BUSL320
Revenue Law
Unit Outline

Second Semester, 2011

Department of Accounting and Corporate Governance
Year and Semester : 2011 Second Semester
Unit moderator : Associate Professor Hope Ashiabor
Unit convenor : Shirley Murphy
Deputy unit convenor : Victoria Lakis
Prerequisites : BUSL250 and BUSL301
(Waivers: if a prerequisite is 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 : Shirley MURPHY
Email : shirley.murphy@mq.edu.au

Deputy convenor : Victoria LAKIS
Email : vlakis@bigpond.net.au
TEACHING STAFF

Unit Administrator : Tony SHUM
Email : tony.shum@mq.edu.au

Other Staff:

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

CONSULTATION TIMES

Staffs 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 allocated 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.

- http://www.businessandeconomics.mq.edu.au/undergraduate_degrees/prizes_scholarships

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, Evans and Pinto, Australian Taxation Law (21st edn, CCH 2011) - cited throughout this Unit Outline as 'Woellner'.

   (ii) **Workbook**

   (iii) **Casebook**
   Krever, Australian Taxation Law Cases (Thomson Reuters, 2011)

   (iv) **Legislation**
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:**


P Kenny, *Australian Tax 2011* (LexisNexis Butterworths)


**Note:** It is pointless having an out of date edition of the textbook.

3. **REFERENCE MATERIALS**

While references in the Unit 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](http://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:

- **Institute of Chartered Accountants in Australia:** [http://www.icaa.org.au](http://www.icaa.org.au). This site contains relevant information including submissions canvassing tax reform.

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


- Cases: Australian Legal Information Institute site [http://www.austlii.edu.au](http://www.austlii.edu.au)

(c) Professional Reference Texts

2011 Master Tax Guide (CCH)
2011 Australian Tax Handbook (Thomson Reuters)
2011 Australian Master GST Guide (CCH)
2011 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.

TECHNOLOGY USED AND REQUIRED

Students will need access to the internet as lecture handouts and notices will be available from the unit’s web page.

UNIT WEB PAGE

- The BUSL320 homepage is at: http://learn.mq.edu.au. You can directly access the Unit outline, current lecture outlines, iLecture, announcements related to the Unit, 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 as an accountant or as a registered tax agent, and how to deal with them.

This unit builds 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:

1. Critical, Analytical and Integrative Thinking
   - Critical analysis through exploring legal issues and factual problems in a range of topics related to the Unit
   - Participating in class discussion and debate;
   - Critical analysis and discussion in class on current media reports on taxation issues;
   - Analysing legal case studies in class and via the exam process.

2. Problem Solving and Research Capability
   - Application of the sources of tax law to solve factual taxation problems
   - Researching in preparation for written assessments;
3. Creative and Innovative
   • Creative thinking skills in determining and evaluating strategies and policies to improve the effectiveness and operation of the present tax laws

4. Effective Communication
   • Participation in class discussions;
   • Expressing relevant views and opinions;
   • Communicating with people from various background/countries/cultures
   • Writing-up the written task and the exam answers

5. Engaged and Ethical Local and Global citizens
   • Understand that the law requires the highest of ethical standards at all times

6. Socially and Environmentally Active and Responsible
   • Relevant practical examples applied to enrich the discussion and critique of tax law problems
   • Reading and referencing current journal, newspapers and magazine articles;

7. Capable of Professional and Personal Judgement and Initiative
   • Approach taxation issues with the ability to make excellent judgments of the situations presented via problems considered in the Unit.

8. Commitment to Continuous Learning
   • Self discipline and time management skills;
   • Identifying and setting targets;
   • Actively participating in class discussions and debate;
   • Contribution to a broad range of original and personal insights by other class members
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

<table>
<thead>
<tr>
<th>Week Commencing</th>
<th>Lecture</th>
<th>Topic</th>
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</table>
| 1 August        | 1       | Operating Framework of the Australian Tax System:  
|                 |         | - 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  
|                 |         | Tax Administration:  
|                 |         | - operation and enforcement of the Act and ancillary legislation;  
|                 |         | - the assessment process; appeal procedures;  
|                 |         | - rights and remedies of the Commissioner and taxpayer;  
|                 |         | - tax agents. |
| 8 August        | 2       | The concept of income:  
|                 |         | - distinction between "income" and "capital";  
|                 |         | - exempt income;  
|                 |         | Calculation of Tax Payable:  
|                 |         | - Formulas, Rates & Offsets  
|                 |         | Tax collection mechanisms |
| 15 August       | 3       | The Income Concept: Incidental Issues  
|                 |         | - residence and source;  
|                 |         | - derivation of income |
| 22 August & 29 August | 4 & 5   | Assessable Income:  
|                 |         | - Income according to ordinary concepts  
|                 |         | - statutory extensions to the concept of income |
| 5 September     | 6       | Statutory Income:  
|                 |         | - Taxation of capital gains and losses;  
|                 |         | - calculation of capital gains and losses;  
|                 |         | - inter-relationship with the income taxing provisions |
| 12 September    | 7       | Allowable Deductions I  
|                 |         | - The general provision s.8-1  
<p>|                 |         | - Substantiation of expenses |</p>
<table>
<thead>
<tr>
<th>Week Commencing</th>
<th>Lecture</th>
<th>Topic</th>
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<tbody>
<tr>
<td>Important Notice: The mid-semester test will be held on Saturday, 17 September 2011 (For further information please visit the unit’s Blackboard site)</td>
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<tr>
<td>Mid Semester Break</td>
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| 3 October | 8 | **Allowable Deductions II**  
- Specific provisions relating to deductions |
| **Important Notice:** The Written Task Report is due on Thursday, 6 October 2011 noon |
| 10 October | 9 | **Goods and Services Tax** |
| 17 October | 10 | **Taxation of Partnerships, Trust Estates and Beneficiaries; minors** |
| 24 October | 11 | **Companies:**  
- Issues related to corporate taxation  
- Dividends and shares, imputation system |
| 31 October | 12 | **Fringe Benefits Tax**  
- The tax and its applications in practice |
| 7 November | 13 | **Anti-Avoidance Legislation**  
- Alienation of Personal Services Income;  
- Basic techniques of tax planning;  
- Ethical issues in tax practice |
| **END OF SEMESTER 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

<table>
<thead>
<tr>
<th>Title/Name</th>
<th>Assessment Task 1</th>
<th>Assessment Task 2</th>
<th>Assessment Task 3</th>
<th>Assessment Task 4</th>
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<tbody>
<tr>
<td><strong>Description</strong></td>
<td><strong>Tutorial Homework and Group work/Presentations</strong></td>
<td><strong>Written Task</strong></td>
<td><strong>Mid-semester Test</strong></td>
<td><strong>End-of-year examination</strong></td>
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| **(including length or similar if applicable)** | ➢ 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. | ➢ Essay type question.  
➢ 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 800 -1,000 words. | ➢ 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 Unit. Students will therefore be expected to have a firm grasp of how this is done and its applications). | ➢ 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 Unit. Students will therefore be expected to have a firm grasp of how this is done and its applications). |
<table>
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<th></th>
<th><strong>Assessment Task 1</strong></th>
<th><strong>Assessment Task 2</strong></th>
<th><strong>Assessment Task 3</strong></th>
<th><strong>Assessment Task 4</strong></th>
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<tbody>
<tr>
<td><strong>Due date</strong></td>
<td>Weekly</td>
<td>Thursday 6 October 2011, noon</td>
<td>Saturday, 17 September 2011</td>
<td>The date is centrally determined by the University.</td>
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<td><strong>% Weighting</strong></td>
<td>10%</td>
<td>10%</td>
<td>20%</td>
<td>60%</td>
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<tr>
<td><strong>Grading method</strong></td>
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<tr>
<td>- marking criteria/standards expectations in relation to presentation</td>
<td>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. Group work / Presentation 5 marks will be awarded for a satisfactory completion of this task.</td>
<td>Refer to: “Standard Marking Criteria for this unit” (below)</td>
<td>Computer marked</td>
<td>Formal marking scheme will be prepared for every question.</td>
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<tr>
<td>- referencing requirements</td>
<td>Refer to the Standard marking criteria for this unit (below)</td>
<td>Refer to the “Standard Marking Criteria for this Unit” (below)</td>
<td>None</td>
<td>Refer to the “Standard Marking Criteria for this Unit” (below).</td>
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<tr>
<td><strong>Submission method</strong></td>
<td>➢ Tutors will collect the written responses of every student to the tutorial questions <strong>EACH WEEK</strong> prior to the tutorial discussion. This is to ensure that students are putting in sufficient effort to prepare for each week’s discussions.</td>
<td>➢ On-line submission via the unit’s Blackboard facility ➢ Students should make a note of the submission deadline for this task, <strong>AS BLACKBOARD DOES NOT ACCEPT LATE SUBMISSIONS.</strong></td>
<td>MC Computer marking sheets to be collected by exam invigilators at the end of the exam.</td>
<td>Formal examination conditions apply</td>
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<tr>
<td>Submission method</td>
<td>Assessment Task 1</td>
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<td>➢ Members of each group move to the front of the class - and a nominated leader acts as spokesperson for the group. Members of the group respond to questions from fellow students/tutor.</td>
<td>➢ All written task reports must submit via Blackboard.</td>
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<td>➢ Marks allocated for each group’s presentations will only be awarded for work presented in the student’s designated tutorial class.</td>
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<tr>
<th>Feedback (type, method, date)</th>
<th>Assessment Task 1</th>
<th>Assessment Task 2</th>
<th>Assessment Task 3</th>
<th>Assessment Task 4</th>
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<td></td>
<td>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.</td>
<td>Feedback – marking guidelines will be posted on Blackboard.</td>
<td>Feedback – marking guidelines will be posted on Blackboard.</td>
<td>Standard University and Faculty exam review protocols apply.</td>
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<tr>
<th>Estimated student workload (hours)</th>
<th>Assessment Task 1</th>
<th>Assessment Task 2</th>
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<th>Assessment Task 4</th>
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<tbody>
<tr>
<td></td>
<td>6 hours a week</td>
<td>10 hours</td>
<td>Time Allowed: 45 minutes.</td>
<td>3 hours plus 10 minutes reading time</td>
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<tr>
<td>Learning outcomes assessed</td>
<td>Assessment Task 1</td>
<td>Assessment Task 2</td>
<td>Assessment Task 3</td>
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<tr>
<td>1. Sound knowledge of conceptual framework</td>
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<td>2. Working knowledge of the major tax provisions</td>
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<td>3. Apply tax provisions simulated real life situations</td>
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<td>4. Strategies for resolution of disputes with the ATO</td>
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<td>5. Evaluation of alternative tax planning strategies</td>
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<tr>
<td>6. Develop tax management strategies</td>
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<td>7. Identification of taxation issues</td>
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<td>8. Use and evaluate numerical data related to taxation</td>
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<tr>
<td>9. Teamwork</td>
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<td>10. Independent research of taxation issues</td>
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<tr>
<td>Graduate capabilities assessed</td>
<td>Assessment Task 1</td>
<td>Assessment Task 2</td>
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<tr>
<td>1. Critical, Analytical and Integrative Thinking</td>
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<tr>
<td>2. Problem Solving and Research Capability</td>
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<td>3. Creative and Innovative</td>
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<td>4. Effective Communication</td>
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<td>5. Engaged and Ethical Local and Global citizens</td>
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<tr>
<td>6. Socio-culturally Informed and Actively Engaged</td>
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<tr>
<td>7. Capable of Professional and Personal Judgement and Initiative</td>
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<td>8. Commitment to Continuous Learning</td>
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</table>
• **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 2011 is from November 14 to December 2.

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.exams.mq.edu.au/](http://www.exams.mq.edu.au/)

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  

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

Permitted Aids:

- **For both the mid-semester and final exam**: 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.

- **For the final exam only**: Students may bring in two A4 sheets – **(HANDWRITTEN ONLY)** - on both sides of your own prepared notes. I think this is confusing still and we should just say something like: “Students may bring in two A4 sheets of their own handwritten notes. The sheets may be written on both front and back.”. **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 index factors, will be provided in the examination paper

Prohibited Materials:

Students are **NOT PERMITTED** to bring the following 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 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 Unit a student’s overall performance must be satisfactory, and additionally he or she must pass the final examination.

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

- present ideas clearly in a well-structured text;
- use appropriate terminology; and
- support 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 legislation, cases and rulings, 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.

In order to not breach the plagiarism guidelines, students are advised to read the following case: [http://www.austlii.edu.au/au/cases/vic/VSC/2007/520.html](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](http://www.mq.edu.au/policy/docs/academic_honesty/policy.html).
GRADES

Macquarie University uses the following grades in coursework units of study:

HD – High Distinction
D – Distinction
CR – Credit
P – Pass
F – Fail

Grade descriptors and other information concerning grading are contained in the Macquarie University Grading Policy which is available at: http://www.mq.edu.au/policy/docs/grading/policy.html

All final grades in the Department of Accounting and Corporate Governance are determined by a grading committee and are not the sole responsibility of the Unit Coordinator.

Students will be awarded one of these grades plus a Standardised Numerical Grade (SNG). The SNG is not necessarily a summation of the individual assessment components.

The final grade and SNG that are awarded reflect the corresponding grade descriptor in the Grading Policy.

In addition, there is a requirement to pass the final examination to be awarded a final grade of a Pass or a higher grade.

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, 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.businessandeconomics.mq.edu.au/new_and_current_students/undergraduate/how_do_i/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.

**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 an approved unit is deemed inappropriate.
- Downloading copyright material without permission from the copyright owner is illegal, and strictly prohibited. Students who are 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.

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Nature of Tax</td>
<td>1.550</td>
</tr>
<tr>
<td>• Constitutional basis of taxation</td>
<td>1.530 – 1.540, 1.560 – 1.600</td>
</tr>
<tr>
<td>• Sources of Income Tax Law</td>
<td>1.310 – 1.340</td>
</tr>
<tr>
<td>• ATO Practice</td>
<td></td>
</tr>
<tr>
<td>• Discretionary Powers</td>
<td>1.490 – 1.520</td>
</tr>
<tr>
<td>• Tax Rulings</td>
<td>30.470 – 30.486</td>
</tr>
</tbody>
</table>

Journal Articles:
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

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Assessment Process: Returns</td>
<td></td>
</tr>
<tr>
<td>▪ Lodging Tax Returns</td>
<td>30.000 – 30.360</td>
</tr>
<tr>
<td>Ancillary Matters</td>
<td></td>
</tr>
<tr>
<td>▪ The General Interest Charge</td>
<td>33.040</td>
</tr>
<tr>
<td>▪ 169A(2) Requests</td>
<td>30.470</td>
</tr>
<tr>
<td>Assessments</td>
<td></td>
</tr>
<tr>
<td>▪ Meaning</td>
<td>30.400 – 30.420</td>
</tr>
<tr>
<td>▪ Types</td>
<td>30.425 – 30.457</td>
</tr>
<tr>
<td>Amending Assessments</td>
<td></td>
</tr>
<tr>
<td>▪ General Principles</td>
<td>30.600</td>
</tr>
<tr>
<td>▪ Time Limits</td>
<td>30.620 – 30.690</td>
</tr>
</tbody>
</table>
Challenging the Assessment: The Tax Appeal Process

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objections</td>
<td>31.300 – 31.430</td>
</tr>
<tr>
<td>The Admin Appeal/STCT Route</td>
<td>31.500; 31-510 – 31.530; 31-570 – 31-700</td>
</tr>
</tbody>
</table>

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:


TAX AUDITS: ENFORCING TAX OBLIGATIONS

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

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


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?

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theoretical Basis for Taxing Income</td>
<td>3.020 – 3.050</td>
</tr>
<tr>
<td>Propositions in Identifying Ordinary Income</td>
<td>3.150 – 3.290; 6.800 – 6-805; 6-880</td>
</tr>
<tr>
<td>Relationship between ordinary and statutory provisions</td>
<td>3.060 – 3.100</td>
</tr>
</tbody>
</table>
(i) Principal Sections:

Section Number (ITAA 1997)

6-5: **Ordinary Income.** This section includes in assessable income amounts that fall within the ordinary concept 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): Certain income that is not received (Constructive Receipts). These sections deem a person to have derived or received income even if they do not actually receive it, eg because they direct that the amount is paid to someone else.

6-25 Reconciliation rules to prevent the same amount from being included more than once in assessable income, and to indicate priority when an amount could be taxed under two provisions.

(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” usually escaped tax altogether. From that date, a capital amount is 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

Doctrine of constructive receipt.

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

Gifts and windfall gains
Employment and services
Carrying on a business

Scott v FCT (1966) 117 CLR 514

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

FCT v Dixon (1952) 86 CLR 540
FCT v Anstis [2010] HCA 40
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 (NSW) v Meeks (1915) 19 CLR 568
Sommer v FCT 2002 ATC 4815
Sydney Refractive Surgery Centre v FCT 2008 ATC #20-036

(f) Ordinary Income is money or money’s worth

Tenant v Smith [1892] AC 150
FCT v Cooke & Sherden 80 ATC 4140
Payne v FCT 96 ATC 4407

(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

(iv) Convertibility Issues:

- Non-Cash Benefits:

  Principal Sections:

  ITAA 1936 --
  21 – This section applies to all non-cash transactions and values the consideration in such circumstances as its money value

  21A – To overcome the principle that, to be ordinary income, an amount received must be money or capable of being converted into money, s 21A includes the value of certain non-cash business benefits in the assessable income of a taxpayer carrying on the business.

  Rulings:

  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
INCOME THAT IS NOT ASSESSABLE INCOME

There are two categories of non-assessable income.

(a): EXEMPT INCOME

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overview</td>
<td>9.000</td>
</tr>
<tr>
<td>Exempt Income</td>
<td>9.025 – 9.200</td>
</tr>
</tbody>
</table>

Principal Sections:

ITAA 1997 Section 6-1; 6-15; 6-20. Division 11.

(b): NON-ASSESSABLE NON-EXEMPT INCOME

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overview</td>
<td>9.000</td>
</tr>
<tr>
<td>Non-assessable non-exempt income</td>
<td>9.005 – 9.015</td>
</tr>
</tbody>
</table>

MUTUALITY PRINCIPLE

Applies to receipts that are “not income” at all because they are really payments made to a person from that same person.

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mutuality principle</td>
<td>9.250</td>
</tr>
<tr>
<td>Limits to mutuality principle</td>
<td>9.255 – 9-260</td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overview</td>
<td>2-000</td>
</tr>
<tr>
<td>The Tax Formula</td>
<td>2.020 - 2-030</td>
</tr>
<tr>
<td>Rates of Tax</td>
<td>2.100 - 2.150</td>
</tr>
<tr>
<td>Family Assistance</td>
<td>2.250</td>
</tr>
<tr>
<td>Medicare Levy &amp; Medicare Levy Surcharge</td>
<td>2.300 - 2.350</td>
</tr>
<tr>
<td>HELP payments</td>
<td>2-400</td>
</tr>
<tr>
<td>Offsets</td>
<td>2.500 - 2.540</td>
</tr>
</tbody>
</table>

Go over the example at paragraph 2-040 carefully to see how these various concepts relating to tax liability fit together.

This topic is fundamental to understanding how our tax system works. Read this section carefully:

(a) This part of the Unit is very important. It is essential that students:

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 Unit is expected to be undertaken through individual study.
(c) Lecture input is minimal, and is only provided as a road map to guide students in their individual reading.

(d) Students who encounter difficulties in understanding any part of the material should contact their tutor for clarification as soon as possible.

(e) Students are advised to obtain a copy of the 2011 Tax Pack as well as the 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 paragraphs in Woellner which have been cited in this part of the Study Guide.

**Calculation of Tax Payable: Formulas, Rates & Offsets**

The sections in ITAA97 Division 4 are the principal charging provisions in the Act. They impose tax upon the taxable income of individuals, companies and some other entities.

Section 4-10 provides the general formula for calculating liability to income tax:

\[
\text{Income tax} = (\text{taxable income} \times \text{rate}) - \text{offsets}
\]

**Tax rates 2010-11**

<table>
<thead>
<tr>
<th>Resident Individuals</th>
<th>Tax on this income</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Taxable income</strong></td>
<td><strong>Tax</strong></td>
</tr>
<tr>
<td>$0 – $6,000</td>
<td>Nil</td>
</tr>
<tr>
<td>$6,001 – $37,000</td>
<td>15c for each $1 over $6,000</td>
</tr>
<tr>
<td>$37,001 – $80,000</td>
<td>$4,650 plus 30c for each $1 over $37,000</td>
</tr>
<tr>
<td>$80,001 – $180,000</td>
<td>$17,550 plus 37c for each $1 over $80,000</td>
</tr>
<tr>
<td>$180,001 and over</td>
<td>$54,550 plus 45c for each $1 over $180,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Resident Individuals</th>
<th>Tax on this income</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Taxable income</strong></td>
<td><strong>Tax</strong></td>
</tr>
<tr>
<td>0 – $37,000</td>
<td>29c for each $1</td>
</tr>
<tr>
<td>$37,001 – $80,000</td>
<td>$10,730 plus 30c for each $1 over $37,000</td>
</tr>
<tr>
<td>$80,001 – $180,000</td>
<td>$23,630 plus 37c for each $1 over $80,000</td>
</tr>
<tr>
<td>$180,001 and over</td>
<td>$60,630 plus 45c for each $1 over $180,000</td>
</tr>
</tbody>
</table>
IMPORTANT CONCEPTS:

- Tax-free threshold
- Marginal tax rates
- Progressive or regressive tax

OFFSETS:

- Where offsets fit in the tax formula
- Value of an offset – distinguished from a deduction
- Low income tax offset (Woellner 2-640) – interaction with tax-free threshold

Tax Collection Mechanisms

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Pay As You Go System</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>32.400 - 32.405</td>
</tr>
<tr>
<td>PAYG Withholding</td>
<td>32.410 - 32.455</td>
</tr>
<tr>
<td>PAYG Instalment</td>
<td>32.460 - 32.510</td>
</tr>
</tbody>
</table>

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:

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 foreign residents are treated for tax purposes.

Australia’s Jurisdiction to Tax

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residence</td>
<td></td>
</tr>
<tr>
<td>▪ Individuals</td>
<td>24.040 – 24.059</td>
</tr>
<tr>
<td>▪ Companies</td>
<td>24.060 – 24.066</td>
</tr>
<tr>
<td>Source of Income</td>
<td>24.100 – 24.110</td>
</tr>
<tr>
<td></td>
<td>24.140 – 24.170</td>
</tr>
</tbody>
</table>

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
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 incoming, rather than departing, taxpayers.

RESIDENTS (Companies):
Malayan Shipping Co Ltd v FCT (1946) 3 AITR 258

TAXATION OF NON-RESIDENTS

- 128B, 128D ITAA36: Liability to withholding tax
- 44(1) ITAA36: dividends

Rulings:

IT 2650 : Residency: permanent place of abode
TR 98/17: Residency status of individuals entering Australia

SOURCE OF INCOME

Nathan v FCT (1918) 25 CLR 183
FCT v French (1957) 98 CLR 398
FCT v Mitchum (1965) 113 CLR 401
Esquire Nominees Ltd v FCT (1973) 129 CLR 177

Double tax agreements
Journal Articles and Further Reading:


**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 paragraphs 13.025 and 13.030

(ii): **ISSUES OF TIMING - DERIVATION OF INCOME**

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Derivation of Income</td>
<td>13.100 – 13.230</td>
</tr>
<tr>
<td></td>
<td>13.300 – 13.380</td>
</tr>
<tr>
<td>Tax Accounting and the STS</td>
<td>15.000 – 15.200</td>
</tr>
</tbody>
</table>

**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:**


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

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
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</thead>
<tbody>
<tr>
<td>Gifts and winnings</td>
<td>4.040 – 4.046</td>
</tr>
<tr>
<td>Sec.15-2 <em>ITAA97</em> Employment Allowances, etc.</td>
<td>4.110 – 4.160</td>
</tr>
<tr>
<td>Payments for Service Contracts</td>
<td>4.050</td>
</tr>
<tr>
<td>Payments for giving up a right</td>
<td>4.060</td>
</tr>
<tr>
<td>Salary Sacrifice Arrangements</td>
<td>4.070</td>
</tr>
</tbody>
</table>

**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.

### 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

Payments for giving up a right:

Riley v Coglan [1968] 1 All R 314
Jarrold v Boustead (1964) 41 TC 701
Pritchard v Arundale [1972] Ch 229
Beak v Robson [1943] AC 352
Higgs v Olivier [1951] Ch 899

Rulings:

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

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

- Division 83A ITAA97: taxes employees when shares are provided at a discount under an employee share acquisition scheme.

- Sec 15-70 ITAA 97: reimbursement of car expenses

- Sec 15-50 ITAA 97: work in progress payments

- Sec 109 ITAA36: deems excessive payments for services and retirement allowances paid to associates of private companies to be dividends. (Also note Div.7A ITAA 36)

- Division 82 ITAA97: assesses employment termination payments – i.e., payments made in consequence of the termination of employment.

- Sec 83-10 to 83-115 ITAA 97: includes in assessable income lump sum payments made a taxpayer for their accrued annual leave or long service leave when their employment is terminated
### Income from Property

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<td>Assignment of the Right to Receive Property Income</td>
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**Principal Sections:**

**ITAA 1997**
- 15–20: Royalties
- 15–35: Interest on overpayments and early payments of tax

**Journal Articles and Further Reading:**


LECTURE 5
Assessable Income II

BUSINESS INCOME

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**Principal Sections:**

**ITAA 1936**
- 21A includes the market value of certain non-cash business benefits in assessable income
- 25A profit acquired before 20 September 1985 for resale at a profit

**ITAA 1997**
- 6-5 assesses the normal proceeds of a business -- complemented by the trading stock provisions in Division 70 ITAA97
- 15-10 bounties and subsidies
- 15-15 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

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<td>☐ CGT and Compensation Payments</td>
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CASES:

Cancellation of a “Structural” agreement
Van den Berghs v Clarke [1935]AC 431

Restriction on ability to carry on a business
Dickenson v FCT (1958) 98 CLR 460
Sec 104-35: CGT event D1: Creating Contractual or other rights

Cancellation of business contracts
Heavy Minerals v FCT (1966) 115 CLR 512

Termination of Agency and Management contracts
Allied Mills Industries v FCT 89 ATC 4365

Reimbursement of previously deducted expense
HR Sinclair v FCT (1966) 14 ATD 194

Apportionment of compensation payments
McLaurin v FCT (1961) 104 CLR 381
**Principal Sections: ITAA 1997**

- **Sec 15-30:** insurance or Indemnity for loss of assessable income
- **Sec 20-20:** assessable recoupments
- **Sec 70-115:** compensation for lost trading stock
- **Sec 104-20:** CGT event C1: Compensation received on the loss or destruction of a CGT asset
- **Sec 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:**


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

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<td>Main Residence Exemption</td>
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<td>Some CGT events worth noting:</td>
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<td>- Loss/Destruction of a CGT Asset CGT event C1</td>
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<td>- Cancellation, Surrender, etc. CGT event C2</td>
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<td>- Creating Contractual or Other Rights CGT event D1</td>
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<td>- Cost Base,…etc (Divisions 110 and 112)</td>
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<td>- Determining CG or CL</td>
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Concessional Adjustments:

- Indexation (Division 114) -- Frozen since 21 Sept 1999
- Discount Method (Division 115) -- For gains of certain taxpayers post-21 Sept 1999

| Record Keeping | 7.960 |

Special Topics: Part 3.3

- The rules in this part supplement the general rules in Part 3.1
  
  *Note in particular the operation of the following rules*

- Replacement asset roll-overs
- Same asset roll-overs
- Effect of Death

| 7-820 | 7-810 | 8-500 to 8-520 |

Journal Articles and Further Reading:

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 entitlement to a deduction.

THE GENERAL DEDUCTION PROVISION

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<td>❑ An Analysis of the Limbs to Sec 8-1</td>
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<td>❑ Positive Deduction Limbs</td>
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<td>❑ Home office expenses</td>
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<td>❑ Travel expenses</td>
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<td>❑ Self-education expenses</td>
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<td>❑ Legal expenses</td>
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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 in carrying on a business for gaining or producing assessable income: *(Business deductions)*

To be deductible:
- the expense must fall within one of the positive limbs; and
- must not be of a capital nature; and
- must not be of a private or domestic nature, and
- must not be incurred in gaining tax-exempt income; and
- the deduction of the expense must not 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
(iii) **Rulings:**

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

### SUBSTANTIATION OF EXPENSES AND THE DEDUCTIBILITY OF CAR EXPENSES

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</table>

**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, documents need not be retained.

  **Note:** The $300 limit does not include claims for meal allowance expenses and travel allowance expenses. Written evidence is required to prove a 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, 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 for failure to maintain records.
- To enable a taxpayer to discharge the burden of proof in the event of a dispute with the ATO.

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

Journal Articles and Further Reading:


LECTURE 8  
Allowable Deductions II

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<td>Blackhole Capital Expenditure</td>
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<td>Bad Debts</td>
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<td>Tax Related Expenses</td>
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<td>Borrowing &amp; Mortgage Discharge Expenses</td>
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<td>Non-commercial Losses</td>
<td>11.550 – 11-558</td>
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**Principal Sections: (ITAA 1997):**

Section 25-10  Repairs  
Section 25-35  Bad Debts  
Section 25-5  Tax related expenses  
Section 25-25  Borrowing expenses  
Division 40  Capital Allowances  
Division 36  Tax losses  
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 are 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
**LECTURE 9**

Goods and Services Tax

**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
- have developed an awareness of the GST issues for business
- be able to identify the GST implications arising from certain transactions

**Regulatory Framework**

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**Journal Articles and Further Reading:**


**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
- explain the concepts of a trust and the tax treatment of trustees and beneficiaries
- understand in very general terms how the anti-avoidance provisions impact on the use of these entities in tax minimisation arrangements.

**Partnerships**

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<td>Variation or Dissolution of Partnership</td>
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<td>Assignment of Partnership Income</td>
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Principal Sections:

a) Outline. The taxation of partnerships is governed by Div. 5 of Part III of ITAA36:

s.90 defines key terms relevant to the operation of the Division
s.91 requires a partnership to furnish tax returns
s.92 partners to include their share of partnership loss, partnership net income and exempt income in their tax return
s.94 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) allow taxpayers to roll over depreciable property upon a change in the composition of a partnership.

Section 70-100 treats 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 roll over the trading stock to the new partners.

Sections 108-5(2)(c), (d) and 106-5 – 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:


Trusts

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<td>☐ Taxation – Trustees and Beneficiaries</td>
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Principal Sections

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

Cases

Taxation of the net income of the trust estate

- 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 A Minor's Income

Journal Articles and Further Reading:


**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**

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**Changes in Corporate Control and the Transfer of Inter-Company Losses**
**Principal Sections: ITAA 1997**

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

**Corporate Distributions**

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<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>18.200</td>
</tr>
<tr>
<td>Assessment of Dividends</td>
<td>18.205 – 18.207</td>
</tr>
</tbody>
</table>

**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.

<table>
<thead>
<tr>
<th>Topics</th>
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<tr>
<td>□ Introduction</td>
<td>18-330 – 18-350</td>
</tr>
<tr>
<td>□ Tax Effects of Imputation on Shareholders</td>
<td>18.389 – 18.400; 18-420</td>
</tr>
<tr>
<td>□ Maintaining a Franking Account:</td>
<td></td>
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<tr>
<td>Debit and Credit Entries</td>
<td>18-340 – 18-387</td>
</tr>
</tbody>
</table>
Knowledge Objectives:

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

- explain 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

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
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<tbody>
<tr>
<td>Introduction</td>
<td>26-000</td>
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<tr>
<td>Identify Whether a Fringe Benefit Exists -- Examples of exempt benefits</td>
<td>26-100 – 26-160</td>
</tr>
<tr>
<td>Ascertaining Liability to FBT Steps in Computing Liability</td>
<td>26-200 – 26-310</td>
</tr>
<tr>
<td>Reconciliation with income tax laws</td>
<td>26-330 and 26-340</td>
</tr>
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</table>

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

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
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<tbody>
<tr>
<td>Students are advised that only the following categories of Fringe Benefits are examinable:</td>
<td></td>
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<tr>
<td>Car Fringe Benefits</td>
<td>26-400 – 26-420</td>
</tr>
<tr>
<td>Loan Fringe Benefit</td>
<td>26-450 – 26-455</td>
</tr>
<tr>
<td>Expense Payment FB</td>
<td>26-500 – 26-505</td>
</tr>
<tr>
<td>Property Fringe Benefit</td>
<td>26-550 -- 26-555</td>
</tr>
</tbody>
</table>
Principal Sections:

ITAA1936
Sec 23L Exemption of fringe benefits that are income nature

- Fringe Benefits Tax Assessment Act (FBTAA) 1986
  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 it relates to tax agents and to legal and accounting advisers.

Barriers to Tax Avoidance

<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraphs</th>
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<tbody>
<tr>
<td>Specific Anti-Avoidance Provisions</td>
<td>25-400 – 25-490</td>
</tr>
</tbody>
</table>
- Div 84 to 87 ITAA97: Alienation of Personal Services Income |

Principal Sections

a) Part IVA (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. The purpose of these rules, as set out in sec 86-10, is to ensure that individuals cannot reduce or defer their tax 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
<table>
<thead>
<tr>
<th>Topics</th>
<th>Read WOELLNER paragraph</th>
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<tbody>
<tr>
<td>Ethical Considerations</td>
<td>33.900</td>
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**Journal Articles and Further Reading:**


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<th>Student ID</th>
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<tbody>
<tr>
<td>Name</td>
<td><strong>2010 - S1 - Written Task Individual Feedback</strong></td>
</tr>
<tr>
<td>Q1</td>
<td><strong>11.5</strong></td>
</tr>
<tr>
<td>Q2</td>
<td><strong>8</strong></td>
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<tr>
<td>Overall</td>
<td><strong>97.5%</strong></td>
</tr>
<tr>
<td><strong>Net Total</strong></td>
<td><strong>9.75</strong></td>
</tr>
<tr>
<td>Comment</td>
<td><strong>Q1, good answer. Q1, could of mentioned the GIC interest ramifications with rulings. Q2, could of mentioned that the accrual basis causes a dent to be raised.</strong></td>
</tr>
</tbody>
</table>

![Sample Graph](image.png)