

**MACQUARIE
UNIVERSITY**

SYDNEY ~ AUSTRALIA



FACULTY OF
BUSINESS AND ECONOMICS

**BUSL320
Revenue Law
Unit Outline**

Second Semester, 2011

Department of Accounting and Corporate Governance

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

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
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Deputy convenor	:	Victoria LAKIS
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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

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**
LJ Nethercott, G Richardson and K Devos, **Australian Taxation Study Manual, Questions and Suggested Solutions** (20th edn, CCH, 2010)
 - (iii) **Casebook**
Krever, **Australian Taxation Law Cases** (Thomson Reuters, 2011)
 - (iv) **Legislation**
Barkoczy, **2011 Core Tax Legislation and Study Guide**, (14th edition, CCH 2011)

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, 2011)

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

J Cassidy **Concise Income Tax** (7th edn, The Federation Press, 2010)

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

Coleman, Hart, McKerchar, et al **Australian Tax Analysis: Cases, Commentary, Commercial Applications, and Questions** (9th edn – Thomson Reuters, 2011).

Fisher and Hodgson, **Tax Questions & Answers 2011** (Thomson Reuters, 2011)

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 . 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

- 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

- **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>
1 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.
8 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>
15 August	3	<p>The Income Concept: Incidental Issues</p> <ul style="list-style-type: none"> ➤ residence and source; ➤ derivation of income
22 August & 29 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
5 September	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
12 September	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>
<p><u>Important Notice:</u> The mid-semester test will be held on Saturday, 17 September 2011 (For further information please visit the unit's Blackboard site)</p>		
<p>Mid Semester Break</p>		
3 October	8	<p>Allowable Deductions II</p> <ul style="list-style-type: none"> ➤ Specific provisions relating to deductions
<p><u>Important Notice:</u> The Written Task Report is due on Thursday, 6 October 2011 noon</p>		
10 October	9	Goods and Services Tax
17 October	10	Taxation of Partnerships, Trust Estates and Beneficiaries; minors
24 October	11	<p>Companies:</p> <ul style="list-style-type: none"> ➤ Issues related to corporate taxation ➤ Dividends and shares, imputation system
31 October	12	<p>Fringe Benefits Tax</p> <ul style="list-style-type: none"> ➤ The tax and its applications in practice
7 November	13	<p>Anti-Avoidance Legislation</p> <ul style="list-style-type: none"> ➤ Alienation of Personal Services Income; ➤ Basic techniques of tax planning; ➤ Ethical issues in tax practice
<p>END OF SEMESTER EXAMINATION</p>		

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/Presentations	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"> ➤ 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. 	<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 Unit. 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 Unit. 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	Thursday 6 October 2011, noon	Saturday, 17 September 2011	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. Group work / Presentation 5 marks will be awarded for a satisfactory completion of this task.	Refer to: "Standard Marking Criteria for this unit" (below)	Computer marked	Formal marking scheme will 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 ensure that students are putting in sufficient effort to prepare 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 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. ➤ 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 submit via Blackboard. 		
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.	Feedback – marking guidelines will be posted on Blackboard.	Feedback – marking guidelines will be posted on Blackboard.	Standard University and Faculty exam review protocols apply.
Estimated student workload (hours)	6 hours a week	10 hours	Time Allowed: 45 minutes.	3 hours plus 10 minutes reading time

		Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
	Learning outcomes assessed 				
1.	➤ Sound knowledge of conceptual framework				
2.	➤ Working knowledge of the major tax provisions				
3.	➤ Apply tax provisions simulated real life situations				
4.	➤ Strategies for resolution of disputes with the ATO				
5.	➤ Evaluation of alternative tax planning strategies				
6.	➤ Develop tax management strategies				
7.	➤ Identification of taxation issues				
8.	➤ Use and evaluate numerical data related to taxation				
9.	➤ Teamwork				
10.	➤ Independent research of taxation issues				

		Assessment Task 1	Assessment Task 2	Assessment Task 3	Assessment Task 4
	Graduate capabilities assessed 				
1.	➤ Critical, Analytical and Integrative Thinking				
2.	➤ Problem Solving and Research Capability				
3.	➤ Creative and Innovative				
4.	➤ Effective Communication				
5.	➤ Engaged and Ethical Local and Global citizens				
6.	➤ Socially and Environmentally Active and Responsible				
7.	➤ Capable of Professional and Personal Judgement and Initiative				
8.	➤ Commitment to Continuous Learning				

- **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/>

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 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>.

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

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.businessandconomics.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.

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
<ul style="list-style-type: none">• The Nature of Tax• Constitutional basis of taxation	1.550 1.530 – 1.540, 1.560 – 1.600
<ul style="list-style-type: none">• Sources of Income Tax Law<ul style="list-style-type: none">⌘ ATO Practice<ul style="list-style-type: none">▪ Discretionary Powers▪ Tax Rulings	1.310 – 1.340 1.490 – 1.520 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 paragraphs</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">▪ The General Interest Charge▪ 169A(2) Requests	33.040 30.470
Assessments <ul style="list-style-type: none">▪ Meaning▪ Types	30.400 – 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 paragraphs</u>
Objections	31.300 – 31.430
The Admin Appeal/STCT Route	31.500; 31-510 – 31.530; 31-570 – 31-700

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 paragraphs</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 paragraphs</u>
□ Theoretical Basis for Taxing Income	3.020 – 3.050
□ Propositions in Identifying Ordinary Income	3.150 – 3.290 ; 6.800 – 6-805; 6-880
□ Relationship between ordinary and statutory provisions	3.060 – 3.100

(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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
<input type="checkbox"/> Overview	9.000
<input type="checkbox"/> Exempt Income	9.025 – 9.200

Principal Sections:

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

(b): NON-ASSESSABLE NON-EXEMPT INCOME

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
<input type="checkbox"/> Overview	9.000
<input type="checkbox"/> Non-assessable non-exempt income	9.005 – 9.015

MUTUALITY PRINCIPLE

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
<input type="checkbox"/> Mutuality principle	9.250
<input type="checkbox"/> Limits to mutuality principle	9.255 – 9-260

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 paragraphs</u>
Overview	2-000
<input type="checkbox"/> The Tax Formula	2.020 - 2-030
<input type="checkbox"/> Rates of Tax	2.100 - 2.150
<input type="checkbox"/> Family Assistance	2.250
<input type="checkbox"/> Medicare Levy & Medicare Levy Surcharge	2.300 - 2.350
HELP payments	2-400
<input type="checkbox"/> Offsets	2.500 - 2.540

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:
- read and understand the materials set out in the outline; and
 - 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

Resident Individuals

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 – \$6,000	Nil
\$6,001 – \$37,000	15c for each \$1 over \$6,000
\$37,001 – \$80,000	\$4,650 plus 30c for each \$1 over \$37,000
\$80,001 – \$180,000	\$17,550 plus 37c for each \$1 over \$80,000
\$180,001 and over	\$54,550 plus 45c for each \$1 over \$180,000

Non-Resident Individuals

<i>Taxable income</i>	<i>Tax on this income</i>
0 – \$37,000	29c for each \$1
\$37,001 – \$80,000	\$10,730 plus 30c for each \$1 over \$37,000
\$80,001 – \$180,000	\$23,630 plus 37c for each \$1 over \$80,000
\$180,001 and over	\$60,630 plus 45c for each \$1 over \$180,000

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
□ 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:

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

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
<input type="checkbox"/> Residence <ul style="list-style-type: none">▪ Individuals▪ Companies	24.040 – 24.059 24.060 – 24.066
<input type="checkbox"/> 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

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 ATR 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:

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 paragraphs 13.025 and 13.030

(ii): ISSUES OF TIMING - DERIVATION OF INCOME

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

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 paragraphs</u>
□ Gifts and winnings	4.040 – 4.046
□ Sec.15-2 ITAA97 □ Employment Allowances, etc.	4.110 – 4.160
□ Payments for Service Contracts	4.050
□ Payments for giving up a right	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.

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 Coglean [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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
□ The Nature of Income from Property	5.000
□ Interest	5.200 – 5.210
□ Leases and Rental Income	5.400 – 5.420
□ Royalties	5.500 – 5.525
□ Assignment of the Right to Receive Property Income	5.600

Principal Sections:

ITAA 1997

15–20: Royalties

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 paragraphs</u>
<ul style="list-style-type: none"> ❑ Identification of a Business 	6.010 – 6.280
<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 Extraordinary transactions 	6.430 – 6.455; 6.485 – 6.490

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

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

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:

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.

LECTURE 6 : Statutory Income
Capital Gains Tax: Parts 3-1 and 3-3 ITAA97

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 paragraphs</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 Division 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 Becoming an Australian resident – Subdiv 855-B ITAA97	7.370 – 7.375; 8-720 8-730
Calculation of Capital Gains or 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 and 112)	7.620 – 7.655
<input type="checkbox"/> Determining CG or CL	7.900 – 7.950

Concessional Adjustments:	
<ul style="list-style-type: none"> ❑ Indexation (Division 114) --Frozen since 21 Sept 1999 ❑ Discount Method (Division 115) -- For gains of certain taxpayers post-21 Sept 1999 	<p>7.690 – 7.698</p> <p>7.915</p>
<ul style="list-style-type: none"> ❑ Record Keeping 	7.960
Special Topics: Part 3.3	
<ul style="list-style-type: none"> ❑ The rules in this part supplement the general rules in Part 3.1 <p><i>Note in particular the operation of the following rules</i></p>	
<ul style="list-style-type: none"> ❑ Replacement asset roll-overs ❑ Same asset roll-overs ❑ Effect of Death 	<p>7-820</p> <p>7-810</p> <p>8-500 to 8-520</p>

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 entitlement to a deduction.*

THE GENERAL DEDUCTION PROVISION

<u>Topics</u>	<u>Read WOELLNER paragraphs</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 ❑ Negative Limbs 	10.040 10-050 – 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; 11-635 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 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

- **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

- FCT v Anstis

- **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 paragraphs</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, 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:**

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

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 paragraphs</u>
□ Repairs and Improvements	11.020 – 11.080
□ Capital Allowances	12.000 – 12.270
□ Blackhole Capital Expenditure	12.300 – 12.330
□ Bad Debts	11.440 – 11.470
□ Tax Related Expenses	11.560
□ Borrowing & Mortgage Discharge Expenses	11.565 – 11.570
□ Tax Losses	11.500 – 11.530
□ Non-commercial Losses	11.550 – 11.558
□ Entertainment	10.600

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

<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*
- *have developed 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 paragraphs</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*
- *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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
<input type="checkbox"/> Taxation of Partnership Income	16.200 – 16.305
<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. 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:

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 paragraphs</u>
□ <i>Types of Trusts</i>	17-010; 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 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

READ

Div.6AA (ss.102AA-102AJ) **ITAA36**

Woellner 21.010 – 21.050

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.

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 paragraphs</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)	32.460
❑ Residence of Companies	24.060 – 24.066

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
❖ Carry Forward of Corporate Losses <ul style="list-style-type: none">• Introduction• Tests	19.000 19.010 – 19.040
❖ Corporate Bad Debts	19.140 – 19.150

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
❖ Introduction	18.200
❖ 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 paragraphs</u>
□ Introduction	18-330 – 18-350
□ Tax Effects of Imputation on Shareholders	18.389 – 18.400; 18-420
□ Maintaining a Franking Account: Debit and 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:

- *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

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

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
Students are advised that only the following categories of Fringe Benefits are examinable:	
❖ Car Fringe Benefits	26-400 – 26-420
❖ Loan Fringe Benefit	26-450 – 26-455
❖ Expense Payment FB	26-500 – 26-505
❖ Property Fringe Benefit	26-550 -- 26-555

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

<u>Topics</u>	<u>Read WOELLNER paragraphs</u>
Part IVA ITAA36: The General Anti-Avoidance Provisions	25-600 – 25-710
Specific Anti-Avoidance Provisions <ul style="list-style-type: none">□ Div 84 to 87 ITAA97: Alienation of Personal Services Income	25-400 – 25-490

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

<u>Topics</u>	<u>Read WOELLNER paragraph</u>
Ethical Considerations	33.900

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.

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.

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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.

