

**Taxation and Revenue Law
Examination March 2009
Examiner's Comments**

Question 1

This question was answered by most students. Although reasonably well answered a number of students overlooked, and did not offer any comment on, the fact that the salary being paid to Smith (and other offices expenses relating to Smith) from February 2004 to February 2008 were not related to the earning of assessable income by World Publications but the acquisition of other publications.

It was necessary for students to express a view as to whether these outgoings were capital, or (less likely) could be recognized as revenue outgoings in the context of the kind of business being carried on.

Question 2

Most students did this question.

Part A

This Part was reasonably well answered and students recognized that there was a distinction to be made between Mary and Kathryn ie., Kathryn appeared to have “crossed the line” and gone from being an amateur to a professional. Surprisingly, however, although students mentioned section 6-5 a number of students failed to make any mention of section 15-2.

Part B

This question was very poorly answered. A number of students simply overlooked the capital gains tax implications raised by the question.

Question 3

Not many students answered this question. However those that did answered it reasonably well.

Some students overlooked the application of Division 128 when dealing with the sale of the “Brownvilla” property. Also a number of students did not mention Division 6AA although they referred to the trustee being liable under section 98(1) in relation to the \$10,000 applied to the benefit of Hope and Charity.

Question 4

This question was attempted by most students and generally well answered, particularly parts (a) and (b).

The main problem area for some students appeared to be part (c) involving dividend imputation. In this regard a number of students confused the “debits” with the “credits”, and also used the incorrect fraction when doing calculations.

Question 5

Part A

This question was answered reasonably well, although some students overlooked the fact that section 8-1 allows for apportionment. Also in regard to the facsimile a number of students recognized it was a capital outgoing but failed to mention Division 40 (capital allowances).

Part B

This part of the question was poorly answered. A number of students were not able to clearly articulate the legal reasoning for the differences in the decision between *McCauley's* case and *Stanton's* case.

Also a number of students did not recognize that royalties will invariably be covered by section 6-5, and not section 15-20 due to the unusual drafting of the later provision (to only include royalties at common law that are not otherwise ordinary income).

Question 6

Part A

Students generally answered parts (a) and (b) well and recognized it involved a discussion of *Carden's* case and *Henderson's* case.

The standard of answers to part (c) was poor. A number of students did not seem to recognize the issue sought to be raised by part (c). Part (c) required students to refer to section 25-35 and *Point's* case ie., the requirements for claiming a deduction for bad debts.

Part B

This question required students to consider Division 165 and to express the “continuity of ownership test” and “same business test” in clear concise language. It was generally reasonably well answered.