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**Question 1**

80/100

Income tax is payable by each individual and company (s 4-1)
The relevant tax year 2002-2003 (s 4-10(1))
An amount is only assessable once (s 6-25(1))

**Advice to Tommy Sixpack**

Tommy’s assessable income consists of ordinary and statutory income (s 6-1(1)). Each amount must be linked to the provision of services to be assessable (s 26(e)).

**SALARY**

As an employee of Pear, this is assessable: s 26(e).

**CAR**

The car provided to Tommy and used by his wife has been provided by Pear in respect of Tommy’s employment(s 136(1)), satisfying the threshold requirements for a fringe benefit. Pear will be liable for any tax on this benefit (s 66(1)).

**RECEIPTS FROM RUNNING**

**Sponsorship and appearance monies**

The sponsorship and appearance monies Tommy has received are linked to services he has provided. Accordingly, these payments will be assessable (s 26(e), Stone).
**Prize monies**

Prize money Tommy has received will only be assessable if Tommy is carrying on a business (*Stone*). A clear connection between Tommy’s skill and ability as a runner and the receipt of prize money is insufficient to show this (*Stone*). Profit making is an essential purpose of a business (*Ferguson*). It is questionable whether Tommy has this requisite purpose, or whether he merely entered competitions for experience and enjoyment. The latter argument is given weight by the fact Tommy has a full time job with Pear (*Stone*). Accordingly, his purpose is best characterised as enjoyment rather than profit making (*Stone*).

Although the amounts Tommy received from running is substantial compared to the amount received from full time employment, the character of the payment is the same (*Stone*). Consequently, this receipt is unlikely to be assessable.

**Gift from Pear**

The gift will be income if it is incidental to services provided (s 26(e)). Tommy is employed as a business manager for Pear and has been properly remunerated for these services. The gift did not replace his income (*Dixon*). Tommy may have received it because of his personal qualities (*Scott*), or Pear may have been motivated by goodwill (*Hayes*). In either of these cases, the payment will not be linked to services rendered. Tommy’s employment is not based on his ability as a runner, nor do his running activities form part of his employment contract (*Kelly*). Accordingly, despite the gift being from his current employer, the gift is not assessable as it is not an incident of employment.

**Sale of Rental Property**

Net capital gains are assessable under s 102-5(1) as statutory income (s 6-10). The rental property is a CGT asset (s 108-5(1)(a)), which Tommy has disposed of – giving rise to CGT event A1. This event took place when Tommy exchanged contracts on February 20th (s 104-10(3)). On this date, all terms and conditions were settled.
Although the price was re-negotiated, Tommy will be liable for CGT on the amount agreed to on February 20\textsuperscript{th} because that contract was the source of the obligation (\textit{Sara Lee}). Tommy does not qualify for any main residence exemptions because this is his rental property.

Assuming this transaction was completed at arms length, the capital proceeds from the sale are $450\,000 (s 116-20(1)). The cost base of the property includes the purchase price and the legal fees on purchase and sale (ss 110-25(3)(a)(b)). Alternatively, Tommy could opt to index the cost base of the property from time of purchase to 20 September 1999 (Div 114). The capital gain is the difference between these amounts (s 104-10(4)).

Tommy held the property for eighteen years. Accordingly, Tommy may discount the capital gain by half (ss 115-10, 115-25, 115-100). However, if he chooses to index the cost base he cannot discount the capital gain (s 115-20) and will be liable for the full amount.

**INVESTMENT IN TELEPHONE COMPANY**

Investment has provided Tommy with use of a mobile phone + phone credit. This benefit could be converted into money or money’s worth (\textit{Cooke}) if Tommy sold the phone, rendering the benefit ordinary income under s 6-5. However, it is likely that Tommy will be permitted to do this. Accordingly, the benefit is non-convertible. Non-convertible benefits are deemed to be convertible if the benefit has been generated by a business (s 21A). There is no evidence to support the idea that Tommy is in the business of investing – he has a full time job and does not appear to have ever invested in such a scheme prior to now. Consequently, it is unlikely that these benefits will be assessable.

**Advice to Pear**

Pear is a carrying on an IT business (s 995-1). Pear’s business income receipts will be assessable as ordinary income (s 6-5).

**SALE OF PEAR’S INTERNET LICENCE**
Ownership of an Internet access provider license allowed Pear to sell Internet access. Pear’s decision to sell this license has caused them to restructure their business from providing Internet access to selling software. Similar to Merv Brown, arguably this decision was made to reduce losses and increase profitability – Pear has experience as a software company and presumably thought it could be more profitable selling software. Accordingly, the proceeds from this sale are capital in nature.

The license is a legal right that is not property, meeting s 108-5(2)(b) criteria as a CGT asset. Sale of the license is CGT event C2 (s104-5) because Pear's ownership has ended (s 104-25(1)). The event took place when Pear accepted the buyer's offer on June 20th (s 104-25(2)). Pear has made a capital gain of $500 000 on the sale (s 104-25(3)). They will be liable for this gain under s 102-5(1). Pear’s carry forward capital loss may be used to offset part of the gain (s 102-15).

The condition of sale in the contract gives rise to CGT event D1 because it imposes a contractual right (s 104-35(1)) for Pear onto the buyer. However, it does not appear that Pear has received extra consideration, nor incurred extra costs for this right, thus there will be no capital gain or loss.

**TOMMY’S CAR**

As discussed above, Pear will be liable for any FBT payable on the car provided to Tommy (s 66(1)). FBT is payable for the car because it has been used privately (s 7(1)).

Car fringe benefits are taxed concessionally (s 9). Consequently they are generally only of value to persons paying the top marginal rate of tax. Tommy’s assessable income did not exceed this threshold this year. Tommy and Pear should re-analyse next financial year whether the car as a fringe benefit really is the better option.

The FBT year ended 31 March. Pear can choose whether it wishes to use the expense method (s 10) or formula method (s 9) to calculate the taxable value of the car. Pear will choose the method yielding less tax. This amount then needs to be ‘grossed up’ to determine the amount of FBT they are liable for (s 5B).

Total word count = 1100 words.