Tax law notes

WEEK 1

Tax – a "compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered" (Matthews v Chicory Marketing Board). Commonwealth taxes: income tax (including capital gains); fringe benefits tax; GST; customs duty, or State taxes: payroll tax; land tax; stamp duty

Structural features of tax: tax rates; tax payers; tax base; tax periods

s. 4-10 ITAA 97: Income Tax Payable = (Taxable Income x Tax Rate) - tax offsets

s. 4-15 ITAA97: Taxable income = Assessable income – deductions

s. 6-1(1) ITAA97: Assessable income = Ordinary income + Statutory Income

Ordinary income: assessment of gains that have an income character as set out in the doctrines that have been developed by the courts (s 6-5 ITAA97), referred to as "ordinary concepts".

Statutory income: assessment of amounts by a specific provision in the income tax legislation (s 6-10(2) ITAA97); Division 10 has a summary lists of the statutory income provisions in the income tax legislation.

- Non-assessable Income: if the legislation stipulates that it's "exempt income" or "non-assessable non-exempt" (NANE) income (ss 6-15(2)(3); 6-20; 6-23)

- Deductions (expenses which are incurred by the taxpayer in gaining or producing assessable income and therefore reduce the tax payable by a taxpayer on their assessable income)

Deductions = general deductions (s 8-1) + specific deductions (s 8-5)

Ordinary income (OI) (week 3)

s6-5 ITAA97: income may be assessable under ordinary income ie. Income according to ordinary concepts
Prerequisites of ordinary income

- **Cash** or **cash convertible**
  - *Tennant v Simth*: receipt of free accommodation was not income as it was neither cash nor convertible
  - *FCT v Cooke & Sherden*: holiday given by soft drink manufacturer was not convertible to cash

- **A real gain** to the taxpayer; tax payer must be better off financially (*Hochstrasser v Mayes* – reimbursement of a work-related expense isn't a real gain)

Characteristics of ordinary income

- **Regular/periodical receipts** (i.e. regular court ruled as income – *FCT v Blake* or a one-off court ruled that this was capital – *FCT v Harris*)
  - When **a gain is regular**, **expected and depended upon**, a gain can constitute ordinary income, even if the **gain does not flow from an earnings source**:
    - Government aged pension: Keily v FCT (1983)
    - Youth Allowance payments: Anstis v FCT (2010)
    - Certain "top-up" payments: FCT v Dixon (1952)
- **The flow concept**: in terms of "fruit" (capital i.e. property) and "tree" (income i.e. rental payment) in *Eisner v Macomber*
  - **Nexus (a connection) with the earning source**: property (i.e. rent ↔ property); business (i.e. an accounting firm's profit ↔ accounting business); Result of personal exertion (i.e. salary ↔ an employee providing services)
  - **Severable from its earning source**: the gain can be extracted without the affecting the underlying earnings (i.e. salary can be obtained without damaging the underlying work contract or the employee's ability to work)

Other general principles of ordinary income

- **Constructive receipt rule**: the taxpayer who is entitled to receive the income is the person who will be assessable on it, even if the actual gain is directed to someone else (*Federal Coke v FCT*)