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Introduction to Taxation Law (TOPIC 1):

What is tax?

- 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 (1938) 60 CLR 263**.
- A tax = a pecuniary burden laid upon individuals or property to support the government a payment exacted by legislative authority: [Black's Law Dictionary, p. 1307 \(5th ed. 1979\)](#).
- Tax collection is performed by a government agency. In Australia, the Commissioner of Taxation, supported by the Australian Taxation Office (ATO) is responsible for this task.
- When taxes are not fully paid, penalties and interest, including criminal penalties (such as incarceration) may be imposed on the non-paying entity or individual.
- Purpose and effects:
 - The funds received through taxation are used for many purposes. These include enforcement of law and public order, protection of property, economic infrastructure (roads, legal tender, enforcement of contracts, etc.), public works, social engineering, and the operation of government itself.
 - Most modern governments including that in Australia also use taxes to fund welfare and public services. These services can include education systems, health care systems, pensions for the elderly, unemployment benefits, and public transportation. Energy, water and waste management systems are also common public utilities.

Constitutional basis of taxation in Australia:

- The Commonwealth Parliament derives its power to enact income tax legislation from the Constitution.
- [S 51\(ii\) of the Australian Constitution](#) grants the Cth Parliament power to make laws for the peace, order, and good government of the Commonwealth with respect to, inter alia, taxation; but so as not to discriminate between States or parts of States.

- The effect of [s 51\(ii\)](#) is that the Commonwealth retains the power to legislate on matters of taxation provided the legislation does not discriminate between States and Territories.
- Power to impose income tax is a concurrent power shared between Commonwealth and the States.
 - However, the States have not imposed income tax since the Second World War – but nothing to prevent the States imposing income tax apart from political concerns.
 - States cannot charge an income tax – as this power has been ceded to the Commonwealth.
 - The GST was going to be a problem for States, as such, they now get certain percentages (but that caused problems w/ NSW complaining).
- LIMITATIONS ON CTH POWER:
 - a. Laws imposing taxation shall deal only with the imposition of taxation and deal with one subject of taxation; any provision therein dealing with any other matter shall be of no effect: [s 55](#).
 - Imposition Act imposes liability for the tax
 - Rates Act specifies the applicable rate of tax
 - Assessment Act sets out the rules for working out what is subject to tax or how to calculate the tax payable.
 - b. The Commonwealth may not give preference to any one state ie can't discriminate between States and parts of States: [s 99](#).
 - c. The Commonwealth cannot impose tax on property belonging to a state: [s 114](#).
 - d. Proposed laws imposing taxation shall not originate in the Senate (must originate in House of Representatives) and the Senate cannot amend tax laws, only suggest amendments which the House of Representatives must actually amend: [s 53](#).
- Constitution affects the distribution of taxing rights between Commonwealth and State Governments.
 - For example, customs and excise duties can only be imposed by the Commonwealth Government: [s 90](#)
 - Interpreted to exclude states from imposing taxes on goods, eg, sales taxes, GST.

Vertical fiscal imbalance:

- Vertical fiscal imbalance = means that the revenue-raising abilities of the governments do not coincide with their spending responsibilities.
- As [s 51](#) and other provisions of the constitution (such as [ss 52 and 90](#)) prescribe only limited legislative powers to the Commonwealth, Australian states have considerable obligations (like funding of schools, hospitals etc).
- The Cth collects money through taxes and distributes to the States through “tied grants” (power to distribute in [s 96 Constitution](#)).
- States like this and protects them from dealing with the politics associated with imposing taxation directly. Leave it to the Commonwealth.

Levies and charges

- Australian tax system is also a collection mechanism for other amounts payable by Australian tax residents.
- Examples:
 - Medicare levy
 - Medicare levy surcharge

- Repayment of higher education debts (Higher Education Loan Program, known as HELP).