Taxation theory, practice and law

Student’s Name

Institution

Course Code

Date

**Question 1: With reference to relevant legislation and case law discuss Emmi's assessable income for the yea**r.

Based on the Emmi’s income for period ended, Emmi’s taxable income would be $25335, which is the payment received from the company and the tip Emmi received from a customer. According to Wright (2013, p. 15) tax law the Australia tax law is categorized into two system based on the year of established. The tax system which was established in 1936 and 1976 illustrates that taxable income are regarded as all revenue or income an individual receives. As stated by Wright (2013, p. 23), under ITAA 1936 an income can be inform the form of salary, tips and even gifts from friends, customer and employers. However, the gifts are subjected to no taxable if it falls under a certain amount. According to ITAA of 1976, section 60, a gift is only considered as a taxable income if the amount gifted is more than $15,000. This means that any amount lower than $15,000 is exempted from taxation and therefore, an individual is not required to pronounce such a gift for the purpose of taxation. For instance, in the case of Commissioner of Taxation v La Rosa, the high court judge made a ruling that La Rosa was supposed to declare $220,000 value of heroin as income and therefore, it was supposed to be subjected to taxable income. Though the amount was given to La Rosa by the police as part of his role in operation to recover the drug, the ITAA 1936 required that all tips and other sources of income should be declared to the government. In this case of Emmi, the tips and income would be part of Emmi’s assessable income for the year.

The Income Tax Assessment Act 1936 is an act of parliament established to streamline the taxation process in Australia. Australia Taxation Law (ATL) is elaborate and it provides every details of taxable income. Taxable income according to Davis, Akroyd, Pearl, & Sainsbury (2019, p. 21), is the amount which is used to calculate the amount of tax an individual is supposed to pay to the government. In Australia, the law described the kind of income taxable and therefore, all the calculation of taxes supposed be based on the taxable income. According to Davis, Akroyd, Pearl, & Sainsbury (2019, p. 24), Income Tax Assessment (ITA) Act 1936 describes taxable income as every income an individual earns and therefore, every person is responsible for submission of income tax based on income. However, tips received under ITA Act 1936 and 1997, tips are taxable income. Therefore, tips of $335 cash received by Emmi from a customer will be part of taxable income.

1. Income of $25,000 from working in the Crown Melbourne restaurants

The income earn is subjected to taxable income, therefore, an income of $25,000 from working in the Crown Melbourne restaurant which is paid to Emmi taxable under the ATAA of 1936. The income of $25, 000 will then be taxed. In this case, it means that $25,000 will be subjected to 19% tax rate. This is because the amount falls between $18,201 and $37,000.

1. **Expensive gift valued at $250**

Martin (2017, p. 21) pointed out that Australia does not have clear laws for gifts. Under ITAA 1976 and 1997, gifts are not taxable income. However, a gift of high amount of above $15,000 is taxed and therefore. An individual is required by the law to declare to the government any gift of above $15,000. For instance, in the case of Commissioner of Taxation v La Rosa, the judge made a ruling that la Rosa had responsibility to inform the state of such a gift or tips provided by the police. However, Emmi’s gift of a perfume from a client worth $250 would not be subjected to taxable income because the gift is less than 15,000. Again,

1. **A monthly entertainment paid by the restaurant**

The taxable income does not cover the any amount spend on meals for entertainment and other enjoyment. It is stated that the restaurant owner spend around $380 on which was consumed Emmi and the event was organized as reward for Emmi for her hard work. This spending cannot be classified as Emmi’s income rather than company’s expenses. Emmi did not receive the reward in terms of cash or as a gift rather a treatment by the company. In this case, the treatment or enjoyment of $380 is not classified as an income under ITAA 1936 and 1997. The ITAA article 3 Section 57, defines the taxable income and treatment by a company or employer does not fall under the categories. The gift or reward given to an employee fall under Non-assessable or exempt income and therefore, Emmi is not required to declare such as reward when submitting or foiling her tax return.

**E. Emmi’s gift from her father**

It is important to point out that Under ITAA 1936 and 1976, gifts are not taxed. As stated by Davis, Akroyd, Pearl, & Sainsbury (2019, p. 21) gifts are classified as non assessable income and therefore, an individual who receives a gift is not required by the law to declare such a gift to the government for the purpose of tax compliance. The reward provided to an individual in terms of entertainment no matter the amount used by the employer or any other person cannot be included as part of taxabole income. In sense, the amount spent by the company was not credited into the account of Emmi and therefore, Emmi does not have any obligation to declare such a reward when filing her tax return because it is not captured by the law.

**Emmi’s assessable income is therefore, calculated as illustrated below:**

Description Amount

Payment from Crown Melbourne restaurants - $25,000

Tip from customer - $335 +

 Total - $25,335

However, the amount is subjected to 19% tax rate because it falls between $18,201 and $37,000 and therefore, the total income earned by Emmi would be subjected to deduction of 19%.

Emmi’s total income (taxable income) -$25335

 Rate 19%

 Tax payable by Emmi $25335 X19%

 $4813.65

**Therefore, tax which is supposed to be submitted by Emmi is $4813.65.**

**Question 2:**

Liu is a 65 years old Australian resident but born in China, Liu is retiring from her business and decides to sell all of her Australian assets and moving home to China.

The Capital gains tax in Australia capture all the sales of assets. The capital gain tax law, Australian Tax Office the capital gain form part of the an individual income which must be declared at the end of the financial year. It is also regarded as the levies which are obtained from a property acquired within Australia. The capital gains are the profits obtained from the sales of assets and therefore, the law requires that any profit earned by the seller or the property is subjected to capital gain tax. According to Hopkins & Merkins (2019, p. 21), the capital gain tax rate is 47% of the gains made. It is also important to state that net capital gain is included in the taxpayers’ assessable income.

In this case, Liu would be required to not pay taxes for the sale of the house sold at $630,000. The house was initially purchased at $55,000 in 1981 and it has appreciated to $630,000. The capital gain tax is not applied to a residential house of a taxpayer. Though the residential house of Liu is sold at a higher value with a greater profit, the amount or the profit would not be taxed under GGT law of 1985. The law exempt residential houses of taxpayers from being taxed and therefore, there is not GGT which is applied to the sales of the house (Davis, Akroyd, Pearl, & Sainsbury, 2019, p. 35). However, if the house was not a residential house, the profit obtained from the sale of the house would have been subjected to 47% tax. According to Australia law (Capital gain tax) law tax is applied on the appreciated value of the house. Therefore, the amount $575000, which is obtained by deducting $55,000 from $630,000 is the capital gain from the house which will be subjected to taxation as required by the law. In the sales of the house at $575,000, will be subjected to 47% of tax and therefore, 575,000 will be subjected to 47% of tax rate. However, the sale of the house Liu would be required to pay approximately $270250 as a capital gain for the sale of his residential house. This would not apply in this because the house was a residential house.

It is also pointed out that Liu sold a car at $8000, which he bought in 2011 at $37,000. Based on the value, the car had depreciated by almost 60% and therefore, it is capital loss and therefore, it is subjected to capital gain tax. It means that Liu did not make any profit from the sale of the car and therefore, the capital gain tax is not applied. The sales of the car would then be exempted from tax and therefore, it cannot be included as taxable income. The sales of the car will subjected to stamp duty under the GGT of 1985. The car will not be taxed and Liu will not be required to pay any tax from the sale of the car.

The sale of Monte Liu Photography Studio which was started by Liu years back would be subjected to capital gain tax. It is pointed out that the company is valued at $125,000. In this case, Liu will be required to declare $125,000 which is the sale of the company as an income and therefore, it will be included as part of her taxable income.

The sale of furniture would be subjected to capital gain tax. It is noted that Liu sold furniture at 4800. The painting which was purchased directly from the artists will also be subjected to capital gain. The capital gain law only exempts painting and other materials provided as reward or gift to taxpayer from capital gain tax. The sale of paint which was purchased by the taxpayer and sold is taxed. In the case Liu paintings, the painting being sold at $8000 and 28,000 will be taxed under capital gain tax (CGT).

However, it is advisable to note that under capital gain tax (CGT) the sale of paintings, the company, and the car and furniture will increase the taxable income of Liu. It is important to note that in the sale of house, Liu would be required to pay a stamp duty of 3% of the value of the house. In this case, Liu would pay $18900 for stamp duty for the sale of the house. But income from the sale of her residential house would not be subjected to capital gain tax. It is also important to point that from the sale of car at $8000, Liu will be required to pay 3% as stamp study but not capital gain tax because value of the car depreciated and she did not make any profit or gains from the sale of the car. The stamp duty is paid for the processing of the payment process between the buyer and the seller. Therefore, the value of furniture, and the company sold by Liu would be added to her taxable income for the end of the year. It would be advisable to fail to declare the sale of house, car and other properties to the government when filing tax return. It is required that all income be declared and therefore, it would be prudent for Liu to declare all her income. But income the case of exempted items, it would be advisable listed them under exempted properties for the purpose of clarity.

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