THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

MODULE 2.01 – AUSTRALIA OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

Analysis of a simple change of residency for a company would firstly require examination of whether enough planning has been done by the Board of directors to effectively change the Australian tax residency of Grande Pty Ltd, to another tax jurisdiction, Singapore, under Australian tax law provisions.

A company is treated as a tax resident of Australia if it carries on business in Australia and has its central management and control (CM&C) in Australia. (Para (b) of Sub-sec 6(1) of ITAA 1936). Once these conditions cease to be satisfied a company becomes a non-resident. The facts indicate some business operations remain in Australia so the central question becomes where a change of CM&C can be achieved by the Boards proposed actions.

CM&C is..”a question of fact and degree to be answered according to where the central management and control of the company actually abides. As a matter of long-established authority, that is to be determined, not by reference to the constituent documents of the company, but upon a scrutiny of the course of business and trading.” (Bywater)

It’s not sufficient to change a Boards location as the test of where a company exercises CM&C is a matter of factual enquiry and includes where:

- the power resides with those making high-level decisions and determining general company policies;
- the superior directing authority is located; and
- people consider advice, give instructions for those providing day to day management to follow, controls and dictates company directions, such as use of profits and dividend decisions.

Based on the information provided in Question 1, the facts indicate that if the Board was considering just changing the day to day management to Singapore, this wouldn't be sufficient to effectively change tax residency location to Singapore, according to long standing case authority. Advice needs to be given that its where senior management or directors make strategic decisions, establishes central management and control. It is vital that the superior directing authority is relocated to Singapore: Case References: Bywater Investments Limited & Ors v. Commissioner of Taxation; Hua Wang Bank Berhad v. Commissioner of Taxation [2016] HCA 45; 2016 ATC 20-589 (Bywater). Professional advice of a more complex nature might advise of a wider form of corporate restructuring that seeks to minimise the tax consequences on disposal of assets and stock.

Part 2

Candidates are asked to demonstrate an understanding of the operation of Part IVA (secs 177A-F) ITAA 1936, known as the GAAR. which applies to schemes specifically entered into for the ‘sole and dominant’ purpose of attracting a tax benefit such as gaining a tax deduction or avoiding an otherwise taxable gain.

The provisions require an objective finding per 8 factors in s177D(2) of ITAA 1936, even if it is a rational commercial intention, as this factor is not decisive (per Spotless case). The facts presented in this question indicate that the company Board is attracted to relocating to a low tax jurisdiction to avoid domestic rates of tax, however the commercial rational of acquiring greater access to markets and manufacturing expertise appears to be the material overriding consideration. On balance, it may be concluded that the most influential reasons were commercial and if so, it’s unlikely that the Australian Tax Office (ATO)would invoke the GAAR. Also noted is that the company is not a significant global entity and does not meet the tests to be applied by the ATO to attract the diverted profits liability rules per s177H-R of ITAA 1936.

Avenues for administrative certainty are variously available to taxpayers through the ATO channels for a pre-lodgment compliance agreement, obtaining early engagement advice, or securing a legally binding, written, private binding tax ruling (Sch1 of the Taxation Administration Act 1953). These engagement services generally require a settled statement of facts and issues on which the ATO can provide an opinion and while the GAAR may not be an area the ATO will agree to rule upon due to assumptions required about future matters (for example FCT v. Hacon Pty Ltd & Ors, 2017 ATC, 20-639), other areas of exit tax uncertainty may be acceptable to be ruled upon.

Part 3

Different asset classes have different tax treatments, which candidates need to explain.

The company has been operating for 5 years so all assets are post-20 September 1985 (post CGT), and tax is payable on disposal for any taxable gain (trading stock excluded). Specifically, CGT Event I1 applies (s104-160 ITAA1997) when a company owns Australian assets and ceases to be an Australian resident. For each CGT asset

the company owns its capital gain is calculated by deducting the cost base from its market value, or for a capital loss the assets' reduced cost base less market value is applied to all non-Taxable Australian Property (TAP) and post-CGT assets. An entity ceasing to be Australian resident could escape CGT on non-TAP assets by agreeing to remain assessable on such assets after they leave until disposal.

Anti-overlap provisions within Capital Gains Tax (CGT) legislation (s 118 of ITAA 1997) means that depreciating assets may be brought to account under the uniform capital allowance provisions (Div 40 of ITAA). Then, under the uniform capital allowance system, balancing adjustments arise when a taxpayer stops holding a depreciating asset which for tax purposes equals the difference between the termination value and the adjustable value of the asset. This includes where depreciating asset is used for both R&D as well as other taxable purposes.

Candidates may also explain how the trading stock provisions apply. CGT event K4 specifically applies to any CGT asset that starts being trading stock, resulting in a capital gain or loss when the market value basis is applied. For completeness, candidates may recognise another cautionary issue to advise upon with the research and development (R&D) tax incentive for business expenditure which Grande Pty Ltd has claimed in the 2025 tax year. Where any tangible depreciating property used for R&D is sold for a profit. (Div 355 ITAA 1997), the relevant tax provisions provide that a portion may be clawed back (per calculation methodology). TR 2021/5

Question 2

Part 1

Calculation of Taxable income under *sec 4-15 of the Income Tax Act 1997* (ITAA1997)

Assessable INCOME COMPONENTS - *sec 6-5 of ITAA 1997*			A$
Salary	Contract income of $100,000		100,000
Net Rental Income	Non market loss ($5,200) would be challenged as an uncommercial arrangement. It would be treated as non-arm's length, although in the character of income. Rental income received	$5,200	
	Assume deductions for property are allowable property expenses of $10,400, however the ATO treatment would be to only allow deductions up to the rental income received (or apportion them, depending on the facts of each case): See cases *FCT v Groser, 82 ATC 447, 13 ATR 445, and FCT v Kowal, 84 ATC 4001,15 ATR 125*.	$5,200	NIL
Share trading income	Net trading profits from short-term sales are fully assessable as income and not capital gains (*Myer Emporium* case)		30,000
Dividends from Publico	A dividend of $3,000, has been paid *ss 6(1) ITAA 1936* , and is fully franked with a grossed-up value, assuming 30% full company tax rate of $4,285.70. The corporate franking credit is the grossed-up dividend that must be added to taxable income and an offset allowed (sec *207-20 ITAA 1997*)		4,285.70
Trust distribution	Net trust income share assessable income includes corpus $(12,000+5,000) – *Sec 97 ITAA 1936*		17,000
ADD	Shares sale price $10,000, and purchase price of $2,000. Capital Gain = $10,000 - $2,000 = $8,000.		
Capital Gains	Since the shares were held for more than a year, the 50% CGT discount applies to make a taxable capital gain = $8,000 X 50% = $4,000. Included under s*ec102-5 ITAA 1997*		4,000
	Gross Income (rounded whole dollar amount accepted)		$155,285.70
Allowable DEDUCTIONS -*sec 8-1 and Subdiv 290-C of ITAA 1997*			
Superannuation deductions	Concessional contributions are deducted from taxable income, apply relevant deductions $10,000-(s*290-150 ITAA 1997*)		10,000
Expenses	Work related		3,000
Income insurance	Loss of income premium prepayment $3,500 deduction paid on 1 July 2024 would be allowable, however the tax law restricts the deduction to period over which the insurance cover is provided and so a prepayment would not be allowed for the following tax year. So, no tax deduction would not be allowed in the 2025 tax year but in the year of the insurance premium covers (*s82KZM of ITAA 1936*)		3,500
	Taxable income (rounded whole dollar amount accepted)		$138,785.70

Total Taxable Income Calculation:
$155,285 - $16,500 = $138,785 of taxable, less offsets (methodology applied per *sec 4-10 ITAA 1997*).

Part 2

To qualify for the ZONE A (special area s79A ITAA 1936) remote area rebate for Norfolk Island, Xena must meet qualifying periods, based on usual place of residency, s63-10 ITAA Tax Ruling TR94/27 and ATO web list. The amount of the rebate is a fixed amount plus a percentage as prescribed in the Rates Act and has a Commissioners discretion.

Private Health Insurance: Xena can claim 16.405% of premium reduction from her health insurer for monthly premiums paid, or Xena can claim a refundable tax offset in her tax and the rebate entitlement is based on the income for Medicare levy surcharge purposes.

The imputation credit provisions for fully franked dividends, as outlined in Subdivision 207 of the ITAA 1997, allow shareholders receiving assessable dividends to claim a tax offset equivalent to the amount of Australian company tax paid on that income. As the credit is limited to the company tax paid, Xena will pay the tax difference between the assumed lower company tax rate and her higher individual marginal tax rate plus the Medicare levy.

PART B

Question 3

Part 1

The tax law provisions require dividends paid by the company out of profits derived by the company from any source to be included in assessable income (ss44(1) of ITAA 1936).

Further extensions of the dividend rules under Subdivision E of Division 7A ITAA 1936, operates to ensure that private companies are not able to make tax-free distributions of profits to shareholders or their associates in the form of payments, loans or forgiven debts. The kinds of transactions treated as a dividend, under Division 7A, includes amounts paid, loaned, or debts forgiven, by the company to a shareholder or shareholder's associate (ss 109D and 109E of ITAA 1936). With interposed entities, Subdivision E or Division 7A of ITAA 1936 applies to arrangements involving the private company and one or more interposed entities making payments or loans or giving loan guarantees for the purpose of the 'target entity' receiving a payment or loan from an interposed entity. ATO Tax Determination TD 2012/12 may be cited. The definition of loans within scope includes transactions such as, advances, loans or anything which in substance, either impliedly or expressly, has an obligation for repayment, also reinforced in decision of CofT v Bendal 2025] FAFC15. The essential elements of a loan agreement have not been made with shareholders (s109X, 109N ITAA1936).

The ATO is likely to make an assessment, that both Yanco Trading Pty Ltd's guarantee and Zedco Finance Pty Ltd 's loan was provided as part of the same contrived arrangement for the purpose of avoiding the Division 7A consequences, which is that Yanco Trading Pty Ltd would have directly paid or lent the amount to its shareholders (or their associates).

Division 7A then treats certain transactions between a private company and its shareholder or associate of its shareholder, as an assessable deemed dividend by the company to the shareholder or associate, to the extent to which the company has a distributable surplus. The facts in this question are that Zedco Finance Pty Ltd has only $20,000 of distributable profits, out of an expected payment to each shareholder of $40,000, so that the assessable proportion of the deemed dividend is reduced to the distributable surplus (s109Y of ITAA.1936). The formula and calculation for each shareholder is as follows:

Provisional dividend X (distributable surplus for year ended 2026 =$40,000 X $20,000 = $10,000.
Total provisional dividends) $80,000

Part 2

If the target entity only repays a fraction of the loan made by the interposed entity, the target entity is treated as repaying the same fraction of the loan taken to have been made by the private company. Section 109XB of the ITAA 1936 applies separately to each loan (being the 'actual transaction') and is not concerned with other loans that have been repaid or put on a commercial footing by the 'lodgement day'. Hence it is advisable that the loans be made to comply with the excluding conditions within the Division, so no deemed dividend can arise.

Part 3

Candidates should acknowledge that the ATO is likely to query such an arrangement because Division 7A issues have been longstanding area of administrative risk and because the plan exhibits uncommercial features. In particular, candidates may refer to Taxpayer Alert TA2024/2 Arrangements to circumvent Division 7A of the Income Tax Assessment Act 1936 through the guaranteeing by private companies of third-party loans, should be consulted. This Tax Alert applies to arrangements which, when viewed objectively, involve a series of steps that are intended to circumvent the operation of Division 7A. The Commissioner may then make a determination under Part IVA to cancel any tax benefit arising under the arrangement.

This ATO Tax Alert provides states an administrative view that subparagraph (c)(ii) of s109U of ITAA 1936, does not restrict the application of the provision to third party private company lenders, but can refer to any additional entity in the chain of interposed entities. It is the ATO view that s109U only requires the first interposed entity to be a private company. ATO audit resources will be applied where there is an arrangement designed to circumvent the law, such as applying…" section 109U to arrangements involving a series of steps that, when viewed objectively, are intended to circumvent the operation of Division 7A." The contrived features may include the informal on lending without formal agreements. Although this ATO view is yet to be tested in the Courts there is a risk that the tax adjustment applied by the ATO is to deem the private company which gave the guarantee (Yanco Trading Pty Ltd) to have paid an unfranked dividend to the shareholders or associates who received the loan from the related private company, Zedco Finance Pty Ltd or an external bank (Division 7A).

Question 4

Part 1

Candidates are expected to be familiar with applicable legislation in the Fringe Benefits Tax Assessment Act 1986 (FBTAA) per Division 4, and Fringe Benefits Act where applicable. Fringe Benefits Tax (FBT) is a tax imposed on employers, assessed annually at a tax rate of 47%, but payable in quarterly instalments. It applies to the total fringe benefits provided to certain classes of employees, unless exempted. The legislation includes acceptable methods for calculating the amount of FBT owed and has specific requirements for record-keeping.

In the case of Veda, she has been provided with a car allowance and a loan fringe benefit, to assist with the purchase of her own car. Candidates should understand that the allowance is not a 'car expense' fringe benefit (s136(1) of FBTAA). The monetary payment, is an allowance of $5,000, that is properly treated as included in Vedas assessable income, with allowable deductions for expenses (s8-1, ITAA 1997) incurred on the business proportion. Substantiation provisions for car expenses (Division 28 of ITAA1997), require either the cents per kilometre method (minor use option) or the logbook method. Substantiation using logbooks involves receipts, depreciation calculations and if an electric car apportionment of electricity. The rules allow for apportioning a loss or outgoing that is only partly attributable to producing assessable income (s28-170 of ITAA 1997).

Veda is also provided with a separate 'loan fringe benefit', by her employer Oralie Pty Ltd, to assist her to buy a car (s16FBTAA1986).The FBT payable is equal to the difference between a notional amount of interest, calculated daily on the statutory rate and the lesser interest actually accruing on the loan (grossed up). The actual notional interest benchmark applied for 2025 is published as 8.77%.

An employer must keep records for 5 years to identify and explain FBT transactions (s32 FBTAA1986) and failure to comply is an offence. Loan fringe benefits do not fit within the class of simplified record keeping FBT measures which apply from the 2025 FBT, so employee declarations would be required for Veda. It also does not seem that Oralie Pty Ltd can be exempted from the record-keeping requirements as no base year has been established, or records were previously maintained (ss13 A-L, FBTAA).

Part 2

Living Away from Home (LAHA) benefits usually arise when an employer pays an employee in Ramesh's situation, for the additional expenses of having to live away from their usual place of residence, due to employer's business requirements (s30 FBTAA. The LAHA is related to Australian source employment income and the details of the question point to Ramesh qualifying as a 'temporary resident' with LAFA not being exempt. However, the receipt of passive dividends of $9,000 from a foreign UK source will be treated as exempt (s768-910 of ITAA 1997). It is assumed that Remesh fits within the temporary resident tax provisions and is not a permanent resident, of Australia, or resident-citizen, or the holder of a protected visa based on the facts of the question.

A distinction is made between two types of employee payments paid by an employer for working away from home. The first is a short-term travel allowance, which is given to an employee for brief periods away. The second is a payment for extended periods of time away from their usual place of residence, which is required by an employer's direction and generally requires a new living arrangement, away from the employee's home. (s31 FBTAA1986 and ATO Practical Compliance Guide PCG 2021/3). Ramesh has not been posted or relocated to Australia, from an overseas country and so the LAFHA benefit is not exempt from FBT.

The fringe benefit is the amount of compensation paid. The ATO's reasonable amounts for sustenance allowable under s31G of FBTAA1986 are contained in Tax Determination TD2025/2. Then FBT is reduced by any expenses otherwise allowable under the general provisions. However, any expenses that Ramesh personally incurs on accommodation or for food and drink while he is in Melbourne are living expenses and will not be deductible against assessable income, as they are inherently of a private or domestic in nature (s8-1, ITAA 1997).

The substantiation requirements require an employee declaration in an approved form before FBT lodgement time, detailing the employee's usual place of residence, that s31C of FBTAA 1986 is satisfied and that Ramesh was required to live away from home.

Foreign source dividends not a FB as otherwise assessable.

PART C

Question 5

Part 1

A family trust, must register for Goods and Services Tax (GST) as it carries on an enterprise manufacturing and selling car navigation software, which is a taxable supply and has a turnover threshold of over $75,000 (or $150,000 for non-profit organisations) per A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

The information supplied in this question indicates that the Ausco Family Trust is an Australian resident and earns GST-relevant income over the threshold, from renting property and providing services, which means it is required to be registered for GST.

Even though the Ausco Family Trust owns a 70% equity interest in Tatrum Pty Ltd, each entity must report and separately account its own GST. The trust reports GST on its income from rental properties and its own purchases, while Tatrum Pty Ltd Pty Ltd reports GST on its product sales and purchases. Students may also refer to relevant provisions for the membership requirements of a GST group: s48-10 GST Act.

Record keeping requires valid tax invoices containing all required fields per s29-70 of the GST Act be maintained for at least five years Taxation Administration Act 1953, Schedule 1, s382-5).

Part 2

Sales of software by Tatum Pty Ltd

Net GST-exclusive is $500,000 at 10% GST rate is 1/11×500,000 = $45,454.55

Less total purchases of $100,000 (exclusive of GST) = 10%×100,000=$10,000

These are assumed to be creditable acquisitions (used in the business, and Tatum Pty Ltd is registered), so full input tax credit is claimable.

Net GST Payable by Tatum Pty Ltd = $45,454.55 (GST collected)−$10,000 (GST credits)=$35,454.55

Ausco Family Trust

Calculations of GST on commercial property rental which is a taxable supply under Div 9 of the GST Act 1999, and for office equipment.

GST on Rent (Commercial Property) for quarterly return:

- Tatrum Pty Ltd rent (exclusive of GST): $60,000, so GST: $6,000
- Other tenant rent (exclusive of GST): $90,000, so GST: $9,000
- Total GST on rental income = $6,000 + $9,000 = $15,000

Candidates could note the likely operation of Subdiv 72-C of GST Act: Supplies for inadequate consideration can be adjusted if under market value unless excluded.

Office Equipment Purchase:

- Cost = $40,000 (exclusive of GST)
- GST paid = 10% × 40,000 = $4,000
- Creditable acquisition for administrative use

Net GST Payable (Ausco Family Trust) $15,000−$4,000=$11,000

Question 6

Thin capitalisation measures apply to limit the total debt of the Australian operations of multinational groups (including branches of those groups) by an entity, within the category of a 'general class investor.' The measures cover investment into Australia of foreign multinationals and Australian-based multinationals. In relation to foreign investment into Australia, the rules apply where a foreign entity carries on business through an Australian PE or to an Australian entity in which five or fewer non-residents have at least a 50% control interest, or a single non-resident has at least a 40% control interest, or the Australian entity is controlled by no more than five foreign entities.

For transactions on or after 1 July 2023, the thin capitalisation rules that apply for non-financial entities, consists of a choice of three tests. The first is a fixed limit on debt deductions, determined by reference to test limit of 30% of tax EBITDA (i.e. essentially an entity's taxable income or loss, adjusted for net debt deductions, tax depreciation/capital works and prior year tax losses). Deductions denied under this fixed ratio test can be claimed in a subsequent income year (i.e. carried forward for up to 15 years) in some circumstances. An additional test that can be chosen is a group ratio test, which will allow an entity in a group to claim debt-related deductions having regard to the percentage of worldwide group's net interest expense as a share of group earnings applied to the entity's tax EBITDA .The final choice is a third-party debt test which limits debt deductions to the amounts that are only attributable to the entity's external third-party debt that meet the relevant conditions.

Furthermore, new debt deduction creation rules apply to income years commencing on or after 1 July 2024 and broadly apply to all entities subject to the thin capitalisation rules, other than an authorised deposit-taking institution (ADI). These rules are intended to disallow debt deductions to the extent that they are incurred in relation to certain debt creation schemes that typically lack genuine commercial justification. The rules can affect debt deductions arising from both existing and new related-party debt arrangements that were used to fund:

- the acquisition of a CGT asset or a legal or equitable obligation from an associate, subject to certain exemptions; or
- certain payments and distributions to associates.

With a tax loss of $200,000 expected for FY2025, tax EBITDA may be nil or negative, potentially denying all interest deductions under this rule.

The question is aimed generally to cover Div 820 of the Income Tax Assessment Act 1997, which involves the Thin capitalisation rules to limit deductions on excessive debt. The Debt-Equity rules in Div 974 of ITAA 1997, is distinguishable as it aims to classify financial instruments as either debt or equity for tax purposes, which can also affect the deductibility of payments associated with those instruments.

Question 7

This problem involves non-commercial losses and the application of Division 35 of ITAA 1997, to the separate business activities carried on in partnership (Division 5 of ITAA 1936). Specifically, it addresses the operation of the loss deferral rule. Division 35 applies only to an individual who is carrying on a '*business activity' in an income year, either on their own, or in a general law partnership (section 35-5). Exceptions: Where an individual has a loss from a primary production business (as defined) in a year of income, and the total of their assessable income from sources unrelated to that business activity is less than $40,000, the rules in subsecs 35-10(2), (2A) or (2B), will not apply in relation to that business activity (per subsection 35-10(4)).

The partnership consists of Mediclear Pty Ltd, and individuals Eddie and Rose.

For the individuals any excess of their share of allowable deductions over their share of assessable income is looked at separately for each separate business of the partnership: see for example Income Tax Ruling TR2003/3.

The operative rule in s35-10 of ITAA 1997 is that unless an individual's business activity meets one of four statutory tests, the provision has no operation; The four tests are the Assessable income test, Profits test, Real property test and Other assets test, The amount of assessable income derived by the individual from the relevant business activity for the relevant income year is at least $20,000 (para (a) of s35-30), so the Assessable Income Test is satisfied.

Calculation of the assessable income from the activity can involve making a 'reasonable estimate' of a notional annual amount if the activity has not been carried on for the whole year (para 35-30(b)), a loss from that business activity will not be deductible in the income year in which it arose. The law applies as if the loss were not incurred in the income year and it is deemed to be deductible from the assessable income from the activity for the next year in which this activity is carried on.

The facts of the question are that the partnership consists of two individuals and a company and ss 35-10(2) requires that the assessable income and deductions for each business activity be examined separately for each individual. Each partner will not have allowable deductions in excess of their assessable income in respect of the cleaning business. As Division 35 can only apply to individuals, the loss deferral rule does not apply to the company partner, Mediclear Pty Ltd who may claim the loss in the current year. Note: The interests of companies are ignored (paragraphs 35-25(a))

In respect of the horse breeding business activity however, each individual partner, Eddie and Rose will have a share of partnership income from horse breeding of $20,000 and a share of allowable deductions of $24,000 leaving an excess of $4,000, which subsection 35-10(2) may defer, as one of the tests is satisfied., assuming no exception or exercise of a Commissioner's discretion. The provisions specify that the interests of any non-individual partners be ignored when applying the Assessable income test (s35-25 of ITAA 1997). As a result, only $16,000 of the assessable income from the horse stud activity is taken into account for the Assessable income test, and therefore it is not passed. As the Assessable income test is not passed, the rule in subsection 35-10(2) will operate to defer the losses of Eddie and Rose in respect of the horse stud activity in this example, assuming no other test in Division 35 is met, the exception in subsection 35-10(4) does not apply, and no exercise of the discretion under section 35-55 occurs.

Question 8

A Multiple Entry Consolidated Group (MEC) group is formed when two or more eligible tier-1 companies of a foreign company (the top company) make a choice, in writing, to consolidate themselves into a MEC group (s 719-50 and para 719-5(1)(a) of ITAA 1997), on a particular date.

Such a MEC Group is treated as a consolidated group, with a either tier-1 company being appointed as the head company for the whole tax year. Assets of consolidated group under Division 701 of ITAA 1997, are treated as being owned by a single entity being the head company.

Sale of land is a CGT Event A1 and foreign entities are subject to capital gains tax (CGT) on taxable Australian property, which includes, taxable Australian real property (i.e. CGT asset under s 855-20 ITAA 1997).

Intercompany rollovers of CGT assets by the originating company are disregarded under s126-60 of ITAA 1997. The facts of the question indicate that two potential rollovers have occurred in the one group:

- the first sale from a resident head company of a MEC group to a non-resident head company; and
- the second sale from that same non-resident subsidiary back to a different resident company.

The first transaction involving the CGT asset where the MEC group seeks rollover relief where the CGT asset is transferred to a foreign resident company in the same group, from the entity that originally acquired the asset. Subdivision126-B of the ITAA 1997 provides that a roll-over may be available for the transfer of CGT assets between two members of the same wholly owned group of companies, and at least one of the companies is a foreign resident (s124-40 of ITAA 1997). There are a number of requirements to be satisfied for the same asset roll-over tax relief to be available which candidates may provide in the context of consolidated entities and conclude it is satisfied for the first rollover, or possible reasons for denial. Note that ID2004/459 contains has some ATO analysis.

Candidates should be able to explain why the second rollover, by Developco Inc back to a MEC company, while being within a wider global group of entities, would be denied under relevant Australian tax law provisions.

The second sale of land is also subject to Australian CGT (s 855-10 of ITAA 1997), but would be denied rollover of the capital gain on sale under paragraph (a) of ss126-50(7) of the ITAA 1997, as the foreign resident company must not have acquired the asset from '... an Australian resident originating company other than the company that is the recipient company for the current application of this Subdivision'. Rollover relief for the CGT asset sale is only available to an Australian resident company which is the same resident company from which it previously acquired the asset. It’s not possible to try to argue the case that it was indeed (notionally for tax purposes) the same head company involved in both transactions as the second transfer was from a non-resident, which was not part of the same Australian MEC, single entity group.

For additional marks it could be noted by candidates that the second transaction is also from a non-resident Developco Inc back to different resident entity and does not occur in the context of the one consolidated Australian group, where non arm’s length features may occur. Accordingly, if any arrangements involved additional features of tax risk then the GAAR provisions of Part IVA of ITAA 1936 could be applied; for example, cost setting uplifts of the CGT asset, or was considered as undermining/exploiting the CGT rules.