PART A

Answer-to-Question-_1_

1) Dane being an Australian resident shall be subject to tax on employment income received from Highrise Solutions Pty Ltd during the current tax year.

By virtue of ss 83A-20, 83A-25(1), the employee share scheme right obtained by Dane at a discount shall be subject to tax during the current tax year. However, the discount is only included in the taxpayer's assessable income for the current tax year in which the shares are acquired. Therefore, the amount actually paid by Dane shall not be subject to tax.

The discount shall be calculated by deducting the amount paid by Dane to acquire the shares from the market value of shares. The Market value of shares shall be the value of shares at the time of shareholders approval at the AGM as upheld in the case *Fowler v FCT (2013) 92 ATR 595*.

Dane may also be subject to tax concession under s. 83A-35(1) on the payment of tax upfront on the shares acquired at discount subject to certain conditions and the maximum limit of concession availed can be $1,000.

So during the current tax year, the differential of market value of shares and consideration paid by Dane shall be subject to income tax. Where Dane plans to sale his entire shareholding subsequently after the lapse of restriction, that shall be accordingly dealt as capital gain tax at that time during the tax

year in which he sales the shares.

2) With respect to payments, gifts and awards received from Rockets club by Dane during the year, it is of vital importance to first establish whether this activity of Dane is business or employment. Keeping in view that Dane has a career in engineering and has merely as a hobby pursuing his sport activity in a local club, entails that it is not a business activity. In *Spriggs and Riddell v FCT (2009) 82 ATIR 148* it has been held that it is a difficult question of fact and degree in determining whether a sportsperson is carrying on a bussine or not.

For the purpose of this question, as discussed above, it can be observered that it is not a full-time activity of Dane, hence shall not be accounted for as business activity. Therefore, the fixed weekly payment of 500$ and bonus on winning 200$ on each winning can be treated as assessable income.

With regard to award of car from the employer, such gits shall come under the fringe benefits under FBTAA, unless it can be established that the gift was made to irrespective to their status as employee. It shall be accordingly governed under s 15-2 ITAA 1997.

3) WIth respect to Danes claim of losses amounting to $50,000 on his establishment of plant nursey business, the Div 35 ITAA 1997 rules establish whether an individual can offset business losses against other assessable income. In general Dane can only offset loss against other income derived in the same income year if the business activity satisfies at least one of the four

commerciality tests which are as under:

(a) *Assessable income test*: assessable income from the business activity for the income year is at least $20,000 or reasonably be estmated to be at least $20,000 if the activity is carried on for the whole year.

(b) *Profits test*: the activity has resulted into profits in at least 3 of the past 5 income years, including the current tax year.

(c) *Real property test*: the total value of real property, or interest in real property, used in carrying out the activity is at least $500,000.

(d) *Other assets test*: the total value of other assets used on a continuuin basis in the business activity is at least $100,000.

Given the scenaior and available information, Dane does not fulfill the first two conditions but if he qualifys the property or other assets tests, then he may offset loss of $50,000/- against his other assessable income and that non-commercial loss rules shall not prohibit the offset as provided under s 35-10(1).

----------ANSWER-1-ABOVE----------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

1) ABC Partnership shall be treated as partnerships for the purpose of taxation in Australia as per rules under Div 5 of Pt III ITAA 1936. The partnerships are treated as a pass-through entities in Australian taxation system, where the net income of net loss of a partnerhsip is worked out as if the partnership is a resident taxpayer and then the net income or net loss is attributed to the partners in proportion to their respective interests in the partnership.

Therefore, the the net income of $ 300,000 shall be apportioned accordingly to the respective share of Alfie, Bonnie and Corban LLC and will be assessed in their respective capacity. Alfie and Bonnie, being resident taxpayers shall include in their personal tax returns, the amount of $100,000 each as their respective share and pay tax accordingly to their applicable marginal rate of tax.

Corban LLC being a company registered in USA, but since Corban is in Australia, as per the residency test as envisaged under section 6(1), a compay is a resident of Australia if it both carries on business in Australia and has its voting power controlled by Australian resident shareholders. Therefore Corban LLC shall be treated as resident company for the purpose of tax

in Australia. Accordingly, the the respective share of Corban LLC in ABC Partnership shall be subject to tax in Australia. Also, if the distrbution of profits is paid to the USA company from ABC Partnerhsip, which shall be subject to 30% withholding tax on payment as well.

2) Salary paid to a partner by the partnerhsip is against the common principles of partnership, where a person cannot contract with themselves for employment and therefore under the australian tax law the salary is not a deductible in calculating the net income or loss of the partnership. The said decision is also fortified under *Scott and FCT (2002) 50 ATR 1235*.

Resultanlty, the salary paid to Alfie, being a partner cannot be allowed as a deductuble expense in deriving net income of the partnerhsip, but the same shall vary the Alfies individual interest in the net income or loss of ABC Partnerhsip. Therefore salary paid to ALfie shall treated as his share in ABC Partnerhsip and shall be subject to tax. However, if in a particular year, the salary paid exceeds his interest in the availabel net income, then excess is not assessable income of the partner and such excess shall be paid in a future income year when sufficient profits are available.

Similarly in case of superannuation paid, it shall not be part of net income of a partner and shall have the same treatment as meted out in case of salary paid to Alfie.

Corban, however, not being the partner of the ABC Partnership in indiviudal capacity, the salary of $20,000 paid to him shall be deductible for the ABC partnership.

Resultantly, the net income of the ABC partnerhsip shall be enhanced with the amount of salary paid and superannuation paid to Alfie and increase the net income of Partnerhsip.

It is also pertinent to mention that agreement to draw salary by a partner in partnership is a contractual agreement to vary interests of the partners and for it to be effective it needs to be agreed before the end of the tax year.

3)The deductibility of interest incurred by any person shall be subejct to general principles of test which include primary test i.e. use of the borrowed funds. If the money borrowed by the partnerhsip for the purpose of working capital requirments for instance establishes a nexus with the business of the partnerhsip, hence the interest paid on that amount is deductible. In this instant case, $15,000 borrowed funds utilized for working capital requirments is allowed and the attrbuted interest payment shall be deductible for partnership. The said principle is also fortified in the decision of *FCT v Robers; FCT v Smith (1992) 23 ATR 494*. With regard to the other portion of utilization of funds amounting to $20,000 to Corban to pay-out his revalued partnership capital, generally provision of funds to the partners that do not constitute repayment of funds, invested in the partnerhsip business lacks the important connection with the income generating activities of the partnership, and therefore borrowing for that purpose is not incidental and relevant to the partership business and is not deductible. In this case, since it is for the purpose of partnership, then the same should be deductible.

Whereas, for the interest on borrowing of funds by Corban, the same shall be treated as income for the partnership business and resultantly the net interest expense at 4% shall be deductible for the ABC partnership.

---------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

PART B

Answer-to-Question-_3_

--------------ANSWER-3-ABOVE---------------

----------ANSWER-4-BELOW----------

Answer-to-Question-_4_

The Frills Family Trust is a discretionary trust, in which the entitlements of the beneficiaries in any particular income year are determined by the exercise of discretionary powers by the trustees. The entitlement is also attached to the discretion exercised, because in discretionary trust, the entitlement to the beneficiary of any amount is on the basis of discretion of the trustees.

The net income of a trust is taxed in the year it is derived by the trustee of the turst, regardless whether it is actually paid to the beneficiaries. The net income of the trust estate is determined in which the capital gains, net franked distributions and franking credits are excluded. Then the entitlements are determined, in this case, being discretionary trust, the entitlement is established if the discretion is exercised by the trustees. In the instant case the entitlement is established by the discretion exercised. The net income is then allocated to each beneficiary on the basis of entitlement.

A capital gain is excluded form the income of a trsut estate in determining the amount that is assessable in the hands of a beneficiary as per the provisions of ss 97, 98A or 100. It is also excluded from the net income in determining the amount that is assessable in the hands of beneficiary. For the treatment of

capital gains, the gain is reduced by capital losses available to the trust if any and then reamining gain is reduced by 50% discount under the CGT rules. The gain allocated to the Kids Charitable Trust shall then be grossed up to eliminate the effect of reduction under the discount capital gains rules, the small business concession as per s 115-215(3). The gain is then reduced by any discounts which are available to the beneficiary, the resultant gain is then assessed and taken into account for net capital gain for the beneficiary for the said tax year.

Whereas for the rental income, entitled to Freida and Freddy, the same shall be assessed under s97 on the share of net income of the trust estate and can be able to claim any other losses available to offset against the income from trust.

----------ANSWER-4-ABOVE----------

--------------ANSWER-5-BELOW---------------

PART C

Answer-to-Question-_5_

--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

There are three types of rulings in the ATO ruling systems that are legally binding on the ATO, which are stated as below:

a) Public Rulings: A public ruling is a legally binding written advice by the ATO, after their considered and decided position on any legal provision. A public ruling is published and states that it is a public ruling which is published in the Gazette. The public ruling is not given to specific taxpayers, whereas they should self-assess in accordance with the ruling and then object to the resulting assessment.

b) Private Rulings: A private ruling is ATOs written view regarding application of any provision on a particular taxapyer which addresses a specific issue relting to that specific taxpayer. A private ruling is made on the basis of relevant facts set out in the application form and on any assumptions that may need to be made. Private rulings enable taxpayers to be notionally assessed on any specific transaction.

c) Oral Rulings: Oral rulings are those which pertain to straightforward matters which are frequently provided to a taxpayer through call centres or at shopfronts. Oral rulings are

not binding on the ATO.

Any rulling is binding on the ATO, if following conditions prevail:

1. the ruling applies to the taxpayer, and
2. the taxpayer relies on the ruling (even if he is unaware of it)

As for the question, that whether Zero Pty Ltd can rely on private ruling issued to Heroine Holding Ltd, it is important that:

a) ruling is given in response to a ruling application in case of private.

b) the facts, assumptions or conditions set out in the ruling are met.

c) the law considred in ruling is in force and has not been materially amended.

Prominenetly in the instant case, the private ruling cannot be applied unless it is applied by the Zero Pty Ltd for its own. However, it can help out if the facts and assumptions or conditions are similar as in the case of Heroine Holding Ltd.

----------ANSWER-6-ABOVE----------

--------------ANSWER-7-BELOW---------------

Answer-to-Question-_7_

--------------ANSWER-7-ABOVE---------------

--------------ANSWER-8-BELOW---------------

Answer-to-Question-_8_

This is with reference to your query regarding the implication of Fringe Benefits Tax implications on loan and waiver of loan to one of your employees Geraldine.

At the very outset, it is important to highlight that the tax period for the FBT is 1 April to 31 March, unlinke the tax period uncer income tax which is 01 July to 30 June. So the calculation for the FBT shall be as per the said tax period. The applicable tax rage for FBT is 47% for the tax period 2021-22.

Keeping in view the information provided, it appears that the said loan is interest free and Brick Pty Ltd is not charging any interest from Geraldine for the loan of $20,000 disbursed to her. The taxable value for the loan fringe benefits shall be the amount by which the notional interest which is the benchmark interest rate applicable at 4.52% for the tax period 2021-22, exceeds the amount of interest that has actually accrued on the loan during the year. Since, it is an interest free loan, the whole of the notional interest on the loan disbursed and held

payable during the period at 4.52% shall be the taxable value for the purpose of FBT.

Also, as provided under s16(3) and (4), if a loan on which interest is not payable for atleast 6 months, it will give rise to a new loan equivalent to the deferred interest component. Therefore the amount of loan shall be increased after 6 months with the amount of interest accrued on the loan and shall subsequently be compounded on that value.

Whereas, with respect to waiver of 50% loan amounting to $ 10,000/-, As per s 14, a debt waiver fringe benefits arises where an employer persuant to an arrangment with employer releases an employee from obligation to pay the debt amount. The taxable value for the purpose of FBT shall be the amoutn waived by the Brick Pty Ltd which is $10,000/-.

----------ANSWER-8-ABOVE----------
