LAWS20060 – TAXATION LAW OF AUSTRALIA

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### Question 1

### A). TR 2018/4[[1]](#footnote-2) contains new effective life of depreciating assets under s40-100 of ITAA 1997 and started being applicable from 1st July 2018.

### b). details of tax offsets are contained in Income Tax Assessment Act 1997[[2]](#footnote-3) Division 376

### c). for 2018/19 tax year, the top tax rate applicable to resident is 45% for **income threshold of**$180,000 and over

### d). Capital losses or gains on assets obtained prior to 20/09/1985 (the initiation day of the CGT) are exempted from CGT. Legislative reference: Division 104 of ITAA 1997

### e). CGT event B1 in s104-15 of the ITAA 1997[[3]](#footnote-4) is triggered when a person go into an agreement in which the rights to enjoyment and use of a CGT asset possessed by the person is passed to another individual and the asset’s title may or will pass to the other individual at the end of the agreement. CGT event B1 s104-15 tax any capital loss or capital gain earned when the individual first obtains the enjoyment and use of the person’s assets. This CGT is only triggered when there is an agreement in which the asset title will or might pass and if the asset does not pass, capital gains or losses are disregarded.

### f). the formulae enclosed in section 4-10(3) ITAA 1997[[4]](#footnote-5) is expressed as;

### Income Tax=(Taxable Income x Tax Rates) – Offsets

### This formula is applied to compute income tax for a particular financial year. The initial step is to multiply the taxable income with the individual’s tax rate to establish the income tax amount on the taxable income. The taxpayer will be required to incorporate all tax offsets which will lower the total income tax as they will be deducted from the tax acquired in the preceding step.

**g).** the deduction of legal expenditure was reviewed by theHigh Court in FC of T v Day 2008 ATC 20-064[[5]](#footnote-6). under s8 (1) of the *ITAA 97*, a public servant officer requested for a deduct in legal expenditures he spend as a result of several cases related to disciplinary charges filed by his employer against him. It is highlighted in S 8 (1) that any legal expenses spent on the production of assessable income and further, the under the Public Service Act 1922[[6]](#footnote-7), customs officers are entitled to legal expenses deductions. However, in this case, it was ascertained that the legal expenditures were disallowed deductible based on s 8-1(2)(b) of losses or outgoings of a private nature. This ruling is significance as it outlines that costs incurred in defending conduct are not deductible as the costs were not utilized in the course of producing or gaining assessable income.

h) Marginal rate refers to a tax rate which is applied to the incremental amount of the tax base. On the other hand, the entire amount of tax a person pays divided by the taxable income is referred to as the average rate.

i). Consumption Tax refers a tax whose economic incidence relies on the consumer for instance through the increase in the cost of goods and services. It is more focused on consumption rather than earning as in the case of income tax. The goods and services tax was established in 1st July 2000. The burden of the increase in prices falls on the consumers who are not entitled to any credits. They therefore absorb the GST cost in the prices they purchase goods and services.

**Question 2**

a). Since Brett took a loan to pay employee wages, the interest expense is deductable. Individuals can claim deductions for expenses incurred in earning investment and assessable income. Additionally, despite the loan being secured using his personal home, Brett is still qualified to deduct home equity loan interest as the loan was primarily utilized for business purposes. Interest accrued by business owners from personal loans to fund their businesses can deducted from their tax bill and tax deductions can be claimed in personal income tax filing.

b). the mobile phone charges incurred by Julie are deductable but only the percentage used for work related calls. The current tax system allows tax deductions for most costs incurred in running businesses by reducing the taxable income. Employees who use their personal mobile phones for work related activities are allowed to claim deductions for the mobile phone charges incurred provided that the costs incurred by the employees were not paid by the employer and there are records to support these claims. Also, for employees who use their mobile phones for both work and personal purposes as in the case of Julie, deduction is allowed but only for the percentage used for work purposes. For Julie, out of the $500 spend on mobile phone charges, the only allowable deductable amount will be $300 which represents the amount used for work related purposes. However, Julie must have kept complete and accurate records to support her assumption in order to claim the deduction.

c). sec 8-1 of ITAA 1997 outlines that any costs incurred in producing or gaining assessable income or necessarily acquired in undertaking business activities of producing or gaining assessable income can equally amount to deductions. Therefore, the $1,200 sally paid to the babysitter so that she can go to work is deductable. This is because the amount paid is directly associated with the process of gaining and producing assessable income.

d). Income Tax Assessment Act 1997 - Sect 25.45 indicates that employers can deduct a loss in terms of money if the loss was causes by misappropriation, embezzlement or defalcation or theft by their employees or agents. Referencing Jerry’s case, the goods were stolen by a long term employee and therefore, the $20,000 worth of goods qualifies as allowable deduction.

e) The expenses incurred in contesting local government elections are deductable but cannot exceed $1,000 for each election contested. Based on this, $1,000 of the expenditure of $5,000 will be deductable. Also, the $2,000 used for election party qualifies to be political contributions if it was made in personal capacity.

**QUESTION 3**

A) By granting a lease to Brian, Andy triggered the CGT event F1[[7]](#footnote-8) which occurs when an individual grant a lease to another person. The amount of capital proceeds from CGT event F1 is the difference between the premium of $5,000 Andy earned for granting the lease to Brian and the expenses Andy incurred in granting the lease. The CGT discount of 50% is not applicable in CGT event F1[[8]](#footnote-9).

b) (B). If an individual acquires land an investment or for private reasons, then its termed as a capital asset and which is subjected to capital gains tax after selling the land. However, if the individual disposes the capital gains assets in a period less than twelve months, the entire capital gain is paid. But the individual can get a discount of 50 percent on the capital gain for the capital gains tax held for a period of over twelve months before selling. In this regard, all the proceedings will have a capital gain tax. The 50% discount is applicable as john has owned the land for 10 years.

(C) If an individual rents out part or their entire home; the rent money received is termed as assessable income. This implies that the rental income must be declared in the individuals’ income tax return. Also, the deductions for the associated expenses might not be subjected to the overall exemption from CGT. This also means that the individual is required to pay CGT on part of any capital gain acquired after selling or renting a home[[9]](#footnote-10). Therefore Jamie and Olivia are subjected to pay CGT on the capital gain of $300,000 earned when they sold the house. Also, Jamie and Olivia qualify for a 50% discount as they have owned the house for over 12 months.

d) Capital proceedings for BHP shares

(12,000\*$1.56)- (12,000\*$0.45) = $13,320

Capital proceedings for Westfarmers shares

(5,000\*$2.10)-( 5,000\*$5.20) = -$15,500

Since, the 50% discount does not apply in this case as Chris has owned the shares for 11 months, the net capital gain to be included in Chris 2018/19 tax return would be a capital loss of $2,180

= $13,320+ (-$15,500) = -$2,180

**QUESTION 4**

(A)ATO declared that awards are non-assessable income. Therefore, if a company is awarded a prize of $2,000 for the outstanding television advert of the year, then the amount will not be included assessable income.

(B). ATO declared that rewards are non-assessable. However, the rewards which are received as part of business related activities or which are related to an individual income earning activities are assessable. In this regard, the amount which the employee remained with is assessable as it was acquired in business related activities which includes an employer and an employee.

(C). ATO declared that small gifts or rewards are non-assessable. However, gifts may amount to assessable income if they are large amounts or received as part of business related purposes Based on this scenario, an iPhone gift worth $1000 falls in the category of gifts of large and it was received from a client which amounts to a business related activity. The gift is also related to the income earnings activities of the receiver as an employers or contractor.

(D). In Australia, amounts awarded as damages for personal injuries suffered by a person in a car accident are not included in assessable income. This implies that an individual is not required to disclose the damages or the compensation payment in the assessable income as damages of this kind are not taxable. However, if an individual uses the damages award to earn income, for example to start a business, then the income earned is assessable.

(E) When an individual purchases a share and trades it for more later, then he or she makes a capital gain which is assessable. Additionally, the income received from the investment of the shares is generally assessed. In this regard, if a taxpayer buys a share during the year for $5. On the 30 June and the share currently trends at $7.50 then the income will be Assessable.

**QUESTION 5**

In considering Nisu situation, it is important to note that Australian income year starts from 1 July to 30 June (ATO 2017b)[[10]](#footnote-11). There are several factors outlined in the case study which are directly associated with Nisu’s residency test. First, Nisu is a foreign student in Australia from Nepal. Second, he arrived in Australia on 30th December 2018 and left Australia on 30 June 2019 without the intention of returning back to Australia. Third, Nisu had no intention of permanently residing in Australia as he intended to live in Australia for three years to study. Fourth, he does not own a permanent house in Australia as he shares a rental house with four other students. Fifth, Nisu had managed to secure a part-time job in a bookshop during his time in Australia. All these factors are essential in determining the residency of an individual for tax purposes.

Income Tax Assessment Act (1997)[[11]](#footnote-12) details the importance of determining the residency of an individual in order to assess his or her tax obligation. Specifically, these issues are outlined in Division 6 section 6.10 (“Other assessable income”)[[12]](#footnote-13) and sections 6.5 (“Income according to ordinary concepts”)[[13]](#footnote-14) of Income Tax Assessment Act (1997). For Australian residents, taxable comprises of both direct and indirect income earned from both abroad and Australia. For cases of foreign residents as in the case of Nisu, taxable income is composed of both direct and indirect income earned in Australia only. Also, it is important to define the differences in tax rates for residence and non-residence taxpayers as outlined by *Income Tax Rates Act* (1986)[[14]](#footnote-15)

ATO (2017)[[15]](#footnote-16) outlines four tests; three statutory tests and one common law test, which are applied in determining an Australian versus non-Australian residency of individuals. In cases where an individual passes one of the tests, the individual is considered as an Australian residence for tax purposes. The first test is a common law test of residence known as the resides test. This test defines a person as a resident if he or she resides permanently or for over considerable period in Australia. The dynamic which outlines the concept of residing are outlined in cases such as *IRC v Lysaght*[[16]](#footnote-17)*and Levene v IRC*[[17]](#footnote-18)and as well inTR 98/17 (1998)[[18]](#footnote-19). If a person does not pass this general and primary test for defining Australian residency for tax purposes, other three statutory tests are applied.

The 1st statutory test is the domicile test. This test requires individual to indicate their permanent home is in Australia in order to be considered a resident. If a person has a permanent home outside Australia, therefore the person is considered to be a non-residence for tax purposes even when he or she has the intention to return to Australia. An expression of the domicile tests is reference in *IT 2650*[[19]](#footnote-20) *and Applegate’s case*[[20]](#footnote-21)*.*

The 2nd test is the 183 day test. This statutory test of residency determines residency according to the number of days a person is present physically in Australia for a certain income year whether continuously or with breaks. *Paragraph 37 and 38 of TR 98/17* states, “in most cases, if individuals are not residing in Australia under ordinary concepts, their usual place of abode is outside Australia.” However, “there may be situations where an individual does not reside in Australia during a particular year but is present in Australia for more than one-half of the income year (perhaps intermittently) and intends to take up residence in Australia.[[21]](#footnote-22)” The third test is the superannuation test which covers Commonwealth government employees working at Australian posts abroad. Under this test, these employees are deemed as Australian resident.

Using the above tests, it can be determined whether Nisu is a resident of Australia for tax purposes for the 2018/19 income year. Based on the ordinary test, Nisu does not reside in Australia as he does not reside their permanently as his permanent home is in Nepal and he intended to live in Australia to study a course which would take 3 years. Additionally, he has neither lived in the country for a considerable period of time as he has stayed for six months and his intentions are not settle in Australia permanently. Therefore, based on this test Nisu is a non-resident which is further reinforced by rulings of cases such as *Miller v FCT* (1946)[[22]](#footnote-23) and *Levene v IRC* (1928)[[23]](#footnote-24).

Moving to the other statutory tests, the domicile test indicates that Nisu is a non-residence as he does not own a permanent residential home in the country. The case study has indicated clearly that Nisu has no permanent home in Australia as he shares a rental house with his friends and his permanent home is in Nepal where his family lives. This test outlines that an individual with their permanent home outside Australia are considered as non-residence for tax purposes. Considering the 183-day test, Nisu stayed in Australia for 182 days (from 30 December 2018 to 30 June 2019) and therefore, he is a non-resident for the 2018/19 income year. This is because Nisu spent fewer days in the country than the required 183 days to be qualified as a resident for taxation considerations. Since the superannuation test is not applicable to Nisu case scenario, it can be concluded that Nisu is a non-resident for the 2018/19 income year.

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