

TABL2751 Business Taxation – Comprehensive DISTINCTION Notes

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\* Note – These notes were compiled with reference to the prescribed readings from the course textbook, lecture slides and tutorial discussions.

## (W1) Introduction to Tax

Governments impose taxation in order to raise revenue which is used to provide goods and services to the public.

- **Social goods** – joint (non-rival) consumption and non-excludable e.g. street lighting, footpaths, roads
- **Merit goods** – benefits user, positive externalities (benefits others – improved contribution to economy) e.g. health, education

A ‘good’ tax should be:

- Simple: low compliance and administrative costs
- Equitable
  - **Vertical equity** – taxpayers in a different position should be treated differently (e.g. progressive tax rates)
  - **Horizontal equity** – like taxpayers should be treated alike (e.g. all income sources taxed at the same rate – excl. CGT)
- Efficient: tax shouldn’t affect decision making (neutrality) – however **sin taxes** placed on alcohol and tobacco control behaviour

Federal income tax was introduced in Australia in 1915. Taxation is a **concurrent power** meaning both State and Federal govt can tax.

- Commonwealth (Federal) tax – Administered by ATO e.g. Income tax (direct tax) and GST (indirect tax)
- State taxes – Administered by Office of State Revenue (OSR) e.g. indirect taxes such as land tax, stamp duty, payroll taxes

Sources of tax law:

- **Statute** (legislation):
  - ITAA36, ITAA97, Income Tax Rates Act 1986 (Cth), FB Tax Assessment Act 1986 (Cth) [FBTAA], A New Tax System (GST) Act 1999 (Cth) [GST Act], Taxation Administration Act 1953 (Cth)
- **Case law** – judgments are binding on lower courts (precedent)
  - Lodge objection with ATO → Administrative Appeals Tribunal → Federal Court → Full Federal Court (3 Judges) → HCA (if special leave granted – 7 judges)
- **Tax Office Rulings** – informal source of law (ATO’s interpretation of the law)
  - Different types of rulings – public/private/product/oral

Income tax is payable by each individual and company regardless of residency status (s4-1 ITAA97).

- Residents (for tax purposes) are taxed on worldwide income (s 6-5(2) ITAA97)
- Non-residents (for tax purposes) are taxed on Australian sourced income s 6-5(3) ITAA97)
- Different tax rates apply to residents and non-residents

Tax year is from 1 July – 30 June each year.

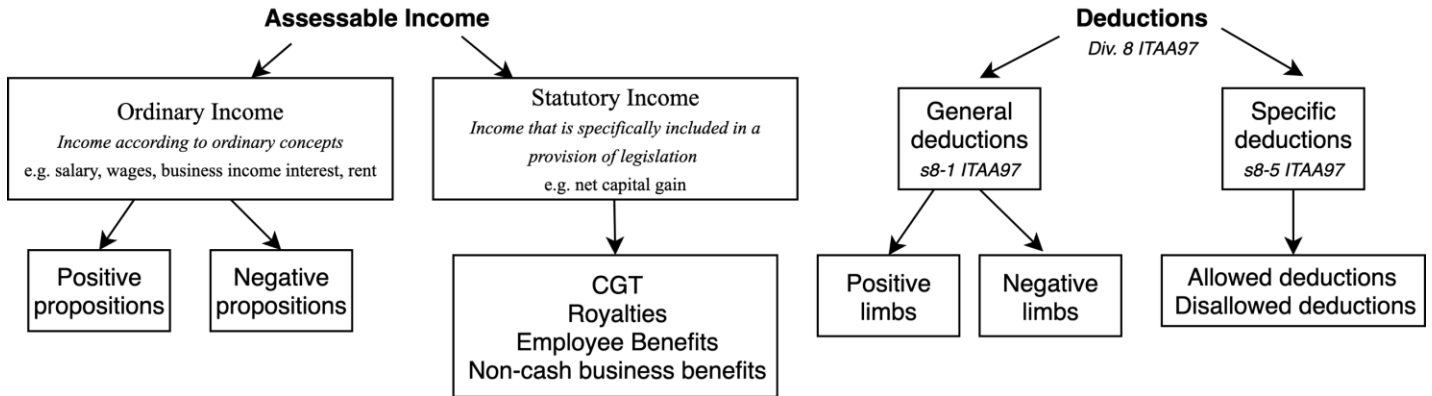
**Income tax = [Taxable Income x Tax Rate] – Tax offsets** (s 4-10 ITAA97)

➤ Assessable income – Deductions (s 4-15 ITAA97)

### (W3) Income

*Assessable income = ordinary income + statutory income*

- If an item is both ordinary and statutory income, the more specific provision will prevail (s6-25 ITAA97)



#### Positive propositions

- To be income an amount must be **beneficially derived**
  - Requires right of use and enjoyment (realised gain)
- Income is judged from the **character it has in the hands of the recipient**
  - *Federal Coke*: compensation for cancelled contract is not income
- Income generally exhibits **recurrence**, regularity and periodicity
- Amounts **derived from carrying on a business** are income
  - *FCT v Dixon*: regular payments accounting for income discrepancy are assessable income
  - *FCT v Stone*: sponsorship money is AI
  - *Kelly v FCT*: best & fairest award is income because it is directly related to employment
  - *FCT v Whitfords Beach*: Profits from sale of land are ordinary income because more than mere realisation
  - *FCT v Myer Emporium*: Lending money to receive future lump sum is income because of profit making motive
- Amounts **derived from property** are income – e.g. interest, rent, royalties (compensation for use of property), dividends
- Amounts **received as substitutes or compensation for lost income** are income

#### Negative propositions

- Amounts not **convertible into money** are not ordinary income
  - *Cooke & Sherden*: holiday bonus not income because not convertible to money
  - *Tennant v Smith*: income is money coming in; NOT what is saved from going out
  - *Payne v FCT*: frequent flyer points are not income as they are not convertible
- **Capital amounts** are not ordinary income - can only be assessed through statutory provisions
  - Process/structure: *Sun Newspapers*: noncompete payment is capital because it relates to business structure not operation
  - Mere realisation: *California Copper Syndicate*: sale of land is income due to clear profit motive