

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

**Question 1**

**Part A**

This question was answered by most students. Although reasonably well answered a number of students, where they were uncertain of an answer to a sub-part of the question, simply left gaps ie., made no attempt to provide any analysis that might lead to an answer.

Another weakness was that students would comment generally on the subject area but not answer the specific facts in the question. For example students recognized in sub-part (7) that the machine was subject to capital allowance under Division 40 but provided no comment as to the fact that the particular machine referred to had only an effective life of 6 months.

**Part B**

This question was surprisingly poorly answered by most students. Some students failed to give any factual background as to what occurred in the cases referred to, as requested in the question.

In regard to *Tennant v Smith* most students completely overlooked the fact that if the same situation occurred today the benefit would not be assessable under section 15-2 but liable as a fringe benefit.

**Question 2**

Most students did this question.

**Part A**

This Part was reasonably well answered. Students generally recognized that James would be liable on the proceeds from the sale of his story and the issues arising as to whether the income would be sourced in Australia or not.

**Part B**

This standard of answers to this question varied. It was important to recognize that initial repairs are not deductible for two reasons. Firstly the "repair" often results in an improvement to the item and therefore a capital outgoing. Secondly section 25-10 contemplates a deduction for repairs where the defects arise from the current user using the item to produce his assessable income. Students often mentioned one or the other but not both reasons.

### **Question 3**

#### **Part A**

Students who answered this question generally answered it either well or very poorly.

#### **Part B**

This was poorly answered. Students (despite being told in lectures) were mostly unable to explain the background to the definition of “royalties” being included in the legislation ie., to overcome the decision in *United Aircraft* and to avoid any difficulties under the Double Tax Agreement as to jurisdiction to tax.

### **Question 4**

#### **Part A**

This question was attempted by most students and generally poorly answered. Many students seem to be completely confused as to both the events giving rise to franking debits and credits, and the amounts of those debits and credits. Those students who understood the topic were able to answer the question succinctly and scored high marks for their answer.

A surprising number of students sought to “adjust” the amounts given when no adjustment was required.

Similarly to below (in respect of Q6A) students were not prepared to do simple calculations; see further below. This is unsatisfactory and students were marked down for not completing the calculations. For example one student recoiled from completing the following calculation to determine the amount of the franking credit:

$$7000 \times 30/70 = ?$$

#### **Part B**

This question was also not well-answered by students. Often the student’s analysis of the decision in *BP Petroleum* was either very superficial or not quite on point.

### **Question 5**

#### **Part A**

This question was not answered very well. Many students overlooked the fact that the trust was settled by the father of the children of the trust and therefore section 102 had application.

## **Part B**

This part of the question was poorly answered for an easy question. A number of students simply chose to ignore the last part of the question ie., whether it was preferable to appeal to the Federal Court or the Tribunal where section 108 was involved.

A number of students did not properly set out the relevant factors in choosing between the Federal Court or the Tribunal despite such factors being the subject of a list in the textbook.

## **Question 6**

### **Part A**

This question was very poorly answered. A number of students did not attempt the simple calculation involved in properly answering the question or covered the page with wrong calculations.

For example some students would put in the formula for one of the required calculations but state that it was too complicated to calculate. One formula required to be calculated (but said to be too complicated) was as follows:

$$\$100,000 \times 365/365 \times 200\%/4$$

The answer is \$50,000. It is not acceptable nor accepted that a student is unable to do such a calculation. If the student fully understands the theory the calculations are straightforward.

A number of students had no difficulty in answering this question and scored high marks for answer.

### **Part B**

This question was poorly answered. Few students sought to canvass either section 21A or section 15-2 in respect of the benefit received by Geoff. Also in considering the application of Part IVA very few students were able to articulate what was the possible "tax benefit" sought to be achieved by the arrangements.