



Taxation 1 Notes

Taxation 1 (Royal Melbourne Institute of Technology)



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TAXATION 1

EXAM NOTES

MUST-KNOW RESOURCES TO REFER TO



Legislation – austlii.edu.au



Free access to cases, Master Tax Guide, Legislation and worked examples: iKnowConnect via RMIT library.



Accounting times -
<https://www.accountingtimes.com.au/>



TPB website – tpb.gov.au



ATO newsletter - <https://www.ato.gov.au/about-ato/subscriptions>



General news sources- NOT social media.

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Legislation by Sections and Acts

Income Tax Assessment Act 1936 (Cth) ("ITAA 1936")

Income Tax Assessment Act 1997 (Cth) ("ITAA 1997")

S4-10: Income tax formula

Income Tax Rates Act 1986 (Cth)

Income Tax Act 1986 (Cth)

Taxation Administration Act 1953 (Cth)

International Tax Agreements Act 1953 (Cth)

Fringe Benefits Tax Assessment Act 1986 (Cth) ("FBTAA")

A New Tax System (Goods and Services Tax) Act 1999 (Cth)

S9-5: What constitutes entity's making a "taxable supply"

S9-10: Meaning of supply

S9-15: Meaning of consideration

S9-20: Definition of an enterprise

S9-25: Indirect tax zone

S9-40: Entity's with taxable supply are liable to pay GST

S9-70: GST charged on value of supplies

S23-5: Requirements for entities registering for GST

S38(...): See GST-FREE Supply section

S40-5: Financial supplies

S40-35: Residential rent

S144-5: "Taxi travel" suppliers **must** register for GST regardless of turnover

S195-1 "Taxi travel" : "travel that involves transporting passengers by taxi or limousine for fares"

ATO TAX RATES

Resident tax rates 2024-25

| Taxable income | Tax on this income |
|-----------------------|---|
| 0 – \$18,200 | Nil |
| \$18,201 – \$45,000 | 16c for each \$1 over \$18,200 |
| \$45,001 – \$135,000 | \$4,288 plus 30c for each \$1 over \$45,000 |
| \$135,001 – \$190,000 | \$31,288 plus 37c for each \$1 over \$135,000 |
| \$190,001 and over | \$51,638 plus 45c for each \$1 over \$190,000 |

The above rates **do not** include the Medicare levy of 2%.

Resident tax rates 2023-24

| Taxable income | Tax on this income |
|-----------------------|---|
| 0 – \$18,200 | Nil |
| \$18,201 – \$45,000 | 19c for each \$1 over \$18,200 |
| \$45,001 – \$120,000 | \$5,092 plus 32.5c for each \$1 over \$45,000 |
| \$120,001 – \$180,000 | \$29,467 plus 37c for each \$1 over \$120,000 |
| \$180,001 and over | \$51,667 plus 45c for each \$1 over \$180,000 |

The above rates **do not** include the Medicare levy of 2%.

Foreign resident tax rates 2024-25

| Taxable income | Tax on this income |
|-----------------------|---|
| 0 – \$135,000 | 30c for each \$1 |
| \$135,001 – \$190,000 | \$40,500 plus 37c for each \$1 over \$135,000 |
| \$190,001 and over | \$60,850 plus 45c for each \$1 over \$190,000 |

Foreign resident tax rates 2023-24

| Taxable income | Tax on this income |
|-----------------------|---|
| 0 – \$120,000 | 32.5c for each \$1 |
| \$120,001 – \$180,000 | \$39,000 plus 37c for each \$1 over \$120,000 |
| \$180,001 and over | \$61,200 plus 45c for each \$1 over \$180,000 |

MLS income thresholds and rates for 2024-25

| Threshold | Base tier | Tier 1 | Tier 2 | Tier 3 |
|-------------------------|-------------------|-----------------------|-----------------------|-------------------|
| Single threshold | \$97,000 or less | \$97,001 – \$113,000 | \$113,001 – \$151,000 | \$151,001 or more |
| Family threshold | \$194,000 or less | \$194,001 – \$226,000 | \$226,001 – \$302,000 | \$302,001 or more |
| Medicare levy surcharge | 0% | 1% | 1.25% | 1.5% |

The family income threshold is increased by \$1,500 for each MLS dependent child after the first child.

MLS income thresholds and rates for 2023-24





| Threshold | Base tier | Tier 1 | Tier 2 | Tier 3 |
|-------------------------|-------------------|-----------------------|-----------------------|-------------------|
| Single threshold | \$93,000 or less | \$93,001 – \$108,000 | \$108,001 – \$144,000 | \$144,001 or more |
| Family threshold | \$186,000 or less | \$186,001 – \$216,000 | \$216,001 – \$288,000 | \$288,001 or more |
| Medicare levy surcharge | 0% | 1% | 1.25% | 1.5% |

The family income threshold is increased by \$1,500 for each MLS dependent child after the first child.

GST = 10% (divide by 1.1 to find GST, multiply by 1.1 to add GST)

Medicare Levy = 2% of taxable income

KEY REGULATORY BODIES

| | | | |
|---|--|---|--|
|  | Australian Tax Office Headed by: Commissioner of Taxation (FCT) Overseen by: Inspector General of Taxation (IGOT) |  | Treasury Advises policy direction to government and develops legislation |
|  | Tax Practitioners Board (TPB) Governing body for tax practitioners Administers Tax Agent Services Act 2009 (Cth) (TASA) |  | Board of Taxation Provides policy advice |

TAX AGENTS


CODE OF PROFESSIONAL CONDUCT


S30-5 Tax Agent Services Act 2009 (TASA)


- All **registered tax** and **BAS** agents (2014-2021 financial advisers) **must comply** to the legislated code.
- 17 elements of code, including:
 - Honesty and integrity
 - Independence & management of conflicts of interest
 - Confidentiality
 - Competence
 - Other (incl. Maintaining professional indemnity insurance)


COMPLAINTS AND INVESTIGATIONS

Decisions to **terminate** or **suspend registration** of tax professionals are viewable in the ART.

 *Kennedy* (2022) – TPB decision to terminate registration was confirmed by (then) AAT where tax agent was involved in tax evasion schemes and sham invoicing.

 *Shmuel* (2019) - TPB decision to terminate registration was confirmed by (then) AAT. Tax agent had been issued with DPN, tax-related liability had not been paid which was subject of a default judgment, had been declared bankrupt (not disclosed) and pled guilty to a dishonesty-related offence.

 *Beckett* (2019) - decision by (then) AAT to confirm TPB termination overturned on appeal to Federal Court: tax agent denied procedural fairness in AAT.

 *Frugtniet* (2019)- tax agent's claim that he had been denied procedural fairness dismissed by Full Federal Court.

SOURCES OF TAX LAW

LEGISLATION

INCOME TAX:

Concurrent statutes that **measure** taxable income:

- *Income Tax Assessment Act 1936 (Cth)* ("ITAA 1936")
- *Income Tax Assessment Act 1997 (Cth)* ("ITAA 1997")

Assessment Acts describe how taxable income is **calculated** but does **not impose tax**.

Statute giving **effect to double tax treaties**:

- International Tax Agreements Act 1953 (Cth)

Statute which **sets rate of tax applied** to taxable income to **determine quantum income of tax liability**:

- *Income Tax Rates Act 1986 (Cth)*

Imposition statute that **imposes tax liability**:

- *Income Tax Act 1986 (Cth)*

Statute for **administration rules for tax collection** and **penalties** to ensure **compliance**:

- *Taxation Administration Act 1953 (Cth)*

EMPLOYMENT FRINGE BENEFITS:

Tax **imposed** on an **employer providing fringe benefits** to an employee:

- *Fringe Benefits Tax Assessment Act 1986 (Cth)* ("FBTAA")

Fringe benefit: a payment to an employee but in a different form to salary/wages, e.g. allowing staff to use work car for private purposes, paying for staff's gym membership, car parking, etc,

GOODS AND SERVICES TAX:

Consumption tax:

- A New Tax System (Goods and Services Tax) Act 1999 (Cth)

CASE LAW

Meaning of words in tax law is derived from **judicial precedent** or **decisions** of **courts** interpreting **past cases**.

Extent of precedent is determined by level of court:

From Australian High Court to Administrative Review Tribunal (admin body with less authority than courts)

RULINGS

Statutory officer administering tax laws (Commissioner of Taxation) issues "Rulings".

Private Rulings:

- Taxpayers obtain private rulings to determine how the commissioner would apply tax laws to a particular transaction

Public Rulings

- Broadly set out by Commissioner's views on the way provisions of an Act should be applied to determine the extent of a tax liability.

INCOME TAX FORMULA

Located in s4-10 ITAA97:

Income Tax Payable = (Taxable Income x Tax Rate) - Tax Offsets

After determining taxable income:

1. Calculate basic Income Tax Payable based on tax rate tables
2. ADD: Calculate each Levy (Medicare Levy, Medicare Levy Surcharge, HELP Repayments)
3. SUBTRACT: Calculate each Tax Offset (e.g. those already recognised such as PAYG withheld or tax instalments AND any concessional tax offsets, such as LITO)

Resulting figure = taxpayer's income tax liability. May be **net tax payable** OR **net tax refund**.

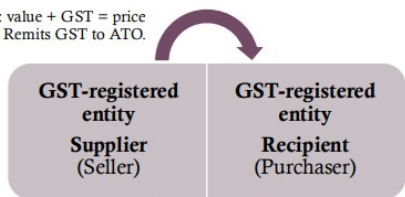
GST

REGISTRATION

Purpose:

- Imposition of GST on certain supplies; and
- Claiming input tax credits in respect of certain acquisitions

Charges: value + GST = price to recipient. Remits GST to ATO.



REQUIREMENTS TO REGISTER

S23-5, entities **must** register when following requirements are met:

1. The entity carries on an "enterprise"
2. The entity's GST turnover is over the "registration turnover threshold"

NOTE:

Entities may register for GST if they carry an enterprise but do not meet/exceed the turnover threshold.

TAXI TRAVEL

Definition:

S195-1 "Taxi travel": "travel that involves transporting passengers by taxi or limousine for fares"

Determined by *Uber BV v FCT (2017)* - UberX services and other "ride-sourcing" services.

S144-5: "Taxi travel" suppliers **must** register for GST regardless of turnover

DEFINITION OF AN ENTERPRISE

S9-20 GST Act: An activity or series of activities conducted:

- In the form of a **business**,
- In the form of an **adventure** or concern in the **nature of trade**
- In the form of **leasing, licensing** or other grant of an interest in **property** on a **regular/continuous basis**

Excludes:

- Provision of labour as an employee
- Private recreational pursuits
- Activities without reasonable expectation of profit or gain

DEFINITION OF GST REGISTRATION TURNOVER THRESHOLD

S23-5: Entity's "annual turnover" must exceed "registration turnover threshold"



Example 25.3

- Jesse owns a mobile shoe-cleaning business. He used to work on his own and earned sales revenue of approximately \$30,000 each year.

1 • Jesse is not required to register for GST - current and projected annual turnover (\$30,000) is below the registration turnover threshold (\$75,000).
• Jesse can choose to register for GST.

- He has now hired two more employees as business is booming.
- He expects that, with the additional employees, his sales revenue for the year will increase to approximately \$90,000.

2 • Jesse is required to register for GST - projected annual turnover (\$90,000) exceeds the registration turnover threshold (\$75,000).

Annual turnover is broadly the **entity's GST-exclusive sales revenue** over a current & projected **12-month period**.

SUPPLIES

TAXABLE SUPPLY

S9-5 Entity makes a taxable supply if:

NOTE: GST is charged on the "value" of taxable supplies (s9-70)

MEANING OF SUPPLY

S9-10 "Any form of supply whatsoever", e.g.:

- Supply of goods, services, provision of advice/information, grant/assignment/surrender of property, creation/grant/transfer/assignment/surrender of rights, entry into/release from an obligation to do anything/refrain from an act/tolerate an act or situation.

MEANING OF CONSIDERATION

S9-15 Any act or forbearance in connection with the supply.

- Not limited to provisions of money,
- Anything of value (e.g. provision of goods and services)
- Barter transactions
- Does not have to be voluntary

- 1 • It makes a *supply*
- 2 • The supply is for *consideration*
- 3 • The supply is made in the course or furtherance of the entity's *enterprise*
- 4 • The supply is *connected with the indirect tax zone*
- 5 • The entity is *registered* or required to be registered for GST
- 6 • The supply is *not a GST-free or input taxed supply*

Wide interpretation by the courts

FCT v Reliance Carpet Co Pty Ltd (2008)

FCT v Qantas Airways Ltd (2012)

FCT v MBI Properties (2014).

MEANING OF “IN THE COURSE OR FURTHERANCE...”

Not defined in legislation. Judiciary suggests interpretation to take a wide approach that any supply that is connected to the enterprise will be made “in course or furtherance of” that enterprise

FCT v Reliance Carpet Co Pty Ltd (2008)

CONNECTION TO THE INDIRECT TAX ZONE

S9-25 “Indirect tax zone” essentially refers to “Australia”: s195-1.

Supplies connected to Australia:

- Goods are delivered/made available to the recipient in Australia;
- The supply is done in Australia.

CONSEQUENCES

S9-40 Entity that makes a taxable supply is liable to pay GST.

Amount of GST payable:

$$\begin{array}{|c|} \hline \text{Value of supply} \\ \text{(GST-exclusive)} \\ \hline \end{array} \times \begin{array}{|c|} \hline \text{GST rate} \\ \text{of 10\%} \\ \hline \end{array} = \begin{array}{|c|} \hline \text{GST} \\ \text{Payable} \\ \hline \end{array}$$

GST-FREE SUPPLY

No GST charged on the value in respect of GST-free supplies.

NOTE: GST-free supplies are excluded from the definition of taxable supplies.

| | |
|------------------|---|
| FOOD | <p>S38-2 Food/ingredients for human consumption is GST-free unless an exception applies. *Unprocessed, fresh foods</p> <p>S38-3 Exceptions include: food for consumption on the premises, hot takeaway food, foods listed in Sch 1, e.g. prepared food (confectionary, baked goods, ice-cream)</p> |
| HEALTH | <p>S38-7 Supply of a medical service is GST-free.</p> <p>Medical services include:</p> <ul style="list-style-type: none">• Services where a Medicare benefit is payable• Services provided by or on behalf of a medical practitioner approved pathology provider (s 195-1). <p>Other health services included, eg, dental, nursing, podiatry, acupuncture, medicine, hospital care (ss 38-10; 38-45; 38-50; Subdiv 38-B).</p> <p>Cosmetic surgery where no Medicare benefit is payable is not GST-free (s 38-7(2)).</p> |
| EDUCATION | <p>S38-85 Supply of an education course and administrative services that relate directly to a supply provided by the supplier of the course are GST-free.</p> <p>Also GST-free are those meeting specified conditions, e.g. excursions, course materials.</p> |

INPUT TAX SUPPLY

No GST charged on the value of input taxed supplies (ITS)

NOTE: ITS excluded from the definition of taxable supplies.

- S9-30(3) Where a supply is GST-free & input taxed, GST-free characterisation applies.

| FINANCIAL SUPPLIES S-40-5 Defined by reference to the GST regulations | |
|--|---|
| Examples of financial supplies (GST Regulation 40-5.09) <ul style="list-style-type: none">• Bank accounts• Securities (eg, shares)• Life insurance• Annuities• Loans and advances | Examples of supplies that are not financial supplies (GST Regulation 40-5.12) <ul style="list-style-type: none">• Professional services• Insurance other than life insurance• Broking services• Debt collection services |
| RESIDENTIAL RENT S40-35 The hire, lease, or licence of “residential premises” is input taxed. | |
| Defined as: <ul style="list-style-type: none">• Land or building that is occupied/intended to be occupied as a residence; or• Capable of being occupied as a residence for residential accommodation (s195-1) <i>South Steyne Hotel Pty Ltd v FCT (2009).</i> | Suppliers of “commercial residential premises” on a long-term basis: <ul style="list-style-type: none">• May treat supply as taxable supplies under concessional rules under Div 87 or input taxed Sale and long-term lease (greater than 50y) of “residential premises” is taxed (s40-65) unless premises are: <ul style="list-style-type: none">• “Commercial residential premises”• “New residential premises” (s40-75) |

MIXED OR COMPOSITE SUPPLY

MIXED SUPPLY can be unbundled into separately identifiable parts

Each part is treated separately for GST purposes.

- Apportionment is required between taxable supply and the GST-free and input taxed supply (*S 9- 80; and see FCT v Luxottica Retail Australia Pty Ltd (2011)*).

COMPOSITE SUPPLY is one that has a dominant part and something that is ancillary or integral to that part.

Treated as a single supply taking dominant part’s characterisation.

SPECIAL RULES

Alter the treatment of a supply and include:

- Supplies to associates: Div 72
- Margin scheme for sale of real property: Div 75
- Insurance claims for settlements: Div 78
- Offshore supplies other than goods or real property: Div 84
- Vouchers: Div 100
- Supplies in satisfaction of debts: Div 105
- Agents: Div 153

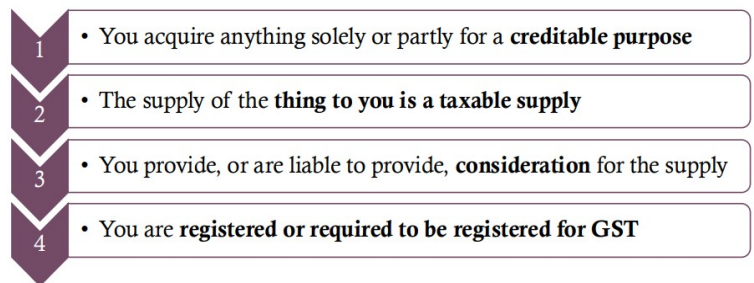
ACQUISITIONS

Broadly defined as “any form of acquisition whatsoever” (S11-10)

****Relates to making input taxed supplies!**

CREDITABLE ACQUISITION

An entity’s entitlement to “input tax credits” (e.g. refund of GST paid on acquisitions made) arises when entity makes a creditable acquisition. These **can be made under S 11-5** if: ^

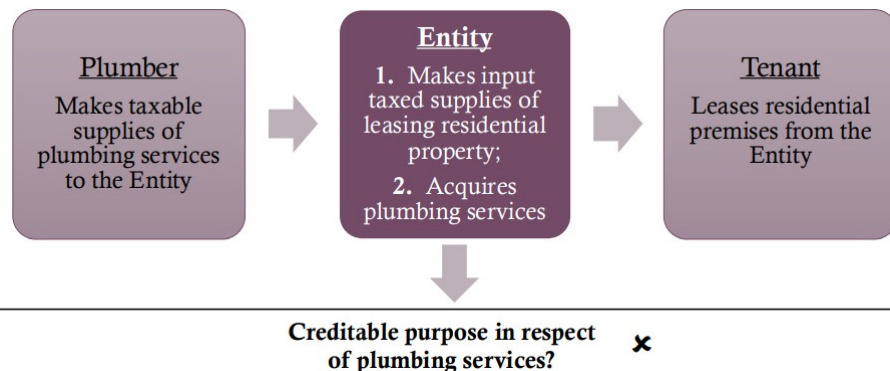


CREDITABLE PURPOSE (S 11-15)

Acquisition is creditable to the extent that it relates to the carrying on of an entity’s enterprise.

Acquisition is NOT for a creditable purpose to the extent that:

- It relates to the making of supplies that would be input taxed; or
- It is of a private or domestic nature.



NO creditable purpose exists if acquisition relates to making input taxed supplies.

FINANCIAL ACQUISITIONS

THRESHOLD:

Acquisitions relating to making of financial supplies ARE treated for creditable purpose, provided the entity does not exceed “financial acquisitions threshold” (S11-15(4)).

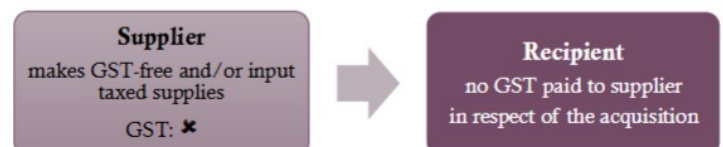
Input taxes must:

- Not exceed \$150,000; and

• Scenario 1:



• Scenario 2:



- Be less than 10% of its input tax on all acquisitions.

REDUCED INPUT TAX CREDITS:

Partial input tax credit of 75% for certain acquisitions (listed in GST regs 70.5.02 and 70.5.02A)

CONSEQUENCES

An entity making a creditable acquisition is entitled to input tax credits on the acquisition (**S11-20**)

Example 25.13

Guido owns various investment properties which he rents out to students at a nearby university.

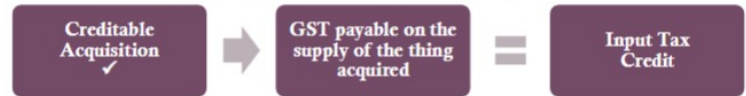
Guido paid \$66 (including GST) to a plumber for repairs in one of the houses.

Guido is registered for GST purposes.



The acquisition is *not for a creditable purpose* as it relates to the provision of residential rental premises, which is an *input taxed supply*.

- Acquisition used for a **fully creditable purpose**:



- Acquisition used only **partly** for a creditable purpose:



SPECIAL RULES

An acquisition that is a “**non-deductible expense**” is deemed to **not be a creditable acquisition** (Div 69)

“Non-deductible expense” is when an expense is not deductible for income tax purposes.

Non-deductible expenses can be a creditable acquisition **where it is deductible** because they relate to **provision of a fringe benefit** and elements of creditable acquisition are satisfied.

NOTE: Only non-deductible expenses listed in **S69-5** are treated as non-creditable acquisitions (e.g. entertainment purposes)

IMPORTATION

Different to general rules as they: **apply regardless** of **GST-registration**, only apply to **importation** of goods, **impose liability** to pay GST **on the importer** not supplier of goods.

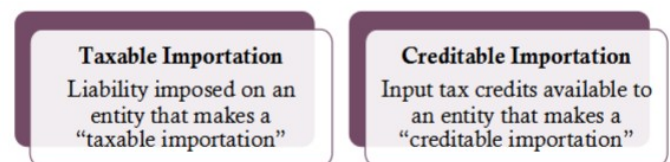
TAXABLE IMPORTATION (DIV 13)

GST Imposed on the entity making the “taxable importation”

- 10% payable on the value of the taxable importation: **S13-20(1)**

An entity makes a “taxable importation” under **S13-5** where:

- Goods are imported; and
- Goods are entered for home consumption (goods are brought into Australia for use in Australia)



NON-TAXABLE IMPORTATIONS (DIV 13)

S13-10 includes:

- Goods that would have been GST-free or input taxed supplies if they were supplied in Aus (**S13-10(b)**)
- Goods exported from Australia and returned to Australia unchanged (**S42-10**)
- Low-value goods (goods other than tobacco products/alc beverages, with customs value less than \$1k)

CREDITABLE IMPORTATION

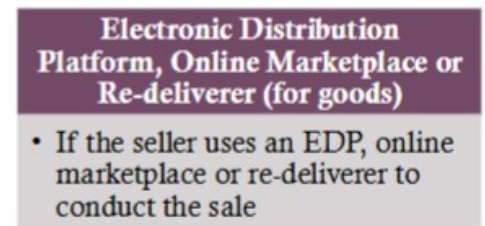
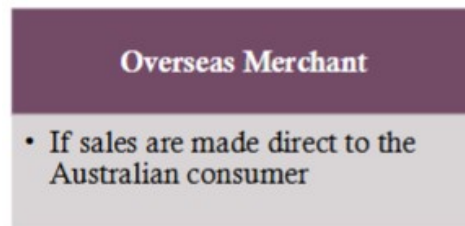
Entitlement to input tax credits arises in respect of “creditable importations”

- **S15-5** A “creditable importation” is made where:
 - Entity imports goods solely or partly for creditable purpose
 - Importation is a taxable importation; and
 - Entity is registered/required to be registered for GST.
- Consequences of making a creditable importation:
 - Input tax credits is equal to the GST-payable on the importation (**S15-20**)

OFFSHORE SUPPLIES

INTANGIBLE SUPPLIES & LOW VALUE GOODS

GST applies to offshore supplies of intangible products (movie streaming) provided to Aus consumers.



“Australian consumer”: Australian-resident entity that is not registered for GST, or the supply is for personal purposes

Entity may treat supply as not being made to an Australian consumer if entity:

- Took “Reasonable steps” to determine status of recipient; or
- Had sufficient systems for that purpose; and
- Reasonable believed the recipient was not an Aus consumer.

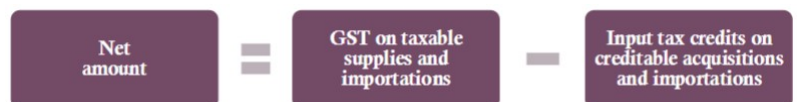
GST LIABILITY

Exists when supplies connected with Australia meet registration turnover threshold, liability rests with:

ADMINISTRATION

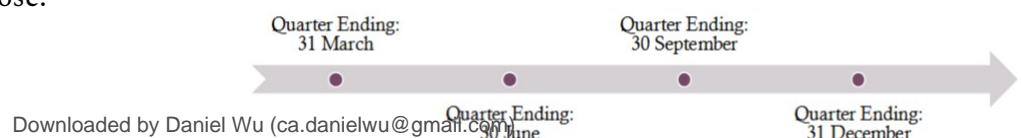
NET AMOUNTS AND ADJUSTMENTS

S17-5 Entity reports on GST return the “net amount”:



Errors may be corrected in a later period -
Correcting GST Errors Determination 2013.

Net amount can ↑ or ↓ for adjustments, which can arise from change to supply, change in consideration, change in extent of creditable purpose.



TAX PERIODS

Entities must **lodge** a **GST return** on a **quarterly basis** (can elect for a monthly basis)

Monthly periods **mandatory** for entities:

- Annual turnover > \$20m
- Carrying enterprise in Australia for <3 months;
- or
- With a bad compliance history.

TIMING

GST obligations are generally reported on a non-cash (accrual) basis. Attribution rules:

LATE CLAIMS OF INPUT TAX CREDITS

S93-5 Generally a 4-year time limit to claim input tax credits

| | Non-cash basis | Cash basis |
|---|--|---|
| GST payable on taxable supplies | Attributed earlier of: <ul style="list-style-type: none">• Invoice; or• Payment | Attributed when: <ul style="list-style-type: none">• Payment made |
| Input tax credit on creditable acquisitions | Attributed earlier of: <ul style="list-style-type: none">• Tax invoice; or• Payment (but must have tax invoice) | Attributed when: <ul style="list-style-type: none">• Payment made; and• Tax invoice received |

S29-10 Period commencing from day **taxpayer** is required to **lodge a GST return** for the tax period to which the credit would be attributable under basic attribution rules.

TAX INVOICES

- Required to claim input tax credits
 - **S29-10(3) and (4)** Attribution of input tax credits cannot occur until a valid tax invoice is held
 - Document is valid if it contains:
 - Supplier's identity and ABN
 - Recipient's identity or ABN where consideration > \$1,000
 - Details of the thing supplied, including quantity and price
 - Extent to which the supply is taxable
 - Date the document is issued.
 - Tax invoices not required for low-value transactions (less than \$75 excluding GST).

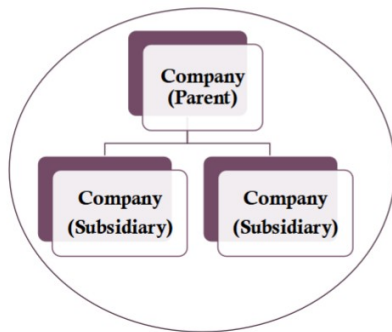
NON-RESIDENTS

Can make election to be a *limited registration entity* (Div 146); otherwise a *standard registration entity*.

Limited registration entities have reduced compliance burden but cannot claim input tax credits.

GST GROUPS

Companies are permitted to form a GST group if they satisfy membership requirements:



Effect of a GST group

- The group is treated as a single entity.
- Most transactions between group members are disregarded.
- One group member is nominated as the responsible member to deal with the group's GST obligations.

INTERACTION WITH OTHER TAXES

INCOME TAX

| Transaction | Interaction |
|--|---|
| GST taxable supplies and assessable income | Assessable income excludes GST component (s 17-5 ITAA 1997). |
| GST creditable acquisitions and deductions | Deduction is reduced to the extent an input tax credit is claimed (s 27-5 ITAA 1997). |

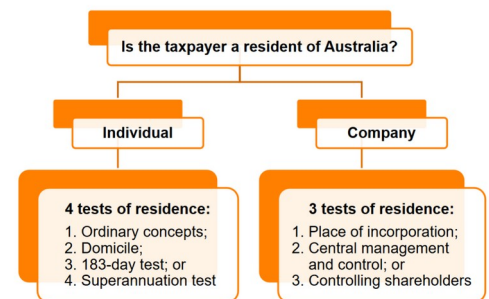
FRINGE BENEFITS TAX

Gross up factor depends on the entity's entitlement to input tax credits:

TAX RESIDENCE

GENERAL PRINCIPLES

- Residents of Australia are taxed on income from all sources: **S6-5(2) Income Tax Assessment Act 1997 (ITAA 1997)**
- Foreign residents are taxed on income from Australian sources only: **S6-5(3) ITAA 1997**.
 - “Do not receive the benefit of the tax-free threshold, are not liable for the Medicare levy & do not have access to many personal tax offsets.



INDIVIDUALS

Must satisfy 1 of the following tests to qualify as a tax resident: > **S6(1) Income Tax Assessment Act 1936. Ruling TR 2023/1.**

RESIDENCE TEST

AKA: “Residence according to ordinary concepts”

- “Resides” is not defined in a statute, meaning derived from ordinary dictionary: e.g.
 - “to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live, in or at a particular place” (TR 2023/1, para 19)
 - *Miller v FCT (1946)*;
 - *FCT v Pike (2020)*

→ Time physically spent in Australia

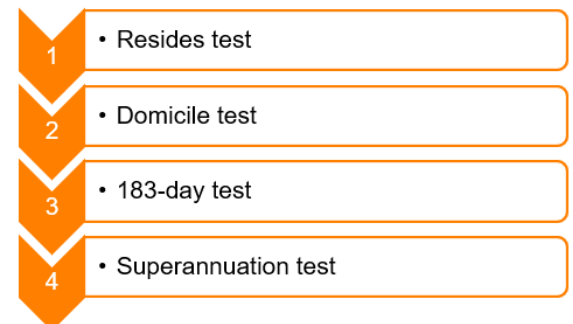
- ♦ *IRC v Lysaght [1928]* - if the person is a visitor, the frequency, regularity and duration of visits.

→ Purpose of the visits to Australia and abroad

→ Maintenance of place of abode in Australia for taxpayer’s use

- ♦ *Levene v IRC [1928]* - the person’s family, business and social ties

**Nationality may be considered



See Tax Ruling TR 2023/1 - The Commissioner’s View, emphasis on:

- Intention or purpose of presence
- Family and business or employment ties
- Maintenance and location of assets
- Social and living arrangements

DOMICILE TEST

An individual is a resident of Australia if his/her domicile is in Australia (unless Commissioner is satisfied that the person has a permanent place of abode outside Australia)

- ★ “Place”: town/country *Harding v FCT (2019)*
- ★ Test does not apply when individual can demonstrate that she/he has permanent place of abode outside of Australia

- “Domicile” is determined by *Domicile Act 1982*:
 - Domicile of origin at birth
 - Domicile of choice: country where the taxpayer intends to make home indefinitely

Tax Ruling TR 2023/1

- Permanent ≠ everlasting; use in contrast to temporary
- Place of abode = physical surroundings of taxpayer living
- Considered factors: length of overseas stay, nature of accommodation & durability of association
- 2 years = substantial period of time

183-DAY TEST

Individual is classified as a tax resident when their physical presence in Australia (continuously or intermittently) = more than one-half of income year.

EXCEPTIONS:

1. If Commissioner is satisfied that individual’s usual place of abode is beyond Australia; &
2. Individual does not intend to take up residence in Australia - *Re Koustrup v FCT (2015)*

SUPERANNUATION TEST

Related to Commonwealth superannuation funds.

- Members of the Commonwealth superannuation fund (public servants) & member’s family are deemed to be residents of Australia.

PROOF OF RESIDENCE

Applies where the individual becomes and ceases to be an Australian resident in the same year.

- Part-year residents have a tax-free pro-rated based on part-year residency period
- Individuals residing for at least 1 day during income year are assessed at the same rates as residents

TEMPORARY RESIDENTS

Individuals are provided with **tax relief if they pass the following test:**

1. Most **foreign sourced income is not taxed** in Australia
2. **Pay tax at the Australian resident income tax rate**
3. Capital gains arising from disposal of assets not have connection with Australia is disregarded
4. No longer entitled to 50% CGT discount (as of 8 May 2012)

5. No longer have access to CGT main residence exemption (as of 9 May 2017 - existing properties grandfathered until 30 June 2020)

Tax payers are TEMPORARY RESIDENTS if:

- Hold a temporary visa under **Migration Act 1958**
- They (or spouse) is not an Aus resident under the **Social Security Act 1991**

WORKING HOLIDAY MAKERS

“Backpacker tax”

Taxpayer is defined as “ if they are in Australia with the following visa:

1. 417 (working holiday)
2. 462 (work and holiday)
3. 408 (Pandemic Event)

Special income tax rates apply: >

| Threshold | Rate |
|----------------|-------------------|
| \$0 - \$45,000 | 15% |
| \$45,001 + | At ordinary rates |

PROPOSED CHANGES TO INDIVIDUAL RESIDENCE

Government has consulted new models based on Board of Taxation reports:

1. “Bright-line” primary 183-day test;
2. Secondary tests where more than 45 but less than 183 days in Australia: look at physical presence & measurable, objective criteria.

COMPANIES

RESIDENCY TEST

Corporations must satisfy 1 of 3 to be considered as tax resident:

PLACE OF INCORPORATION TEST

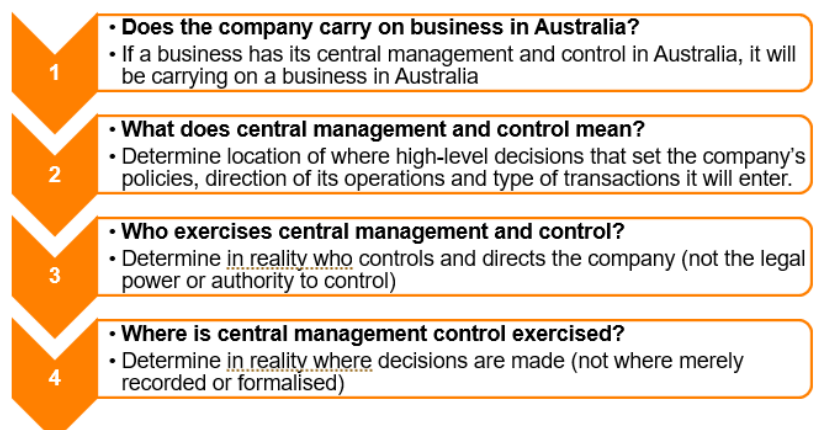
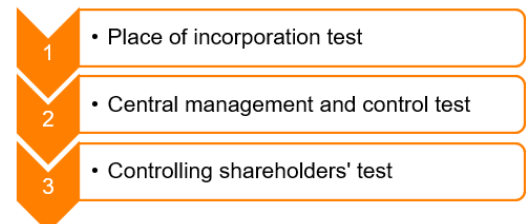
Regardless of any other factors, a **company incorporated under the Corporations Act 2001 is automatically an Australian tax resident.**

Ruling TR 2018/5 >

CENTRAL MANAGEMENT AND CONTROL

Company is an Australian resident if:

Bywater Investments Limited & Ors v Commissioner of Taxation (2016)



- Location of company's " " is question of fact and degree
- No general presumption that location is where directors meet/board meetings occur

PROPOSED CHANGES TO COMPANIES

Potential revision for residency to be classified as "significant economic connection" but changes have not been enacted to date.

CONTROLLING SHAREHOLDERS

TWO LIMB TEST:

1. Voting power is held by 50% of voters at a meeting; and
2. Company is carrying out business in Australia (first limb of central management and control test)

SOURCE OF INCOME

- If taxpayer is a **foreign resident**, they are **taxed** on **ordinary and statutory income sourced in Australia**
 - **Nathan v FCT (1918)** - Question of source is described as "something which a practical man would regard as a real source of income" & "practical, hard matter of fact"
- Source rules are based on common law principles and statutory provisions
 - Requires classification of income into different classes to determine source.

CATEGORIES OF INCOME

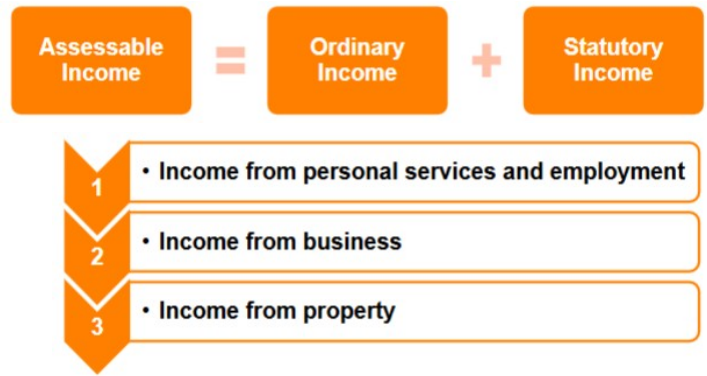
1. **Sale of goods** (trading stock): place where trading activities take place
2. **Sale of property other than** trading stock: real property where property can be located
3. **Services**: *FCT v French (1957)*; *FCT v Efstathakis (1979)* - place where the performance of services occurs.
4. **Interest**: emphasis on place where contract for loan was made & where money has advanced (*Spotless Services v FCT (1993)*)
5. **Dividends**: company derived profits (*Esquire Nominees Ltd v FCT (1973)*)
6. **Royalties**: place where industrial/intellectual property from which royalty flows
 - a. Terms of double tax agreements are relevant
 - b. *Satyam Computer Services (2018)* - payments to Indian companies from Australian clients sourced in Australia under Aus-India DTA.

ACCESSIBLE INCOME

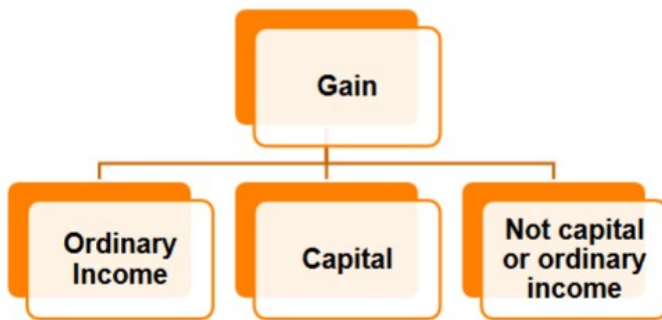
ORDINARY INCOME

S6-5 Income Tax Assessment Act 1997 - “income according to ordinary concepts”

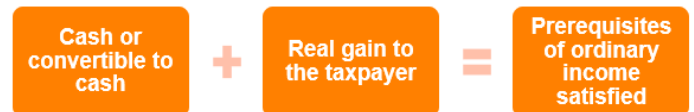
- Gains must be characterised by courts to determine if there is an income character
 - Income is determined “... in accordance with ordinary concepts and usages of mankind” *Jordan CJ in Scott v Commissioner of Taxation (1935)*



CHARACTERISATION OF A GAIN



PREREQUISITE CHARACTERISTICS



(satisfying prerequisites does not automatically classify income as ordinary - see ordinary characteristics to confirm)

CASH OR CASH CONVERTIBLE

A gain CANNOT be ordinary if it is not cash or cash convertible:

- *Tennant v Smith (1892)*
- *FCT v Cooke and Sherden (1980)*

What is “cash convertible”?

- Item must be readily convertible to cash
- It must not be illegal to sell the good: *Payne v FCT (1996)*

NOTE: Statutory provisions s21A Income Tax Assessment Act 1936 for non-cash business benefits

REAL GAIN

“Gain” held to be the “inherent in the concept of income”

- *Lee & Leech Pty Ltd v Commissioner of Taxation (1997) 36 ATR 127 at 134 (Hill J)*

If a receipt is not a genuine gain (taxpayer is better off financially), it is not an ordinary income)

The principle that a receipt is not a real gain will not be ordinary income is more likely to apply in employment situations and clubs:

- *Hochstrasser v Mayes (1960)* - reimbursement of a work-related expense held not to be a real gain.

GENERAL CHARACTERISTICS OF ORDINARY INCOME

After prerequisites of income are satisfied, for a gain to be considered ordinary income, it must satisfy the following characteristics:

- 1 • Regular / periodical receipts; or
- 2 • The flow concept.

FCT v Myer Emporium (1987) - courts can widen their views to reflect modern day practices.

REGULAR / PERIODICAL RECEIPTS

Gain that is regular/periodic is more likely to be “ordinary income” compared to a lump sum:

- *FCT v Blake (1984)* - regular receipts were ordinary income
- *FCT v Harris (1980)* - one-off receipts not ordinary income

Certain lump-sum gains may also be “ordinary income”, e.g.:

- One-off receipt of interest under a loan agreement
- Contract to do a one-off job.

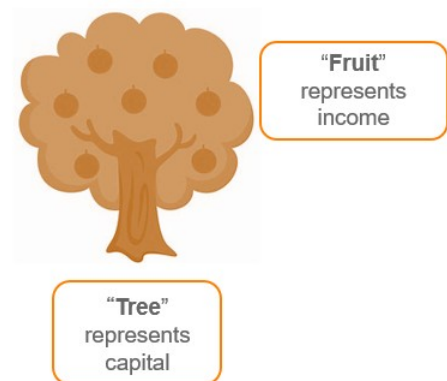
Regular gains may sometimes not be ordinary income:

- *Foley v Fletcher (1843-1860)* - a taxpayer received instalments for the sale of a capital asset.

FLOW CONCEPT

Expressed in terms of “fruit” and “tree” per *Eisner v Macomber (1920)* by Pitney J: —>

To be considered, it must follow two related traits:



- 1 • Nexus (a connection) with the earning source
- 2 • Severable from its earning source
• ie, the gain can be extracted without the affecting the underlying earnings.

| Context | "Tree" | "Fruit" |
|------------|---------------------------------------|----------------------|
| Employment | Taxpayer's ability to work / contract | Payment for services |
| Business | Goodwill of the business | Sales / services |
| Investment | Investment property | Rent |

ORDINARY INCOME DESPITE NO EARNINGS SOURCE

Regular, expected and depended upon receipts can constitute ordinary income even if they don't flow from an earnings source:

- *Keily v FCT (1983)* - Government aged pension
- *Anstis v FCT (2010)* - Youth Allowance payments
- *FCT v Dixon (1952)* - "Top-up" payments offered to employees who resigned to enlist in World War II.

Where "Top-up" is the difference between former salary and military salary.

OTHER PRINCIPLES OF ORDINARY INCOME

- Compensation payments (generally) take on character of loss being compensated
 - Compensation for loss of salary is considered ordinary income due to the nature of salary
- Unrealised gains are not ordinary income
 - Shares that have appreciated in value but have not yet been sold has not generated ordinary income
- Legality of receipts does not affect their accessibility
 - *Minister of Finance (Canada) v Smith (1927); Taxation Ruling TR 93/25*
- Constructive receipt rule
 - Characterisation of receipt as ordinary income is determined in taxpayer's hands
 - Taxpayer who is entitled to receive income is the person who will be assessable on it even if the actual gain is directed to someone else
 - *Federal Coke Co Pty Ltd v FCT (1977)*
- A benefit that saves taxpayer from incurring expenditure is not ordinary income if it is not cash or cash convertible
- "Mutuality" Principle
 - If taxpayer makes a payment to themselves, there is no gain and payment is not considered ordinary income
 - Funds paid to club/association by members are not assessable income of the club. Refund fees to a club are not assessable to members as it is not a real gain
 - *Bohemians Club v Acting FCT (1918)*

INCOME PERSONAL SERVICES

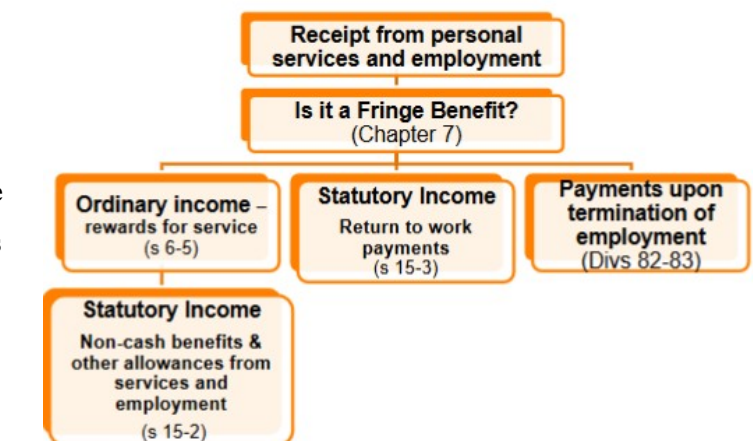
A receipt from employment and providing personal services may be subject to **income tax for the employee** OR the **entity for providing services**, or **fringe benefits tax** for the **employer**:

ORDINARY INCOME: REWARDS FOR SERVICES

NEXUS WITH SERVICE

A connection ("nexus") with a receipt resulting from a taxpayer's personal service constitutes ordinary income.

Courts use **two-step approach to determine** if an



Nexus clearly established for common items of

amount is ordinary income from personal services:

1. Identification of the activity undertaken; &
2. Determining whether the receipt is a reward for performing that particular activity

NOTE: Genuine salary sacrifice has no nexus under ordinary concepts.

personal service, incl.:

- Salary & wages, commissions, bonuses, fees charged for services rendered, ancillary payments that are incident of labour

Nexus is not impacted by lump-sum or one-off receipts for performance of a specific task

Brent v Fct (1971)

Kelly v FCT (1985) - irrelevant who pays and when it is paid.

PRIZES, VOLUNTARY & UNEXPECTED PAYMENTS

Unexpected or **voluntary payments** received as **incidence** of **employment** generally constitute **ordinary income**

- *Laidler v Perry (1965)* - Christmas bonuses paid to employees paid in the form of redeemable gift vouchers.
- *Calvert v Wainwright (1947)* - tips received by a taxi driver

NOTE: it is possible to characterise ordinary income based on nature of payment (income characteristics) rather than nexus:

- *FCT v Dixon (1952)* - additional periodic payments as a substitute for wages that were relied upon by the taxpayer

GIFTS referring to personal qualities are generally not regarded as ordinary income + arising from taxpayer's ability to work and/or the employment contract is ordinary income.

- Necessary to distinguish between the above where gift is made and there is an employment or commercial connection
 - *Scott v FCT (1966)* - the importance of a personal relationship between the parties influenced the finding

NON-DETERMINATIVE FACTORS (to consider in borderline cases):

- *Scott v FCT (1966)* - **expectation** of the gift.
- *FCT v Blake (1984)* - **lump sum** or **regular** payments:
- *Scott v FCT (1966)* - **motive** of the **donor** (note, weight placed on the nature of receipt in the hands of the recipient).

Example 6.3

Kim is employed in the family business, which is a medium sized accounting firm. Her parents are two of the five partners in the firm. Kim has been an employee for three years and has received salary and other payments similar to all other employees.

Over dinner one night, Kim presented her parents with a proposal outlining her ideas for the business which her parents then presented to the other partners. The ideas were successful and resulted in attracting new clients. At Christmas, Kim was presented with a thank you card and a \$2,000 payment.



Ordinary
Income



studocu

Nexus to reward for services appears stronger than the personal relationship. Apply cases of *Scott v FCT* and *FCT v Harris*.
likely to be ordinary income.

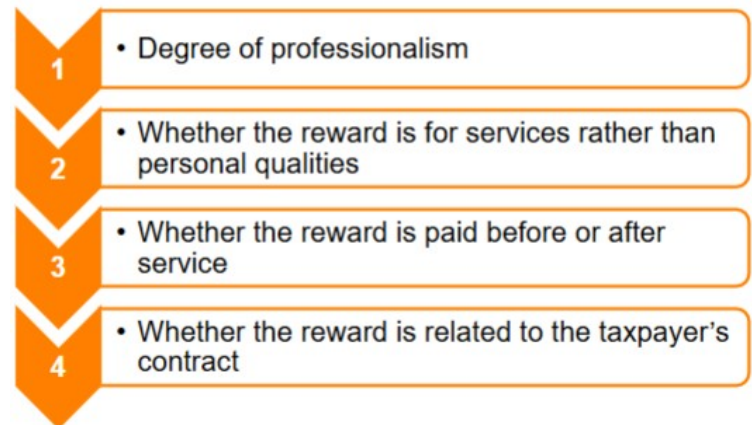
- *Scott v FCT (1966); Hayes v FCT (1966)* - whether the **recipient** has been fully **remunerated** for **services provided**.
- *Scott v FCT (1966); Hayes v FCT (1966)* - the existence of and importance of any personal relationship

PRIZES & CHANCE WINNINGS are non-assessable if the windfall gained is derived by “luck”

Winnings of a casual participant on a TV show: *Case 37 (1966); Ruling IT 167*

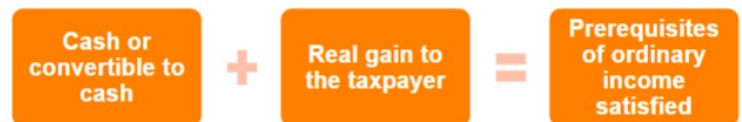
Exception: ordinary income if derived by exercising degree of skill that sufficiently outweighs “luck” (per diagram to the side/above —>)

- *Kelly v FCT (1985)* - professional sporting people.
- Irrelevant that payment does not arise from employer



NON-CASH BENEFITS

“ May have a nexus with personal services, however, if not “convertible cash” it is not considered ordinary income.



- *Payne v FCT (1996)* - redemption of frequent flyer points that were accrued from work-related travel. (note this may be assessable under s15-2 ITAA 1997 or subject to fringe benefit tax)

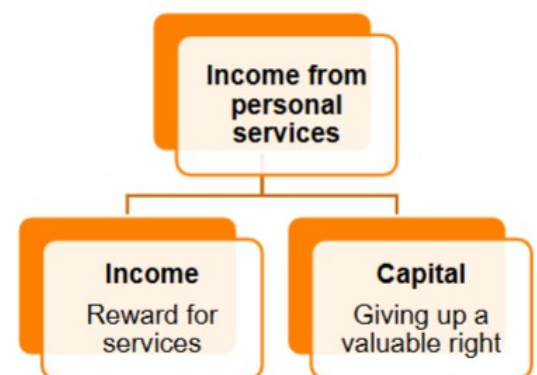
CAPITAL RECEIPT OR PERSONAL SERVICES

Necessary to distinguish between ordinary income receipts and capital receipts (not ordinary income) —>

CHANGES TO ENTITLEMENTS

A **gain** from **change** to **entitlements** under employment or service contracts **takes on** the **character** of what it **replaces**.

- *Bennett v FCT (1947)* - relinquishing employment rights (eg, rights to control a company as managing director).
- *AAT Case 7,752 (1992)* - loss of employee entitlements



RESTRICTIVE COVENANTS

“ or restraint of trade may be formed →



Receipts in connection with restrictive covenant may be ordinary income if connected with current employment agreement (i.e., payment of future services)

May be capital in nature

SIGN-ON FEES

(Enticements) Part of normal practices when attracting people into employment contracts

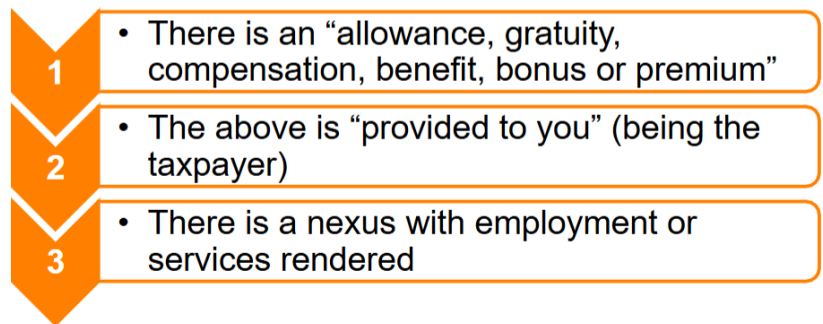
- *Pickford v FCT* (1998); Ruling TR 1999/17 - characterised as payment for future services (ordinary income)

STATUTORY INCOME

S15-2 SERVICES AND EMPLOYMENT

Brings value to certain gains from labour into accessible income (including non-cash benefits that are not convertible to cash under ordinary concepts)

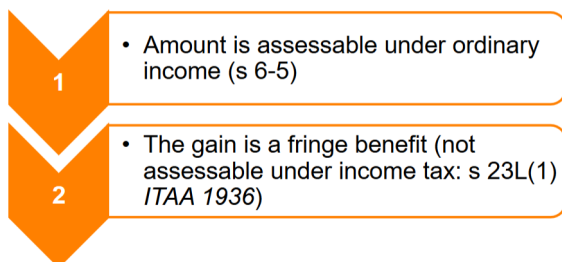
- NOTE: Consider application of 15-2 if s6-5 does not apply.
- 15-2 applies when the following three requirements are met: →



Outline requirements:

1. Of the mentioned allowance, compensation, etc., it would incl.:
 - a. **Cash**, cash convertible, or non-cash convertible **receipts**
 - b. **Voluntary** receipts (gratuities)
 - c. **External** arrangements (e.g. employee receives free accommodation from a client)
2. Must be **received** by the **taxpayer**.
3. As such:
 - a. **Nexus** must be **established** & gain must be “... in respect of, or for or in relation directly or indirectly to, any **employment** or services rendered by the **taxpayer**”
 - b. Easier to establish nexus under s15-2 than ordinary income:
 - i. *Smith v FCT* (1987) - amounts paid by an employer to its employee on completion of relevant tertiary subjects.
 - ii. *FCT v Holmes* (1995) - reward money for helping to prevent disaster.
 - iii. *Payne v FCT* (1996) - insufficient nexus for redemption of frequent flyer points that were accrued from work-related travel.

S15-2 RELATION TO OTHER TAX PROVISIONS



RETURN TO WORK PAYMENTS

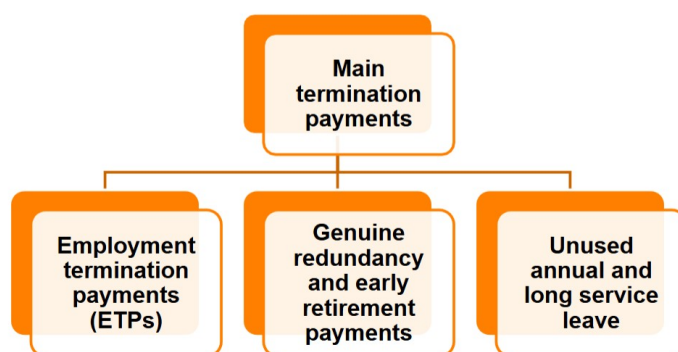
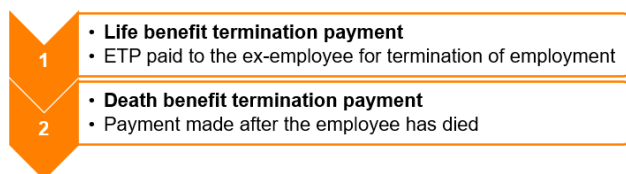
Payments to the taxpayer as **inducement to return to work** or to provide services constitutes **statutory income**.

NOTE: Same position under income from ordinary concepts.

EMPLOYMENT TERMINATION PAYMENTS (ETPs)

Main termination payments →

Two broad sub-types of EPTS ↓



S82-130 REQUIREMENTS FOR EPTS

- **Payment is “in consequence” of employment termination**
 - Reseck v FCT (1975); Le Grand v FCT (2002) - employment termination needs to be one of the causes for the ETP, but does not need to be the dominant cause).
 - McIntosh v FCT (1979) - Brennan J stated that the fact that termination and payment occurs at similar times is insufficient to establish causation.
- **There was in fact a genuine termination payment**
 - **S80-10** “Termination” includes cessation of employment due to retirement or death
 - Grealy v FCT (1989) - fixed-term position made permanent not regarded as a “termination”.
- **Payment does not fall within an exclusion, e.g.**
 - Superannuation payment, pensions, annuities, redundancy payments, or early retirement schemes.

TAXATION OF ETPs

Tax-free Component

SS 82-10(1), 82-65(1), 82-70(1)

- Pre-1 July 1983 employment
- “Invalidity segment”: broadly, being under 65 years of age and medically certified by two practitioners as being unlikely to ever be able to be employed for the position that he/she is reasonably qualified to work due to ill-health.

Taxable Component
S 82-145

- Any portion of the ETP that is not tax-free
- Depends on:
 - *Life benefit termination payment*; or
 - *Death benefit termination payment*.

Life Benefit Termination Payment

- S82-10(4)** Threshold amount is lower of:
- \$245,000 (for 2024-2025); and
 - A \$180,000 “whole of income cap” that is reduced by any non-EPT taxable income and subject to certain exclusions

| ETP taxable component amount | Taxpayer is at preservation age (see PoTL paragraph [18.170]) | Taxpayer is below preservation age (see PoTL paragraph [18.170]) |
|------------------------------|---|---|
| 0 – threshold | Taxed at normal marginal rates but capped at a rate of 15% plus 2% Medicare levy. | Taxed at normal marginal rates but capped at a rate of 30% plus 2% Medicare Levy. |
| Amounts over the threshold | Taxed at 45% plus 2% Medicare levy. | Taxed at 45% plus 2% Medicare levy. |

Death Benefit Termination Payment

- S302-195** Dependent includes:
- Spouse (ex or current)
 - Deceased’s child who is under 18
 - “Interdependency relationships”
 - Anyone else dependent on the deceased before death

| ETP taxable component amount | Recipient is a dependent | Recipient is <i>not</i> a dependent |
|------------------------------|---|--|
| 0 – \$245,000 | Not taxed, except for 2% Medicare levy (ML) where applicable. | Taxed at normal marginal rates but capped at a rate of 30% plus 2% ML. |
| \$245,000 + | Taxed at 45% plus 2% ML. | Taxed at 45% plus 2% ML. |

GENUINE REDUNDANCY AND EARLY RETIREMENTS

Genuine redundancy payment is a payment made to an employee whose position is genuinely made redundant.

Early retirement scheme satisfies the following conditions:

1. Scheme is open to all eligible employees;
2. Employer's purpose of having the scheme is to reorganise the operations of the workplace; and
3. The Commissioner has approved the scheme as an early retirement scheme.

S83-175 & S83-180 REQUIREMENTS/FURTHER CONDITIONS

- Employee is dismissed before age 65 years
- Payment must represent what would be payable under normal commercial arrangement
- Must be no arrangement at time of dismissal where employee was to be re-employed by employer.

TAXABLE TREATMENT

Not ETPs and tax-free provided they are below the following threshold (if above, typically it is considered an ETP):



Example:

Katie has worked for her employer for 11 years. She is made redundant and receives a payment of \$80,000 on top of any annual and long service leave entitlements.

Tax free threshold of redundancy payment:

UNUSED ANNUAL & LONG SERVICE LEAVE

*Generally taxed at normal marginal rates



CONCESSIONAL TREATMENT

Capped at the rate of 30% plus Medicare levy under certain circumstances, including:

- Payment due to leave accruals in respect of services performed before 18 August 1993; or
- Payment was in **connection with a payment that consists of a genuine redundancy payment** or early retirement scheme payment, or an invalidity segment of an ETP.

S83-80: 5% of any leave accrued prior to 16 August 1978 is subject to tax

ASSESSMENT ONE (WK1-2) MODEL ANSWERS

| | |
|--|--|
| What is the overarching ethical responsibility that tax professionals should bear in mind when faced with ethical dilemmas concerning activities that might constitute tax avoidance? | <p><i>APES 110 Code of Ethics for Professional Accountants, which is applicable for members of CPA</i></p> <p>Australia and Chartered Accountants Australia and New Zealand, contains an overarching principle that professional accountants are always to act in the public interest. This not only means not acting in their own interest, but also not acting in the sole interests of the client. This principle is also reflected in the Code of Professional Conduct contained in the Tax Agent Services Act 2009 (Cth).</p> |
| Determining base (or not) rate entities: | <p><i>Jam Jar Ltd has an aggregated turnover under the \$50 million aggregated turnover threshold.</i></p> <p><i>Its assessable income is \$104,000, which comprises of:</i></p> <ul style="list-style-type: none"> <i>\$100,000 trading income from running the business; and,</i> <i>\$4,000 of interest income.</i> <p>$4000/100,000 = 4\%$ of income is passive</p> <p>\therefore is a base rate entity as it does not exceed 80% & has aggregate under 50m.</p> |
| Sandra Myers prepared her own tax return and claimed a large deduction for overseas travel. Sandra was aware that the claim was false and could not be substantiated but she intentionally claimed it anyway. Sandra was subsequently subjected to an audit where the false claim was detected. In this case, where there is evidence of fraud or evasion the Tax Commissioner must issue an amended assessment in: | <p>'unlimited time to issue an amended assessment-s 170(1) and (2) ITAA36.' According to s 170(1) and (2) ITAA36, where there is evidence of fraud or evasion, the Commissioner may amend an assessment at any time.</p> |

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| <p>Jeremy is an Australian resident employee of a mining company.</p> <p>He was transferred overseas for a temporary work assignment for a period of 2 years and intended to return to Australia at the end of that period. The purpose of the assignment was for Jeremy to gain wider work experience. Jeremy was initially accompanied by his wife and children but the children returned to Australia to continue their schooling. He spent his annual holiday in Australia. During his absence from Australia he rented out his home</p> | <p>In these circumstances the taxpayer was not considered to be a resident of Australia under the ordinary meaning of the word "resident" but was considered to be a resident under the extended definition of that term.</p> <p>I.e. Jeremy is not a resident under the ordinary meaning of "resident", however is a resident of Australia under the domicile test.</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax</p> |
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| <p>and maintained bank accounts in Australia.</p> <p>He made no investments in the overseas country and remitted all money in excess of living requirements to Australia for investment.</p> <p>Is Jeremy a resident of Australia for tax purposes under the domicile test?</p> | <p>law.</p> <p>Scenario Source: IT2650</p> |
| <p>Emily, who had just completed tertiary studies, decided to leave Australia for an unspecified period of time to work in one overseas country to gain work experience.</p> <p>Before leaving she closed all bank accounts except for a 5-year interest bearing deposit. She had no established home in Australia and no spouse or children in Australia. She was forced to return to Australia within 18 months due to an illness.</p> <p>Is Emily a resident of Australia for tax purposes under the domicile test?</p> | <p>Emily was considered to be a non-resident as it was her original intention to remain outside Australia for an unspecified period of time and she was considered to have a permanent place of abode in the overseas country. The opposite conclusion would have been reached if she had intended to (and did) spend one year each in 2 countries and then had travelled for a further period of one year, making do in temporary or transitory accommodation in each country as she went. In that case she would not have a permanent place of abode in any of the overseas countries and would continue to be a resident of Australia.</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.</p> <p>Scenario Source: IT2650</p> |
| <p>A bank manager was posted to the New Hebrides for 2 years. During that time he and his family lived in a furnished house provided by the bank.</p> <p>The taxpayer's home in Australia was let. On leaving Australia, the taxpayer expected a further overseas posting after his 2-year period. He advised the Department of Social Security that the family was leaving Australia permanently and child endowment payments should cease.</p> <p>Is the bank manager a resident of Australia for tax purposes under the domicile test?</p> | <p>The taxpayer was considered to have abandoned his place of residence in Australia and to have formed the intention to, and in fact did, reside outside Australia. His place of abode in Vila was not merely temporary or transitory; rather, it was intended to be and was in fact his home for the time being (Case S19 85 ATC 225; 28 CTBR (NS) Case 29).</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.</p> <p>Scenario Source: IT2650</p> |

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| <p>A bank officer was posted from Australia to the New Hebrides for 2 years only and never intended to stay any longer.</p> <p>During his overseas posting he maintained bank accounts in Australia, into one of which family allowance payments continued to be made, and let his Australian home unfurnished. He was accompanied by his wife and children.</p> <p>Is the bank officer a resident of Australia for tax purposes under the domicile test?</p> | <p>His place of abode in the New Hebrides was considered to be temporary or transitory for two reasons. Firstly, he lived, by the bank's continuing permission, in a house leased by the bank in the New Hebrides.</p> <p>Secondly, having regard to the 2- year period of his appointment, the taxpayer's relationship with his place of abode in Port Vila lacked " a more enduring relationship" (see Appellate per Fisher J 79 ATC at p.4317; 9 ATR at pp 910-911) with the particular place of abode than that expected to exist where a person ordinarily resides there or has there his usual place of abode (Case Q68 83 ATC 343; Case 132 26 CTBR(NS) 913).</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.</p> <p>Scenario Source: IT2650</p> |
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| <p>Bjorn Anderson, a promising half-back from Sweden, is offered an eighteen month contract to play soccer in Australia for a club in the National Soccer League. The club provides accommodation for Bjorn and his family. As Bjorn intends to remain in Australia for the full term of his contract, he leases his house in Sweden, sells his car and redirects the family mail to Australia. His children attend an Australian school and his wife and children become involved in sporting activities.</p> <p>However, Bjorn is having trouble acclimatising to Australian conditions. After withdrawing from yet another torrid session, Bjorn is put on notice to perform 'or else'. Bjorn's form continues to slide to the point that management seek to terminate his contract on the ground of non-performance.</p> <p>Bjorn's contract is paid out for an agreed sum. Four months after arriving in Australia, Bjorn and his family return to Sweden.</p> <p>Bjorn explains to the Commissioner that despite only being in Australia for four months he was residing here during that time and he argues that he is entitled to be taxed as an Australian resident.</p> <p>Is Bjorn Anderson a resident of Australia for tax purposes</p> | <p>As Bjorn established that he intended to live in Australia for eighteen months with his family and his behaviour over the four months is consistent with the intention, Bjorn resided in Australia.</p> <p>As residency is a question of fact, individuals who are in Australia for less than six months may establish they reside here. Conversely, individuals may establish that they do not reside here, even if they have been in Australia for a longer time.</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.</p> <p>Consider further the consequences of the taxpayer being a resident of Australia for tax purposes.</p> <p>Scenario Source: TR98/17</p> |
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| <p>under the resides test?</p> | |
| <p>Michael Desmond is a South African diamond corporation executive. He takes the opportunity to participate in an intensive eight month advanced management development program at an Australian university.</p> <p>Michael's wife and children do not accompany him to Australia and while here he stays in basic accommodation on campus. He spends his time studying or writing reports for his company. He is in Australia solely to do the course and at the end of eight months he returns home.</p> <p>Is Michael Desmond a resident of Australia for tax purposes under the resides test?</p> | <p>Michael does not exhibit behaviour that is consistent with residing here. All of the facts lead to a conclusion that he is a non-resident.</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.</p> <p>Consider further the consequences of the taxpayer being a resident of Australia for tax purposes.</p> <p>Scenario Source: TR98/17</p> |
| <p>Jane Cierpinski is single and is a Professor of Biology at the University of Warsaw. She comes to Australia to work on a research project. She is contracted to do the research in Australia for five months.</p> <p>A six month lease of a small furnished unit near her work is such an attractive proposition that she enters into the lease despite intending to leave after five months. She also buys an old car. She relaxes at the end of her long days by going to the movies, occasionally attending dinner parties hosted by her colleagues, reading novels or writing letters to her friends and parents.</p> <p>Jane intends to return to Warsaw at the end of the project that actually lasts for seven months. She negotiates an extra month on the lease of her unit. Apart from depositing her salary into an Australian bank account to cover normal living expenses, Jane retains all assets and investments in Poland, her country of domicile.</p> <p>Is Jane Cierpinski a resident of Australia for tax purposes under the resides test?</p> | <p>Jane's behaviour over the seven months in Australia is consistent with residing here. She is regarded as a resident from her arrival.</p> <p>Her residency status would be for a part year only, from the time she arrives to the time she leaves Australia.</p> <p>Period of physical presence in Australia:</p> <p>This may apply when an individual comes to Australia on a short-term employment contract for less than six months. This would not normally be sufficient time to demonstrate behaviour that is consistent with residing here. If the employment is extended past six months, the facts surrounding the entire stay in Australia must be considered, not merely the original intended length of stay.</p> <p>In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.</p> <p>Consider further the consequences of the taxpayer being a resident of Australia for tax purposes.</p> <p>Scenario Source: TR98/17</p> |
| <p>Michelle Latour is a viticulturist who comes to Australia to do some research for five months. She actually stays for seven months to complete the Australian phase of her project.</p> <p>Michelle's husband and children do not accompany her to</p> | <p>Michelle was in Australia for a considerable time. However, all of the factors relating to her presence in Australia suggest that the quality and character of her stay reflect that of a visitor who is temporarily in Australia rather than establishing behaviour consistent with</p> |

Australia. They stay in their home in Bordeaux. From Australia, she assists her husband in running the family business.

While in Australia, Michelle stays in a hostel. She uses credit cards to meet day to day expenses. Her concentration on her research is often interrupted because she has to constantly fax and phone her husband about their emerging business problems. In fact, she needs to make a quick trip home for a week to sort out a major business dilemma.

Is Michelle Latour a resident of Australia for tax purposes under the resides test?

residing here.

In order to present a sufficient analysis of this issue you would need to present a detailed analysis of the facts and circumstances with reference to the relevant sources of tax law.

Consider further the consequences of the taxpayer being a resident of Australia for tax purposes.

Scenario Source: TR98/17