Taxation and Revenue Law
Examination September 2019

Examiner’s Comments

Question 1

This question was straight forward and reasonably well answered by students.

However some students were confused about the manner in which capital gains is calculated as part of taxable income. Students determined the net capital gain and identified it as being taxable and then did a different calculation for taxable income by taking into account assessable income (such as rent) but excluding capital gains.

Students generally recognized (correctly) that amounts that are deductible are not included in the cost base in calculating the capital gain.

Question 2

Students did not answer this question well. Then answers involved either a discussion of whether the profit was assessable under s.6-5 as ordinary income (or under s.15-15 for pre-CGT properties) or as a capital gain.

The fact that any profit arising might be assessable as both an income and capital gain (with the capital gain being reduced by the income gain) did not seem to be recognized by most students.

Students who only considered capital gain invariably failed to discuss the principles established in Scottish Australian Mining, Whitford Beach and Westfield as to whether the gain might be of an income character and assessable under s.6-5.

Question 3

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.

Few students recognized that a loan given to an associate of a shareholder is deemed to be a dividend even though the loan might have been provided to the shareholder in the capacity of an employee. In other words with this kind of fringe benefit Division 7A takes precedence over FBT; s.109ZB(1).

Also surprisingly some students also referred to certain benefits provided to employees as being assessed under s.6-5 or s.15-2 and completely ignored FBT.

A number of students also seemed to insist that the payment made to H was an ETP despite the question stating that the payment was for H entering into a restrictive
covenant and the definition of ETP excluding such payments from being ETPs; see s.82-135. It followed that such students failed to then consider the D1 CGT event.

**Question 4**

This question on trusts was reasonably well answered.

**Question 5**

This question required the calculation of taxable income including the trading stock adjustment. Most students recognized that to minimize taxable income the closing trading stock had to be valued at cost price (being the lowest value between the cost price, marketing selling price and replacement price given for the two types of trading stock).

The question also required students to determine the entries to the franking account. The question was reasonably well answered by most students.