Examiner’s Comments

Question 1

This question caused problems with some students.

Students generally expressed the provisions dealing with the deductibility of carried forward losses correctly. However not many students were able to clearly identify how the change of share ownership in the company impacted on the availability of the tax losses for the three years.

In particular students often overlooked an important requirement for the company to satisfy the continuity of ownership test being that only the same shares held by the same shareholders are able to be taken into account in applying the test; s.165-165.

Question 2

Many students overlooked Division 128 concerning the brothers being deemed to have the same cost base as their deceased father when they inherited the hotel.

Thereafter the question involved a discussion as to whether the gain was on income or capital account. This involved inter alia a discussion of the principles in Scottish Australian Mining, Westfield and Whitford Beach.

Often the students correctly stated the principles but made limited attempts in applying those principles to the facts in the question. In particular the students should have considered the application of the principles in the context of each of the three different factual situations outlined in the question.

Some students would put in assumptions in their answers such as ‘if the property was purchased by the taxpayers with a profit-making purpose the gain would be on income account’. This merely begs the question. Students are expected to take the facts as given in the question and based on those facts express a conclusion.

Question 3

This question dealt with the taxation of trusts and beneficiaries and was generally well answered.

Some students lost marks for failing to refer to the relevant taxing provision. For example, students would correctly state that the amount was included in the assessable income of Mary but not bother to refer to the relevant taxing provision i.e., s.97.
**Question 4**

This question was generally well answered.

Students recognized the difference between repairs and capital improvements, the application of s.21A/s.6-5 to the barter transaction and FBT.

One issue students’ tendered to overlook was stating that the cost to the employer of providing the fringe benefit to the employees was tax deductible to the employer.

**Question 5**

This question involved a consideration of residency and source of income. Most students correctly considered the principles in *French* and *Mitchum* and expressed a conclusion based on the facts.

A lot of students recognized that the amounts paid by way of royalties to Rig Fires was sourced in Australia but incorrectly referred to s.15-20, instead of s.6-5 (and a reference to s.6C deeming the royalty to be sourced in Australia).

Students often stated that the bravery award was assessable under s.6-5 or 15-2. This is very unlikely and few students sought to put forward any logical argument as to reasons why neither provision should apply.

Dated: 12 September 2018