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Topic 1 The Taxation System in Australia

Topic	Explanation	Law
Assessable income	Includes ordinary & statutory income Ordinary Income Statutory Income	<i>s6-1(1)</i> <i>s6-5</i> <i>s6-10</i>
Constructive receipt	Pay income to a different person	
Deductions	General deductions Specific deductions Gifts or contributions Personal superannuation contribution Never capital amounts unless tax depreciation Can take it as deduction if it's connected to income	<i>s 8-1</i> <i>s 8-5</i> <i>division 30</i> <i>Subdivision 290-C</i>
Direct and indirect tax	Direct – person who owes money pays to ATO eg. Company would have to do company tax return to work out what they owe to ATO & pay it over Indirect – eg. Grocery shopping, part of what you pay for grocery is what you owe to govt. Coles pay GST to government, not you. Coles is the middleman/vendor who is responsible for paying the indirect tax	
FBT	You will only get taxed on your cash salary, the rest of the stuff you receive is not taxed eg. Company car from employer, mobile phone given by employer. Employer pays tax on FB	
Foreign income tax offset	Double taxation agreement If you pay tax in another country, convert in AUD and get deduction Have offset because it'll stop foreign investment if there wasn't	
Franking credits	Deduction against taxes payable Belong to dividends Dividends is after tax income for us – company has paid some of our taxes Prepayment of taxes = franking credit Take franking credits and deduct of taxes payable	
GST	If you are carrying on a business in Australia and have a turnover of more than \$75,000 you have to register for GST	
HELP	Have to repay the HELP debt once HRI >\$54,126	

Income tax	Individuals – salary, rent, profit share from partnership, sole proprietor, don't have separate tax returns from different income Companies – turnover, dividends	
Joint	Same legal interests 50%, equal everything, can deduct expenses	s40-80
Low income rebate		s159N ITAA36
Medicare levy	2% of taxable income – don't have to pay if income <\$20,896	s251S ITAA 1936
Medicare levy surcharge	For individual taxpayers without private health insurance	
Non assessable income	If amount is not ordinary income or statutory income s6-15(1) also if legislation says it's exempt or NANE ss6-15(2) & (3); 6-20; 6-23 Exempt income s6-20 NANE s6-23 What is not assessable income s6-15	s6-15(1) ss6-15(2) & (3) s6-20 s6-23
Ordinary income	Anything that you get money from that's not capital 3 sources: 1. carrying on a business eg. Sales revenue 2. Property eg. Dividends, interest, rent income 3. Employment eg. Salaries, wages	s6-5
part year residents	From 1 July 2012, part-year residents can access a tax-free threshold of at least \$13,464. Access to the remaining \$4,736 of the full tax-free threshold will be pro-rated. For part-year residents, the tax-free threshold is calculated as: = \$13,464 + (\$4,736 x number of months as a resident of Australia) ÷ 12	
Partnership	Contract for 2 or more entities	s995-1 ITAA97
PAYG	As you make income, you have to make tax payments to ATO	
private health insurance offset	Adopted to subsidise taxpayers paying private health insurance premiums Refundable offset s67-23 ITAA97	
SBE	Turnover of less than \$2 million, if it is a company – tax rate 28.5% SBE income tax offset <i>Subdivision 328-F</i>	
Tax administration	Do I need to lodge a tax return? What if you need to change something on your return after lodging it?	
Tax offsets Available offsets:	Refundable – can be used to pay income tax, ML, MLS, HELP or refund in cash if you haven't used all of it	s13-1 ITAA97

	<p>Non-refundable</p> <ul style="list-style-type: none"> -can only reduce amount of income tax pay to 0 -Excess offsets do not provide a tax refund -Excess offsets are not carried forward to the next year -Can't be used to reduce: Medicare Levy, Medicare Levy Surcharge, HELP repayments, Temporary Budget Deficit Levy -Except for Foreign income tax offsets that may be applied against Medicare Levy, Medicare Levy Surcharge 	
Temporary budget repair levy	If your taxable income is over \$180,000 2% on amount you earn above \$180,000, foreign residents have to pay too	
Tenants in common	Have specific interest in an asset	

Calculations		
Topic	Calculation	Law
Assessable income	Assessable income = ordinary income + statutory income	
Companies – big & small	Big: \$1m $\$1m \times 30\% = \$300,000$ Small: \$100 $\$100 \times 28.5\% = \28.50	
HELP repayment	Have to repay the HELP debt once HRI >\$54,126 $HRI = \text{Taxable Income} + \text{Net Rental Loss} + \text{Net investment loss} + \text{Reportable Fringe Benefits} + \text{Reportable Superannuation Contributions} + \text{Exempt foreign employment income}$ $HELP \text{ repayment} = HRI \times \% \text{ of repayment}$	
Income tax equation	Income tax = (taxable income x tax rate) – tax offsets	Division 4 s4-10
Low income rebate	< \$66,667 Maximum rebate = \$445 Only for taxpayers with income up to \$37,000 Offset reduces by 1.5 cents for every \$1 of income exceeding \$37,000 Eg. Income \$39,000: $(39,000 - 37,000) \times 0.015 = 30 = \415	
Medicare levy	Taxable income x 2% - exemptions on P67	

Medicare low income earner – threshold & phase in limit	Seniors & pensioners 65yrs+ TH \$33,044 PH \$41,305 Other tax payers TH \$20,896 PH \$26,120	
MLS	<p>1 Determine the ‘Income for surcharge purposes = Taxable Income + Net Investment Loss + Reportable Fringe Benefits+ Reportable Superannuation contributions + Exempt foreign employment income If the taxpayer has a spouse, determine the ‘Income for surcharge purposes’ for the taxpayer and their spouse</p> <p>2 Determine the % at which the MLS will be charged The % depends on whether the taxpayer is single or part of a family The % will be based on ‘Income for surcharge purposes’</p> <p>3 Determine the amount of MLS payable Performed for each taxpayer individually, even if they are in a family Include the MLS for each taxpayer in their own taxes payable calculation Use the % in step 1 and multiply it with the sum of each taxpayer’s taxable income, reportable fringe benefits</p>	
Taxable income Division 4 s4-15	Taxable income = assessable income – deductions	

Topic 2 Residence, source and tax accounting

Topic	Description	Law
183 day rule	<p>A person who is actually in Australia, continuously or intermittently, during more than half of the year, will be a resident. Unless the Commissioner is satisfied that:</p> <p>i. The person has a usual place of abode outside Australia; and</p> <p>ii. The person does not intend to take up residence in Australia</p> <p>For people on permanent residence visa</p>	
4 tests	<p>s6(1) ITAA36</p> <p>primary test – someone comes to aus</p> <p>domicile – someone leaves aus</p> <p>183 test</p> <p>Superannuation test</p> <p>Resident if you pass 1 test</p> <p>Foreign resident if you fail all 4 tests</p>	s6(1) ITAA36
ATO -domicile	<p>A period of 2 years or more is generally regarded as a substantial period for adopting another country as permanent place of abode</p> <p>Lecture example: slide 20</p> <p>Foreign resident because she cuts ties, no family, no assets, no bank account in Australia – life shifted to another country – committed to live in another country for a substantial amount of time</p> <p>Can't be foreign resident if you don't tie yourself to one place eg. 1 year in UK, 1 year in Germany</p>	
ATO –primary	<p>Won't look at you if you're in Australia for less than 6 months</p> <p>This is not supported in legislation</p> <p>Quality and character of a person's stay</p> <p><u>ATO main factors</u></p> <ul style="list-style-type: none"> - Physical presence including intention or purpose of person's presence in Australia - Family and employment ties - Maintenance of place of abode and location of assets - Social and living arrangements 	<p>1. TR 98/17, paragraph [22] to [28], [42] to [51], [61] to [63]</p> <p>2. TR 98/17, paragraph [52] to [56]</p> <p>3. TR 98/17, paragraph [57] to [58]</p> <p>4. TR 98/17, paragraph [59] to [60]</p>
Australian resident	Taxed on all sources of income	Division 6 ITAA97
Companies	1. place of incorporation test	

	<p>Company incorporated in Australia is automatically resident</p> <p>2. Place of central management and control test Company must carry on business in Australia The company's central management and control must be located in aus</p> <p>3. Controlling shareholders test Voting power is controlled by aus residents The company is carrying on business in Australia</p>	
Dividends	<p>Dividends are assessable income</p> <p>The source of dividend income is determined by the location at which the company paying the dividend derived its profits. The ultimate original source of that company's income is not relevant</p>	S44(1) ITAA36
Domicile test	<p>Law tells you what to do</p> <p>Most often use it for people leaving Australia – land job overseas</p> <p>You are resident of Australia if you are born here</p> <p>Intend to make Australia your permanent home</p> <p>Permanent residence</p> <p>Domicile = place of abode = person's residence, lives, sleeps at night</p>	
Foreign resident	<p>Only tax on income earned in Australia</p> <p>foreign resident definition s995-1 ITAA 1997</p> <p>Foreign residents aren't entitled to Medicare benefits so don't pay Medicare levy and Medicare levy surcharge</p>	s 995-1 ITAA 1997
Medicare levy	<p>Foreign Residents do not pay Medicare Levy</p> <p>Temporary residents can usually claim a full exemption</p> <p>If you don't pay the Medicare Levy you do not have to pay the Medicare Levy Surcharge</p>	
Primary test	<p>A person who resides in Australia according to the ordinary concepts</p> <p>Common law test</p> <p>Correct exam technique:</p> <ul style="list-style-type: none"> • Key question: Is Fred a resident of Australia? • Definition of a resident s 6(1) ITAA36 <ul style="list-style-type: none"> – Primary Test – Resides in Australia – Domicile Test – 183 Day Rule Test – Superannuation Test • Apply the primary test of residency first • There are four main factors that the ATO [TR98/17 paragraph 20] and to a lesser extent the Courts considered are crucial in applying the primary test: <ul style="list-style-type: none"> – Physical presence in Australia, including the purpose of the visit to Australia – Family and business or employment ties – Maintenance of a place of adobe in Australia – Social and living arrangements 	s 6(1) ITAA36
Residency	Resident definition	s6(1) ITAA36
Royalties	Where a royalty is outgoing S6C ITAA36 deems the royalty to have an Australian source	s6C ITAA36
Superannuation test	Only apply for people who work for the state	

Temporary resident	If you are a resident according to the 4 tests but a temporary resident, you only pay tax on what you earn in Australia	Subdivision 768-R ITAA 1997
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Cases	Topic	Description
Henderson v FCT	Change basis-cash/accrual	Changing from cash to accrual
Koitaki Para Rubber Estates Ltd v FCT	Company	Central management and control
Esquire Nominees v FCT	Dividends	Dividends source of income
FCT v Applegate	Domicile	Permanent place of abode Not a resident
FCT v Jenkins	Domicile	Permanent place of abode Not resident
IRC v Lysaght	Primary	Moved abroad
Joachim v FCT	Primary	Family home in Australia and intention to treat Australia as home
Levene v IRC	Primary	Temporary visits abroad
Rhodesia Metal Ltd (Liquidator) v Taxes Commr	Sale of goods	Source of income overseas
Thorpe Nominees Pty Ltd v FCT	Sale of goods	Source of income in Australia
FCT v Efstathakis	Service income	Place of performance of services
FCT v French	Service income	Source of services income
Koustrup v CoT (2015) AATA 126	Usual place of abode	Not a resident so was taxed on everything Apply foreign resident tax threshold