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WEEK THREE – RESIDENCY

- Tax treatment is different for residents & non- residents
  - Residents pay tax on their worldwide income; non- residents pay tax on only their Australian-sourced income *ITAA97 s6-5, s6-10 (5) (a)*
  - Residents are liable to pay medicare levy @ 2%
  - Tax-free threshold & most tax offsets are only available to residents
  - Residents are only subject to CGT on taxable Australian property
- Four tests for individual residency:
- Test 1. *Do they ordinarily reside in Australia? → if yes, then they are a resident*
  - It is about their intention or purpose of presence, family/ business ties, social & living arrangements, maintenance & location of their assets – *Tax Ruling 98/17*
  - The period of the taxpayer's physical presence in Aus is relevant, but not everything
  - ***Joachim v FCT****– about their intention to return home that is important, not just if they are physically present e.g. taxpayer was on a Sri Lankan vessel for 316 days – his intention was still to return to Australia, so he was a taxpayer*
  - *"Physical presence & intention will coincide most of the time, but few people are always at home." ~AAT in Joachim v FCT*
  - ***IRC v Lysaght*** *– regular visits constitute residency (consistently each year)*
  - ***Levene v IRC–*** *had no fixed abode, but lived in and out of hotels in France & Monaco for majority of the year – when he has in hotels, he was still considered an ordinary resident of UK de to his habits of life, regularity of visits & "bird of passage" vibe*
- Test 2. *Domicile test*
  - A resident if their domicile (permanent home) is in Australia, unless there is a permanent abode outside of Australia – *IT 2650*
  - Meaning of permanent home is not ever lasting, just more than temporary/ transient
  - Look at intended and actual length of overseas stay – *general rule is 2 years*
  - No single factor is determinative
  - This test is for an Australian that goes overseas
- Test 3. *183 days test → if you stay in Australia continually or intermittently for > ½ year*
  - Exception – usual place of abode is outside Australia, and there is no intention to take up Australian residency
  - This test is about whether a non- resident has commenced residing in Australia
- Test 4. *Commonwealth Superannuation test*
  - If you are a member of a Commonwealth superfund, and an eligible employee, you are deemed to be a tax resident → for Commonwealth government employees
- Three tests for company residency:
- Test 1. *Were they incorporated in Australia? → if yes, then resident*
  - It doesn't matter if it carries on business overseas, is managed overseas, or is controlled by foreign shareholders
- Test 2. *Central management & control*
  - If it has its central management & control in Australia, then it is a resident
  - *Where are the high-level decisions being made? Where do the directors reside?*
- Test 3. *Control of voting power*
  - If the voting power is controlled by shareholders who are Australian residents, and they carry on business in Australia, they are a resident
- ***Permanent establishment –*** *place at or through which a person carries on any business; not a place where the person is engaged in business dealings through a genuine commission agent/ broker*
- ***Temporary residents –*** *holds a temporary visa, no Australian resident spouse; generally treated similarly to non- residents*

WEEK THREE – TAX FORMULA, RATES, OFFSETS & PAYG

- *S6-5 – includes ordinary income*
- *S4-1 income tax is payable*
- *S4-10 – describes period to pay from*

4-10 (3) Income tax payable/refundable =

((Taxable Income x Rates) – Tax Offsets) – Credits + Levies/Charges

- For an expense to be deductible, it generally requires a link between deduction & income
- Franking credit tax offset → amount of dividend distribution and franking credits both go into shareholder's assessable income
  - Shareholder is entitled to a franking tax offset, equivalent to amount of franking credits attached
  - Franking credit offsets are refundable for individuals

Low Income Tax Offset

445 - ((taxable income - $37,000) x 1.5%)

- Credits → any instalments you have already paid through the PAYG system
- Medicare levy surcharge → not liable if the taxpayer has complying private health insurance
- Subtract tax offsets after you apply the rates *– franking credits are assessable income, but the same amount is a tax offset*

Part tax-free threshold =

$13,464 +

($4,736 x number of months in the year the individual is a Resident) / 12 mths

- Low- income tax offset – if taxable income is less than $66,667 then they can obtain a low-income tax offset with maximum of $445 – reduced if income is over $37K
- If you are a resident for only part of the year, you are only entitled to a portion of tax-free threshold – *round to the closest, e.g. 20th October – from November 10th Oct – from October*
- In most cases, tax offsets can reduce a taxpayer's liability to nil, and excess tax offsets are lost
  - Sometimes, excess offsets are refundable (e.g. franking credit), and some are transferrable to a spouse (e.g. seniors and pensioners tax offsets)
- Steps involved in calculating tax liability:
  - Calculate the taxpayer's taxable income for the year
  - Calculate the basic income tax liability on taxable income according to applicable tax rates
  - Calculate the taxpayer's tax offsets for the income year
  - Subtract the tax offsets from the basic income tax liability
- Taxable income is defined in s4-15 (1) – *Taxable income = assessable income – deductions*

WEEK FOUR – INCOME TAX PART 1

- Most income is ordinary income – *in accordance with ordinary concepts (s6-5 ITAA97)*
- Other assessable income – statutory income e.g. CGT – *s6-10*
- *What is not assessable income?*
  - *S6-20 exempt income*
  - *S6-23 non- assessable non- exempt income (NANE)*
- *S6-25 – reconciliation rules – where an amount may be included as either ordinary or statutory income, treat it as statutory income*
- ***Doctrine of constructive receipt –*** *you are taken to have received an amount as soon as it is applied or dealt with in any way on your behalf* – as soon as it has been dealt with per the taxpayer's instructions (not necessarily when it has been received) → prevents people from avoiding deriving income by directing it to others- *s6-5(4) and 6-10(3) ITAA97*
- No single characteristic is decisive – look at all characteristics of ordinary income

Parson's Proposition on income from personal exertion (characteristics of ordinary income)

1. An item of income is derived when it has 'come home' to the taxpayer → doesn't matter if it was obtained illegally or immorally – *presence of this does not preclude derivation*