

MACQUARIE
UNIVERSITY

SYDNEY ~ AUSTRALIA



FACULTY OF
BUSINESS AND ECONOMICS

BUSL320
Revenue Law
Unit Outline

Second Semester, 2010

Department of Business Law

**MACQUARIE UNIVERSITY
FACULTY OF BUSINESS AND ECONOMICS
UNIT OUTLINE**

Year and Semester	:	2010 Second Semester
Unit convenor	:	Associate Professor Hope ASHIABOR
Prerequisites	:	BUSL250 and BUSL301 (Waivers: if prerequisites not met – it may be waived in special cases subject to the permission of the Head of Department)
Credit points	:	3

Students in this unit should read this unit outline carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult one of the teaching staff in the unit.

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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TEACHING STAFF

Unit Administrator : Tony SHUM
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- **Other Staff:**

For the names of other teaching staff in this unit, please consult the unit's Blackboard site***

CONSULTATION TIMES

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

Students experiencing significant difficulties with any topic in the unit must seek assistance immediately.

All correspondence on teaching related matters must be submitted via the unit's Blackboard Mail facility.

CLASSES

- There are 3 hours face-to-face teaching per week in this unit - consisting of 1 x 2 hour lecture and 1 x 1 hour tutorial.
- The timetable for classes can be found on the University web site at: <http://www.timetables.mq.edu.au/>
- Tutorial times are managed by the on-line enrolment system. It is not necessary to contact members of staff about tutorial changes. On-line enrolment changes **will be shut down at the end of week three so all changes must be made by then.**
- You **must** attend your official tutorial class. Tutors will keep attendance records and you can only attend class or sit for the class presentation in your registered tutorial. Please ensure that you know your tutor's name and your tutorial number as this information is required to be noted on your mid-semester written report. Please note that assessment marks may be awarded for attending tutorials (see assessments section for details).
- **Attendance:** Students are expected to attend and participate in at least 10 out of 12 tutorial classes.

PRIZES

- The **Australian Taxation Office Prize for Revenue Law** and the **CCH Prize for Revenue Law** are awarded for proficiency in this unit in the first and second semester respectively.
- These prizes are offered in alternate semesters and are open to all students proceeding to the degree of Bachelor

REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

There are a number of general texts covering the content 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 Unit Outline as 'Woellner'
 - (ii) **Workbook**
LJ Nethercott, G Richardson and K Devos, **Australian Taxation Study Manual, Questions and Suggested Solutions** (20th edn, CCH, 2010)
 - (iii) **Casebook**
Krever, **Australain Taxation Law Cases** (Thomson Reuters, 2010)
 - (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 Reuters, 2010)

S Barkoczy, **Australian Tax Casebook** (10th edn, CCH, 2010)

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

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

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

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

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

3. **REFERENCE MATERIALS**

While references in the course outline section of this Unit Outline 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 Reuters provide an on-line service covering a commentary on the relevant legislation, 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 database.

(b) Useful Internet sites

Internet resources are a very valuable source of information relating to current developments on taxation issues. Some useful sites 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 proposed tax reforms.
- **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 Reuters)
- 2010 **Australian Master GST Guide** (CCH)
- 2010 **Australian GST Handbook** (Thomson Reuters)

(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 Reuters Weekly Tax Bulletin**; the former can be accessed from the University Library's database.

UNIT WEB PAGE

- The BUSL320 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 unit's Blackboard site.

LEARNING OUTCOMES

Upon the successful completion of this unit, 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.

GRADUATE CAPABILITIES

The learning objectives listed above include specific knowledge you will need in your future careers as well as graduate capabilities or ‘transferable’ or ‘workplace’ skills that will help you in your future workplace such as speaking in front of your peers, writing concise reports 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 graduate capabilities 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 capabilities they value most are intellectual, communication and interpersonal skills. Accordingly, the following graduate capabilities 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)

TEACHING AND LEARNING STRATEGY

- **Lectures and Tutorials**

The main means of presentation is by way of 13 two hour lectures and 12 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's lecture outlines (PowerPoint slides) will be posted 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 Unit Outline to supplement the material set out in the lecture outlines.***

The Lectures will also be recorded on **I-Lecture** on a weekly basis.

Tutorial 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.

LECTURE TOPICS AND DATES IN THIS UNIT

<u>Week Commencing</u>	<u>Lecture</u>	<u>Topic</u>
2 August	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.
9 August	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>
16 August	3	<p>The Income Concept: Incidental Issues</p> <ul style="list-style-type: none"> ➤ residence and source; ➤ derivation of income
23 August & 30 August	4 & 5	<p>Assessable Income:</p> <ul style="list-style-type: none"> ➤ Income according to ordinary concepts ➤ statutory extensions to the concept of income
6 Sept	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
13 Sept	7	<p>Allowable Deductions I</p> <ul style="list-style-type: none"> ➤ The general provision s.8-1 ➤ Substantiation of expenses

<u>Week Commencing</u>	<u>Lecture</u>	<u>Topic</u>
Important Notice: The mid-semester test will be held on Saturday, 18 th September 2010 (For further information please visit the unit's Blackboard site)		
Mid Semester Break		
5 Oct	8	Allowable Deductions II ➤ Specific provisions relating to deductions
Important Notice: The Written Task's Report is due on Tuesday, 5 th October 2010 noon		
11 Oct	9	Goods and Services Tax
18 Oct	10	Taxation of Partnerships, Trust Estates and Beneficiaries; minors
25 Oct	11	Companies: ➤ Dividends and shares, imputation system
1 Nov	12	Fringe Benefits Tax ➤ The tax and its applications in practice
8 Nov	13	Anti-Avoidance Legislation ➤ Alienation of Personal Services Income; ➤ Basic techniques of tax planning; ➤ Ethical considerations
END OF YEAR EXAMINATION		

RESEARCH AND PRACTICE

- This unit uses research by Macquarie University researchers - (please refer to the section titled “**Journal Articles**” at the end of the prescribed material for each week’s Lecture in this unit outline).
- This unit uses research from external sources researchers - (please refer to the section titled “**Journal Articles**” at the end of the prescribed material for each week’s Lecture in this unit outline).
- This unit gives you practice in applying research findings in your assignments

RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OUTCOMES

	Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
Title/Name	Tutorial Homework and Group work	Written Task	Mid-semester Test	End-of-year examination
Description (including length or similar if applicable)	<ul style="list-style-type: none"> ➤ Preparation of written responses (1 page max. handwritten) to tutorial questions and Group Presentation. ➤ 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. 	<ul style="list-style-type: none"> ➤ Two essay type questions. ➤ The Written Task is designed to engage students with material outside their textbooks in relation to contemporary issues in taxation. ➤ It is intended to provide students with a greater appreciation of how to deal with changes to tax laws. ➤ Responses to the Written Task must be within the range of 500 -700 words. 	<ul style="list-style-type: none"> ➤ A closed book multiple choice exam ➤ The test covers material taught in Lectures 1 - 6. ➤ 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). 	<ul style="list-style-type: none"> ➤ A combination of multiple choice questions and case study/essay type questions. ➤ The exam covers material taught in Lectures 7 - 13 inclusive. ➤ 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).

	Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
Due date	Weekly	Tuesday, 5th October 2010 noon	Saturday, 18th September 2010	The date is centrally determined by the University.
% Weighting	10%	10%	20%	60%
Grading method				
- marking criteria/ standards expectations in relation to presentation	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.	Refer to: Standard marking criteria for this unit (below)	Computer marked	Formal marking scheme to be prepared for every question.
- referencing requirements	Refer to the Standard marking criteria for this unit (below)	Refer to the Standard marking criteria for this unit (below)	None	Refer to the Standard marking criteria for this unit (below).
Submission method	➤ Tutors will collect the written responses of every student to the tutorial questions EACH WEEK prior to the tutorial discussion. This is to ascertain that student's are putting-in sufficient effort in preparing for each week's discussions.	➤ On-line submission via the unit's Blackboard facility ➤ Students should make a note of the submission deadline for this task, AS BLACKBOARD DOES NOT ACCEPT LATE SUBMISSIONS.	MC Computer marking sheets to be collected by exam invigilators at the end of the exam.	Formal examination conditions apply

	Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
Submission method	<ul style="list-style-type: none"> ➤ Members of each group moves to the front of the class - and a nominated leader (rotates weekly) acts as spokesperson for the group. Members of the group respond to questions from fellow students/tutor. ➤ Marks allocated for each group's presentations will only be awarded for work presented in the student's designated tutorial class. 	<ul style="list-style-type: none"> ➤ All written task reports must be cleared via the unit's Turn-it-in facility prior to submission. ➤ A deduction of 5% on the total assignment mark will be imposed each day for late submissions. 		
Feedback (type, method, date)	Soon after each presentation, oral feedback on what is expected, what has been left out of the presentation, and how such questions ought to be addressed will be provided to the class by the tutor.	Individual feedback - (see sample 1 from semester 1, attached.	Individual feedback - (see sample 2 from semester 1, attached.	Standard University and Faculty exam review protocols apply.

		Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
1.	Estimated student workload (hours)	1 hour a week	4 hours	Time Allowed: 75 minutes.	3 hours plus 10 minutes reading time
2.	Learning outcomes assessed				
	1.	Refer to the Learning Outcomes and the Graduate Capabilities			
	2.	Application & Critical Thinking (# 3 & # 5);	Application & Critical Thinking		
	3.	Teamwork (# 9).	Undertake independent research.		
3.	Graduate capabilities assessed				
	1a.	Intellectual	Intellectual skills (all those listed)	Solving problems	Intellectual skills (all listed in the unit outline).
	1b.	Communication		Managing Information	
	1c.	Inter-personal		Critical thinking	
	1d.			Analysing issues.	

- **Attendance:** Students are expected to attend and participate in at least 10 out of 12 tutorial classes.

- **Examinations**

A final examination is included as an assessment task for this unit to provide assurance that:

- i) the product belongs to the student and
- ii) the student has attained the knowledge and skills tested in the exam.

A 3-hour final examination for this unit will be held during the University Examination period.

The University Examination period in the Second Half Year 2010 is from November 15 to December 3.

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. The University's policy on special consideration process is available at

http://www.mq.edu.au/policy/docs/special_consideration/policy.html

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. (Individual Faculties may wish to signal when the Faculties' Supplementary Exams are normally scheduled.)

The Macquarie university examination policy details the principles and conduct of examinations at the University. The policy is available at:

<http://www.mq.edu.au/policy/docs/examination/policy.htm>

RESOURCES THAT STUDENTS ARE PERMITTED/ PROHIBITED FROM BRINGING INTO FORMAL EXAMINATIONS

Permitted Aids:

- For the purposes of the mid-semester and 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.
- The **2010 Core Tax Legislation and Study Guide (CCH)**.
- **(FOR THE FINAL EXAMINATION ONLY):** - 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.**
- Any reference material required for the exam e.g. Tax Rates and rebates will be provided in the examination paper

Prohibited Materials:

Students are **NOT PERMITTED** to bring the following into the examination room:

- Any textbooks – (*with the exception of the 2010 Core Tax Legislation and Study Guide*) -, 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 such as mobile phones, MP3 players, IPODs etc.**

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

STANDARD MARKING CRITERIA FOR THIS UNIT - (Applicable to Assessment Tasks 1, 2, and 4) IN THE TABLE ADDRESSING THE RELATIONSHIP BETWEEN ASSESSMENTS AND LEARNING OUTCOMES

Performance Level

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

In awarding marks to any of the assessment tasks in this unit, answer scripts will be assessed on how well it:

- Presents ideas clearly in a well-structured text;
- Uses appropriate terminology;
- Supports arguments raised 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.

ACADEMIC HONESTY

The nature of scholarly endeavour, dependent as it is on the work of others, binds all members of the University community to abide by the principles of academic honesty. Its fundamental principle is that all staff and students act with integrity in the creation, development, application and use of ideas and information. This means that:

- all academic work claimed as original is the work of the author making the claim
- all academic collaborations are acknowledged
- academic work is not falsified in any way
- when the ideas of others are used, these ideas are acknowledged appropriately.

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>.

Further information on the academic honesty can be found in the Macquarie University Academic Honesty Policy at http://www.mq.edu.au/policy/docs/academic_honesty/policy.html

GRADES

Please refer to relevant Bachelor Degree rule in the Handbook of Undergraduate Studies.

GRADING APPEALS AND FINAL EXAMINATION SCRIPT VIEWING

If, at the conclusion of the unit, you have performed below expectations, and are considering lodging an appeal of grade and/or viewing your final exam script please refer to the following website which provides information about these processes and the cut off dates in the first instance. Please read the instructions provided concerning what constitutes a valid grounds for appeal before appealing your grade.

http://www.businessandconomics.mq.edu.au/for/new_and_current_students/undergraduate/admin_central/grade_appeals.

SPECIAL CONSIDERATION

The University is committed to equity and fairness in all aspects of its learning and teaching. In stating this commitment, the University recognises that there may be circumstances where a student is prevented by unavoidable disruption from performing in accordance with their ability. A special consideration policy exists to support students who experience serious and unavoidable disruption such that they do not reach their usual demonstrated performance level. The policy is available at: http://www.mq.edu.au/policy/docs/special_consideration/procedure.html

STUDENT SUPPORT SERVICES

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

Students at Risk Program

Students who are repeating the unit for the second, third or fourth time will be managed through the Students at Risk program. Details about the operation of this program will be posted on the unit's Blackboard site.

IT CONDITIONS OF USE

Access to all student computing facilities within the Faculty of Business and Economics is restricted to authorised coursework for approved units. Student ID cards must be displayed in the locations provided at all times.

Students are expected to act responsibly when utilising University IT facilities. The following regulations apply to the use of computing facilities and online services:

- Accessing inappropriate web sites or downloading inappropriate material is not permitted. Material that is not related to coursework for approved unit is deemed inappropriate.
- Downloading copyright material without permission from the copyright owner is illegal, and strictly prohibited. Students detected undertaking such activities will face disciplinary action, which may result in criminal proceedings.

Non-compliance with these conditions may result in disciplinary action without further notice.

Students must use their Macquarie University email addresses to communicate with staff as it is University policy that the University issued email account is used for official University communication.

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
⌘ ITAA 1936 vs ITAA 1997	1.445
⌘ ATO Practice	
▪ Discretionary Powers	1.490 – 1.520
▪ Tax Rulings	30.470 – 30.486

Journal Articles:

H. Ashiabor, - "Critical Appraisal of Tax Expenditures and the Implementation of Environmental Policy in Australia" *Bulletin for International Fiscal Documentation*: - (2002) 56 (5), 204 – 213.

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

Journal Articles:

H Ashiabor, "Recovery of Tax Pending Review or Appeal" (1993) 5 (4) *CCH Journal of Australian Taxation* 18.

R. Fayle, "Mediation in Tax Disputes", (1999) 2 *Journal of Australian Taxation* 93.

R Fisher, "An Assessment by Any Other Name ...'Making an Assessment under Self-Assessment" (2005) 34 *Australian Tax Review* 7.

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”.

Lavermicocca, C 2009, ‘Managing Tax risk and Compliance’, The Tax Specialist, vol.13(2), p71

D Boccabella, “Legal Professional Privilege: The Case for Tax Accountants’ Clients” (1993) 27 *Taxation in Australia* 391.

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>
□ Theoretical Basis for Taxing Income	3.020 – 3.050
□ Propositions in Identifying Ordinary Income	3.150 – 3.290 ; 6.880
□ 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 from the **Australian Taxation Study Manual** set out at the end of the Powerpoint slides used in the Lecture on this topic.
- (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 **2010 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 2009-10

Resident Individuals

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 – \$6,000	Nil
\$6,001 – \$35,000	15c for each \$1 over \$6,000
\$35,001 – \$80,000	\$4,350 plus 30c for each \$1 over \$35,000
\$80,001 – \$180,000	\$17,850 plus 38c for each \$1 over \$80,000
\$180,001 and over	\$55,850 plus 45c for each \$1 over \$180,000

Non-Resident Individuals

<i>Taxable income</i>	<i>Tax on this income</i>
0 – \$35,000	29c for each \$1
\$35,001 – \$80,000	\$10,150 plus 30c for each \$1 over \$35,000
\$80,001 – \$180,000	\$23,650 plus 38c for each \$1 over \$80,000
\$180,001 and over	\$61,650 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).

Journal Articles and Further Reading:

R. Krever, "The Ironic Australian Legacy of *Eisner v Macomber*", (1990) 7 *Australian Tax Forum*, 191.

A Slater, "The Nature of Income: Intersection of Tax, Legal and Accounting Concepts" (2007) 36 *Australian Tax Review* 138.

Australian Government, *2010-2011 Federal Budget at a Glance*,
http://www.budget.gov.au/2010-11/content/at_a_glance/html/index.htm

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

Journal Articles and Further Reading:

Board of Taxation, *Review of the Foreign Source Income Anti-Deferral Regimes: A Report to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs*, September 2008.

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

Journal Articles and Further Reading:

A DeZilva, "The Alignment of Tax and Financial Accounting Rules: The Case for a New Set of Common Rules" (2003) 18 *Australian Tax Forum* 265.

G Hill, "The Interface Between Tax Law and Accounting Concepts and Practice as Seen by the Courts" (2005) 1(1) *Journal of the Australasian Tax Teachers Association*, 1.

M D'Ascenzo and A England, "The Tax and Accounting Interface" (2005) 1(1) *Journal of the Australasian Tax Teachers Association* 24.

S Barkoczy, "Work in Progress in Professional Partnerships" (1994) 6 (1) *CCH Journal of Australian Taxation* 30.

A Tran, "The Gap Between Accounting Profit and Taxable Income", (1997) 13 *Australian Tax Forum* 507.

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>
□ The Nature of Income from Property	5.000
□ Interest	5.200 – 5.210
□ Leases and Rental Income	5.400 – 5.475 7.250 – 7.275
□ Royalties	5.500 – 5.525
□ 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

Journal Articles and Further Reading:

Australian Government, The Treasury, **Reform of the Taxation of Employee Share Schemes**, 5 June 2009.

Minter Ellison, *Taxation of Employee Share Schemes- Comparison – Old Law vs New*, 22 June 2009, at

<http://www.minterellison.com/public/connect/resources/file/eb1fbe0060a389d/ESS-comparativeTable.pdf>

LECTURE 5
Assessable Income II

BUSINESS INCOME

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
<ul style="list-style-type: none"> □ Identification of a Business 	6.010 – 6.250
<p>Tax Treatment of Business Income (a):</p> <ul style="list-style-type: none"> □ Normal Proceeds of a business 	6.400 – 6.420
<p>Incidental Receipts of a Business</p> <ul style="list-style-type: none"> □ Bounties and subsidies □ Compensation Payments □ Non-cash business benefits 	6.750 <i>See details below</i> 6.480
<p>Tax Treatment of Business Income (b):</p> <ul style="list-style-type: none"> □ 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

Journal Articles and Further Reading:

H. Ashiabor, - (1998) - "Lease Incentives: Disentangling the Myer Web." *The Tax Specialist*, (vol. 2 no 2), 73.

S Barkoczy, "Income According to Ordinary Concepts – Part 3: Net Profits or Gross Receipts?" (1997) 3 *New Zealand Journal of Taxation Law and Policy* 195.

S Barkoczy and P Cussen, "When are Profits Realised from the Sale of Leased Equipment Income in Nature – The Inconsistent Approach of the Full Federal Court" (1994) 23 *Australian Tax Review* 153.

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
<input type="checkbox"/> Determining CG/CL	7.900 – 7.950

Concessional Adjustments: <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 	7.690 – 7.698 7.915
<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 	7.800 – 7.820 8.000

Journal Articles and Further Reading:

K Spence and R Shaddick, “Re-targeting Capital Gains Tax for Non-Residents: Proposed Division 855 – Winners and Losers” (2006) 10 *The Tax Specialist*, 5.

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 lodgement, for 5 years from the date of the lodgement 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 lodgement, then the period begins to run from the date of lodgement 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)**Journal Articles and Further Reading:**

G Richardson, "Section 51(1) Unlegislated Tests of Deductibility" (1995) 24 *Australian Tax Review* 153.

S Barkoczy and N Bellamy, "Losses and Outgoings: The 'Matching Principle' - A Heavier Burden?" (1994) 2 *Taxation in Australia* 151.

S Barkoczy, "Deductibility of interest on money borrowed to acquire income-producing property: revenue or capital?" *CCH Tax Week* Issue 12 (1997) ¶ 155

M D'Ascenzo, "Deductibility of Interest – Steele's Case" (1998) 4 *Asia Pacific Tax Bulletin* 132.

A Maples, "The Tax Treatment of Post-Cessation Expenses and Losses in Australia" (2002) *Australian Tax Review* 139.

LECTURE 8
Allowable Deductions II

<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</p> <p>27.075</p> <p>27.135 – 27.145</p> <p>27.085</p> <p>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</p> <p>27.115</p> <p>27.125</p>

Journal Articles and Further Reading:

G Hill, "GST- An Income Tax to be interpreted by reference to Income Tax Principles or Just Another Consumption Tax" (2002) 17 *Australian Tax Forum* 229.

G Hill, "Some Thoughts on the Principles Applicable to the Interpretation of the GST" (2003) 6 *Journal of Australian Taxation* 1.

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>
<input type="checkbox"/> Taxation of Partnership	16.200 – 16.300
<input type="checkbox"/> Variation or Dissolution of Partnership	16.400 – 16.440
<input type="checkbox"/> Assignment of Partnership Income	16.460 – 16.490
<input type="checkbox"/> 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.

Journal Articles and Further Reading:

R Richardson and G Leese, "Tax Issues on Entry and Exit from a Professional Partnership" (1994) 6(2) *CCH Journal of Australian Taxation* 6.

I Tregoning, "partnership Salaries and TR 2005/7" (2005) 8 *Journal of Australian Taxation* 351.

Trusts

<u>Topics</u>	<u>Read WOELLNER, Chapter</u>
❑ <i>Types of Trusts</i>	17.040
❑ <i>Taxation of Trust Income:</i> <ul style="list-style-type: none">▪ <i>Present Entitlement & Legal Disability</i>▪ <i>Net Income of a Trust Estate</i>	17.060 – 17.100 17.110 – 17.160
❑ <i>Taxation – Trustees and Beneficiaries</i>	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**
Bamford v FCT (HCA) 2010 ATC ¶20-170
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

Journal Articles and Further Reading:

T Murphy, “Bamford v Federal Commissioner of Taxation”, June 2010 vol 44 (11)
Taxation in Australia 649.

C Malone, “A Matter of Trusts: Streaming Capital Gains ... if any” July 2010 vol 45 (1)
Taxation in Australia 49.

A Everett, “An Analysis of the Concepts of Present Entitlement” (2003) 13 *Revenue Law Journal* 147.

P Giugini, “Present Entitlement: Legal Theory and Accounting Practice” (1991) 20
Australian Tax Review 20.

M. Blissenden, “Taxation of Trust Income Under Div 6: A Reflection on Justice Hill’s Contribution” (2006) 35 *Australian Tax Review* 262.

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*

General Overview

<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>
□ Introduction	18.330 – 18.335
□ Tax Effects of Imputation on Shareholders	18.389 – 18.425
□ 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.*

Context

<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

Inclusion in assessable of certain benefits in relation to employment s15-2 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

Hart v FCT (2004) 217 CLR 216

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

Journal Articles and Further Reading:

Carbone D and Tretola J, “FCT v Hart: An Analysis of the Impact of the High Court Decision on the Application of Part IVA” (2005) 34 *Australian Tax Review* 196.

Practice Statement PSLA 2005/24, This is the main ATO publication on Part IVA of ITAA 1936.

L Zeman, “Federal Commissioner of Taxation v Hart: Did the High Court Set the threshold Too Low?” (2007) 17 *Revenue Law Journal* 1.

A Athanasiou, “PSI - Looking Forward, Looking Back” (2002) 37 *Taxation in Australia* 78.

Sample 1

Student ID _____



Enter your Student ID here

LastName _____

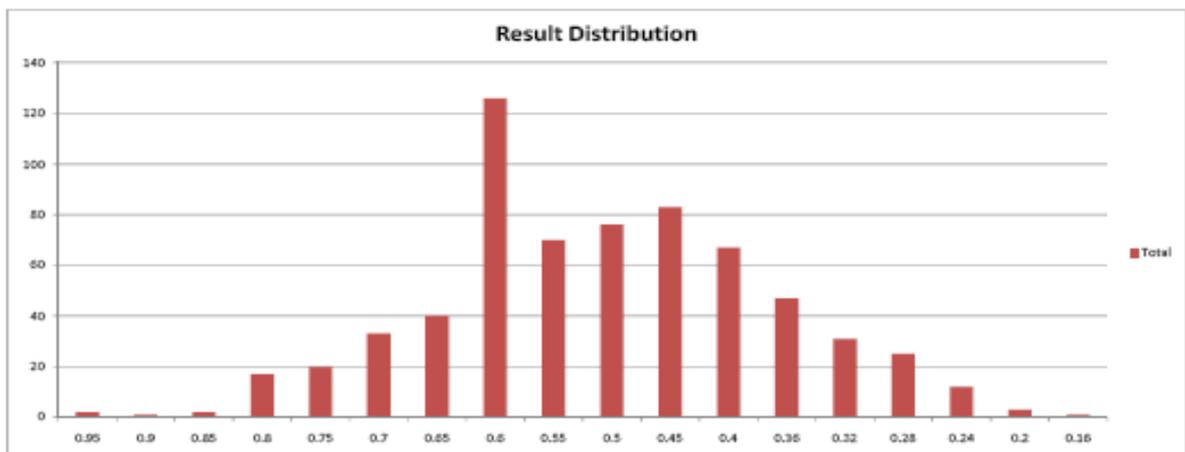
2010 - S1 - Mid Exam - Individual feedback

Other Name _____

Result **23/25**

Overall **92%**

Question 1	Wrong	Question 14	Correct
Question 2	Correct	Question 15	Correct
Question 3	Correct	Question 16	Correct
Question 4	Correct	Question 17	Correct
Question 5	Correct	Question 18	Correct
Question 6	Correct	Question 19	Correct
Question 7	Correct	Question 20	Correct
Question 8	Wrong	Question 21	Correct
Question 9	Correct	Question 22	Correct
Question 10	Correct	Question 23	Correct
Question 11	Correct	Question 24	Correct
Question 12	Correct	Question 25	Correct
Question 13	Wrong		



Sample 2

Student ID



Enter your Student ID here

Name

[2010 - S1 - Written Task Individual Feedback](#)

Q1

[11.5](#)

Q2

[8](#)

Overall

[97.5%](#)

Net Total

[9.75](#)

Comment

Q1, good answer. Q1, could of mentioned the GIC interest ramifications with rulings. Q2, could of mentioned that the accrual basis causes a debtor to be raised.

