

**Taxation and Revenue Law
Examination March 2018**

Examiner's Comments

Question 1

This question was generally well answered by students.

Although deductibility of the payments was an issue the main issue in the question was capital gains. It required students to identify the capital gain tax consequences of entering into a restrictive covenant agreement, and the cancellation of such an agreement before the date of expiry of the agreement.

Some students virtually ignored capital gains and only discussed the deductibility of the payments and whether the receipts were assessable as income.

In discussing the deductibility of the advertising expenses many students overlooked the fact that it was difficult to discern any nexus between the expenses and the earning of the assessable income given that the advertising took place in regions where this brand of shoes was not sold.

Question 2

This question involved a discussion of the principles in *Scottish Australian Mining* and *Whitford Beach*. If the land was ventured into a commercial venture the students should thereafter have discussed whether the profit should have been included as income in assessable income of the taxpayer and the calculation of the profit.

The second half of the question involved a calculation of a capital gain based on an A1 event.

Students often considered in detail *either* the profit being of an income nature (and what the amount of that profit was) or the capital gains implications. The question required both aspects to be discussed in equal measure.

Question 3

This question was not well answered.

A surprisingly large number of students failed to set out the tests of residency for individuals and companies, or stated the tests incorrectly.

Also students often started by considering the residency of Grandchester Ltd when this was largely dependent on the residency of Harry. Harry was a 60% shareholder in the company. In other words the residency of Harry should have been considered first and then the company.

This meant a lot of students overlooked that fact that Grandchester would be a resident of Australia if Harry was a resident. There was no doubt that Grandchester carried on business in Australia through the activities of Harry, although some students incorrectly found that Grandchester was not carrying on business in Australia.

Question 4

This question was not well answered.

Students had trouble identifying the tax benefit for the purposes of Part IVA. Furthermore the discussion of Part IVA was intermingled with *Ure's* case when this involved two different provisions and should have been considered separately.

Many students did not attempt to apply the law to the facts in determining whether or not the Commissioner was within time to amend the assessments, and were generally uncertain as to the applicable time limits.

Question 5

This question involved the calculation of the taxable income of Fresh Produce. Students generally determined the taxable income and also calculated correctly the capital allowance available in respect of the forklift trusts.

However, a number of students did not seem to understand the franking of dividends and the calculation of the debits and credits to the franking account. Also some students overlooked the application of Division 7A in respect of the salary paid to Gary and the loan to Susan.

Dated: 5 March 2018