

**Taxation and Revenue Law
Examination September 2013
Examiner's Comments**

Question 1

Most students answered this question reasonably well. A common mistake was treating the loan of \$50,000 as being subject to FBT where it was clearly identified in the question as not being related to the former employment. Students should have considered the possible application of section 6-5(1)/21A and section 15-2.

Question 2

This question was reasonably well answered. In the better answers students identified that a net capital loss arose that was carried forward but otherwise not to be taken into account in calculating taxable income.

Most students expressed a good understanding of the franking system and correctly identified the relevant debits and credits to the franking account.

Question 3

Part A

This question was at times poorly answered by some students. It was necessary for the students to do the calculations (which were easy) to demonstrate a proper understanding of the provisions.

The better students (not many) were able to properly deal with the additional issue of the machine being used 50% of the time for private use.

Part B

This part was not particularly well answered. Broadly students were able to explain by reference to section 6(1) of the ITAA 1936 when a company was a resident. However, students often got into a muddle thereafter in seeking to explain when a company was not a resident.

Question 4

This question required students to refer to the law relating to one-off transactions i.e., *Whitfords Beach* (and the application of section 6-5) and also section 15-15.

Reference also had to be made to *McCauley* and *Stanton's* case in respect of the common law royalty payment.

A number of students overlooked the application of Division 149 to the company one of the other two issues referred to above.

Question 5

Part A

This question was reasonably well answered.

Part B

A number of students did not recognize the inherent problem raised for determination by the Court in *Taylor v FCT* ie., that section 98 purported to assess a person who is under a legal disability but who is also presently entitled. [Broadly persons who are under a legal disability have no legal rights so as to not be capable of being presently entitled.]

Dated: 23 September 2013