Examining March 2019

Examiner’s Comments

Question 1

This question was straight forward but not well answered by students.

Students did not clearly state the tests for residency or, if the tests were stated, did not state the tests correctly.

When dealing with the residency of Jerry most students ignored the first test (i.e., where does he reside) and immediately went to the ‘6 month test’. Furthermore in applying the ‘6 month test’ students generally ignored the exclusions from that test. In other words even if Jerry had been in Australia for over half a year, he would still not be a resident of Australia under that test if the Commissioner was satisfied his usual place of abode was outside of Australia and he did not intend to take up residence in Australia.

Question 2

Students generally answered this question reasonably well even if the amounts calculated were not entirely correct.

The main failing on this question was the oversight by some students in not considering the application of s.109 and Division 7A in respect of the payments made to Tom and Dick who were associates of the shareholders in Acme Pty Ltd.

Question 3

This question was not well answered.

Students did not seem to recognize the limited application of s.15-20 as compared to s.6-5, or the difference between common law royalties or royalties as defined in the ITAA 1936. Many students failed to consider the capital gains tax implications of the restrictive covenant entered into by Austco Batteries with National Batteries.

Question 4

This question was reasonably well answered.

A number of students failed to read the preamble to the question which caused those students some confusion in answering some sub-parts of the question. The preamble stated that unless otherwise stated all purchases were made post September 1985.
Question 5

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 (based on the market value of the land at the time it was committed to the profit-making venture).

The second half of the question involved a calculation of a capital gain based on an A1 event (based on the original cost of the land to the taxpayer).

Very few students attempted to undertake the calculation of the income gain and capital gain (which was a simple calculation) so as to distinguish between the income gain and capital gain or the implications flowing from the gain being both of an income nature and capital nature.

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.

Students were also not very clear in the rules governing the time limits within which the Commissioner had the power to amend the assessment.

Dated: 18 March 2019