

MACQUARIE UNIVERSITY



FACULTY OF BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS LAW

STUDY GUIDE

Unit : **BUSL320 - Revenue Law**

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Session : **First Semester, 2010**

MACQUARIE UNIVERSITY
Faculty of Business and Economics
Department of Business Law

BUSL320 - Revenue Law

First Semester 2010

- Credit Points** : 3
- Prerequisites** : **BUSL250 and BUSL301**
(Waivers: if prerequisites not met - Permission of Head of Department)
- Offerings:** : This unit is offered in the first and second semesters, as well as in the Summer School Program.

ABOUT THIS UNIT

This unit looks at the regulatory environment and the impact of the conceptual framework on key areas of taxation including income tax, goods and services tax and fringe benefits tax. It seeks to enhance the ability of students to recognise, describe and analyse taxation issues, concepts and problems encountered in a contemporary setting.

TEACHING STAFF

Convenor : Assoc Professor Hope ASHIABOR
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*****For the names of other teaching staff in the Unit, consult Blackboard*****

Staff teaching on the unit are available for individual consultation with students. A timetable of when staff will be available will be posted on the Blackboard.

LEARNING OUTCOMES

On successful completion of this subject, the student should be able to:

1. Demonstrate a sound knowledge of the conceptual framework of the principal rules that relate to taxation in Australia;
2. Demonstrate a good working knowledge of the major provisions of the federal regulatory environment of the Australian taxation system with particular reference to income tax, goods and services tax, fringe benefits tax, the Taxation Administration Act and an awareness of the significance of pending changes;
3. Apply Income Tax, Fringe Benefits Tax, GST and the Taxation Administration Act provisions to simulated real life situations for the purposes of giving professional advice;
4. Develop strategies for solving practical problems involving taxation law principles, and the resolution of disputes with the Australian Tax Office;
5. Critically evaluate alternative tax planning strategies for optimal personal business returns;
6. Develop a suitable set of tax management strategies for individuals and business at various stages.
7. Recognise, describe and analyse taxation problems, issues and concepts encountered in a contemporary setting;
8. Use, present and evaluate numerical or statistical information related to taxation;
9. Work collaboratively to solve legal problems related to taxation; and
10. Undertake independent research on taxation issues through using electronic information retrieval systems.

TEACHING AND LEARNING STRATEGY

Lectures and Tutorials

The main means of presentation is by way of 13 two hour lectures and 13 weekly tutorials of one hour duration. Lectures cover the basic material as outlined in the listed topics, as well as noting where each topic fits into the overall framework of the tax regime.

Each week lecture outlines will be placed on Blackboard prior to the formal lecture. *They are not intended to be a substitute for lecture attendance. They cannot be relied upon to the exclusion of the allocated reading tasks for each week. You are expected to prepare your own notes from the prescribed reading set out in this Study Guide to supplement the material set out in the lecture outlines.*

Tutorials questions have been designed to provide a practical application of the principles discussed in lectures. Tutorials will involve an analysis and discussion of preset questions based on the previous week's lecture. They therefore complement and consolidate the topics covered in lectures.

It is essential that adequate preparation be undertaken BEFORE each tutorial in order for the full benefit to be gained. Students will also be expected to participate in tutorials through contributing to class discussions and showing an interest in other learning activities conducted by the tutor.

Generic skills

The learning objectives listed above include specific knowledge you will need in your future careers as well as generic or 'transferable' or 'workplace' skills that will help you in your future workplace such as speaking in front of your peers, writing concise summaries and working collaboratively in a team.

It is impossible for you to learn everything you'll need to know about taxation law in this one unit as it is a very complex area, changes regularly with new government policies and has a huge volume of case law. More importantly, you need to learn about the sorts of issues and problems related to tax that are likely to arise in the workplace in the context of your work, whether it is as an accountant or a lawyer, and how to deal with them.

This unit will build on the generic skills developed in BUSL250 and BUSL301. Interviews with employers, representatives from professional associations representing accountants and graduates now working in the accounting field have indicated that the skills they value most are intellectual, communication and interpersonal skills. Accordingly, the following generic skills will be specifically developed in BUSL320 tutorials:

Intellectual skills

- ***Critical thinking*** (judge the merit of an argument and/or evidence, evaluate new ideas)
- ***Analysing issues*** (work out what the problem is)
- ***Solving problems*** (apply knowledge and critical thinking to solve business problems)
- ***Creative thinking*** (able to imagine, invent, discover)
- ***Argue effectively*** (understand the good and bad points of particular arguments and make a reasoned choice between a number of possible solutions)
- ***Finding information*** (research)
- ***Managing information*** (sorting out what is useful)
- ***Interdisciplinary perspective*** (able to see issues from another's point of view as well as from one's own)

Communication skills

- ***Writing easily understood, plain English documents***
- ***Effective listener***
- ***Able to present an effective argument verbally*** (in front of a group)

Interpersonal skills

- ***Able to consider the client's interests*** (outcomes focused)
- ***Work with people from different cultural backgrounds & value systems***
- ***Teamwork*** (able to contribute to a team and understand how teams work)
- ***Tolerate ambiguity*** (understand that people may have inconsistencies in their approaches to work situations)
- ***Able to apply ethics to work situations*** (able to make judgments based on one's own values and/or the ethics of your organisation)

HOME PAGE UNIT WEB PAGE

The BUSL 320 homepage is at: <http://learn.mq.edu.au>. You can directly access the course outline, current lecture outlines, announcements related to the course, library and other useful websites via the Blackboard.

STUDENT REMEDIATION PILOT PROJECT

Students who are repeating the unit for the second, third or fourth time will be managed through a remediation pilot project. Details will be posted on Blackboard.

ASSESSMENT

Assessment in this unit consists of **FOUR** components set out below. In order to pass, students must attend classes and perform satisfactorily in all aspects of assessments:

Marks in this unit will be allocated on the following basis: -

a)	Tutorial Homework and Group Work	10%
b)	Written Task	10%
c)	Mid-Semester Test	20%
d)	Final Examination	60%

Performance Level

To pass the course a student's overall performance must be satisfactory, and additionally he/she must **PASS** the formal examination.

When a student's composite mark for the subject is just below the mark required for a specific grade, the grade awarded will be reviewed with regard to all subject attendance (lectures and tutorials) and all work submitted.

In awarding marks to any of the assessment tasks in this unit, your answers will be assessed on how well you:

- Present ideas clearly in a well-structured text;
- Use appropriate terminology;
- Support the argument with relevant examples.

Answers to assessment tasks must be legibly written in ink, *not* pencil. Untidy, illegible and inadequate work may not be marked.

All answers must be substantiated with references to the relevant legislative provisions, decided cases and rulings and other pronouncements issued by the Australian Taxation Office, where appropriate.

Please refer to the Plagiarism Guidelines in this Study Guide.

In any grading decision, including whether or not to give special consideration, regard will be given to class attendance and the quality of participation.

- Students' attention is drawn to the note on *Special Consideration* in the **University Calendar**.

(a) **Tutorial Homework and Group Work** (10%)

Tutors will collect your written responses to the tutorial questions *EACH WEEK* prior to the tutorial discussion. This is to ascertain whether or not you are putting-in sufficient effort in preparing for each week's discussions.

This part of the assessment is worth 5%. Given that there are 12 tutorials, your best 10 will be taken into account. You will be graded either an "S" (satisfactory) which constitutes 1/2 mark or "U" (unsatisfactory) which constitutes 0 marks.

The tutor will divide each class into groups for the purposes of tutorial discussions. A tutorial group work worth 5% of the overall assessment. Each group will be expected to make a short presentation (approx 10 mins each group) on specific questions allocated to them by the tutor. Your tutor has the discretion in allocating questions to the groups.

Students should note that group presentations will only take place in your designated tutorial. If you do not turn up, the presentation mark for your designated week will be automatically forfeited.

(b) **Written Task** (10%)

Students are required to prepare and submit a short report at *12noon 19th April 2010 (Monday)*. The nature of the task will be announced in lectures Week 3, and posted on Blackboard.

This report must be submitted online via **BLACKBOARD ASSIGNMENTS** on the dates specified above. Please note the submission times, **AS BLACKBOARD DOES NOT ACCEPT LATE SUBMISSIONS**. A deduction of 25% on the total assignment mark will be imposed each day for late submission.

(c) **Mid-Semester Test** (25%)

<i>Coverage</i>	Lectures 1 – 6 inclusive (The test will comprise of 25 multiple choice questions).
<i>Weighting</i>	25% of total assessment
<i>Date</i>	Saturday, 24 th April 2010 – 9:50 am – 11:30am There will be <u>NO</u> provision for supplementary exam.
<i>Time allowed</i>	90 minutes plus 10 minutes reading time
<i>Structure</i>	A closed book exam comprising 25 multiple choice questions.

Computation of Tax Payable/Tax Refund Entitlement (The ability to compute tax liability is an integral part of any tax course. Students will therefore be expected to have a firm grasp of how this is done and its applications).

Any reference material required for the exam will be provided.

Permitted Aids:

For the purposes of the final examination, students may bring in and use **Standard Type Pocket Calculators**. Students are reminded that they use them (i.e., the calculators) at their own risk and responsibility.

Prohibited Materials:

You are **NOT PERMITTED** to take into the examination room:

- Any textbooks, or photocopies or scans of pages of any textbooks, books of problems, casebooks etc...
- Calculators with **memory banks, electronic dictionaries mobile phones and any electronic devices.**

(d) **Final Examination** (60%)

<i>Coverage</i>	Primary focus on lectures 7-13 inclusive. Questions on topics covered in earlier lectures may also be assessed.
<i>Weighting</i>	60% of total assessment
<i>Date</i>	During the examination period
<i>Time Allowed</i>	3 hours plus 10 minutes reading time
<i>Structure of paper</i>	A closed book exam: it will primarily be based on a combination of case study and essay type questions.

Computation of Tax Payable/Tax Refund Entitlement (The ability to compute tax liability is an integral part of any tax course. Students will therefore be expected to have a firm grasp of how this is done and its applications).

Any reference material required for the exam e.g. Tax Rate will be provided in the examination paper.

EXAMINATIONS

The University Examination period in Semester 1 of 2010 is from 7th June to 27th June. You are expected to present yourself for examination at the time and place designated in the University Examination Timetable. The timetable will be available in Draft form approximately eight weeks before the commencement of the examinations and in Final form approximately four weeks before the commencement of the examinations <http://www.timetables.mq.edu.au/exam>. The only exception to not sitting an examination at the designated time is because of documented illness or unavoidable disruption. In these circumstances you may wish to consider applying for Special Consideration. Information about unavoidable disruption and the special consideration process is available at <http://www.reg.mq.edu.au/Forms/APSCon.pdf>. If a Supplementary Examination is granted as a result of the Special Consideration process the examination will be scheduled after the conclusion of the official examination period. You are advised that it is Macquarie University policy not to set early examinations for individuals or groups of students. All students are expected to ensure that they are available until the end of the teaching semester, which is the final day of the official examination period.

Permitted Aids:

- For the purposes of the final examinations, students may bring in and use **Standard Type Pocket Calculators**. Students are reminded that they use them (i.e., the calculators) at their own risk and responsibility.
- Two A-4 sheets (typed or handwritten) on both sides of your own prepared notes. **These MUST be handed in TOGETHER with your answer scripts at the end of the exam.**

Prohibited Materials:

You are **NOT PERMITTED** to take into the examination room:

- Any textbooks, or photocopies or scans of pages of any textbooks, books of problems, casebooks etc...
- Calculators with **memory banks, electronic dictionaries mobile phones and any electronic devices.**

Random checks will be conducted during examinations to verify the types of calculators being used.

SUPPORT SERVICES FOR OVERSEAS STUDENTS

Macquarie University provides a range of Academic Student Support Services. Details of these services can access at <http://www.student.mq.edu.au>.

The University Counseling and Health Services have appointed counselors specifically to assist students from overseas countries and those who speak English as their second language. They are particularly expert in assisting with difficulties which involve adjustment to University life or to Australian custom, personal difficulties or the skills of studying, of reading, learning and remembering, or organizing and motivating study, or of facing examinations. Much of the work with students is conducted on an individual basis in a confidential setting. However, each semester groups are conducted to assist students in study skills, stress management and preparation for returning to their home country.

PLAGIARISM

A Definition of Plagiarism

Macquarie University defines plagiarism as ‘using the work of another person and presenting it as one's own’ by not correctly referencing the source of information. In very simple terms, plagiarism can include:

- Copying words directly from the original source, without acknowledging the original source in writing;
- Paraphrasing work from another source, without indicating the source in writing;
- Copying any part of the research of another student; and
- Submitting an assignment that was prepared, in whole or in part, by another person.

You must read the University's practices and procedures on plagiarism. These can be found in the Handbook of Undergraduate Studies or on the web at www.student.mq.edu.au/plagiarism/

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee.

Students who might be tempted to breach the plagiarism guidelines are well advised to read the following case: <http://www.austlii.edu.au/au/cases/vic/VSC/2007/520.html>.

UNIVERSITY POLICY ON GRADING

Academic Senate has a set of guidelines on the distribution of grades across the range from fail to high distinction. Your final result will include one of these grades plus a standardised numerical grade (SNG).

On occasion your raw mark for a unit (i.e., the total of your marks for each assessment item) may not be the same as the SNG which you receive. Under the Senate guidelines, results may be scaled to ensure that there is a degree of comparability across the university, so that units with the same past performances of their students should achieve similar results.

It is important that you realise that the policy does not require that a minimum number of students are to be failed in any unit. In fact it does something like the opposite, in requiring examiners to explain their actions if more than 20% of students fail in a unit.

The process of scaling does not change the order of marks among students. A student who receives a higher raw mark than another will also receive a higher final scaled mark.

For an explanation of the policy see

<http://universitycouncil.mq.edu.au/pdfs/cal-ug-rules.pdf>

UNIVERSITY POLICY ON SPECIAL CONSIDERATION

Students who are prevented by unavoidable disruption from completing any of the work required to complete a unit should report the circumstances in writing (supported by a Professional Authority Form or other proper evidence) to the Registrar's Office. The information supplied will then be referred to the Dean of the Faculty of Business and Economics in which the unit is offered, to take into account when assessing the student's performance (see Rule 7 of the Bachelor Degree Rules). Where students were prevented by unavoidable disruption from attending an examination or prior to or during an examination were affected by unavoidable disruption which they believe prejudiced their performance, they should report the circumstances in writing to the Registrar's Office. The report (supported by an original Professional Authority Form or other proper evidence) should reach the Academic Program Section of the Registrar's Office by no later than five days after the date of the examination for the unit, and in any case not later than the day following the final day of the examination period. Requests for special consideration in Vacation or Summer Course Program units must be lodged within two working days after the date of the examination for the unit. The information supplied will then be referred to the Dean of the Faculty of Business and Economics in which the unit is offered who may, after considering the information, recommend that Academic Senate grant a special examination. <http://www.reg.mq.edu.au/Forms/APScons.pdf>

TEXTBOOKS AND REFERENCE MATERIALS

There are a number of general texts covering the subject of this unit. Students are advised to acquire at least one textbook in each of the categories appearing under the heading "PRESCRIBED TEXTS".

1. **PRESCRIBED TEXTS** (Students should have access to these books AT ALL TIMES).

(i) **Textbook**

Woellner, Barkoczy, Murphy, and Evans, **Australian Taxation Law** (20th edn, CCH 2010) - cited throughout this Study Guide as 'Woellner'

(ii) **Workbook**

LJ Nethercott, G Richardson and K Devos, **Australian Taxation Study Manual, Questions and Suggested Solutions** (19th edn, CCH, 2009)

(iii) **Casebook**

Krever, **Australain Tax Cases** (Thomson, 2009)

(iv) **Legislation**

Barkoczy, **2010 Core Tax Legislation and Study Guide**, (13th edition, CCH 2010)

2. **RECOMMENDED TEXTBOOKS**

The acquisitions of the following are **OPTIONAL**. Students should consult the lecturer before making a purchase from books in this category.

Any of the following books may also be of use:

Coleman, Hart, Jogarajan, Krever, McLaren and Sadiq, **Principles of Taxation Law** (Thomson, 2010)

S Barkoczy, **Australian Tax Casebook** (9th edn, CCH, 2008)

J Cassidy **Concise Income Tax** (6th edn, The Federation Press, 2009)

P Kenny, **Australian Tax 2010** (LexisNexis Butterworths)

Coleman, Hart and McKerchar, **Australian Tax Analysis: Cases, Commentary, Commercial Applications, and Questions** (7th edn – Thomson, 2009).

Fischer and Hodgson, **Tax Questions & Answers 2010** (Thomson, 2009)

Note: It is pointless having an out of date edition of the textbook.

3. **REFERENCE MATERIAL**

While references in the course outline section of this syllabus are confined to standard textbooks on taxation, references will also be made during lectures to reported cases and rulings and other pronouncements issued by the Australian Taxation Office.

(a) **Commentaries**

Both CCH and Thomson provide an on-line service covering a commentary on the relevant legislation Act, rulings and reports and other pronouncements of the Australian Taxation Office. These on-line tax services are also available in multi-volume loose-leaf formats.

The on-line service of CCH can be accessed from the University Library's homepage.

(b) **Useful Internet sites**

Internet resources are a very valuable source of information relating to current developments on taxation issues. Some sites that are useful include:

(i) **ATO website:** The Australian Taxation Office Internet site **www.ato.gov.au**. This site offers access to:

- all ATO rulings and other pronouncements
- current ATO publications
- legislation
- Australian and selected overseas tax case law
- all ATO forms

(ii) Access to other internet sites which are relevant to tax issues can be located at:

- **Australian Treasury:** <http://www.treasury.gov.au>. This site contains Treasury press releases and consultation documents.
- **CPA Australia:** <http://www.cpaaustralia.com.au>. This site contains relevant information including submissions canvassing tax reform.
- **Institute of Chartered Accountants in Australia:** <http://www.icaa.org.au>. This site contains relevant information including submissions canvassing tax reform.
- **Deloitte:** <http://www.deloitte.com.au> Click on "tax central" to access information on both the Ralph Reforms and the GST.
- **Ernst & Young:** <http://www.ey.com/global/gcr.nsf/austaralia/home>. Good for keeping up to date on tax reforms.
- **KPMG:** <http://www.kpmg.com.au>. Very useful, especially for its "Daily Tax News".
- **Board of Taxation:** <http://www.taxboard.gov.au>. Contains information on proposed tax changes.

(iii) **Cases, rulings, and legislation can also be accessed from the following sites:**

- Cases: **Scaleplus site:** <http://scaleplus.law.gov.au>
- Cases: **Australian Legal Information Institute site:** <http://www.austlii.edu.au>
- Cases and Taxation rulings: **Australian Taxation Office** <http://www.ato.gov.au>

(c) **Professional Reference Texts**

2010 **Master Tax Guide** (CCH)
2010 **Australian Tax Handbook** (Thomson)
2010 **Australian Master GST Guide** (CCH)
2010 **Australian GST Handbook** (Thomson)

(d) **Journals**

Articles in legal and accounting journals are invaluable aids in keeping up to date with developments in tax law and practice. These include:

- * **Australian Tax Review**
- * **Australian Tax Forum**, a journal of taxation policy, law and reform
- * **Taxation in Australia**
- * **The Tax Specialist**
- * **The Australian Accountant**
- * **The Journal of Australian Taxation**
- * **The Chartered Accountant in Australia**
- * **The Australian Law Journal**, it contains a section called "Revenue Notes" which features articles on important decisions.

(e) **Update on Tax Developments**

For a weekly update on tax developments, students are advised to consult either **CCH Tax Week** or the **Thomson Weekly Tax Bulletin**; the former can be accessed from the University Library's home page.

LECTURE TOPICS AND DATES IN THIS UNIT

<u>Week Commencing</u>	<u>Lecture</u>	<u>Topic</u>
22 Feb	1	<p>Operating Framework of the Australian Tax System:</p> <ul style="list-style-type: none"> ➤ Constitutional basis of taxation - relationship between the Commonwealth and the States; ➤ Sources of income tax law; ➤ Structure of the income tax legislation and how the parts fit together <p>Tax Administration:</p> <ul style="list-style-type: none"> ➤ operation and enforcement of the Act and ancillary legislation; ➤ the assessment process; appeal procedures; ➤ rights and remedies of the Commissioner and taxpayer; ➤ tax agents.
1 Mar	2	<p>The concept of income:</p> <ul style="list-style-type: none"> ➤ distinction between "income" and "capital"; ➤ exempt income; <p>Calculation of Tax Payable:</p> <ul style="list-style-type: none"> ➤ Formulas, Rates & Offsets <p>Tax collection mechanisms</p>
8 Mar	3	<p>The Income Concept: Incidental Issues</p> <ul style="list-style-type: none"> ➤ residence and source; ➤ derivation of income
15 Mar & 22 Mar	4 & 5	<p>Assessable Income:</p> <ul style="list-style-type: none"> ➤ Income according to ordinary concepts ➤ statutory extensions to the concept of income
29 Mar	6	<p>Statutory Income:</p> <ul style="list-style-type: none"> ➤ Taxation of capital gains and losses; ➤ calculation of capital gains and losses; ➤ inter-relationship with the income taxing provisions
<p>Mid Semester Break The Written Report is due on Monday, 19th April 2009 noon</p>		

<u>Week Commencing</u>	<u>Lecture</u>	<u>Topic</u>
19 Apr	7	Allowable Deductions I <ul style="list-style-type: none"> ➤ The general provision s.8-1 ➤ Substantiation of expenses
<u>Important Notice:</u> The mid-semester test will be held on Saturday, 24th April 2010. (For further information please visit the unit's website)		
27 Apr	8	Allowable Deductions II <ul style="list-style-type: none"> ➤ Specific provisions relating to deductions
3 May	9	Goods and Services Tax
10 May	10	Taxation of Partnerships, Trust Estates and Beneficiaries; minors
17 May	11	Companies: <ul style="list-style-type: none"> ➤ Dividends and shares, imputation system
24 May	12	Fringe Benefits Tax <ul style="list-style-type: none"> ➤ The tax and its applications in practice
31 May	13	Anti-Avoidance Legislation <ul style="list-style-type: none"> ➤ Alienation of Personal Services Income; ➤ Basic techniques of tax planning; ➤ Ethical considerations
END OF YEAR EXAMINATION		

LECTURE 1

Operating Framework of the Australian Taxation System

Introductory Material

Knowledge Objectives:

At the end of this topic, you should be able to:

- explain the impact that the Federal Constitution has on the nature of tax legislation.
- identify the sources of tax law.
- explain the relationship between the provisions of the **ITAA 1936** (as amended) and those of the **ITAA 1997**.
- Explain the relationship between statutory provisions, case law and rulings and their practical relevance to the solution of problems.

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
• The Nature of Tax	1.550
• Constitutional basis of taxation	1.530 – 1.540, 1.560 – 1.600
• Sources of Income Tax Law	1.310 – 1.340
⌘ <i>ITAA 1936 vs ITAA 1997</i>	1.445
⌘ <i>ATO Practice</i>	
▪ Discretionary Powers	1.490 – 1.520
▪ Tax Rulings	30.470 – 30.486

Issues in Tax Administration

Knowledge Objectives:

At the end of this topic, you should be able to:

- explain the assessment process and the self-assessment system
- describe the procedure to be followed in lodging objections, reviews and appeals
- explain the rights and duties of a taxpayer or tax adviser when faced with an ATO audit.

The Self-Assessment Regime

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
The Assessment Process: Returns <ul style="list-style-type: none">▪ Lodging Tax Returns	30.000 – 30.360
Ancillary Matters <ul style="list-style-type: none">▪ Rulings▪ The General Interest Charge▪ 169A(2) Requests	30.471 – 30.486 33.040 30.470
Assessments <ul style="list-style-type: none">▪ Meaning▪ Types	30.410 – 30.420 30.425 – 30.457
Amending Assessments <ul style="list-style-type: none">▪ General Principles▪ Time Limits	30.600 30.620 – 30.690

Challenging the Assessment : The Tax Appeal Process

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Objections	31.300 – 31.430
The Admin Appeal/STCT Route	31.500 – 31.620

Principal Sections

Taxation Administration Act 1953 (Cth.)

Part IVC (ss.14ZL – 14ZZS) consolidates the provisions dealing with the conduct of objections, reviews and appeals in relation to decisions taken by the Commissioner under any Commonwealth Taxing Act.

Rulings

- **TR96/12** Objections against income tax assessments

TAX AUDITS: ENFORCING TAX OBLIGATIONS

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Audits – (General)	29.240 – 29.270
Commissioners’ Powers to Obtain Information	
❑ To examine and copy records	29.130 – 29.145
❑ To obtain information (including to require persons to give evidence)	29.160 – 29.180
❑ Legal Professional Privilege	29.205 – 29.235
Record Keeping: Obligations, Formalities, Retention periods, consequences for non-compliance	29.110 – 29.120

Principal Sections

- 262A ITAA 36 Keeping records
- 263 ITAA 36 Confers the statutory right to enter premises for the purposes of obtaining information upon the Commissioner
- 264 ITAA 36 Confers the power to obtain information and require attendance for examination upon the Commissioner

Cases

Citibank v FCT 89 ATC 4268
Industrial Equity Ltd v FCT 90 ATC 5008

ATO Guidelines

ATO (1989) “Guidelines for the exercise of Access Powers in relation to external accountant’s papers” (16 November, 1989) **Australian Tax Practice Rulings and Guidelines**, OG 58.

ATO (1991) “Guidelines for the Conduct of Auditors and Taxpayers in Complex and Large Scale Audits”.

LECTURE 2

The Concept of Income Ascertainment of Tax Liability Tax Collection Mechanisms

The Concept of Income

Knowledge Objectives:

At the end of this topic you should:

- *be able to explain the theoretical basis for taxing income*
- *be able to explain approaches taken by the courts to the concept of income*
- *be able to understand the development of legislative responses to practical commercial problems which were not adequately dealt with by the courts*
- *be able to explain the role of the CHECKLIST in Division 10 ITAA97 in identifying amounts which are included in Assessable Income*

WHAT IS INCOME?

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> Theoretical Basis for Taxing Income	3.020 – 3.050
<input type="checkbox"/> Propositions in Identifying Ordinary Income	3.150 – 3.290 ; 6.880
<input type="checkbox"/> Relationship between ordinary and statutory provisions	3.060 – 3.090

(i) **Principal Sections:**

Section Number (ITAA 1997)

6-5: **Ordinary Income.** This section includes in assessable income all gains which fall within the ordinary concepts of income.

6-10: **Statutory Income.** This section includes in assessable income other amounts covered by the income tax legislation (**see CHECKLIST in section 10-5**)

6-5 (4) and 6-10 (3): Income that is not received (Constructive Receipts). These sections deem a person to have derived or received income realised indirectly by way of constructive receipt

6-25 Reconciliation rules to prevent the same amount from being included more than once in assessable income

(ii) Significance of the Distinction between Income and Capital:

▪ **Distinction between income and capital**

Eisner v Macomber (1920) 252 US 189

- When will an amount be characterised as income rather than capital?
 - Prior to 20 September 1985, an amount that was “capital” often escaped tax altogether. From that date, a capital amount will be taxed under the capital gains tax provisions unless it comes within a specific exemption.
-

(iii) Identification: Principles of Ordinary Income (No statutory definition of income, so look at characteristics):

(a) Ordinary income comes in to the recipient.

Tenant v Smith 1892 AC 150
FCT v Cooke & Sherden 80 ATC 4,140

(b) An amount must be characterized as ordinary income in the hands of the person who derived it.

Federal Coke Co Pty Ltd v FCT 77 ATC 4255

(c) Ordinary income has a sufficient nexus with an earning activity.

Californian Copper Syndicate v Harris (1904) 5 TC 159
Scott v FCT (1966) 117 CLR 514

(d) Ordinary Income will often exhibit periodicity, recurrence, and regularity

FCT v Dixon (1952) 86 CLR 540
C of T (Vic) v Phillips (1936) 55 CLR 144

(e) Compensation for an amount, which would have been ordinary income, has the character of ordinary income

C of T (Vic) v Phillips (1936) 55 CLR 144

(f) **Ordinary Income is money or money's worth**

Tenant v Smith 1892 AC 150

FCT v Cooke & Sherden 80 ATC 4,140

(g) **Mixed amounts that cannot be dissected have the character of capital.**

McLaurin v FCT (1961) 104 CLR 381

(h) **Illegal, immoral, or ultra vires receipts may be ordinary income**

FCT v La Rosa 2002 ATC 4709

Patridge v Mallandaine (1856) 2 TC 179

No 275 v MNR (1955) 13 Can Tax ABC 279

(iv) **Convertibility Issues:**

• **Non-Cash Benefits:**

Principal Sections:

(ITAA 1936 (as amended)):

21 – This section applies to all non-cash transactions and values the consideration in such circumstances as its money value

21A – This section includes the value of any non-cash business benefit in the assessable income of the person carrying on the business.

Rulings:

IT 198: Gratuitous Benefits, Value of Holidays – Assessability

IT 2668: Income Tax: Barter and Counter trade Transactions

Taxation Ruling TR 1999/6: Income Tax and FBT: Flight Rewards Received under Frequent Flyer and Other Similar Consumer Loyalty Programs

• **Foreign currency must be converted into Australian dollar equivalent: section 960-50(1) ITAA1997**

(v) The relationship between ordinary income and statutory income

EXCLUSIONS FROM ASSESSABLE INCOME

For an overview of the two categories of non-assessable income

Read: WOELLNER, Chapter 9.000

The 2 categories are:

(a): EXEMPT INCOME

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> Overview	9.020
<input type="checkbox"/> Examples of Exempt Income	9.025 – 9.200
<input type="checkbox"/> Mutuality Principle	9.250 – 9.260

Principal Sections:

ITAA 1997 Section 6-1(3); 6-15; and 6-20. The nature of Exempt Income. **CHECKLIST** in Sections 11-5 to 11-15; and Divisions 50-53.

(b): NON-ASSESSABLE NON-EXEMPT INCOME

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> Overview	9.005
<input type="checkbox"/> Examples of Non-assessable non-exempt income	9.010 – 9.015

Ascertainment of Tax Liability

Knowledge Objectives:

At the end of this topic, you should be able to:

- *explain the basis on which the liability to tax is determined*
- *identify the tax offsets to which an individual taxpayer may be entitled;*
- *calculate the tax refund due to, or amount of tax payable by an individual*
- *calculate the Medicare Levy and the Medicare Levy surcharge.*

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> The Tax Formula	2.020
<input type="checkbox"/> Rates of Tax	2.100 - 2.150
<input type="checkbox"/> Family Assistance	2.250
<input type="checkbox"/> Medicare Levy & Surcharge	2.300 - 2.350
<input type="checkbox"/> Offsets	2.500 - 2.540

Major Activity:

Read this section of the Study Guide carefully:

- (a) This part of the course is very important. It is essential that students should:
- i. read and understand the materials set out in the outline; and
 - ii. go through the suggested review questions in the **Australian Taxation Study Manual**
- (b) Much of the work relating to the topics covered in this part of the course is expected to be undertaken through individual study.
- (c) Lecture input would be minimal, and would only be provided as a road map to guide students in their individual reading.
- (d) Students who encounter difficulties in understanding any part of the material however should contact the lecturer for clarification as soon as possible.

- (e) Students are advised to obtain a copy of the **2009 Tax Pack** as well as the
- i. **Supplementary Tax Pack** either from the Australian Taxation Office (or your local newsagent) or from the ATO's website www.ato.gov.au, to supplement the references to chapters in Woellner which have been cited in this part of the Study Guide.

Calculation of Tax Payable: Formulas, Rates & Offsets

Division 4 (ITAA 1997) : Tax Formula etc.

Division 4:

The sections comprised in this Division are the principal charging provisions in the Act. They impose tax upon the taxable income of individuals, companies and some other entities.

Formula: Calculation of Tax Payable on Taxable Income: Sections 4-10 to 4-15

	Assessable income
<i>Less :</i>	Allowable deductions
Equals :	Taxable Income
<i>x</i>	Tax Rate
Equals :	Gross Tax payable
<i>Plus :</i>	Medicare levy and surcharge
	HELP debt
<i>Less :</i>	Offsets
	Tax already paid
Equals :	Net Tax payable/ refund entitlement

Tax rates 2008-09

Residents

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 – \$6,000	Nil
\$6,001 – \$34,000	15c for each \$1 over \$6,000
\$34,001 – \$80,000	\$4,200 plus 30c for each \$1 over \$34,000
\$80,001 – \$180,000	\$18,000 plus 40c for each \$1 over \$80,000
\$180,001 and over	\$58,000 plus 45c for each \$1 over \$180,000

Non-Residents

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 – \$34,000	29c for each \$1
\$34,001 – \$80,000	\$9,860 plus 30c for each \$1 over \$34,000
\$80,001 – \$180,000	\$23,660 plus 40c for each \$1 over \$80,000
\$180,001 and over	\$63,660 plus 45c for each \$1 over \$180,000

Tax Collection Mechanisms

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> The Pay As You Go System <ul style="list-style-type: none">▪ Introduction▪ PAYG Withholding▪ PAYG Instalment	32.400 - 32.405 32.410 - 32.455 32.460 - 32.510

The Penalty Regime : (Principal Sections)

Taxation Administration Act 1953

Division 284 to 288 Schedule 1 (*Administrative penalties*: These provisions impose additional (penalty) tax in specified circumstances.

Taxation Administration Act 1953

Sections 8A to 13C (*Judicial penalties*: These provisions create offences for which persons may be prosecuted in court)

LECTURE 3

The Income Concept : Incidental Issues (Basis of Liability to Income Tax & Derivation of Income)

Basis of Liability to Australian Income Tax: International Issues: - Residence and Source

Knowledge Objectives:

At the end of this topic, you should be able to explain:

- *the meaning and significance of the concepts of residence and source in determining liability to Australian tax.*
- *how foreign source income of residents are treated for tax purposes*
- *how Australian sourced income of non-residents are treated for tax purposes.*

Australia's Jurisdiction to Tax

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
□ Residence <ul style="list-style-type: none">▪ Individuals▪ Companies	24.040 – 24.059 24.060 – 24.066
□ Source of Income	24.100 – 24.110 24.140 – 24.170

PRINCIPAL SECTIONS:

Residents:

- 6-5 **ITAA97** : Assessable ordinary income of residents and non-residents
- 6-10 **ITAA97** : Assessable statutory income of residents and non-residents
- 6(1) **ITAA36** : Definition of resident
- 44(1) **ITAA36** : Dividends received by residents and non-residents

Cases:

RESIDENT (Individuals):

Ordinary meaning of “resident”

Levene v IR Commrs [1928] AC 217

IR Commrs v Lysaght [1928] AC 234

Extended definition of “resident”

FCT v Applegate (1979) 9 ATR 899

Case S19 85 ATC 225 the 183 day rule applies to for incoming rather than departing taxpayers.

RESIDENTS (Companies):

Malayan Shipping Co Ltd v FCT (1946) 3 ATR 258

TAXATION OF NON-RESIDENTS

- 128B, 128D, (**ITAA 36**): Liability to withholding tax;
- Subdivisions 136A and B (**ITAA 97**): CGT & Non-residents.

Rulings:

IT 2650 : Residency: permanent place of abode

TR 98/17: Residency status of individuals entering Australia

SOURCE OF INCOME

ITAA 1936, ss.6C, 6CA, 25(2), 38-43, 44(1)

ITAA 97 Subdivision 136A and B

Curtis Brown Ltd v Jarvis (1929) 14 TC 744

FCT v Mitchum (1965) 113 CLR 401

Thorpe Nominees P/L v FCT (1988) 88 ATC 4886

Tax Accounting for Receipts

Knowledge Objectives:

At the end of this topic, you should be able to:

- *Explain the role of the cash and accruals methods of tax accounting in dealing with the assessability of receipts.*
- *Understand the fact that there is no liability to pay tax until income has been derived.*

(i): ACCOUNTING PERIODS:

Read WOELLNER, Chapter 13.025 to 13.030

(ii): ISSUES OF TIMING - DERIVATION OF INCOME

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
□ Derivation of Income	13.100 – 13.230 13.300 – 13.380
□ Tax Accounting and the STS	15.000 – 15.200

Principal Sections:

Section 6-5.4 and 6-10.3: Constructive Receipts

Section 4-10 and 9-5: Accounting period for taxation purposes

Sections 6-5 to 6-25: The income concept

Choice of Method: Cash or Accruals?

Time of derivation of income differs according to the nature of the income-producing activities of the taxpayer.

(a) **Income from professional practice**

Cash Method:

Carden's case (1938) 63 CLR 108

FCT v Firstenberg 76 ATC 4141

FCT v Dunn 89 ATC 4141

Accruals Method:

Henderson v FCT 70 ATC 4016

Barratt and ors v FCT 92 ATC 4275

- (b) **Prepaid Income**
Arthur Murray (NSW) v FCT (1965) 114 CLR 314
- (c) **Trading income**
J. Rowe & Sons v FCT 71 ATC 4157
- (d) **Receipt of cheque not immediately presented for payment**
The Official Receiver v Tilley (1960) 103 CLR 529
- (e) **Salary and Wages**

Rulings:

TR 93/11: Income Tax: Assessability of income on an accruals basis: when professional fees are derived.

TR 98/1: Income Tax: Determination of Income: Receipts v Earnings

LECTURE 4
Assessable Income I

Knowledge Objectives:

At the end of this topic, you should:

- *be able to explain the impact that the provisions of the **Income Tax Assessment Act** has on the inclusion of amounts as assessable income.*

Income from Personal Exertion

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
□ Gifts	4.040 – 4.046
□ Sec.15-2 ITAA97 □ Employment Allowances, etc.	4.110 – 4.160
□ Payments for Service Contracts	4.050
□ Restrictive Covenants	4.060
□ Salary Sacrifice Arrangements	4.070

Principal Sections:

15-2 (ITAA 97): includes in assessable income the value to the taxpayer of certain benefits provided in respect of the taxpayer's services.

1.2 Cases : Gratuitous payments and windfall gains:

FCT v Dixon (1952) 86 CLR 540

Hayes v FCT (1956) 96 CLR 47

Scott v FCT (1966) 117 CLR 514

FCT v Harris (1980) 10 ATR 869

Smith v FCT (1988) 164 CLR 513

Payne v FCT 96 ATC 4407

Payments for Service Contracts

Brent v FCT 71 ATC 4195

Beak v Robson [1943] AC 352

Higgs v Olivier [1951] Ch 899

Riley v Coglean [1968] 1 All R 314

Jarrold v Boustead (1964) 41 TC 701

Pritchard v Arundale [1972] Ch 229

1.3 Rulings:

TR 92/15: The Difference between an Allowance and a Reimbursement.

TR 95/3: CGT – Restrictive covenants and trade ties.

TD 95/54: Does a person who acquires the benefit of a restrictive covenant incur a capital loss on the expiry of that covenant?

TR 1999/6: Income Tax and FBT: Flight Rewards Received under Frequent Flyer and Other Similar Consumer Loyalty Programs

OTHER STATUTORY PROVISIONS DEALING WITH PERSONAL EXERTION INCOME

- **Div.13A comprising (ss.139-139GF) (ITAA 36):** Taxes employees on the value of shares provided under an employee share acquisition scheme.
- **Sec. 15-70 (ITAA 97):** Reimbursement of car expenses
- **Sec. 15-50 (ITAA 97):** Work in progress payments
- **109 (ITAA 36):** deems excessive payments for services and retirement allowances paid to associates of private companies to be dividends. (Also note Div.7A ITAA 36)
- **Employment Termination Payments:** (sec.82-125 to 82-160 ITAA 97): assesses ETPs – i.e., payments made in consequence of the termination of employment.
- **Sec.83-10 to 83-15 (ITAA 97):** includes in the assessable income of a taxpayer, lump sum payments, made in consequence of the termination of employment in respect of unused annual leave/annual leave.
- **Sec.83-65 to 83-115 (ITAA 97):** includes in the assessable income of a taxpayer, lump sum amounts paid in consequence of termination of employment in respect of unused long service leave.

Income from Property

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> The Nature of Income from Property	5.000
<input type="checkbox"/> Interest	5.200 – 5.210
<input type="checkbox"/> Leases and Rental Income	5.400 – 5.475 7.250 – 7.275
<input type="checkbox"/> Royalties	5.500 – 5.525
<input type="checkbox"/> Assignment of the Right to Receive Property Income	5.600

Principal Sections:

(ITAA 1997)

15–20: Royalties

15–25: Amount received for lease obligation to repair

15–35: Interest on overpayments and early payments of tax

LECTURE 5
Assessable Income II

BUSINESS INCOME

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> Identification of a Business	6.010 – 6.250
Tax Treatment of Business Income (a):	
<input type="checkbox"/> Normal Proceeds of a business	6.400 – 6.420
Incidental Receipts of a Business	
<input type="checkbox"/> Bounties and subsidies	6.750
<input type="checkbox"/> Compensation Payments	See <i>details below</i>
<input type="checkbox"/> Non-cash business benefits	6.480
Tax Treatment of Business Income (b):	
<input type="checkbox"/> Profits from Isolated and Extra-ordinary transactions	6.430 – 6.455; 6.485 – 6.490

Principal Sections:

(ITAA 1936)

Section 21A includes the market value of non-cash business benefits in assessable income

(ITAA 1997)

6-5 Assesses the normal proceeds of a business
(Complemented by the *trading stock provisions* – Division 70)

15-10 Bounties and subsidies

15-15 Profit-making undertaking or plan

25-40 Loss from profit-making undertaking or plan

CASES:

IDENTIFICATION OF A BUSINESS

What are the characteristics of a business?

Ferguson v FCT 79 ATC 4261

FCT Walker 85 ATC 4179

Betting:

Brajkovich v FCT 89 ATC 5227

TAX TREATMENT OF BUSINESS INCOME

(a): Normal Proceeds of Business

Californian Copper Syndicate v Harris (1904) 5 TC 159

GP International Pipecoaters v FCT 88 ATC 4823

Kosciusko Thredbo v FCT 84 ATC 4043

(b): Isolated business transaction or undertaking

Scottish Australian Mining Co Ltd v FCT (1950) 81 CLR 188

Whitfords Beach Pty Ltd v FCT 83 ATC 4277

(c): “Extraordinary” transactions

FCT v Myer Emporium 87 ATC 4363

FCT v Cooling 90 ATC 4472

Montgomery v FCT (1999) 42ATR 475

Westfield Ltd v FCT 91 ATC 4234

Henry Jones (IXL) Ltd v FCT 91 ATC 4663

RULINGS:

IT 2655: Income Tax: Betting and Gambling - Whether Taxpayer Carrying on Business of Betting or Gambling

TR 92/3: Profits from Isolated Transactions

IT 2631: Income Tax: Lease Incentives

COMPENSATION PAYMENTS

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
❑ Common Law Position	6.800 – 6.850
❑ Statutory Positions	6.870; 6.910
❑ Apportionment	6.880
❑ The Gourley Principle	6.900
❑ CGT and Compensation Payments	6.910

- (a) **Cancellation of a “Structural” agreement**
 - **Van den Berghs v Clarke [1935]AC 431**
- (b) **Restriction on ability to carry on a business**
 - **Dickenson v FCT (1958) 98 CLR 460**
 - **104-35: CGT event D1: Creating Contractual or other rights**
- (c) **Cancellation of business contracts**
 - **Heavy Minerals v FCT (1966) 115 CLR 512**
- (d) **Termination of Agency and Management contracts**
 - **Allied Mills Industries v FCT 89 ATC 4365**
- (e) **Reimbursement of previously deducted expense**
 - **HR Sinclair v FCT (1966) 14 ATD 194**
- (f) **Apportionment of compensation payments**
 - **McLaurin v FCT (1961) 104 CLR 381**

Principal Sections: ITAA 1997

- **Section 15-30:** Insurance or Indemnity for loss of assessable income
- **Section 20-20:** Assessable Recoupments
- **Section 70-115:** Compensation for lost trading stock
- **Section 104-20:** **CGT event C1:** Compensation received on the loss or destruction of a CGT asset
- **Section 104-25:** **CGT event C2:** Cancellation, surrender and similar ending of a CGT asset

RULINGS:

TD 93/58: Under what circumstances is the receipt of a lump sum compensation/settlement payment assessable?

TR 95/35: CGT - Compensation Receipts

LECTURE 6 : Statutory Income
Capital Gains Tax: Parts 3-1 To 3-3 ITAA 97

Knowledge Objectives:

At the end of this topic, you should be able to :

- *identify the assets to which the capital gains tax provisions will apply;*
- *explain the impact that the capital gains tax provisions have on the determination of assessable income;*
- *determine the components of the cost base and the reduced cost base;*
- *calculate any capital gain or loss arising, and the amount to include in assessable income.*

General Rules for Ascertaining Liability to CGT

Part 3.1: General Rules for Ascertaining Liability to CGT	
<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
CGT Assets - ITAA 97 Division 108 <input type="checkbox"/> Definition & Classification <input type="checkbox"/> Exemptions - ITAA 97 Division 118 Main Residence Exemption	7.500 – 7.540 7.700 – 7.720; 8.050 – 8.060
CGT Events - ITAA 97 Divisions 103 and 104 Some CGT events worth noting: <input type="checkbox"/> Disposal of CGT Asset CGT event A1	7.100 – 7.120
<input type="checkbox"/> Loss/Destruction of a CGT Asset CGT event C1 <input type="checkbox"/> Cancellation, Surrender, etc. CGT event C2 <input type="checkbox"/> Creating Contractual or Other Rights CGT event D1	7.145 7.150 7.165
<input type="checkbox"/> Shares CGT events G1 – G3	7.300 – 7.315
<input type="checkbox"/> Australian Residency Ends CGT event I1	7.370 – 7.375
Calculation of Capital Gains/Losses ITAA 97 Division 102	
<input type="checkbox"/> Overview	7.600
<input type="checkbox"/> Capital Proceeds (Division 116)	7.605 – 7.615
<input type="checkbox"/> Cost Base,....etc (Divisions 110, 112 & 114)	7.620 – 7.655

<ul style="list-style-type: none"> ❑ Determining CG/CL 	7.900 – 7.950
<p>Concessional Adjustments:</p> <ul style="list-style-type: none"> ❑ Indexation (Note: Frozen since 21 Sept 1999) ❑ Discount Method (Division 115) For gains of certain taxpayers post-21 Sept 1999 	<p>7.690 – 7.698</p> <p>7.915</p>
<ul style="list-style-type: none"> ❑ Record Keeping 	7.960
Special Topics: Part 3.3 Overview:	
<ul style="list-style-type: none"> ❑ The rules in this part supplement the general rules in Part 3.1; and ❑ Apply to the computation of capital gains/losses Where the Part 3.1 rules do not apply <p>Summary of some of the special CGT rules: <i>Note in particular the operation of the following rules</i></p>	
<ul style="list-style-type: none"> ❑ Transfer of assets to a wholly owned company ❑ Replacement asset roll-overs ❑ Same asset roll-overs ❑ Effect of Death ❑ When an asset ceases to be a pre-CGT asset ❑ Roll-over relief for small business taxpayers 	<p>7.800 – 7.820</p> <p>8.000</p>

LECTURE 7
Allowable Deductions I

KNOWLEDGE OBJECTIVES:

At the end of this topic, you should be able to:

- (a) *explain the basic principles underlying the deductibility of expenditure;*
- (b) *explain how the tests for deductibility apply to practical situations;*
- (c) *explain how the deductible amounts are calculated;*
- (d) *explain the significance of the substantiation requirements in determining an entitlement to the deductibility of expenses.*

THE GENERAL DEDUCTION PROVISION

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
The General Deduction Provision <ul style="list-style-type: none"> ❑ An Analysis of the Limbs to Sec 8-1 ❑ Positive Deduction Limbs ❑ Apportionment ❑ Characterisation of Outgoings (The cases discussed in these paragraphs are particularly important) ❑ Negative Limbs 	10.040 – 10.180 10.200 10.210 – 10.240 10.250 – 10.330
Particular Types of expenses which fall under Section 8-1 <ul style="list-style-type: none"> ❑ Interest ❑ Home office expenses ❑ Travel expenses ❑ Self-education expenses ❑ Legal expenses 	10.460 10.430 10.475 10.440 10.470

Principal Sections:

Division 8 and the CHECKLIST in Division 12 (ITAA 1997)

- ❑ Section 8-1 ITAA 1997: The General Deductibility Provision:
- ❑ Section 8-10 ITAA 1997: No Double deductions.

THE GENERAL PRINCIPLES FOR DEDUCTIBILITY UNDER DIVISION 8.

ANALYSIS OF S.8-1: There are 2 positive "limbs" to the section –

First limb: a deduction is allowable for losses and outgoings incurred in gaining assessable income: (**Employment related deductions**)

Second limb: a deduction is allowable for losses and outgoings necessarily incurred on a business for gaining or producing assessable income: (**Business deductions**)

To be deductible:

- ❑ the expense must fall within one or other of the positive limbs; and
- ❑ must not be of a capital, private or domestic nature, and must not be incurred in gaining tax-exempt income;
- ❑ nor should the deductibility of the expense be prohibited by a provision of the tax legislation.

(ii) Cases

- **Timing of deductibility:**
 - FCT v James Flood (1953) 88 CLR 492
 - RACV Insurance P/L v FCT 74 ATC 4169
 - Coles Myer Finance Ltd v FCT 93 ATC 4214
- **Apportionment**
 - Ronpibon Tin v FCT (1949) 78 CLR 47
 - Ure v FCT 81 ATC 4100
- **Relevance of purpose**
 - Magna Alloys and Research v FCT 80 ATC 4542
 - FCT v Total Holdings (Aust.) 79 ATC 4279
- **Revenue and Capital Expenses**
 - The tests and their applicability**
 - Sun Newspapers Ltd v FCT (1938) 61 CLR 337
 - Mt. Isa Mines v FCT 92 ATC 4755
 - Broken Hill Theatres P/L v FCT (1952) 85 CLR 423
 - BP Australia Ltd v FCT (1965) 112 CLR 386

(iii) Rulings:

- **TR 97/7:** Meaning of Incurred-Timing of Deductions
- **TR95/33:** Sec.51(1): Relevance of Subjective Purpose in Determining the Deductibility of Losses and Outgoings.
- **TR 98/9:** Deductibility of self-education expenses
- **TR 95/25:** Deductions for Interest Under sec 51(1) of ITAA 1936 following FCT v Roberts; FCT v Smith
- **TR93/30:** Home–Office expenses
- **IT 2199/IT 2543 & TD 93/174:** Travel Between Home and Work

SUBSTANTIATION OF EXPENSES AND THE DEDUCTIBILITY OF CAR EXPENSES

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Substantiation	10.680 – 10.705

Principal sections:

- Division 900 ITAA 1997 - Substantiation
- Division 28 ITAA 1997 - Deductibility of car expenses

Substantiation

The substantiation rules require that the taxpayer should prove, in the required manner, that the relevant expenditure was incurred. The evidence required to establish that level of proof is a receipt, invoice, or similar written document containing the details.

Written Evidence:

Written evidence can be:

A document from the supplier of the goods or services, showing:

- the name of the supplier
- the amount of the expense
- the nature of the goods or services – if not shown, you may write this on the document before you lodge your tax return
- the date the expense was incurred
- the date of the document

If the document does not show the payment date, you can use independent evidence to show the date the expense was incurred, such as a bank statement.

A document from the supplier of the goods or services must be in English unless the expense was incurred outside Australia.

Exceptions to the written evidence rule

- where the total claim does not exceed \$300 then documents need not be retained.

Note: The \$300 limit does not include claims for car, meal allowance award transport payments allowances and travel allowance expenses. Written evidence is required to prove one's claim for these expenses.

- individual expenses not exceeding \$10, where the total does not exceed \$200, and
- the Commissioner is satisfied that it is unreasonable to have obtained documentary evidence – for example, for toll or parking fees where a receipt cannot be obtained.

In these cases details must be entered in a diary or similar document.

Retention of documents – duration:

The written records must be kept for 5 years from October 31 or in the case of a late lodgment, for 5 years from the date of the lodgment of one's tax return.

For depreciation expenses, records must be kept for the entire period over which the asset has been depreciated. Records must then be kept for a further 5 years from the date of your last claim. The 5 years start from October 31 or if there was a late lodgment, then the period begins to run from the date of lodgment of the tax return. This period is extended if at the end of the 5- year period, the taxpayer is in a dispute with the ATO that relates to the depreciation claim.

Why should records be kept? :

- Under self-assessment, the documents must be retained for use in the event of a tax audit.
- Severe penalties apply under the tax act for failure to maintain records.
- To enable a taxpayer discharge the burden of proof in the event of a dispute with the ATO.

Relief from the effects of failing to substantiate (see Subdivision 900-H ITAA 1997)

<p><u>LECTURE 8</u> Allowable Deductions II</p>
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<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
□ Repairs and Improvements	11.020 – 11.130
□ Capital Allowances	12.000 – 12.270
□ Blackhole Capital Expenditure	12.300 – 12.320
□ Bad Debts	11.440 – 11.470
□ Tax Related Expenses	11.560
□ Borrowing & Mortgage Discharge Expenses	11.565 – 11.570
□ Tax Losses	11.500 – 11.540
□ Non-commercial Losses	11.550
□ Entertainment	10.600

Principal Sections: (ITAA 1997)

Sections 25-10	Repairs
Sections 25-35	Bad Debts
Subdivision 40A to 40I	Capital Allowances
Division 35	Losses from non-commercial business activities

Division 32: Entertainment Expenses:

Entertainment expenses are defined under sec.32-10. Generally, entertainment outgoings incurred after 19 September 1985 are not tax deductible – sec. 32-5.

There limited exceptions to this general rule, as provided in sections 32-20 to 32-50 in relation to expenditure for:

- entertainment costs of a taxpayer in the business of providing entertainment
- entertainment for advertising to the public the taxpayer’s business or products
- entertainment allowance that is assessable income of an employee
- meals provided to employees on working days at an in-house dining facility
- free entertainment provided to disadvantaged members of the public
- provision of entertainment that is incidental to seminar attendance.

Tax-Related Expenses and Certain Legal Expenses

- Section 25-5 -expenditure in relation to the preparation of an income tax return, the disputing of a tax assessment and the obtaining of professional tax advice
- Section 25-20 – expenses relating to lease documents
- Section 25-25 – Borrowing expenses for money used in producing assessable income
- Section 25-30 – Expenses in discharging a mortgage so long as the mortgage was used in producing assessable income
- Section 25-75 – Rates and taxes as well as land tax incurred in respect of income producing premises.

Cases

- **Repairs and Improvements**

FCT v Western Suburbs Cinema (1952) 86 CLR 102

W. Thomas & Co Pty Ltd v FCT (1965) 115 CLR 58

Law Shipping Co v IRC (1924) SC 74

- **Bad Debts**

FCT v National Commercial Banking Corp of Australia Ltd 83 ATC 4715

Point v FCT 70 ATC 4021

Rulings

- **TR 97/23:** Deductions for Repairs
- **TD 98/D3:** Initial Repair Expenditure and Capital Gains
- **TR 92/18:** Income Tax: Bad Debts

<p><u>LECTURE 9</u> Goods and Services Tax</p>

Knowledge Objectives:

At the end of this topic, you should :

- *be able to explain the interaction between the GST provisions and other taxes*
- *have a basic understanding of the mechanics of the GST*
- *develop an awareness of the GST issues for business*
- *be able to identify the GST implications arising from certain transactions*

Regulatory Framework

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<ul style="list-style-type: none"> □ Basic Concepts: <ul style="list-style-type: none"> □ Registration & Turnover □ Charging GST □ Concept of Supply □ Creditable acquisitions □ Imported Goods 	<p>27.065 27.075 27.135 – 27.145 27.085 27.165</p>
<ul style="list-style-type: none"> □ GST Accounting Issues: <ul style="list-style-type: none"> ▪ GST Adjustments ▪ Remitting GST ▪ Accounting 	<p>27.095 27.115 27.125</p>

LECTURE 10

The Taxation of Partnerships, Trusts and the Beneficiaries of Trust Estates, and Income of Minors

Knowledge Objectives:

At the end of this topic, you should be able to:

- *understand the taxation laws that relate to partnerships and trusts*
- *outline the nature of a partnership, its formation and its dissolution*
- *outline the concepts of a trust and the tax treatment of trustees and beneficiaries*
- *outline the relative merits of these entities as tax planning vehicles*
- *understand in very general terms how the anti-avoidance provisions impact on the use of these entities in tax minimisation arrangements.*

Partnerships

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
❑ Taxation of Partnership	16.200 – 16.300
❑ Variation or Dissolution of Partnership	16.400 – 16.440
❑ Assignment of Partnership Income	16.460 – 16.490
❑ Uncontrolled Partnership Income	16.320 – 16.340

Principal Sections:

a) **Outline of Div.5 ITAA 1936** The taxation of partnerships is governed by Div.5 of Part III of the ITAA, which contains the following 4 sections:

- s.90 defines key terms relevant to the operation of the Division
- s.91 this provision requires a partnership to furnish tax returns, but confirms that the partnership per se is not liable to pay tax
- s.92 partners to include share of; partnership loss, partnership net income and exempt

- income in tax return
- s.94 this provision imposes penal rates of tax in respect of partnership income over which the recipient partner does not have "real and effective control"

b) ITAA 1997

Sections 40-295(2) and 40-340(3) (**ITAA 1997**) allow taxpayers to rollover depreciable property upon a change in the composition of a partnership.

Section 70-100 (**ITAA 1997**) overturns the result in Rose v FCT (1951) 84 CLR 118 and treats all changes in the composition of partnerships as dispositions of partnership trading stock unless the partners elect to avoid the application of the section and instead rollover the trading stock to the new partners.

Sections 108-5(2), (c), (d) and 106-5 (**ITAA 1997**) – partners interest in partnership assets for CGT purposes – include share of capital gain or loss at partner level.

Cases

FCT v Beville (1953) 10 ATD 170
Poole v FCT (1970) 122 CLR 427
FCT v Everett (1980) 10 ATR 608
FCT v Galland (1986) 18 ATR 33
FCT v Roberts; FCT v Smith 92 ATC 4380
FCT v McDonald (1987) 18 ATR 957

Rulings:

TR2006/2: Income Tax: Deductibility of service fees paid to associated service entities:
Phillips arrangements

TR 94/8: Partnership Indicators

TR 93/32: Co-ownership of rental property

TR 95/25: Deductibility of interest under sec.51(1) following FCT v Roberts; FCT v Smith

IT 2501 and IT 2608: Assignment of partnership interest

IT 2540: Income Tax: CGT: Application to disposals of partnership assets and partnership interests.

Trusts

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
□ Types of Trusts	17.040
□ Taxation of Trust Income: <ul style="list-style-type: none">▪ Present Entitlement & Legal Disability▪ Net Income of a Trust Estate	17.060 – 17.100 17.110 – 17.160
□ Taxation – Trustees and Beneficiaries	17.170 – 17.210

Principal Sections

Division 6 of Part III of the **ITAA36** (ss.95-102) establishes the framework for the taxation of trusts and beneficiaries.

Cases

Taxation of the net income to Beneficiaries and Trustees

- **Present Entitlement and Legal Disability**
FCT v Whiting (1943) 68 CLR 199
Taylor v FCT 70 ATC 4026

- **Calculating the Net Income of the Trust Estate**
Case E69 (1954) 5 TBRD 431
Case C36 71 ATC 156
Davis v FTC 1989 20 ATR 548

Taxation of Minor's Income

READ Div.6AA (ss.102AA-102AJ) (ITAA36) Woellner, 21.800 – 21.860
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LECTURE 11

Taxation of Companies and Shareholders

Knowledge Objectives:

At the end of this topic, you should be able to:

- *outline the criteria used in calculating a company's taxable income and the tax payable thereon*
- *explain the system for the collection of company tax*
- *explain how corporate distributions are assessed*
- *prepare a franking account and know the implications for shareholders receiving dividends*

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
❑ Introductory Issues	18.000 – 18.110
❑ The Mechanics of Company Taxation <ul style="list-style-type: none">• Collection of Company Tax (PAYG Instalment system)	Chart at 32.460
❑ Residence of Companies (covered in Lecture 3)	24.060 – 24.066

Changes in Corporate Control and the Transfer of Inter-Company Losses

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
❑ Carry Forward of Corporate Losses <ul style="list-style-type: none">• Introduction• Tests	19.600 19.610 – 19.640
❑ Corporate Bad Debts	19.740 – 19.750

Principal Sections: ITAA 1997

- Prior Year Losses (Sub-div. 165-A)
- Continuity of Ownership (Sub div. 165-D)
Same Business (Sub-div. 165-E)
- Current Year Losses (Sub-div. 165-B)
- Corporate Bad Debts (Sub-div. 165-C)

Cases

Avondale Motors Parts P/L v FCT (1971) 124 CLR 97
K. Porter & Co P/L v FCT (1977) 52 ALJR 41
J. Hammond Investments P/L v FCT (1977) 77 ATC 4311
FCT v Students World Aust. P/L (1978) 138 CLR 251

Corporate Distributions

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> Introduction	18.200
<input type="checkbox"/> Assessment of Dividends	18.205 – 18.207

Principal Sections: ITAA 1936

Section 6(1): Dividends - Definition

Section 44(1): includes in assessable income dividends paid to shareholders out of a company's profits

Cases:

Dividends – Meaning

"out of profits": FCT v Slater Holdings Ltd. 84 ATC 4883
"paid": Brookton Co-op. Soc. Ltd v FCT 81 ATC 4346
"shareholder" Norman v FCT (1963) 109 CLR 9
Patcorp Investments Ltd v FCT (1976) 140 CLR 247

The Simplified Imputation System

ITAA1997 (Division 200 to 215) post 1 July 2002 regime.

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<input type="checkbox"/> Introduction	18.330 – 18.335
<input type="checkbox"/> Tax Effects of Imputation on Shareholders	18.389 – 18.425
<input type="checkbox"/> Maintaining a Franking Account: Debit/Credit Entries	18.340 – 18.387

LECTURE 12

Taxation of Fringe Benefits and its Practical Applications

Knowledge Objectives:

At the end of this lecture and the tutorial questions on this topic, you should be able to:

- *define what is meant by a “fringe benefit”*
- *indicate the rate of fringe benefit tax and identify with whom the liability rests*
- *explain the method of assessment of fringe benefits tax*
- *outline the method of payment of fringe benefits tax*
- *identify the different types of benefits that will give rise to fringe benefits tax.*

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Identify Whether a Fringe Benefit Exists	26.100 – 26.170
Ascertaining Liability to FBT <input type="checkbox"/> Steps in Computing Liability	26.200 – 26.303
Reconciliation with income tax laws	26.330 & 26.340

Specific Provisions relating to the valuation Rules for some categories of Fringe Benefits

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Students are advised that only the following categories of Fringe Benefits are examinable:	
<input type="checkbox"/> Car Fringe Benefits	26.400 – 26.420
<input type="checkbox"/> Loan Fringe Benefit	26.450 – 26.455
<input type="checkbox"/> Expense Payment FB	26.500 – 26.505
<input type="checkbox"/> Car Parking Fringe Benefit	* (general overview)
<input type="checkbox"/> Property Fringe Benefit	* (general overview)

Principal Sections:

ITAA1997

s32-20

Entertainment fringe benefits deductible

ITAA1936

s23L

Exemption of fringe benefits that are income nature

ITAA1997

s15-2

Inclusion in assessable of certain benefits in relation to employment which are not fringe benefits

- **Fringe Benefits Tax Act 1986 (Cth) sections 5 & 6**
- **Fringe Benefits Tax Assessment Act (FBTAA) 1986 (Cth.)**
 - Section 66
 - Section 136

Cases:

National Australia Bank Ltd v FCT 93 ATC 4914

Roads and Traffic Authority (NSW) v FCT 93 ATC 4508

Westpac Banking Corporation v FCT 96 ATC 4366

LECTURE 13

Anti-Avoidance Legislation, Tax Planning, Ethical Considerations

Knowledge Objectives:

At the end of this lecture you should be able to:-

- *explain the differences between tax avoidance, tax evasion and tax planning*
- *describe the nature and mechanics of anti-avoidance legislation*
- *outline some of the basic tax planning techniques*
- *explain the ethics of tax practice and how they relate to tax agents, legal and accounting advisers.*

Barriers to Tax Avoidance

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Part IVA (ITAA36) The General Anti-Avoidance Provisions	25.500 – 25.750
Specific Anti-Avoidance Provisions □ Alienation of Personal Services Income	25.300 – 25.490

Principal Sections

a) Part IV A (ITAA 1936): – The General Anti-Avoidance Provision

- s177A - Interpretation
- s177B - Operation of Part IVA
- s177C - What a tax benefit is
- s177CA – Tax benefit includes withholding tax avoidance
- s177D - Conditions to Part IVA applying
- s177E - Stripping of company profits
- s177F - Cancellation of tax benefit

b) Some Specific Anti-Avoidance Provisions

ITAA 1936

- **Sec 82KJ** – denies a deduction for expenses incurred as part of a “pre-payment” tax avoidance scheme

Cases:

FCT v Ilbery 81 ATC 4661

FCT v South Australian Battery Makers Ltd 78ATC 4412

ITAA 1936

- **Sec 82KK (Tax deferral schemes)** – this Section contains arrangements designed to postpone tax liability
- **Sec 82KL** – this Section denies deductions incurred as part of “**expenditure recoupment**” schemes.
- **Sections 102A to 102CA** – These Sections prevent tax avoidance by the alienation of income for periods of less than seven years without the alienation of the underlying income producing assets.

ITAA 1997

- **Sec 26-35** reduces deductions for “excessive” amounts paid to related entities.
- **Divisions 84 to 87** – Alienation of Personal Services Income regime

Purpose of these rules, as set out in **Sec 86-10**, is to ensure that individuals cannot reduce or defer their income tax (and other liabilities) by alienating their personal services income through companies, partnerships or trusts that are not conducting personal services businesses.

Cases:

IRC v Duke of Westminster [1936] AC 1

Case N 40 (1981) ATC 197

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
Ethical Considerations	33.300 – 33.940