1. Tax is a contribution levied on persons, property or business in support of government.
2. A compulsory exaction of money by a public authority for public purposes, enforceable by law. 3. The process of raising money for the purposes of government by means of contributions from individual persons.

Incidence of Taxation

i. *Regressive* | decreasing proportion as income rises. Indirect Taxes such as GST may be seen to be regressive as they take no account of a person's ability to pay.
ii. *Proportional* | same proportion at all income levels. Flat tax rate, eg. 30% corporate tax rate.
iii. *Progressive* | increasing proportion as income rises. This is the case with Australia's marginal rates of income tax applicable to individuals.

Criteria for evaluating a tax system

i. Fairness. ii. Equity | Horizontal and Vertical.
Vertical – as income increases the a taxpayer's share of the tax burden increases. Eg: Australia's marginal rates of taxation. GST is an example of not achieving vertical equity.
Horizontal – all taxpayers on the same income level will pay the same amount of tax. Eg: Capital Gains Tax concessions that negate or reduce any income from capital.
iii. Simplicity. iv. Certainty. v. Efficiency/Neutrality. vi. Flexibility

Constitutional Aspects of Taxation

Section 51(ii) | The Commonwealth Parliament shall have power to make laws with respect to taxation, but not so as to discriminate between States or parts of States.
Section 55 | Taxation laws shall deal only with the imposition of taxation. Taxation laws shall deal with one subject of taxation only.
Direct taxes | Collected directly from person liable to pay. -Income Tax, FBT
Indirect taxes | Collected by an intermediary and then paid to government. – GST, Customs duties, Luxury car tax, Wine equalisation tax.
Medicare Levy = Taxable Income*2%
The Medicare Levy is not paid by the following taxpayers:
1.They may have *low taxable incomes* | **TI < $21,335**
2.They are Senior Australians and pensioners | **TI < $33,738**
3.Pension age Commonwealth pension recipients:Self-funded retirees /Members of the Defence Forces.
4.Foreign residents.
5.Temporary residents who do not have access to Medicare benefits.
HRI = (Taxable Income + Net Rental Loss + Reportable Fringe Benefits + Reportable Superannuation Contributions+ Exempt foreign employment income + net investment loss) x relevant percentage.
Most tax offsets are non-refundable. Non-refundable indicates that the total offsets allowable to a taxpayer can only reduce the amount of income tax otherwise payable by the taxpayer to nil. -Excess offsets do not provide a tax refund to taxpayer. - Excess offsets are not carried forward to next tax year.
Non-refundable cannot reduce: Medicare Levy, MLS, HELP, Temporary Budget Deficit Levy
Maximum tax offset = $445
Maximum offset only applies to taxpayers on taxable incomes up to $37,000
The tax offset reduces by 1.5 cents for every $1 of income exceeding $37,000
If taxpayer has taxable income > $66,667 - no tax offset. (66,667 – 37,000) x 0.015 = $445
Unfranked dividends have no franking credit or gross-up amount.
Gross up amount = dividend * (3 ÷ 7)
Maximum offset is 29.040% of the amount paid for the total medical cover → Private Hospital Cover + Extras Cover. Small Business Entity (SBE) tax rate is 28.5%

Section 6(1) ITAA36 | resident or resident of Australia means:
a. a person, other than a company, who resides in Australia and includes a person:
i. whose domicile is in Australia;
ii. who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income; or
iii. who is: A. a member of the superannuation scheme established by deed under the Superannuation Act 1990; or B. an eligible employee for the purposes of the Superannuation Act 1976; or C. the spouse, or a child under 16, of a person covered by sub-subparagraph (A) or (B); and
b. a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia

PRIMARY TEST - 4 main factors:
-Intention or purpose of person's presence in Australia. -Family and business ties.
-Maintenance and location of assets. -Social and living arrangements.

DOMICILE TEST
-A person whose domicile is Australia **is a resident** of Australia.
-The domicile test of residency usually applies where an Australian resident live in an overseas country for an extended period of time. -Your domicile of origin will remain your domicile, unless to *acquire* domicile of choice. **-How to acquire domicile of choice**? #Have the intention to make Australia or another country your home indefinitely. #Take up permanent residence in Australia or another country. #A working visa for even a 2 year period would not be sufficient evidence of an intention to acquire a new domicile of choice.

183 DAY RULE TEST
-A person is actually in Australia, continuously or intermittently, during more than half of the year, will be a resident. Unless he does not intend or has place of abode outside of Aus.

SUPERANNUATION TEST – applies to Australian government employees

Section 44(1) ITAA36 Source of Dividend Income
-If shareholder(resident) -> assessable income includes dividends that are paid out of profits derived by the company from any source.
-If shareholder (non-resident)-> assessable income includes dividends that are paid out of profits derived by the company from sources in Australia.

Dividends & Royalties
-Withholding rate (FINAL TAX)= 30% for non-treaty countries. -Most **DTA**s will reduce this amount to 15%. -Withholding applicable to the extent that any dividend **has not been franked.** - if dividend is franked there is still no access to any applicable franking credits.

ORDINARY INCOME s6-5(1): Your assessable income includes income according to ordinary concepts, which is called ordinary income. <must satisfied both prerequisites + ONE characteristic>
i.Cash or be convertible into cash. (Cooke v Sherden)
ii.There must be a real gain. (Hochstrasser v Mayes)
Receipts that are not convertible into cash are not ordinary income.

Characteristics

Regular or periodic receipt (Relied upon to pay expenses-Salary, interest, rent)
Income flows from capital (*Eisner v Macomber* | Tree and fruit analogy)
Some gains are ordinary income despite having no earnings source (But regular or periodic and relied upon-Government pensions, welfare)
Constructive receipt | Income does not have to be paid directly to you
Compensation (i)for **loss of income**, ordinary income(*FCT v Dixon, Sommer v FCT)*
(ii) for **loss of income earning ability**(*Coward v FCT*, Generally capital)

Nexus (a link) to either: **1.Personal exertion** (providing labour or services) (Employment | employee, salary, wages, *allowances*, Providing personal services | Independent contractor) **2.Property**(Interest, rent, dividends, royalties) **3.Business**(Carrying on a business)

Unexpected or voluntary **payments** such as tips are received as a reward for services rendered. (*Laidler v Perry)*- May also be classified as ordinary income based on the nature of the payment rather than any nexus with employment or services. (*FCT v Dixon)*

Prizes earned as a result of a **business activity** or a degree of personal exertion and skill that outweighs the element of chance are ordinary income. (professional sportspeople)

A **gift** given for personal qualities is usually not regarded as ordinary income and would normally not be assessable income. Must be a bona-fide gift and not a payment for services provided.

(Scott v FCT | Windeyer J.*)* An unsolicited gift does not become income merely because it can be traced to gratitude engendered by some service rendered. In distinguishing between a taxable and a non-taxable gift, the relevant question is **whether the gift was** in a relevant sense, **a product of the recipient's personal services** or, an **exceptional payment** due to the **recipient's personal qualities**.

Capital receipts are not ordinary income. Most capital receipts are statutory income.

#Payments received for giving up a valuable right are usually capital. For example a restraint of trade or restrictive covenant provision in an employment or business contract.

#Make sure the right is not part of an existing contract, if so it may be ordinary income.

*#Higgs v Olivie*r | *FCT v Woite* | *Pickford v FCT*

Statutory Income = amounts that are not ordinary income but are included in your *assessable income* by provisions (specific sections) of the ITAA.

Precedence Rule | Section 6-25(2) -Unless the contrary intention appears, the provisions of the Act will prevail over the rules about ordinary income. (Eg. Section 44 ITAA36)

Section 10-5 | contains a list of the specific provisions about assessable income.

S15-2 ITAA97 | Makes some gains from **personal exertion** assessable as statutory income. (limited scope as most of the listed receipts are normally ordinary income. Eg. a non-cash nature received by a volunteer as a rewards for their volunteer work.)

Section 15-3 ITAA97 | Makes payments to a taxpayer as an inducement to return to work assessable income.

Division 20-A ITAA97 | This division includes amounts in assessable income to reverse the effect of certain kinds of deductions. (Insurance or indemnity = any deductible expense. Other recoupments = must be a listed deduction.)

Section 21A ITAA36 | a non-cash business benefit may be treated as income according to ordinary concepts even if it is not convertible into cash, provided it is otherwise of an income nature.

Termination payments usually fall into 3 categories: Employment termination payments or ETPs. Genuine redundancy payments and early retirement schemes. Payments for unused annual and LSL.

Threshold = Base amount$9,780 + (Service amount$4,891 x Years of Service)

3 ways for an amount to be **non-assessable.** Section 6-15(1)- If an amount is **not** ordinary income or statutory income, it is not assessable income. Section 6-16(2)- If an amount that is ordinary or statutory income that is **made exempt by a section of the Act**. *Section 6-15(3)*- If an amount that is usually ordinary or statutory income is made **non-assessable non-exempt** income by a section of the Act.

Section 102-20 | You make a capital gain or loss only if a CGT event happens.

A1 | Disposal of a CGT asset [The time of the event is **when you enter into the contract for the disposal** or if there is no contract - when the change of ownership occurs.]

C1 | Loss or destruction of a CGT asset [The timing of a C1 event is when compensation is first received, or if none, when the loss is discovered or when the destruction occurred. For example an investment property that is destroyed by fire. An insurance policy payout then occurs - The timing of the C1 event is when the payout occurs]

C2 | Cancellation, surrender and similar endings [CGT event C2 happens if your ownership of an **intangible CGT asset** ends by the asset: Being redeemed or cancelled. Being released, discharged or satisfied. Expiring. Being abandoned, surrendered or forfeited. Is exercised.] (Option holders ***not*** **exercising an option** to acquire a CGT asset, such as shares or a business. When a contractual right such as a **restrictive covenant agreement comes to an end.** C2 usually results in a **capital loss** (the cost of acquiring the option).) *Exercising an option is also a C2 event.

C3 |End of option to acquire shares etc. C3 happens if **an option a company granted** to an entity to acquire shares or debentures in the company. *Ends by being: not exercised , cancelled, released or abandoned. Timing is when the option ends.*C3 should usually result in a **capital gain** to the company as it retains the money paid for the option.

D1 | Creating contractual or other rights. [Entering into a restraint of trade agreement and receiving payment for creating a contractual right in the other party to enforce your promise. Entering into a restrictive covenant. Receiving payment for withdrawing an objection to a proposed development.]

D2 | Granting an option. **Usually a capital gain**. As you receive money for granting the option. [Can be an option to sell an underlying asset (put option). Can be an option to buy an underlying asset (call option).] D2 does not apply to options relating to a personal use asset or collectable.

Collectable assets defined in section 108-10 as: Artwork | Jewellery |Antique, Coin or medallion, Rare folio, manuscript or book, Postage stamp. [**used or kept mainly for personal use or enjoyment.]** (Personal use **assets acquired for $10,000 or less are exempt from capital gains tax.)**

4 CGT concessions specifically for **small business**. 1.The 15-year asset exemption. 2.The 50% active asset reduction. 3.The retirement exemption. 4.The asset roll-over.

Access concession must satisfy **3 basic conditions:** 1) Must be a **Small Business Entity**- turnover is less than $2,000,000 or if not an SBE, the **net value of assets** that the entity and related parties own must **not exceed $6 million**. 2)Disposable of CGT asset = **Active Asset.** 3) If asset is a share in a company of an interest in a trust specific rules apply.

If the asset is a share in a company or an interest in a trust: There must be a **CGT concession stakeholder** before the CGT event. The entity claiming the concession must be a **CGT concession stakeholder** in the company or trust. Or CGT stakeholders in the company or trust have a **small business participation percentage** in the entity of at least 90%.

For example, they must own 90% of the company shares that are being sold.

A CGT concession stakeholder = a significant individual in the company or trust.

A significant individual controls at least 20% of the shares or has at least a 20% interest in the trust. This 20% is referred to their small business participation percentage.

If the asset is a share in a company or an interest in a trust: Must also satisfy an 80% active asset test. Under this test the market value of the active assets of the company or trust in which the relevant shares or trust interest is held must be more than 80% or more of the market value of all the assets of the company of trust.

The taxpayer must have continuously owned the relevant CGT asset for at least 15 years. The individual taxpayer must also be: Aged 55 years or over and retiring. Or is permanently incapacitated.

A capital gain that arises from a CGT event happening to an active asset may be reduced by 50%. If the capital gain has already been reduced by the general 50% discount, the 50% active asset concession applies to that reduced gain. So that only 25% of the original capital gain is taxable.

The small business asset roll-over allows a taxpayer to defer the making of any capital gain from a CGT event happening in relation to one or more small business assets if the taxpayer acquires a replacement asset or assets. The deferred gain may crystallise in later years when the replacement asset(s) is sold. You have up to two years after the relevant CGT event to acquire the replacement asset.