, can agree in writing to opt out.

The intra-group transaction has the effect for Zane (Pty) Ltd (Zane) of the disposal of the capital asset being at base cost (i.e. the proceeds would be set at R1,000,000, the same as the cost) and the disposal of the inventory being at cost. For Bolte (Pty) Ltd (Bolte), the effect is that Bolte effectively 'steps into the shoes' of Zane, meaning that the capital asset is deemed to have had the original acquisition date, improvements and use as occurred in Zane. Currently, this means that Bolte is considered to have acquired the asset for R1,000,000. Similarly for the inventory, Bolte 'steps into the shoes' of Zane as to the acquisition and any subsequent opening or closing inventory adjustments. This means that Bolte has opening inventory of R2,000,000 and (if none is sold), the same value for closing inventory. Zane would have proceeds of R2,000,000 against which the cost/opening inventory value of R2,000,000 would reduce the effect to nil for taxable income.

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Further, it is important to remember that any capital asset acquired from Zane must be treated as a capital asset by Bolte on receipt. The same is true for the inventory (i.e. it does not matter whether Zane and Bolte have the same or similar trade).

Sale of capital asset and inventory within 12 months

The intra-group transactions rule has an 18-month anti-avoidance rule with respect to subsequent disposals of the assets transferred by, in this case, Bolte. Should such a disposal take place, then consequences outlined below arise. Note that for inventory, the 18-month rule is only applicable if the inventory which Bolte acquires from Zane is not of the type which Bolte regularly and continuously sells in the course of its trade. If it is the same, then the 18-month rule would not apply, and the inventory could be sold as usual with no anti-avoidance rule arising.

For the capital asset, if sold within 18 months, then a capital gain arises from the sale, and the following would occur based on the illustrative numbers. The capital gains which would have arisen if the asset had been sold for market value at the start of the 18-month period (i.e. the transfer from Zane to Bolte) must be treated as an immediate capital gain which cannot be aggregated with Bolte's other capital gains and losses, being R500,000 (R1,500,000 – R1,000,000). As a result, 80% of that gain would be immediately taxed as a taxable capital gain (being R400,000). Further, such amount may not be set off against any assessed loss or current year loss for Bolte. The balance of the capital gain or capital loss for the period from the transfer to the disposal would be recognised under the normal rules, being R200,000 (R1,700,000 – R1,500,000).

The anti-avoidance rule would only apply if the inventory sold which had been received under the corporate rule is a type which Bolte did not already regularly sell. Should the anti-avoidance rule apply for the inventory sold within 12 months, then a portion of the unrealised profit must be immediately recognised. This is calculated as the market value at the start of the 18-month period (R3,600,000) less the inventory cost transferred at that date (R2,000,000). This amount (R1,600,000) must be effectively immediately recognised as taxable income and is an amount against which any of Bolte's assessed loss or current year loss may not be offset. The balance of any realised profit (i.e. above the market value as at the start of the 18-month period) would be recognised under the normal rules, being R400,000 (R4,000,000 – R3,600,000).

Consequences if holding in Zane is reduced

If the percentage holding in Zane is reduced to 45%, Zane ceases to be part of the group. As Bolte has effectively 'stepped into the shoes' of Zane for the assets transferred, there is no tax risk and therefore no new or anti-avoidance tax effects arise as a result of the earlier intra-group transaction.

(b) Serant (Pty) Ltd (Serant) acquisition of business by means of a loan

This is a loan from the shareholder (Evante) to the company (Serant). While they are connected persons, this is a transaction between resident persons. No transfer pricing

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applies. Similarly, no equity is sought from this loan, and so no anti-avoidance rule arises in this regard. That the repayment terms are open ended and that no interest is to be charged appears not to create any specific South African tax implications for either Evante or Serant.

Serant's trade has been loss-making for some time. The facts supplied imply that the newly acquired trade will expand the diversification of the group and is therefore not a similar trade to that already contained in Serant. This business acquisition results in income for Serant against which Serant hopes to use its assessed losses. However, should the Commissioner consider that the sole or main aim of the acquisition was for Serant to utilise the assessed losses, the new trade may be ring-fenced from the loss-making trade and only profits from Serant's original business may be used against the assessed loss. If that trade is discontinued, the further risk is that the assessed loss is lost altogether. The group has made the argument that the acquisition is not only for tax efficiency through utilisation of the losses in Serant, but also to further diversify the business activities of the group. The burden of proof will rest with Serant to demonstrate that the main purpose was the diversification of the group business interests rather than utilisation of the losses in order to achieve the sought tax efficiency.

From a value added tax (VAT) perspective, it would also be important to ensure that the written agreement for the acquisition of business specifies it being the acquisition of a going concern for which the VAT rate may then be set at 0% for this taxable supply, otherwise the added VAT to be paid on the acquisition would have detrimental cash flow effects.

(c) VAT issues

Acquisition of mixed-use property by Unje (Pty) Ltd (Unje)

Unje is a VAT vendor currently supplying 100% taxable supplies at the standard rate.
The acquisition of the residential building with the intention to convert it to mixed use raises a number of issues.

Since, on acquisition, there is the intention to utilise 30% of the property for the purpose of making taxable supplies, a notional VAT claim would be permitted based on the use of the building. The notional input VAT would be determined as R15 million x 15/115 x 30% use = R586,957. Although transfer duty of R1,505,600 (([R15 million – R12.1 million] x 13%) + R1,128,600) would have arisen on the acquisition of the building, the transfer duty is not included in consideration and the notional input VAT % is not impacted by the transfer duty.

Expenses pertaining to the conversion into commercial rental (a taxable supply) and the residential rental (an exempt supply) and which can be allocated to one or the other directly will follow that treatment (i.e. expenses for taxable supplies generate input tax claims and expenses for exempt supplies result in no input tax claims). In this case, the conversion costs for the commercial rentals would trigger a VAT input claim of R1,304,348 (R10 million x 15/115). However, the project management costs apply to the

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entire building and would have to be apportioned. While the usual method would be turnover based, in this case the most appropriate apportionment mechanism (which would have to be approved by the Commissioner) would be based on the building use (likely floor space). Thus, the project management costs would result in an input deduction of R19,565 (being R500,000 x 15/115 x 30%).

South African transactions of Tangoer Ltd (Tangoer)

First, it must be established whether Tangoer must register for VAT. It is a company which is not resident but, by virtue of its online platform (electronic service), could earn fees from South African customers. Even if Tangoer does begin to earn fees from South Africa, it would need to earn more than R1 million in taxable supplies made regularly and continuously in a 12-month period before being required to register for VAT. So, there would be no immediate obligation to register. As the fee is only a percentage of the sales price agreed by the buyers and sellers on the platform, the taxable supply for Tangoer is only the fee in respect of the use of the platform.

It is unclear whether the fee Tangoer charges for the collection and delivery of the goods is a fee earned by Tangoer or a reimbursement for costs incurred. It seems though that as Tangoer sets the fee and charges the fee, it may be a supply by Tangoer but the exact nature of this transaction requires deeper analysis.

Tangoer appears to use sub-contractors for the collection and delivery of the goods. If Tangoer contracts the services for delivery outside South Africa (and the sub-contractors are registered VAT vendors), such services may be zero rated by the sub-contractor to Tangoer. But VAT at the standard rate would be charged by the sub-contractor should goods be shipped within South Africa (but is likely to be claimed as an input deduction if the recipient is a registered VAT vendor).

For South African customers receiving goods and making payment of the agreed fee to Tangoer, the amount received by Tangoer is not for its own benefit but for the benefit of the selling customer on the platform. However, part of the fee is withheld by Tangoer, and the source of the income must be established. It is clear that no permanent establishment exists in South Africa (as the online platform is used), the source rules do not appear sufficient to allow the levying of South African income tax on the amount paid. That the payer is in South Africa is insufficient to levy the tax.

If the seller is in South Africa, the fee being paid is for services rendered by Tangoer in South Africa by virtue of the customers' use of the platform, therefore the lack of permanent establishment again prevents the taxation of the fees.

(d) Ethical considerations

The client's request to prepare a transfer pricing manual that "pushes the limits" of acceptable ranges raises significant ethical issues under the ACCA Code of Ethics and Conduct. The most relevant affected principles are integrity, objectivity, professional competence and due care, and professional behaviour.

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As the request suggests an intention to manipulate transfer pricing outcomes to achieve tax savings rather than reflect arm's length conditions, we should not be associated with such misleading information. Our integrity is at risk. Next, the tax manager's pressure to comply or face moving the business to another firm risks compromising our professional judgment and restricting our objectivity. We should guard against such pressure. "Pushing limits" rather than performing genuine comparability analyses risks the firm failing to meet professional and technical standards. The aggressive position advocated by the tax manager risks bringing the profession into disrepute if we agree. This is in violation of our duty of professional behaviour.

The Code also requires threats to be identified and addressed. In this instance, these are self-interest (based on the firm's desire to retain the client and the related fees), advocacy (acting to promote the client's aggressive position), and intimidation (explicit pressure from the tax manager to support an aggressive outcome).

We should inform the client that the firm cannot support the creation of a transfer pricing manual that pushes beyond what is ethically and technically defensible. Instead, we should offer to prepare a transfer pricing manual based on proper benchmarking and applicable standards. If the manager insists on an aggressive position and the threats cannot be reduced to an acceptable level, we should decline or withdraw from the engagement.

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Question 2

(a) Shareholder loan

It should first be pointed out that Esme is a connected person to the company Estripar (Pty) Ltd (Estripar) by virtue of her shareholding of 24% (greater than 20% and she is a natural person). As a non-resident connected person with which the company is transacting (via the loan), it must be considered whether the transaction is at arm's length or not and whether a benefit arises which would generate a transfer pricing adjustment.

It is clear from the supplied information that the loan has been granted by Esme (a non-resident) to the company (a resident) at terms which would not apply as between independent parties. A third-party bank would have made the same loan with an interest rate of 5% per annum. However, even though these conditions exist, it must be established whether a 'tax benefit' arises for either Esme or Estripar. A 'tax benefit' is defined as the avoidance, reduction or postponement of any liability for tax (with tax being that levied under the Income Tax Act).

Estripar (Pty) Ltd

In this circumstance, the company benefits from not having to pay interest on the loan. As this results in no deduction, there is no avoidance, reduction or postponement of tax for the company.

Esme as a non-resident

Esme, in not charging interest, has an unchanged taxable income from a South African income tax perspective. With no interest charged, she has no taxable income in South Africa. There is, however, no avoidance of South African income tax as even if interest were to be charged, then, as a non-resident, the South African sourced interest (as a result of the utilisation of the debt in South Africa) would be fully exempt for normal tax purposes as (i) she has not been in South Africa for more than 183 days and (ii) does not have a permanent establishment in South Africa. Should these last two factors, on further investigation, be found to be incorrect, then a tax benefit may arise.

As there is no 'tax benefit' (and hence no difference in taxable income should the transaction have taken place between independent parties) which would result in any avoidance, reduction or postponement of any tax liability, no transfer pricing adjustment arises.

Esme as a resident

Once Esme becomes a resident, the transfer pricing adjustment would no longer even need to be considered as the transaction (the loan and its interest terms) would now be between two parties who are tax resident in South Africa (despite the loan being denominated in Euros).

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Foreign exchange gains and losses irrespective of residence

For the company, the on-going loan in Euros would require the company to recognise unrealised foreign exchange gains or losses at the end of each tax year and realised foreign exchange gains or losses on making any repayment of the loan. Unless the loan was treated by Esme as trading stock, she would not recognise the unrealised or realised exchange gains or losses. The loan would be a capital asset and for South African tax purposes, its base cost would be its market value at the time she became a resident (before she becomes resident, the asset would not be recognised for capital gains tax purposes). Subsequent repayments of the loan would be part disposals by her of the foreign (loan) asset. The relevant currency translation rules would have to be applied for capital gains tax (which effectively include any currency gains and losses in the capital gain or capital loss of this part disposal by Estripar).

(b) Trust distributions

Whilst Esme is a non-resident, no South African income tax implications arise from distributions to her.

However, once she becomes a resident, several implications arise. First, with respect to distributions of income, the trust on distributing income to Esme would be considered to vest such amount in Esme. For income not distributed as an annuity, the underlying income would retain its nature (i.e. dividends remain dividends, and interest remains interest etc.). Further, in such cases, as the income retains its nature, the applicable exemptions to such income would also apply. For a distribution drawn from foreign dividends, as there are no substantial holdings, the general foreign dividend exemption would apply (being 25/45 of the gross foreign dividend). Foreign dividends arising from dual-listed companies would remain fully exempt (as would South African dividends). For interest, the foreign interest would be taxable in full, but the South African interest would be subject to an annual exemption of up to R23,800 (as Esme is under 65 years of age).

Tutorial note: The foreign trust would be created when Esme is a non-resident. As a result, there are no South African tax implications of her disposal of the investments to the trust. This includes the South African holdings in South African collective investment schemes, as these are not attached to any permanent establishment in South Africa.

(c) Acquisition of a primary residence either by Esme or the foreign trust

Should Esme acquire the primary residence directly, the base cost would be generated (being the transfer duty incurred plus acquisition costs). On subsequent sale, she would benefit from the first R2 million of the capital gain being exempt from capital gains tax.

If the foreign trust was used to acquire the house, then a number of issues arise. If the foreign trust owns the property, capital gains tax still arises as the property is immovable property situated in South Africa. Sale of the property would also result in non-final withholding tax on the sale of 10% of the proceeds. This can be reduced if the actual

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capital gain can be demonstrated. As Esme would have been living in the property as a primary residence, if the capital gain realised is distributed to Esme, she may still be able to make use of the primary residence exemption.

If Esme makes an additional loan to the trust, the deemed donation does not arise for this further amount of loan as Esme would use the property as a primary residence. As she would live rent-free, there is no trust income to attribute to her. Based on the same reasoning as for the loan to Estripar (Pty) Ltd, no transfer pricing adjustment would arise. Thus, the rent-free nature of the arrangement generates no additional South African tax consequences.

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Question 3

(a) Secondment package

The fringe benefits considered for this secondment generate different tax effects.

The apartment supplied by the employer generates no fringe benefit as it has been supplied by the employer to Charan as a residence while he is away from his 'usual place of residence'. No calculation is therefore needed as no tax effects arise.

The reimbursement of the public transport expenses, to the extent Charan is being reimbursed for business travel, will generate no South African tax consequences. However, should the reimbursement cover travel costs from home to the office (return) or other personal trips, then the amount should be included in Charan's gross income.

The additional cost-of-living allowance is usually paid to allow the employee to defray expenses which in that location are in excess of the equivalent expenses in South Africa (for example, higher food prices, etc.). As these relate to private costs, such allowance will be subject to South African income tax and included in the gross income of Charan.

The return flights for Charan and his wife for holidays in South Africa during his secondment are all fully taxable. A possible exception may exist if Smalltown is a travel operator, but this is unclear from the information supplied.

The share benefit scheme would not have any tax impact until 1 March 2029, when the shares would vest. The vesting takes place on 1 March 2029, the start of the third year of the secondment. A gain of R300,000 would arise (being (R35 – R5) x 10,000 shares), but two years of the five-year period pertain to his period of foreign service. The gain must be apportioned to the period of service for the application of the foreign service exemption (see below).

For the duration of the secondment (set to last for each of the tax years of 2028, 2029 and 2030), a foreign service exemption is possible for Charan. The conditions are that it applies up to R1,250,000 in each calendar year, apportioned by workdays spent outside South Africa over total workdays for the year. As Charan only has a holiday in South Africa, all workdays are outside South Africa for the secondment years, so days apportionment is unnecessary.

Further, as the cash salary alone already exceeds the maximum exempt amount for the foreign service exemption, all the fringe benefit amounts identified above would be fully taxable based on the inclusions before the application of this exemption.

Should Islandia levy any income taxes on the employment income, these should qualify as a credit against the South African income tax but limited to the equivalent South African tax levied.

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(b) Implications of selling family home

For both options, the capital gain (before any exemptions) would be the same based on the supplied values, being R2,250,000 (R9,000,000 – R450,000 – R1,500,000 – R4,800,000).

However, the application of the primary residence exclusion to reduce the capital gain will differ.

Should Charan sell the primary residence within one year of returning, the capital gain attributable to the period when Charan was renting the property would be excluded from the application of the primary residence exclusion. Whereas, if he sells the property after living in it for more than one year after the period in which it was rented (which is limited to a maximum of five years), then the gain need not be apportioned and the full gain is subject to the primary residence exclusion.

The calculations would be as follows:

Disposal	**Within 1 year**	**After 1 year**
	R	**R**
Capital gain	2,250,000	2,250,000
Less portion attributable to rental period: R2,250,000 x 3 years/15	(450,000)	
Gain subject to the primary residence exclusion	**1,800,000**	**2,250,000**
Less primary residence exclusion (R2,000,000 limited to the gain)	(1,800,000)	(2,000,000)
Add back taxable portion of the gain	450,000	
Gain to be aggregated with other capital gains and losses	**450,000**	**250,000**

R200,000 less capital gain would be taxed if he defers selling until the one-year period has passed. However, the numbers here remained constant and the calculations would have to be revisited should the property price trends indicate that, during the one-year wait, the property disposal would produce an extra capital gain which would outweigh the amount of gain saved by avoiding having a portion of the gain attributed to the rental period.

Ceasing to be a resident and estate duty

If Charan retires at the end of the secondment and only emigrates at that point, he will be deemed to have disposed of all of his assets for capital gains tax purposes, apart from his house (as it is immovable property in South Africa). There does not appear to be any permanent establishment which would remain in South Africa.

However, of the assets which are disposed:

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The personal use assets generate no tax consequences, as any capital gain or capital loss is disregarded. Similarly, the bank deposit of R400,000 generates no capital gain or capital loss as the proceeds and base cost are equal.

The pension is not considered as an asset for disposal as the benefit remains in the fund.

The investments do generate a capital gain, based on the supplied figures, of R1,600,000 (R3,000,000 – R1,400,000). If Charan sells his house immediately, then the consequence of a capital gain of R450,000 (see (b) above) would also arise. This capital gain arises from the actual disposal of the house and is not a deemed disposal as a result of the emigration.

If Charan emigrates, he would cease to be ordinarily resident. He would have to make the necessary declarations to the South African Revenue Service and apply for the necessary tax clearances for moving any money to Islandia from South Africa. He would also have to provide evidence that the ordinary residence link is genuinely broken, after which SARS would issue a letter verifying the cessation of residence.

The estate duty positions while resident versus when he is no longer resident will also differ significantly:

Asset	**Resident**	**Non-resident**
	R	**R**
House	9,000,000	0
Personal assets	1,500,000	0
Investments	3,000,000	0
Cash	400,000	0
Total assets	**13,900,000**	**0**

As the house would have been sold when he ceased to be a resident, there appears to be no assets which would constitute ‘property’ for estate duty purposes once Charan is no longer ordinarily resident.

Tutorial note: Should the house be unsold after ceasing to be resident, but on death, then, as immovable property in South Africa, the house would remain subject to estate duty. Information on the liabilities of the estate are not available, nor are the charges which would be levied to wind up the estate. These would reduce the value of the estate. The abatement of R3,500,000 applies whether the person is resident or not.

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(c) Pension options

Taxable income	**Full annuity**	**Mostly annuity**
	R	**R**
Full annuity (R63,500 x 12)	762,000	
Partial annuity (R60,000 x 12)		720,000
Investment income from dividends (exempt)		0
Interest (less than R34,500, so exempt)		0
Taxable income	**762,000**	**720,000**
Tax per the tables (R762,000 – R673,000) x 39% + R179,147	213,857	
Tax per the tables (R720,000 – R673,000) x 39% + R179,147		197,477

Both qualify for rebates of R26,679 (being R17,235 + R9,444).

Cash for the year	**Full annuity**	**Mostly annuity**
	R	**R**
Full annuity (R63,500 x 12)	762,000	
Partial annuity (R60,000 x 12)		720,000
Investment income from dividends		28,000
Interest		12,000
Cash received	**762,000**	**760,000**
Less tax (after rebates) (R213,857 – R26,679)	(187,178)	
Less tax (after rebates) (R197,477 – R26,679)		(170,798)
Cash	**574,822**	**589,202**

Initially, more cash is expected if the tax-free amount is taken and invested, and the rest converted to an annuity. The investment of this tax-free amount could also ultimately be sold for a capital cash amount should the need arise.

Tutorial note: The annuity is unlikely to be fixed and is usually sold with some form of inflationary or other escalation built into the determination of the annuity. In the short term, the investment is a better option, but a more detailed calculation would be required for financial advice.

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Mark scheme

Question 1

(a) Transfer of assets and inventory

Corporate rule	4
Tax treatment of capital asset and inventory	5
Sale of capital asset and inventory:	
Capital asset	5
Inventory	5
Consequences of holding reduced	2

Maximum 18 marks

(b) Serant (Pty) Ltd acquisition of business using loan

Interest-free loan	3
Introduction of new business	6

Maximum 7 marks

(c) VAT obligations

Unje (Pty) Ltd	5
Tangoer (Pty) Ltd	7

Maximum 10 marks

(d) Ethical considerations

Impact on ethical principles	4
Actions	2

Maximum 5 marks

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Professional skills marks:

Communication

General report format and structure (use of headings, sub-headings and an introduction).

Style, language and clarity (tone of report response, presentation of calculations, appropriate use of the tools, easy to follow and substantive amount of content).

Analysis and evaluation

Clear and logical approach taken to the transfer of the capital asset and inventory addressing all matters and using appropriate quantification where relevant.

Response in relation to VAT considers relevant information and applies appropriate judgement to arrive at conclusions.

Commercial acumen

Assessment demonstrates insight to the business diversification rationale and business purpose for assessed loss disallowance application.

Scepticism

Ethical considerations in respect of the request for an aggressive transfer pricing manual are fully explored.

Maximum 10 marks

Total 50 marks

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Question 2

(a) Shareholder loan

Transfer pricing	2
Estripar (Pty) Ltd	2
Esme resident / non-resident	4
Foreign exchange gains and losses	3

Maximum 9 marks

(b) Foreign investments to foreign trust

Trust distributions	5

Maximum 5 marks

(c) Acquisition of a primary residence

Esme direct acquisition	2
Foreign trust acquisition	4
Rent-free use of house	2

Maximum 6 marks

Professional skills marks:

Analysis and evaluation

Advice includes structured analysis of the income tax implications of trust distributions.

Evaluation considers information available and appropriately concludes on any resulting income tax issues.

Commercial acumen

Evaluation recognises key issues in relation to the interest-free loan and clearly shows the impact of a change in Esme's residency.

Maximum 5 marks

Total 25 marks

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Question 3

(a) Fringe benefits on secondment

Apartment/cost of living allowance	6
Foreign service exemption	2

Maximum 7 marks

(b) Family home sale

South African income tax implications	4
Cessation of residence and estate duty	5

Maximum 7 marks

(c) Pension options

Calculations	5
Advice	1

Maximum 6 marks

Professional Skills Marks:

Analysis and evaluation

Clear and logical approach taken to the tax implications in respect of his secondment package.

Assessment of income tax effects appraises the information in a structured manner and addresses all matters.

Commercial acumen

Advice to Charan on his pension fund shows insight into his situation and arrives at appropriate recommendation.

Maximum 5 marks

Total 25 marks

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