

LEGAL PRACTITIONERS ADMISSION BOARD

MARCH 2014

TAXATION AND REVENUE LAW

Time: Three Hours.

The paper consists of **five** questions

Candidates are required to attempt any **four** questions.

All questions are of equal value.

If a candidate answers more than the specified number of questions, **only** the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Material:

This is an open book examination. Candidates may refer to any books and any printed or handwritten materials they have brought with them.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

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Question 1

Fred works full-time for Alpha Pty Limited ("Alpha") during the week as a maintenance repairman on machinery. On the weekends he conducts his own business whereby he attends various factories in the surrounding area where he lives and does maintenance work on their machinery, including Micron Pty Limited ("Micron"). Micron is a small family company owned and operated by George Smith and involved in the manufacturer of small electrical goods. Fred is married to Mary and has a child who is 18 years old called Sally.

During the years ended 30 June 2012 and 2013 the following events happen:

- 1) In July 2011 Alpha makes an ex gratia payment of \$1,000 to Sally to re-imburse her for costs of enrolling at university. Alpha makes similar payments to the children of employees who work for the company;
- 2) Fred leaves Alpha in September 2012 to carry on his own business on a full time basis and Alpha gives \$100,000 to Fred as an ex gratia payment on the termination of his employment and for Fred agreeing not to work for another machinery company for 3 years;
- 3) Micron, just prior to the Christmas break in December 2012, in addition to his cash remuneration gives Fred a set of golf clubs and some perfume to his wife Mary. George Smith regularly plays golf with Fred on a weekend.

Advise Fred, Alpha and Micron of the tax implications of the above events.

(20 marks)

(Question 2 follows)

Question 2

Part A

Kathryn Smith is the sole executor and trustee of the will of her late husband George Smith. George died on 1 January 2012 and the administration of the estate was completed on 30 June 2012. The estate earned income of \$50,000 for the 6 month period during which it was under administration. From 1 July 2012 the estate derived an annual income of \$200,000.

The terms of the will provided that the residuary estate was to be held on trust on behalf of the wife (Kathryn) and children of George Smith. Under the terms of the will Kathryn was entitled to 50% of the trust income and the remaining 50% of the trust income was to be held equally for the benefit of the two children of George Smith being Nicky and Tom.

Nicky is 20 years of age but mentally incapacitated and Tom is 15 years of age. In regard to the 50% of the income held for the benefit of the children, Kathryn has complete discretion under the terms of the will as to the distribution of the trust income.

During the year of income ended 30 June 2013 Kathryn distributes \$50,000 from the trust to herself to meet her living expenses. She applies \$20,000 of the trust income to pay the school fees of Tom and \$30,000 to meet medical costs of Nicky.

Advise Kathryn (as trustee and beneficiary), Nicky and Tom as to the tax implications in respect of the trust income for the years of income ended 30 June 2012 and 2013.

(15 marks)

Part B

Explain the differences between a direct and indirect tax giving an example of each type of tax. Also explain what is meant by the “tax base” and how the tax base for a particular tax has implications for the tax rate.

(5 marks)

(Question 3 follows)

Question 3

Mr Fu owns a taxi and a taxi licence plate. During the year ended 30 June 2011 he spends most of the year carrying on a business of driving his taxi cab from which he makes about \$50,000 of income a year. In April 2011 he happens to go to an RSL Club and gambles on the poker machines. To his surprise a particular poker machine gives him a big payout. He discovers that if he pushes the buttons in a certain way on that machine, the machine will always give a payout. He suspects that there is a defect in the machine.

For the months of April, May and June 2011 Mr Fu rarely drives his taxi cab and goes regularly each day to the RSL Club and plays the machine. He manages to win \$2.5 million in cash on the machine over the 3 month period that he plays the machine before the RSL Club discovers what is happening and removes the machine from the premises.

In August 2011 Mr Fu lodged his tax return but not did not disclose as income in his tax return the \$2.5 million won on the poker machine. In December 2011 the Commissioner issued Mr Fu with a notice of assessment and imposed tax on the \$50,000 of income declared by Mr Fu from driving his taxi. In February 2014, after an audit of Mr Fu by the Commissioner, the Commissioner issued Mr Fu with an amended assessment seeking to impose tax on the \$2.5 million in cash won on the poker machine.

Advise Mr Fu of the tax implications above including whether the \$2.5 million should have been included in his assessable income for the year of income ended 30 June 2011 and whether the Commissioner has the power to issue an amended assessment.

Assuming the Commissioner has the power to issue an amended assessment outline the procedure for Mr Fu to challenge the amended assessment referring to any applicable time limits.

(20 marks)

(Question 4 follows)

Question 4

Part A

Jim carries on income producing activities in two different locations. During the week he works as a barrister in Sydney in the central business district (CBD). Sometimes during the week he also has to go to courts located in various suburbs in Sydney to represent a client. On the weekends he works on his farm at Cooma. The farm is a commercial enterprise.

Advise Jim on the deductibility of travel costs in respect of the following travel:

- 1) driving from his home to his office in the CBD;
- 2) driving from his office in the CBD to another court located in a suburb in Sydney and then driving back to his office in the CBD;
- 3) driving from his office in the CBD to another court located in a suburb in Sydney and then driving home;
- 4) driving from his office in the CBD directly to the farm in Cooma;
- 5) driving from office in the CBD to home and then to the farm in Cooma.

(15 marks)

Part B

Explain by reference to the relevant case law the difference between an income receipt and a capital receipt.

(5 marks)

(Question 5 follows)

Question 5

Part A

Consider the following scenarios:

- 1) child minding expenses paid by a single father (his wife is deceased) in respect of his child in order that he is able to go to work and earn a living;
- 2) contributions made by a company to a fund established by the Federal Government in order to compensate former employees of the company, and members of the public, who have contracted serious illnesses as a consequence of being exposed to toxic substances manufactured and sold by the company;
- 3) money paid to celebrities to ensure that they will appear on quiz shows;
- 4) gold medals won at the Olympic Games by Australian athletes;
- 5) the costs of printing, mailing, radio and newspaper advertisements incurred by a company (at the instigation of the current management team) of lobbying shareholders not to sell their shares to a rival bidder;
- 6) travelling expenses incurred by an installer of television antennas in travelling from home to install television antennas for customers.
- 7) the purchase by a company of a machine for \$100,000 for mining operations on 1 July 2008 which due to continuous use in the mine will only have an effective life of 6 months;
- 8) the payment of interest by a company on money borrowed from a bank to pay income tax and dividends.

For each of the above scenarios advise the relevant entity as to the taxation implications.

(15 marks)

Part B

How would a factual situation similar to that considered in *Scottish Australia Mining Co v FCT (1950) 81 CLR 188* be treated today? Consider both the income tax and the capital gains consequences, assuming the land was acquired on or after 20 September 1985 by the taxpayer (Scottish Australia Mining Co).

(5 marks)

END OF PAPER