

**Taxation and Revenue Law  
Examination March 2014**

**Examiner's Comments**

**Question 1**

This question was reasonably well answered by students. However, surprisingly, a few students did not recognize that the first part dealt with FBT. Other students also failed to set out the requirements for there to be a fringe benefit but discussed the matter on the basis it was as a fringe benefit.

The second part of the question raised two issues: ETP and capital gains arising from restrictive covenants. Not many students recognized both issues.

The last part required students to consider whether the goods given were a gift or covered by section 6-5 or 15-2 and was generally well answered.

**Question 2**

**Part A**

This question was reasonably well answered by those students who attempted the question.

**Part B**

This was not particularly well answered. Few students recognized that with direct taxes the taxpayer has both the legal and economic burden of the tax, whilst with indirect taxes the taxpayer has the legal burden (to pay the tax) but not the economic burden. Also few students were able to explain in any meaningful way what is meant by the "tax base".

**Question 3**

The first part of this question was well answered with most students discussing whether the gambling activities of the taxpayer constituted carrying on a business.

However, most students did not properly consider the time limits for the Commissioner issuing an amended assessment. Students tended to rely on fraud or evasion (so no time limit) when the issue was really whether the 2 or 4 year time limit applied.

#### Question 4

##### Part A

This question was generally well answered although some students discussed section 25-100 in all contexts when it only needs to be relied upon where the travel is between two or more unrelated work places.

##### Part B

Students answered this question poorly. Students were not able to express in simple terms the difference between capital and income. Students tended to rely on cases as examples without ever attempting to explain in their own words the difference.

#### Question 5

##### Part A

Students sometimes referred to the facts and then stated that the amounts were deductible if the facts “satisfied the statutory test”. This is not answering the question. Students must form a view if the statutory test is satisfied.

Even though a number of the factual situations indicated that the purpose of the outgoing was not to generate income, many students (incorrectly) stated the outgoings were deductible. This was particularly so in respect of the payment of interest on money borrowed to pay income tax and dividends.

##### Part B

Most students referred to *Whitfords Beach* as putting the decision in *Scottish Australia* in some doubt. However few students made any useful comments about the implications arising from capital gains now applying to the factual situation.

Dated: 24 March 2014