**Answer 1**

This question majorly deals with section 95 of ITAA in which the income of a trust and ownership of paying the tax of ordinary/ net assessable income is discussed. Answer of sub questions follows:

1. As per the facts and circumstances given in the case the trustees has to also pay the CGT. Generally, the net income of a trust is taxed in the hands of the beneficiaries (or the trustee on their behalf) based on their share of the trust's income (that is, the share they are 'presently entitled' to) regardless of when or whether the income is actually paid to them. For example, if the beneficiary has a 50% share of the trust's income, they are assessed on a 50% share of the trust's net income. This is referred to as the proportionate approach.

In This case Eric Family Discretionary Trust And Dave Family Discretionary Trust both hold equal shares so the net income will also be distributed, The Calculation of profit will be as follows

**Invested Amount**

Purchase of Land - $ 12,000,000

Stamp Duty $ 1,000,000

Wages $ 2,000,000

Fringe Benefit $ 1,000,000

Blacktown council Exp. $ 800,000

**Sub Total for Land and Business $ 15,800,000 A**

Lease Value of Equipments – $ 280,000

**Sub Total for Plants and Equipments $280,000 B**

**Allocated price**

Land and buildings $30,000,000 C

Plant and equipment $13, 000,000 D

Goodwill $5, 000,000 E

**Calculation**

**C- A**

$30,000,000 - 15,800,000 = 14,200,000 i

D-B

$13, 000,000 - 280,000 = 12,720,000 ii

E

$5, 000,000 iii

**Net Profit**

i+ii+iii

**14,200,000 + 12,720,000+ $5, 000,000 = $31,920,000**

**15 % of 31,920,000 will be the CGT = $4,788,000**

1. Buying and selling property is considered to be a business by the ATO which means that most of those businesses that deal in property will need to have an Australian Business Number (ABN) and register for GST – even for one off transactions. However there is no GST to pay or be paid on the sale and purchase of residential premises unless the property is being sold as a new property since the trustee are also redeveloping the building on the land and selling that also so it will be a second hand property it will not attract the GST as far as the amount for building is considered on the other hand the sale consideration of abandon land will attract the GST and the Trustee has to inform the Purchaser beforehand that how much of the amount Purchaser has to pay at ATO. Purchasers has to pay GST to the ATO with the payment of the balance sale consideration to the trustee
2. Dave Pty Ltd and Eric Pty Ltd will have to pay tax for additional income of $7m each as that will be considered his income and letter on the re invested it in business so they will be exempted from CGT.

**Answer 2**

2. The manner in which a particular issue is analysed by the Australian Taxation Office (ATO hereafter for the sake of brevity) and the courts is highly dependent on the legislative principles enumerated in the statutes and it is in this regard that the landmark cases given in the question are being analysed to ascertain if the same disputes had arisen in the present income year, would the dispute have been resolved or decided differently and if yes, then how.

a. *FCT v Stone* [2005] HCA 21: The aforementioned was a landmark case wherein the assessee was a career police woman who was also an Olympian in the field javelin throwing and it was her income from sporting activities which was subject matter of controversy. For the purpose of the present exercise, it is being deemed that all the events have transpired in the current income year. Section 6-(5) (1) of the Income Tax Act, 1997 assumes a lot importance in this context, which defines ordinary income. Since the assessee who is an Olympian is in receipt of certain payments and grants from different sources and they need to be analysed so as to ensure whether they come under ordinary income or not.

There have been a number of class rulings since the *Stone* case which have clarified the situation since that case. While exploitation of capital has been deemed to be an essential indicator as to whether a particular receipt by the sportsperson is income or not, it has also been held subsequently that periodicity, recurrence and regularity also must be taken into consideration. It is important to mention here that talented athletes who represent the Commonwealth of Australia in prestigious sporting events such as the Olympics or who are considered to have potential to represent the country in such prestigious games are eligible for certain government grants such as Australian Institute of Sport grants which are given to sportspersons. Similar to QAS grant given to Stone, AIS grants are also not regular, periodical and recurrent and as such in the subsequent class rulings, it has been held that dAIS grants given to sportspersons would not be covered within assessable income of the sportsperson and as such the same would not be considered for the purpose of taxation. This aspect has been dealt with specifically in CR 2015/19 Income tax: grants provided by the Australian Sports Commission under dAIS.

b. The landmark case of *Dickenson v FCT* (1958) 98 CLR 460 deals with the issue of restrictive covenant payments. The assessee in this case was proprietor of a garage and service station on his own land and used to sell many brands of motor spirit such as “Castrol”, “Moboil”, “Atlantic” “Shell” etc. however, in the year 1952, he was approached by Shell Company of Australia Ltd to exclusively sell products of Shell for the next ten years. For this purpose, agreements were signed between him and the corporation and the corporation also entered into lease and sublease agreements on his land and shop. The company paid him in two tranches of £2,000 each. The dispute in the present matter was decided by the High Court of Australia in favour the assessee on the ground that the payment made to the assessee was in order to restrict the economic decisions of the assessee and in the nature of a sale price for a substantial detraction from pre existing rights and such the payments were deemed to be capital gains as opposed to ordinary income. However, if the facts of the case were to take place in the current income year, as the question mandates, the payments would be deemed to be part of ordinary income by virtue of TR 95/3 Income Tax and Capital Gains. Post 26th June 1992, any payment made as part of a restrictive covenant payment would be treated as assessable ordinary income as opposed to capital gain by virtue of sections 160 M(6) 160 M(7) and 160 ZA(4) of *Income Tax Assessment Act*, 1936.

c. *FCT v Whitfords Beach Pty Ltd* (1982) 150 CLR 355 was hailed as a landmark case when it was passed in 1982 as in the judgement had reduced the value of section 26 of the *Income Tax Assessment Act*, 1936 almost redundant. The facts of the case are being submitted herein brief for perusal. The respondent company was incorporated and a large tract of land was purchased for domestic purpose and subsequently, new corporations purchased the entire stake in the company and took a number of steps to sub divide the large tract of land and sell it for commercial gains. Section 26 mentioned hereinabove mandates that assessable income of the taxpayer shall include profits arising from sale by taxpayer of any property acquired by him for the purpose of profit by sale or by undertaking any profit making scheme. In this case, it was held that the respondent company had taken a number of steps in order to maximise their profits by sub dividing the land and a such the revenues generated by the respondent company was deemed to be assessable income as opposed to capital gains. However, the aforementioned case has not been deemed to be a great judgement and has rarely been followed. Since when the respondent company had gained ownership of the land, it could not have been sold of and it was only later due to legislative policy changes, that the land could have been subdivided and sold off. If the facts of the case had occurred in the current income year, the proceeds would have been deemed as capital gain and not ordinary income and the act of subdividing the tract of land would have been deemed as mere realisation of a capital asset under the provisions of *Income Tax Assessment Act* 1997 and *A New Tax System (Goods and Services)* *Act*, 1999 and the reasons have been very well enumerated in Advice by Australian Taxation office on the issue of Income Tax- Sale of Real Property (Property development) given in the year 2018 vide Authorisation Number: 051417438986.

**Answer 3**

**The financial year 2020-2021 has some more tax relaxation due the global pandemic**

1. This will be counted as an exemption and Tax will not be attracted on the part of Fuel Ltd.
2. The Fuel limited has to pay the taxes over the cash bonuses as it is chargeable under ITAA
3. This Attracts the Tax on the employees side as it comes under allowances and the discounted value will be considered as the part of the assessable income of employee
4. This attracts the Tax on the part of Fuel Limited as company is charging this from the employees, company will also get the gst Input over it as it leases the cars from Finance co.
5. This Does not attract tax on anyone.
6. This Does not attracts any kind of tax, it is just a facility provided by the bank to the employees of fuel as an arrangement between bank and company.
7. This attracts tax on senior employees as well as on fuel ltd. as share allocation comes under taxable work and the profit from shares will attract taxes on the employees income.

**Answer 4**

1. Jane needs to consider two things that when he will buy all the shares of K, L and M, first he needs pay the GST being the purchaser next he has to file his taxes with the new capital introduced in business that is his own 1.2m which he looped in for buying shares from other siblings, additionally he will also be liable for taxes and interests to the bank for borrowed capital of $800,000.
2. K , L and M has to pay the CGT over $ 400,000 each which they will receive as compensation of selling their shares. And they need to pay taxes over the long term interest free Loan also.