

Taxation Law

Exam Notes

TABLE OF CONTENTS

Exam Details	9
Introduction	9
Definitions of Tax	9
Constitutional basis	9
A law in respect to taxation	10
Must not discriminate	10
A different liability cannot be imposed on a person because of where they live or work.	10
Income tax rates are applied consistently throughout the Commonwealth	10
Constitutional provisions	10
Historical background	11
Uniform Tax Scheme	11
Challenges	11
Source and Residence	12
Entities	12
Residency	12
IT 2650	13
Residency cases	13
ZXBN v Commissioner of Taxation [2003]AAT 604	13
Federal Commissioner of Taxation v Applegate [1979] FCA 37	14
Residency of a company	14
Bywater Investments & others v Commissioner of Taxation [2016] HCA 45	14
Esquire Nominees	14
Source	15
Commissioner of Taxation v Mitchum [1965] HCA 23,	15
Review	15
Tax Accounting	16
Two Methods	16
Taxation Ruling RE 98/1	16
Cash	16
Accruals	17

Income from professional practices	17
FCof T v Firstenberg [1976] Vic SC 309	17
Henderson v FCof T (1970)119 CLR 612	17
Barratt v FC of T (1992) 36 FCR 222.....	17
Change of Method	18
Income not taking the form of cash	18
Cheques	18
Constructive receipt	18
Derived.....	18
Brent v FCof T (1971) CLR 418.....	18
Income subject to a potential refund	19
Arthur Murray(NSW) Pty Ltd v FC of T (1965) 114 CLR 314.	19
When are expenses incurred	19
W Nevill & Co Ltd v FC of T (1937) 56 CLR 290	19
New Zealand flax Investments Ltd v Fcof T (1938) 61 CLR 179	20
Ordinary Income: Individuals.....	20
Assessable Income.....	20
Ordinary Income.....	20
FC of T v Cooke & Sherden [1980] FCA 37.....	21
General Principles.....	21
Characterisation	21
Federal Coke Co Pty Ltd v FC of T (1977) 34 FLR 375	21
FC of T v McNeil (2007) 233 ALR 1.	22
Constructive receipt	22
Time of Characterisation.....	22
Constable v FC of T (1952) CLR 402	22
Character of ordinary income	22
Windfall gains.....	23
Scott v FC of T (1966) 117 CLR 514.....	23
Competitions and prizes	23
Tips, Gratuities	23
Income from carrying on a business.....	24
Convertible to money	24
FC of T v Cooke and Sherden (1980) 42 FLR 403	24
Compensation	24
Periodicity, recurrence and regularity.....	24
FC of T v Dixon (1952) 86 CLR 540.....	24
Youth allowance.....	25
FC of T v Anstis (2010) 241 CLR 443.	25
Regular payments.....	25
Cof T (Vic) v Phillips (1936)55 CLR 144	25
Not decisive factors	25
Illegal, immoral or ultra vires receipts.....	25

Capital Gains	25
Gain to the taxpayer	26
Recoupment of deductive amounts	26
Statutory provisions	26
Income From Personal Exertion	26
Individuals	26
Scott v FC of T (1966) 117 CLR 514	28
Regular periodic payments	28
Payments by a third party	29
Sportspersons	29
Kelly v FC of T 85 ATC 4283	29
Hobby or past time	29
Disposal of a capital asset	30
Payment for Services	30
Brent v FC of T (1971) 125 CLR 418	30
Payment for giving up an asset	30
FC of T v McArdle 89 ATC 4051.	30
Statutory Income	30
Ordinary Income: Property	31
Income from property	31
Interest	31
Federal Wharf Co Ltd v DFC of T (1930) 44 CLR 24;	32
Whitaker v FC of T	32
Annuities	32
Lease and rental income	33
Royalties	33
Stanton v FC of T (1955) 92 CLR 630	33
McCauley v FC of T (1944) CLR 235.	34
Review	35
Ordinary Income: Business	35
Definition	35
Business indicators	36
ATO position	36
System and Organisation	36
Size	37
A business like manner	37
Brajkovich v FC of T 89 ATC 5227	37
Scale of activities	37
Size and scale	37
Thomas v FC of T 72 ATC 4094 and FC of T v JR Walker 85 ATC 4179.	38
Sustained, regular and frequent	38
FC of T v Shields 99 ATC 4783	38

Smith v FC of T [2010]AATA 576.....	38
Turning talent to account	39
FC of T v Stone (2005) 222 CLR 289.....	39
Spriggs and Riddell v FC of T [2009] HCA 22.....	39
Prospect of making a profit.....	39
Glennan v FC of T 198 ALR 250.....	39
Commercial character of the transaction.	40
FC of T v Bivona Pty Limited(1989)FCA 49.....	40
Characteristics or quantities	40
Rutledge v IR Commissioners (1929) 14 TC 490.....	40
On line trading.....	40
Other factors	41
FC of T v La Rosa [2003] FCAFC 125.....	41
Tweddle v FC of T (1942) 180 CLR 1.	41
Substance v Form	41
John v FC of T (1989) 166 CLR 417.....	41
Commencement of business	41
Softwood Pulp & Paper Ltd v FC of T 76 ATC 4439.....	42
Termination.....	42
AGC (Advances) Ltd v FC of T (1975) 132 CLR 175.....	42
Business income	42
Californian Copper Syndicate (1971) 124 CLR 97.	43
Kosciusko Thredbo Pty Ltd v FC of T (1987) 168 CLR 147.....	44
Cases	44
GKN Kwikform	44
Hyteo.....	44
Isolated transactions.	44
Whitfords Beach.....	44
FC of T v Myer Emporium Limited.....	45
FC of T Cooling.....	45
Isolated transaction	46
Westfield Ltd v FC of T (1991) 28 FCR 333	46
Lump sum.....	46
Henry Jones (IXL) Ltd v FC of T (1991) 31 FCR 64	46
Statutory expansion	46
Profit making undertaking or plan	47
Bounties and subsidies	47
Sale of securities.....	47
The sale of know how	48
Moriarty v Evans Medical Supplies Ltd [1957] 3 ALL ER 718.....	48
Sommer v FC of T [2002] FCA1205	48
Sydney Refractive Surgery Centre Pty Ltd v FC of T [2008] FCA 1544	49
Compensation for breach of trust.	49
Murdoch v FC of T [2008] FCAFC 86	49

Cancellation of a business contract	50
Termination of agency and management contracts.	50
Californian Oil Products Ltd (in Liq) v FC of T (1934) 52 CLR 28.	50
Insurance or indemnity	51
Apportionment	52
General Deductions: The Positive Limbs	52
Deductions	52
Two positive limbs	53
Herald & Weekly Times Ltd v FC of T (1932) 48 CLR 113.....	54
W Nevill & Co Ltd v FC of T (1937) 56 CLR 290	54
Ronpibon Tin NL v FC of T (1949) 78 CLR 47.....	54
Charles Moore & Co (WA) Pty Ltd v FC of T (1956) 95 CLR 344.....	55
Travelling to and from work	55
Lunney v FC of T , Hayley v FC of T (1958) 100 CLR 478.	55
The second positive limb	56
New division	56
Griffin Coal Mining Company Ltd v FCof T 90 ATC 4870.....	56
Amalgamated Zinc (de Bavays) (1935) 54 CLR 295	56
AGC (Advances) Ltd v FC of T (1975) 132 CLR 175.....	56
Legality of business being conducted	57
FC of T v La Rosa	57
Your income	57
Connection	57
FC of T v Consolidated Press Holdings Ltd & anor 2001 ATC 4343.	58
To the extent that	58
Ronpibon Tin NL v FC of t (1949) 78 CLR 47	58
Characterising losses and outgoings	58
Legal rights approach	58
Tooheys Ltd v FC of T91922022 SR (NSW) 432.....	58
Grossly excessive expenditure	59
Robert G Nall Ltd v FC of T (1937) 57 CLR 695.....	59
The purposive approach	59
General Deductions: The Negative Limbs	60
Negative limbs	60
Capital	60
Hallstroms Pty Ltd v FC of T (1946)72 CLR 634.....	61
Tests/guidelines	61
Once and for all	61
Enduring benefit test	61
Australian test	62
Fixed v Circulating capital	62
Business entity test	62
Sun Newspapers Ltd & Associated Newspapers Ltd v FC of T (1938) 61 CLR 337.....	62

Business entity test	63
John Fairfax & Sons v FC of T (1959) 101 CLR 30	63
Private or domestic nature	63
Private nature	63
Mansfield v FC of T 96 ATC 4001	64
Other items deductible	64
Not deductible	64
FC of T v Cooper (1991) 29 FCR 177.....	64
Exempt income	64
Non deductible	65
Specific items	65
Self Education	65
FC of T v Hatchett (1971) 125 CLR 494	65
Types of expenditure	66
Self education	66
Leading to promotion	66
FC of T v Studdert (1991) 33 FCR 75.....	66
Taxation Ruling TR 98/9	66
Youth allowance and text books	66
Anstis v FC of T [2009] FCA 286	66
Interest	67
Use Test	67
Business	67
Munro v FC of T (1926) 38 CLR 153	68
Interest	68
Legal and other professional expenses	68
Cases	69
Spriggs v FC of T and Riddell v FC of T [2007] FCA 1817.....	69
deductions	69
Planning, evasion and avoidance	69
Planning, avoidance and evasion	69
Definitions	69
Tax avoidance provisions	69
General anti –avoidance	70
Tax evasion	70
R v Mears (1997) 37 ATR 321	70
Tax avoidance	70
Tax planning	70
IR Commissioners v Willoughby [1997] 4 All ER 65	71
Tax Avoidance	71
Sham transactions	71
Sharrment Pty Ltd v Official Trustee in Bankruptcy (1988) FCR 449	71
Sham	72

Legal Effect	72
Tax effect	72
Cases	72
Vincent v FC of T [2002] FCA 656	72
Part IVA	73
s. 177D	73
s177F	73
Scheme	73
Is there a scheme	73
S177A (3)	74
Identification of the scheme	74
Scheme	74
FC of T v Hart (2004) 217CLR 216.....	74
Tax Benefit.	74
Approaches to determining a tax benefit	75
Relevant tax purpose	75
Purpose	75
Part IVA relevant matters	76
Weighing the matters	76
Cof T v Hart (2004) 217 CLR 216.....	76
Compensating adjustments	77
FC of T v Jackson (1990) 27FCR	77
The Assessment Process	77
Assessment	78
R v DFC of T (SA); Ex parte Hooper (1926) 37 CLR 368	78
FJ Bloemen Pty Ltd v FC of T, [1981] HCA 27.....	78
Nil notice	78
What constitutes an assessment	79
FC of T v Futuris Corporation Ltd [2008]HCA 32	79
An assessment	79
Good faith	79
Assessments	79
Conscious maladministration	80
Maladministration	80
Donoghue v FC of T [2015] FCA 235	80
Statutory authority	80
s.166 ITAA 36	80
s. 166A ITAA 36	80
s. 167 ITAA 36	81
s. 168 ITAA 36	81
Time for issuing assessments	81
Service of the notice	81
FC of T v Prestige Motors Pty Ltd 94 ATC 4570	82

Conclusion of assessment	82
Conclusively provision	82
Signing.....	82
Amended Assessments.....	82
Time limits.....	83
Four years.....	83
Unlimited period	83
Fraud	83
Evasion	84
Denver Chemical Manufacturing Co v Cof T (NSW) (1949) 79 CLR 296	84
ATO extension of time to amend	84
Challenging an assessment	84
Objections against assessments.....	84
S 14 ZU Taxation Administration Act.....	84
Time periods.....	84
Challenging an objection decision	85
AAT	85
Federal Court.....	86
Burden of proof.....	86
Onus of proof	86
Federal Court.....	86
Appeal.....	87
AAT.....	87
Small Taxation Claims.....	87
Referral of question of law	87
General Division	87
Powers of the AAT	88
Appeals	88
Question of Law	88
Haritos v FC of T [2007] FCA 1300	88
Appeals to the Federal Court	88
AAT/Federal Court.....	88
Alternative dispute resolution	89
Collection and Recovery of Tax	89
Effect of s. 177	89
Recovery	89
Waiver of tax debts	89
Release on hardship grounds.....	89
Interest on unpaid tax	90
Recovery	90
Statutory notices	90
Departure Prohibition Orders	90
Freezing orders.....	90