Question 1

Based on the given situation and the related facts, Fred's tax residency needs to be determined for the given tax year.

In determining the tax residency of Fred or any other individual taxpayer, subsection 6(1), ITAA 1936 provides for the following four tests and the taxpayer needs to fulfil atleast one of these tests in order to be classified as resident of Australia for the purposes of tax (Nethercott, Richardson & Devos, 2016).

- Domicile Test – This is applicable to determine the tax residency status of Australian residents based on the underlying location of the permanent residence. This test is not applicable in case of Fred since he is an English resident and thus non-Australian domicile holder (Barkoczy, 2014).
- Superannuation Test – This is applicable only for government employees stationed abroad which is not relevant for the given case (Gilders et. al., 2015).
- 183 Day Test – This is applicable for foreign residents such as Fred who have to stay in Australia due to various reasons. The conditions to be satisfied for obtaining Australian tax residency are as follows (Deutsch et. al., 2016).
  - ✓ Minimum stay of 183 days in Australia – Fred has managed to comply with this
  - ✓ Intention of settling in Australia – Fred has no such intention as his stay is linked to ongoing professional commitment and hence no investment in Australia.

  Fred is not an Australian resident as per this test.

- Resides Test - This is applicable for foreign residents such as Fred who have to stay in Australia due to various reasons. The relevant factors which decide on the tax residency status are highlighted below (Hodgson, Mortimer & Butler, 2016).
  - ✓ Underlying significance of the reason of visit – In Fred's case, reason is employment which has lasted for 11 months and would be considered highly significant.
  - ✓ Personal and professional ties in Australia – Fred has come along with wife and has not made a single visit to Australia thus indicating strong ties.

- ✓ Social arrangement in Australia – Fred is leading a life that is a fair replica of corresponding life in England.

Thus, in accordance with this test, Fred is a tax resident of Australia.

Question 2

Case law 1 - Californian Copper Syndicate Ltd v Harris (Surveyor of Taxes) (1904) 5 TC 159

Relevant Facts

- Company purchased a land for copper mining from the available funds which the taxpayer knew were insufficient to begin with.
- No mining was conducted due to unavailability of the working capital
- Land ownership was given to the other company in the return of the subsequent shares of the other company
- Huge profits resulted to the old owners of the land from the shares

Arguments of the taxpayers

- The action of land sale amounted to substitution of one capital asset with other investment i.e. shares (Coleman, 2011).

Judgement

The court declared that the intention behind the purchase was not to operate the mining on the land as fund insufficiency was evident.. The company did not implement the mining and liquidated the land to the other company with the intent of maximizing the profits. Shares produced sizable proceeds to the company. Therefore, the action of sale reflected business activity and the ordinary proceeds would be assessed as per the section 25(1) of ITAA, 1936 (CCH, 2014).

Final conclusion

Received income - Assessable

Case law 2- Scottish Australian Mining Co Ltd v FC of T (1950) 81 CLR 188

Relevant Facts

- Company purchased the land for coal mining
- Coal reserves exhausted from regular coal removal
- Investors sold the land after subdivision and requisite land development works
- Significant expenditure incurred in the process of land development
- Ample profit was obtained from the sale

Arguments of the taxpayers

- The investors of the company argued that the land was effectively utilised for coal mining for several years and gradually got exhausted in the coal reserves. Therefore, excess mining was not profitable since the land would not be used for any other purpose. Thus, various land development works were organised and sold for residential purpose (Jade, 2016).

Judgement

On the basis of the arguments of the investors, the court argued that the company was actively involved in the coal mining and there was no future plan for liquidation of the land. Hence, the action of land sale would be considered as realisation of the capital asset and does not constitute business action (Jade, 2016).

Final conclusion

Received profit - Capital income (Non Assessable)

Case law 3 - FC of T v Whitfords Beach Pty Ltd (1982) 150 CLR

Relevant Facts

- Land used for drying of fishing shacks and other related business equipment.
- The ownership of the land was transferred to the land development companies
- The new investors did subdivision of land into plots, fencing, gardening, water supply units and so on to enhance the commercial rate
- Alteration in the Article of Association by the new owners to allow alternate usage of beach side land.
- Sale of the plots brought huge returns for the company.

Arguments of the taxpayers

- They utilisation of the land was for drying the shacks and amounted to realisation of the business asset (Barkoczy, 2014).

Judgement

The court reached the decision that no matter that the land was initially used for fishing but the land was further acquired for making high profits by indulging in the land development business. The updated Article of Association for the company along with land developments works undertaken for enabling the sale are the evidence for the same. The benefits generated from the sale were business gains and assessable for tax (CCH, 2016a).

Final conclusion

Received gains - Ordinary income (Assessable)

Case law 4 - Statham & Anor v FC of T 89 ATC 4070

Relevant Facts

- Deceased land owned by the taxpayers and used for farming.
- Cattle business established on the land to receive the income because of low the financial conditions
- The business failed and thus forced the taxpayers to sell part of the land through sub-plotting.
- Commissioner declared that the nature of the received gains as ordinary income

Arguments of the taxpayers

- Taxpayers argued that they needed fund to sustain themselves and manage their distressed financial conditions and hence, started the cattle firm, which became unsuccessful. Thus, the land sale action was adopted (CCH, 2004).

Judgement

Court accepted the arguments of the taxpayer and declared that the taxpayers sold land so that produced amount would be used to improve the dwindling financial conditions of the family. Both the taxpayers did not willingly liquidate the land with the business motive. Therefore, the final judgment was in the favour of the taxpayers and the received income was not held assessable (CCH, 2016b).

Final conclusion

Derived income - Capital income

Case law 5 - Casimaty v FC of T 97 ATC 5135

Relevant Facts

- 998 acres land was received by the taxpayer from his father
- The taxpayer had issued loans at higher interest rate to engage in farming.
- The business failed due to drought
- The dues kept on increasing on the taxpayer leading to financial distress.
- Taxpayer had to sell a large part of the land to refund the issued amount
- The remaining part of the land was consumed for farming by the taxpayer
- The earned amount resulted from sale would be assessable under isolated transaction as argued by the Income Tax Commissioner.

Arguments of the taxpayers

- It was claimed by the taxpayer that he needed fund on immediate basis and hence sold land without indulging in any advertisement and with the intention of farming on residual land (CCH, 2016 c).

Judgement

Court had stated that the taxpayer had acquired the land for farming. However, the financial dues kept on piling on him, which enforced the taxpayer to sell such a large section of the land. No underlying business activity was directed by the taxpayer. There was no motive to commence any business and the central intention of farming was continued even after the sale of the land. Hence, there was no tax liabilities on taxpayer since, he only realised the available capital asset (CCH, 2016 c).

Final conclusion

Received income - Capital income (Non-Assessable)

Case law 6- Moana Sand Pty Ltd v FC of T 88 ATC 4897

Relevant Facts

- Company extract sand from the owned land for this purpose only.
- Sand reserves ended due to continuously mining from land and land turned ripe.
- Company divided the land, installed value addition works and finally sold it.
- Sizable proceeds were earned by the company

Arguments of the taxpayers

- In regards to consumption of the exhausted land, they performed the land development s without it selling was not feasible. Hence, only realisation of capital asset (Coleman, 2011).

Judgement

The court reached the judgement that the company implemented the sand extraction on the land and when the land converted to ripe, they started land development actions. The court declared that company shifted to the business of land development and selling, irrespective of the fact that initially the core intent was sand mining. The company's net profit from sale of the land was purely assessable for taxation (Gilders et. al., 2015).

Final conclusion

Received net profit - Ordinary income

Case law 7 - Crow v FC of T 88 ATC 4620

Relevant Facts

- Taxpayer borrowed fund to buy land.
- At the initial stage, the land was employed for agriculture
- Afters some time the land was liquidated by composing different parcels of the land and this process continued for years where new land was also purchased and farming was completely stopped.
- The net profit generated from the sale was $388,288

Arguments of the taxpayers

- The taxpayer argued on the basis of the initial act of farming that initially, farming was conducted and in the progression action the land was sold due to financial distress. Thus, it ought to be regarded as realisation of capital asset (CCH, 2016d).

Judgement

The honourable court opined that the initial intent of the taxpayer was to formulate profit from sale of land and farming was only temporary. The taxpayer had the core goal that after certain time, the land was divided into sub sections and sold at premium price. The taxpayer systematically conducted the sale of these plots and bought nearby parcels of land for development and hence operated in a systematic manner. The net profit would be assessable for income tax in the accordance to the section 25(1) of ITAA, 1936 (CCH, 2016d).

Final conclusion

Generated income – Ordinary income

Case law 8- McCurry & Anor v FC of T 98 ATC 4487

Relevant Facts

- Taxpayer purchased a property
- The property had some old houses
- It was found from the market scenario that the commercial worth of the property was high, if they constructed new houses and sold off
- Hence, taxpayer borrowed money and started the construction of new houses on the property
- Advertisement was also followed to get higher revenue
- They held the land for the potential purchaser till they get higher proceeds
- Considerable profit received from the houses

Arguments of the taxpayers

- The sale of property was caused due to impending loss and thus in the process, the taxpayers realised the capital asset (CCH, 2016e).

Judgement

The court ruled that the received proceeds were accountable for taxation. Since, the taxpayers had purposely constructed the house for deriving maximum proceeds. They even used borrowed money for the development actions. Thus, the business course of action was chargeable for taxation under ordinary income hypothesis of ITAA, 1936 (CCH, 2016e).

Final conclusion

Derived profit – Assessable Income

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