HI6028 Taxation Theory, Practice and Law Individual Assignment T1

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Date

**Q1: Answers**

The capital gain is regarded as what we pay for the asset and what the assets was paid for. According to Australia Tax office ( 2019, p. 32), it is referred as the profit or loss made after selling an asset to a customer. For instance, when individual sales a real estate, a property, or any other valuable items, the different earned is the capital gain. And according to the taxable law of Australia, 30% is payable as levy and it is referred as capital gain tax. However, in the case of Helen’s father painting it would be important to consider the repercussion of the capital gains tax for selling the panting, which was bought Helen’s father. There are various methods or ways which should be followed when disposing the capital gains tax assets and the capital gains tax event and this is stipulated under section 104- 10 (1)o of ITAA97 (Dolphin, 2018, p. 32). First, it is essential to determine the type of assets and this means that before making purchase of sales of these assets, it is important to know whether the product are personal use assets, CGT assets and collectable assets. The best way to dispose the assets is to transfer the said assets to the name of the spouse before disposing the assets. According to Baine (2018, p. 32), the capital gain taxation law exempts the transfer of assets to spouses from paying any finances earned and therefore, such transfer would not be subjected to taxation. However, it is required that such transfer should be rightful genuine without defrauding the government.

It is also evident that reducing the capital gain tax is in the interest of many people and the best way to reduce the capital gain tax is through improvement of the value of the assets. This is because the amount spent on the improvement of the value of a property is included when calculating the capital gain tax to be paid to the government. It is also important to point that most personal assets are exempted from capital gain tax (CGT). The personal assets are homes, cars, and personal assets such as furniture. It is also important to note that capital gain tax is not applied to any assets, which depreciates its value usually for the purpose of taxation. The business equipments, which are not subjected to taxation because they do depreciates are business equipment and fitting in a rental property. However, the capital gain tax is applied to all properties of Australians citizens located anywhere in the world. It does not matter where the property is located and it is required by the law for every Australians to submit the CGT when such property is disposed. However, looking into the case of Helen’s father painting, it is evident that it should be subjected to the capital gains tax (CGT) (Gregory, Weinzierl, & Yagan, 2009, p. 25). The fact that it was purchased before, September 1985, at it has a gain of less than $ 12,000 then it is exempted from capital gains tax. It is clear that it was passed before the CGT came into effect and therefore, all properties purchased before September 20, 1985 are not subjected to capital gain tax (Abraham, 2015, p. 32). The below are the analysis and calculation of the Capital Gain Tax as applied in the case of Helen’s father paint disposal.

1. It is evident that Helen’s father painting was purchased in February 1985, which was before September 1985 and therefore, the purchase of the painting cannot be subjected to capital gain tax. It is because the CGT came into effect in September 1985 and made purchases, which compel such items to be taxed based on 104-10(5). Under the law the gain of $12,000 is exempted from capital gains tax.
2. The sculpture was purchased by Helen in December 1993 at a cost of 5,500 and sold in January 1, 2018 at $ 6000. In simple mathematics, it means Helen made a profit of $500. And therefore, under capital gain tax law, any gain made after September 20 is subjected to CGP and therefore, by the law it should be subjected to taxation under taxable gains income. However, Helen might decide to use her indexation to apply discount of 50% of taxable capital gain. But this would be done at a later stage because it is only applicable when losses are made. However, at this stage if Helen applied the indexation on the capital gain, the calculation would obtained as follows:
* Indexation figure for September indexation -- 68.7
* Indexation value for December 1993 - 61.2
* The indexation figure factor for 1.123
* The indexation cost base to will be 1.23 X 1.23 and gives 1.237

And because indexation of taxation could be used to, establish any capital loss, Helen will therefore, utilized either capital gain or capital loss when using indexation levy. It is therefore, evidence Helen has several methods to apply and Helen decided to use whatever method he is still needed to address the problem. And for this case indexation would be applied in the calculation and other processes.

Attending attitude

C). Helen purchased the jewelry on October 1987 and $14,000 and later sold the item at $13,000, in March 2018. It translates that Helen made a capital loss of $1000. The jewelry was sold at a loss and therefore, the cost base cannot be subjected to indexation.

d). Helen sold the paint at 500 and later repurchases it at 4700. It means that it made a loss of 3100 during the entire process. The gain made is then disregarded because the management has a close with the owners of the company. The profit is only earned when the product is sold at a price above the buying price. But it did not happen in the case of Helen selling paint (Pedone, 2015, p. 21). The capital gain tax law is also not applied to any property, which made loss when being disposal and therefore, in the case of loss making the capital gain tax is not paid. And therefore, in this situation Helen pays no capital gain tax.

**Barbara‘s income under the case scenario one**

It is evident that Barbara was paid for the work not done. However, it not wrong or illegal to be contracted to write a book and therefore, Barbara contract with Econ Bookshop was purely right and legal. Under the law of contract the agreement can be verbal or written. However, a written agreement is the most preferable agreement required in a formal business environment. I would not agree with Barbara to work and sign the agreement later. It would have been appropriate for Barbara and Eco Bookshop to have a written agreement or contract signed by both parties, before Barbara started to work on the project. As stated by Cussen (2019, p. 19) written agreement is meant to help parties form being exposed to risk and any other litigations. Barbara and Eco Bookshop would have a signed agreement which is bidding before receiving any payment and working on the book as well. First, the agreement would have contained terms of the deal, which include the way revenue from the sales of the book would be shared. Since this was not done both parties are exposed to a lot of risk before establishing who controls the book in the market would be difficult. Both parties can still claim the ownership, things which having an agreement prior to the work would have solved.

It is also important to state that bringing an issue later could hurt Eco Bookshop and it was wrong for the two parties to ignore it. The law of contract, article (19), (20), (22) provides a clear distinction of how the agreement is arrived at and bases on all facts, the deal between Barbara and Eco Bookshop was not anchored in the law and therefore, Barbara or Eco Bookshop could violate the verbal agreement. However the finance which was paid to Barbara by Eco Bookshop was legal and she deserved it because they made a verbal offer, which both parties accepted. It is also important to point that Eco Bookshop contracted Barbara to write book base on the fact that she had the knowledge and skills to differ the task. And under employment act or labor law, it is believed that Eco Bookshop Ltd conducted their due diligent and made a conclusion that she can deliver. The argument that Barbara would have not accepted the offer to write the book is discriminative to the law and the personal she had all the knowledge and skills to deliver the task. It is therefore, important to point that $13,400 paid to Barbara was rightfully earned out of her personal exertion. The law of contract stipulates that an offer must be given and both parties must accept an offer.

In the case of Barbara and Eco Book shop, the offer was issued by Eco Bookshop and Barbara accepted and therefore, a contract was reached as stipulated by the law. For instance, in the case of, Verein für Konsumenteninformation v Amazon EU Sarl (Case C-191/15), the court ruled that Amazon terms and conditions are unfair and therefore, it cannot be applied. This is because of the violation of the contract between Amazon and the public. This case study emphasizes the fact that agreements are made and they are biding and applicable before the court of law. However, Eco Bookshop has never raised an issue with the terms and condition of the agreement between itself and Barbara and therefore, it means that it found Barbara to be capable of delivery the project. It is also evident that Eco Bookshop has not raised any issue with the book delivered by Barbara and therefore, clear that service delivered served their purpose well. And therefore, any payment issued to Barbara is rightfully owned and cannot be challenged because it was earned. It is a different case with Verein v Amazon case, because Barbara has not received money under pretense or she was not paid and failed to deliver. It is therefore, evident that & 13,400 paid to Barbara was her earning without any problem, she deserved it.

**Barbara‘s income under the alternative scenario**

However, signing copyright agreement and continue to earn profits from the book she was paid to write and deliver could be a violation of the term of contract and earning what she does not deserve. Under the contract she was offered to deliver a book to Eco bookshop, which could mean that the book was to be delivered to the bookshop. In this case, it means that the book was a property of Econ Bookshop. All the materials used to deliver the content as well were for the bookshop. Though the content of the contract was not clear besides being approach and requested to write a book. It is clear Barbara had been paid as required by the law and agreement was to deliver the book. Signing a copyright agreement with the bookshop also locked her outside the ownership of the book and all finances earned from the sales of the book. And therefore, money or finances earned from the book she wrote for Eco Bookshop might be considered illegal and violates the agreement the two parties reached before the book was published. The law of contract states stipulates the terms and condition of operation and the limit of each party in the agreement. And therefore, by agreeing to write a book for Eco Bookshop Barbara ought to have been aware that the contents and the entire book belong to Eco bookshop.

 And the only earning she expects from the book is the agreed amount for to write the book which was $ 13,400. It is therefore, evident that other payment she received such as $3,200 and $4,350 violates article 18 of the law of contract It is evident after completing writing the book, Barbara enter into other agreement and started to make some earnings. The book was belonging to Eco Bookshop and would be appropriate for the bookshop to remain with all the copies after the publication. In the case of Patel v Mizra [2016] UKSC 42, the Supreme Court overturned an early ruling and therefore, ruled in favor of Mirza. The case was about the content of the agreement and whether such verbal conversation which led to an agreement can be biding. The court dismissed Patel claim that the agreement or policy was not legally constituted under the law. This case can be applied here because of the violation of the rules and the laws which are applicable in the negotiation. It is required of parties to abide by the content of the agreement once an agreement has been reached. Barbara making deals with any other third parties is legal and therefore, the earnings which she received besides the agreed amount is a violation of the agreement. The agreement whether verbal or written still recognized by the law.

**Effect of this arrangement on the assessable income of Patrick**

The contract law is an agreement between two or more parties, which must legally bidding and enforceable. Under the law, the agreement can either be verbal or written but in either case, the agreement is biding immediately both parties agreed on the terms and condition. The law of contract prohibits the violation of such agreement. All parties are required to uphold their sides of the agreement and meet all the obligations as agreed. However, the violation of the agreement by either party is legal and the party concern must pay for the damages incur by either party. Based on the statement it is evident that Patrick and David entered into agreement with each party had a clear responsibility to perform. Under article (4) of the contract law, the agreement is viable and applicable when either party made an offer, which was acceptable by both parties. Therefore, the verbal agreement between Patrick and David is biding and applicable before the court of law. However, it would have been advisable for both parties to have a written agreement before any exchange could occur. This is important because it protects both the parties from being exposed to any business risk. In this case, Patrick made an offer, which David agreed with the teams of the offer and therefore, it is abiding agreement. However, this can of agreement can have impact when it comes to assessable income. Assessable income is referred to income which includes salaries, dividend and any other income earned.

First, issued loan to David without any agreement put Patrick’s assessable income at risk. It was not easy to affirm whether David would pay back the loan or not and therefore put Patrick’s income at risk. Again, it reduces Patrick’s income before David decided to pay back the money. Giving loan without having a proper documentation itself expose accompany to a lot of risk and therefore, it is important to be careful. Though Patrick gave loan to the son, the risk expose is still the same. It is important to point that assessable include capital gains within a period. It is also noted that David paid back the loan with an interest and therefore, it is an earning which is subjected to taxation as well. It is important to state that the law of taxation is not the same. And in Australian, it defines every aspect how people submit their tax returns. Australia depends on income tax on revenue, and giving loan is likely to increase the tax submission rate because of the gains which will be indicated from interest earn.

In brief the case of agreement between David and Patrick exist and applicable in law. But it is important to have a written contract between parties, to protect the interest of both parties involve. The impact of soft loan on Patrick’s income would have been high, if David would have been decided not to hour the agreement. It is therefore, appropriate to work within the law and in apply the law of contract to avoid any kind of legal challenge which might affect the income of parties involved. It is also advisable to have a written agreement for both parties which legal and applicable before the law. The verbal agreement is also legal and based on several court cases it has been ruled that verbal agreement is a legal agreement. For instance, the case “oral agreement between Bob and Alex (1241), (1870), the Bob and Alex made a verbal promise, which Bob rejected later that they did not sign any document to indicate. However, the judge found that the agreement between Bob and Alex was biding and therefore, Bob must compensate Alex for not going to court, which he promised that he would do. This case can be applied in the case of David and Patrick because the written agreement does not exist as well.

# Bibliography

Abraham, M. (2015). TAXATION THEORY AND PRACTICE. *Journal of Law and Taxation* , 12-35.

Australia Tax office . (2019). Capital gains tax. *https://www.ato.gov.au/General/Capital-gains-tax/* , 2-34.

Baine, D. (2018). How to limit capital gains tax on the disposal of your property. *https://www.businesslive.co.za/bt/money/2018-10-06-how-to-limit-capital-gains-tax-on-the-disposal-of-your--property/* , 2-34.

CUSSEN, M. P. (2019). Form 9465: Don't Pay Your Back Taxes Without It. *https://www.investopedia.com/articles/tax/09/form-9465.asp* , 2-15.

Dolphin, B. (2018). Ten ways to reduce your Capital Gains Tax liability. *https://www.brewin.co.uk/individuals/insights/further-thinking/ten-ways-to-reduce-your-capital-gains-tax-liability/* , 2-15.

Gregory, M. N., Weinzierl, M. C., & Yagan, D. (2009). Optimal Taxation in Theory and Practice. *Journal of Economic Perspectives* , 2-35.

McKendrick, E. (2015). *Contract Law.* Londong : Oxford.

Pedone, A. (2015). *TAX THEORY AND TAX PRACTICE: THE PROBLEMS OF DEFINING, MEASURING AND ASSESSING TAX BASES.* Sydney: Pearson.