

**Taxation and Revenue Law  
Examination September 2008  
Examiner's Comments**

**Question 1**

This question was answered by most students.

**Part A**

Students generally were able to refer to the relevant factual matters that are important in determining whether gratuitous receipts are in the nature of income or true gifts.

The standard of analysis varied between students. The better students were able to canvass the issues more broadly. Those students also expressed the principles in clearer terms. For example, in discussing gold medals won at Olympic Games the better students did not take a rigid approach but canvassed the various scenarios ie., the differences between a professional and an amateur.

Students should also have made reference to section 15-2, but this was often overlooked.

**Part B**

Most students discussed the issues raised by *Carden's* case reasonably well.

**Question 2**

Not many students attempted this question.

**Part A**

In regard to the first rental property a lot of students overlooked the fact that the assignment to the right to future rent would be a post-September 1985 asset.

The second part of the question concerned the calculation of the cost base in respect of the second rental unit. This required a simple analysis of the outgoings to determine which outgoings were immediately deductible versus those amounts which went into the cost base. However this part of the question was not well answered. A number of students appeared to be uncertain as to the distinction between revenue and capital outgoings.

**Part B**

This question was very poorly answered. It required students to consider *California Oil Products* (ie., characterization of receipt of compensation is not how it is calculated but what it is paid for).

Also students had to discuss the implications where the compensation payment was made up of income and capital elements; see *Allsop's* case. Also students needed to recognize that the payment was likely to exempt from capital gains pursuant to section 118-37.

### **Question 3**

#### **Part A**

Not many students answered this question. However those that did answered it reasonably well. The question involved a discussion of the *Arthur Murray* case. It also raised the issue of whether an amount was deductible even though it was not directly productive of assessable income; see *Herald & Weekly Times*.

#### **Part B**

Some students seemed confused as to the issues that needed to be canvassed. The extended concept of business proceeds required students to refer generally to *Myer Emporium* and *Scottish Australia Mining*, and section 15-15 (profit making undertakings or scheme).

### **Question 4**

#### **Part A**

This question was attempted by most students and generally well answered.

#### **Part B**

This question required students to generally consider the differences between direct and indirect taxes. It was surprisingly very poorly answered given that the issues are simply and had been canvassed in lectures (both during the night lectures and weekend schools). Further the issues are almost a matter of common knowledge eg., the differences between a progressive tax versus a regressive tax.

### **Question 5**

#### **Part A**

This question was answered reasonably well, although a number of students overlooked the fact that the trust was created by John Smith for the benefit of his children and accordingly section 102 applied to Ruth.

Also most students in calculating net income incorrectly deducted \$5,000 from the interest income. The \$5,000 for establishing the trust is capital and not deductible.

## **Part B**

This part of the question was poorly answered given it is relatively straight-forward and involved a simple calculation of depreciation under Division 40.

A number of students also kept referring to capital gains tax. Capital gains tax has no application to depreciating assets and in this regard students should have referred to see section 118-24.

In respect of the three scenarios where the depreciating asset was sold students had to consider section 40-285.

## **Question 6**

### **Part A**

The standard of answers to this question was generally poor. Some students failed to recognize that the fact situation was the same as in *Ure's* case.

Also in applying Part IVA students simply stated the criteria for its application but failed to apply it to the factual situation. In particular very few students sought to identify what was the “tax benefit”. Clearly the tax benefit being obtained by George was that, but for the scheme, he would not have got the tax deduction.

### **Part B**

Most students were unable to give any explanation for the definition of “royalties” being included in the legislation. In this regard they needed to refer to *United Aircraft* and subsequent amendments to the tax legislation ie., section 6C deeming a source in Australia for the purposes of section 6-5.

**23 September 2008**

**A J O'Brien**