ATTACHMENT M

Qn	Answer Probably Intended Under TVM	Answer Probably Intended Under Current Law
1	Assessed on $122. The interest credited to the account is treated as received. It is probably not a private receipt. The amount deposited is a further payment by the taxpayer to the bank. This is probably not a private payment. The bank account is a non-private financial asset held by the taxpayer. The payment would form part of the cost (which is its tax value) of the bank account. (It is assumed Div 75-A applies not Div 75-C even though the future interest is "certain.") (Accrued but unpaid interest as at 30 June is ignored for these purposes, assuming a special rule for individuals will allow them to report interest when received.) Relevant steps Receipt +$122 Payments - $122 Assets [$3,122 - 3,000] +$122 +$122	Assessed on $122. The interest credited to the account is treated as received and is ordinary income. Relevant steps Ordinary income +$122 +$122
2	Assessed on $3,000. The wages are a non-private receipt. The deposit to the bank is probably a non-private payment by the taxpayer to the bank. The bank account is a non-private financial asset held by the taxpayer. The deposit forms part of the cost (which is its tax value) of the bank account. Relevant steps Receipt +$3,000 Payments - $3,000 Assets [$3,000 - 0] +$3,000 +$3,000	Assessed on $3,000. The wages paid to the taxpayer are ordinary income. (The deposit to the bank account has no tax consequence and need not be recorded.) Relevant steps Ordinary income +$3,000 +$3,000
3	Assessed on nil. The amount received is a private receipt. The amount deposited is probably a non-private payment by the taxpayer to the bank. The bank account is a non-private financial asset	Assessed on nil. The amount is not ordinary income and is not statutory income nor a capital gain. (The deposit to the bank account has no tax consequence and need not be recorded.)

held by the taxpayer. That payment forms part of the cost (which is its tax value) of the bank account which is a (non-private) financial asset.

Relevant steps	
Receipts	nil
Payments	-$45,000
Assets [$45,000 - 0]	+$45,000
	Nil

Relevant steps	
Ordinary income	nil
	Nil

4 Assessed on $12,000

Taxpayer is deemed to have received the amount owed (s. 16-15) and is deemed to have paid this amount for the debt now owed (s. 16-15).

The taxpayer holds a non-private financial asset with a tax value of the amount it is entitled to receive.

(The recovery of the cost of the slates is ignored.)

Relevant steps	
Receipts	+$12,000
Payments	-$12,000
Assets [$12,000 - 0]	+$12,000
	+$12,000

Assessed on $12,000

The taxpayer probably operates on an accrual basis because it has trading stock. It derives income when the stock is delivered and an invoice rendered.

(The recovery of the cost of the slates is ignored.)

Relevant steps	
Ordinary income	+12,000
	+$12,000

5 Assessed on $2.65m

The rules in s. 16-55 appear to apply to generate both a receipt and a payment. The amount received and spent is the "market value" of the right to receive $2.65m, which in this case is probably not $2.65m. (Div 28 appears not to apply to change this.)

The judgment debt is probably a non-private asset that is now held by the taxpayer. It is a financial asset and its tax value would be the amount that taxpayer has the right to receive (s. 76-15, Item 1), unless it is treated as an asset with a certain gain (s. 76-210) because its cost is different to the amount it might realise if collected. Query if any of the payments are "certain" (s. 76-40, 76-70). If the former, assessed on $2.65m. If the latter, the calculation in Div 76-C is not possible because there is no further term to the debt.

Relevant steps	
Receipts	+ ????
Payments	- [same amt]
Assets [$2.65m – 0]	+$2.65m
	+$2.65m

Assessed on nil

Even for an accrual basis taxpayer, it is unlikely that taxpayer has derived any income in this situation prior to receipt – there would probably be no "gains completely made [and there would be] legal or business unsoundness in regarding them without qualification as income derived" (*Arthur Murray*).

CGT accounting might trigger derivation of an amount that the taxpayer is "entitled to receive" but insufficient facts to decide whether any CGT event has actually occurred.

Relevant steps	
Ordinary income	nil
	Nil

6 Assessed on $340,000

The amount received is probably meant to be treated as the proceeds of assuming a depreciating non-private liability. The liability has declined by (about) one-half as at 30 June

Relevant steps	
Receipts	+$680,000
Liabilities [340,000 – 0]	<u>-$340,000</u>
	+$340,000

Assessed on $680,000

The amount received is unlikely to be ordinary income. Instead, it will be taxed as a (non-discount) capital gain.

Relevant steps	
Net capital gain [680,000 – 0]	<u>$680,000</u>
	$680,000

7 Assessed on nil

The transaction is probably meant to be treated as giving rise to a non-private asset: a zero-tax value asset arising under an unperformed contract.

(If this is so, it is not obvious why the contract would have a positive tax value anyway. There is no financial asset as at 30 June as no amount is due and payable. If it were an investment asset, it probably have no cost at 30 June; Div 16 would appear not to create payments at this stage.)

Relevant steps	
Assets [0-0]	Nil
	Nil

Assessed on nil

No amount of ordinary income is derived until the work is performed and billed.

Relevant steps	
Ordinary income	Nil
	Nil

8 Assessed on about $35,417.

The amount received is probably meant to be treated as the proceeds of assuming a wasting non-private liability. The liability has declined by (about) one-twelfth as at 30 June (ie, 3 months of one year out of three years).

Relevant steps	
Receipts	+$425,000
Liabilities [389,583 - 0]	<u>-$389,583</u>
	+$35,417

Complications. The non-cash aspects of the transaction (the obligations to promote, the entitlement to receive, the ownership of the signage etc) assume importance because of (a) the expansive definitions of asset and liability and (b) Div 16 which creates receipts and payments and ascribes costs to them arising from

Assessed on $425,000

The amount is probably not ordinary income. Instead, it will give rise to a taxable capital gain in the year in which the agreement was entered.

The non-cash aspects of the transaction (signage, etc) are probably irrelevant under current law even though the taxpayer comes to own the signs etc. (despite s. 40-185, Item 4).

Relevant steps	
Net capital gain [425,000 – 0]	<u>+$425,000</u>
	+$425,000

the non-cash elements.

9 Assessed on $2,666 / 2,667

The cash receipt is presumably meant to be the proceeds of assuming a non-private depreciating liability. The liability has been partly performed (about 8 weeks out of 24) by 30 June and has a tax value of the remainder.

Relevant steps	
Receipts	+$8,000
Liabilities [5,333 – 0]	-$5,333
	+$2,667

Assessed on $2,666 / 2,667

The amount received would probably be treated as derived as services are performed.

Relevant steps	
Ordinary income	+$2,667
	+$2,667

10 “Deductible” loss of $268,000

The term deposit would presumably be a non-private financial asset held by the taxpayer. It presumably has a tax value of $268,000 (cost) – ie, as the term is only one year, Div 76-C seems inapplicable. The asset is probably no longer held as at 30 June and there are no proceeds from this transaction.

Relevant steps	
Assets [0 – 268,000]	-$268,000
	-$268,000

Deductible loss of $268,000.

The term deposit would be a traditional security, and the formal dissolution of the company would be a “redemption” (probably not a “disposal”) triggering a loss. The loss would be deductible under s. 70B. (It is possible though unlikely that s. 70B(4)(e) would make the loss a non-deductible capital loss.)

Relevant steps	
Specific deduction	-$268,000
	-$268,000

11 Nil

The withdrawals from the bank account are treated as receipts by the taxpayer. They are probably meant to be non-private receipts. The amounts spent are private payments.

The bank account is a financial asset held by the taxpayer. Withdrawals are probably meant to be treated as reducing the cost of the asset.

Relevant steps	
Receipts	+$400
Assets [16,020 – 16,420]	-$400
	Nil

Nil

The amounts spent are not allowable deductions. (The withdrawals from the bank account have no tax consequence.)

Relevant steps	
	Nil

12 “Deduction” of $8,420.

Holding the invoice for delivered goods indicates the existence a liability which is currently “had” and non-private. If so, Div 16-B treats the taxpayer as having received the amount of the liability as the proceeds of assuming the liability and having paid the same amount for the goods. The goods are probably “held” at that time as a non-private zero tax value asset. (If the goods are not yet held, the

Allowable deduction of $8,420

The cost of stationery would be an allowable deduction which the taxpayer has incurred. Passing of title / receipt of delivery is not considered vital to whether the liability is incurred. (The deferral of deduction until payment under the trading stock rules is not relevant.)

result is the same.)

Relevant steps		Relevant steps	
Receipts	+$8,420	Deductions	-$8,420
Payments	-$8,420		
Assets [0 – 0]	nil		
Liability [$8,420 – 0]	-$8,420		
	-$8,420		-$8,420

Complications. Alternatives revolve around the existence of a liability – the liability might not be "had" until delivery occurs / title to the goods passes. If no amount is due and payable as at 30 June Div 16-B is also not triggered.

Whether the tangible goods are "held" or not is not significant (as they have a zero tax value) but if the taxpayer has another asset being an intangible right to the goods, this would complicate the position further.

13 "Deduction" of $500,000

This is a non-private payment. There is unlikely to be a new asset held arising from the payment. (There is an issue whether the payment would be treated as forming part of the second element of the cost of some existing asset, but it is considered unlikely)

Non-deductible payment of $500,000.

The payment is probably not deductible – it relates to the structure through which the taxpayer derives its income (a dealer which accounts for such a large proportion of sales), is paid in a lump sum and is not concerned with the regular and ongoing maintenance of that structure. The payment does not form part of the cost of any depreciable asset, nor is it added to the cost base of a CGT asset.

Relevant steps		Relevant steps	
Payments	-$500,000	Capital payment [$500,000]	
	-$500,000		Nil

14 "Deduction" of $128,000

This is a non-private payment. There is unlikely to be a new asset held arising from the payment. (There would again be an issue whether the payment would be treated as forming part of the second element of the cost of some existing asset.)

Deduction of $128,000.

The payment is probably deductible – *Nevill*.

Relevant steps		Relevant steps	
Payments	-$128,000	Deduction	-$128,000
	-$128,000		-$128,000

15 "Deduction" of (about) $2,000.

This is a non-private payment. The taxpayer holds a non-private depreciating asset (the lease). The closing tax value of the asset will be

Deduction of (about) $2,000.

The amount incurred for rent ($3,100) is allowable as a deduction. (Ignoring the STS, transitional etc issues) the deduction is spread the unexpired portion of the lease (11/30 x $3,100 which approximates $1,100).

Relevant steps

Payments	-$3,100
Assets [$1,100 – 0]	+$1,100
	-$2,000

over the month on a daily basis (say 20 days which approximates $2,000).

Relevant steps

Deductions ($3,100 x 20/30)	-$2,000
	-$2,000

16 Nil.

This is a non-private payment.

At the end of the year, the taxpayer has an intangible which meets the definition of “asset” and probably also the definition of “hold.” It is not a zero tax value asset because it is acquired from another. It is not trading stock. It is probably not a depreciating asset as “the period for which [the slogan] can be used” is not limited (although its value will clearly decline over time with exposure) – this assumes the asset is not a copyright, but rather something protected by passing off or trademark remedies. If it is an investment asset, the taxpayer can recover none of its cost in the current year. (As the slogan is unlikely ever to be “disposed” of, this becomes a TVM “black hole.”)

Relevant steps

Payment	-$268,000
Asset [$268,000 – 0]	+$268,000
	Nil

Complications. The transaction might also be construed as payment for a depreciating asset being either the copyright in the slogan (which would have a defined term and a closing tax value fixed by Item 2) or another type of asset which meets the “depreciating asset” definition but with a term to be derived from practice (with a closing tax value fixed by Item 4).

Deduction of $268,000.

The payment is probably deductible – it acquires the benefit of a service which is used in the ongoing operation of the business. It does not add to or expand the business structure.

The payment does not form part of the cost of any currently depreciable asset, nor is it added to the cost base of a CGT asset.

Relevant steps

Deduction	-$268,000
	-$268,000

Complications. The payment might be non-deductible if the advertising is viewed as establishing, replacing or expanding the taxpayer’s business structure. If so, the payment would probably give rise to a “black hole.”

17 Deduction of $25,000

The payment of $25,000 is a non-private payment.

The transaction with the assets acquired and remaining contingent liabilities are ignored initially (see below).

Relevant steps

Payment	-$25,000
	-$25,000

Complications. The taxpayer probably has both

Deduction of $25,000

The taxpayer has incurred and paid $25,000 on signing the contract. This payment is deductible. The other $75,000 liability is probably not yet incurred if the obligation to pay it is contingent on performance by the other party.

Relevant steps

Deduction	-$25,000
	-$25,000

assets and liabilities under the contract for which, we are meant by Div 16 to understand that “non-cash benefits” have been given and received. The liabilities may be contingent (which would invoke Div 28). We do not venture to guess how these provisions are meant to apply in this context.

18 “Deduction” of $64,800

The payment of $64,800 is a non-private payment.

No new asset exists at the end of the year. (The possibility that the payment might have to be absorbed into the cost of some existing asset is discounted as unlikely).

Relevant steps	
Payment	-$64,800
	-$64,800

Deduction of $64,800

This is payment is probably deductible – *Hallstroms*.

Relevant steps	
Deduction	-$64,800
	-$64,800

19 “Deduction” of $2,500

Payment is non-private.

Stationery is an asset with a zero tax value at year end.

Relevant steps	
Payment	-$2,500
Asset [0 – 0]	nil
	-$2,500

Deduction of $2,500

Cost of stationery is invariably deductible. (The only issue of concern might arise from the size of this order.)

Relevant steps	
Deduction	-$2,500
	-$2,500

20 “Deduction” of $700,000

The payment is non-private.

The licence is a non-private depreciating asset held at the end of the year. The closing tax value will be determined under s. 72-40, Item 2

Relevant steps	
Payment	-$2.8m
Asset [2.1m – 0]	+$2.1m
	-$700,000

Deduction of $700,000

The taxpayer has purchased a spectrum licence which is a depreciating asset for the depreciation rules. The decline in value is straight line.

Relevant steps	
Specific deduction [$2.8 / 4]	-$700,000
	-$700,000