CHAPTER 1
SOURCES OF TAXATION LAW

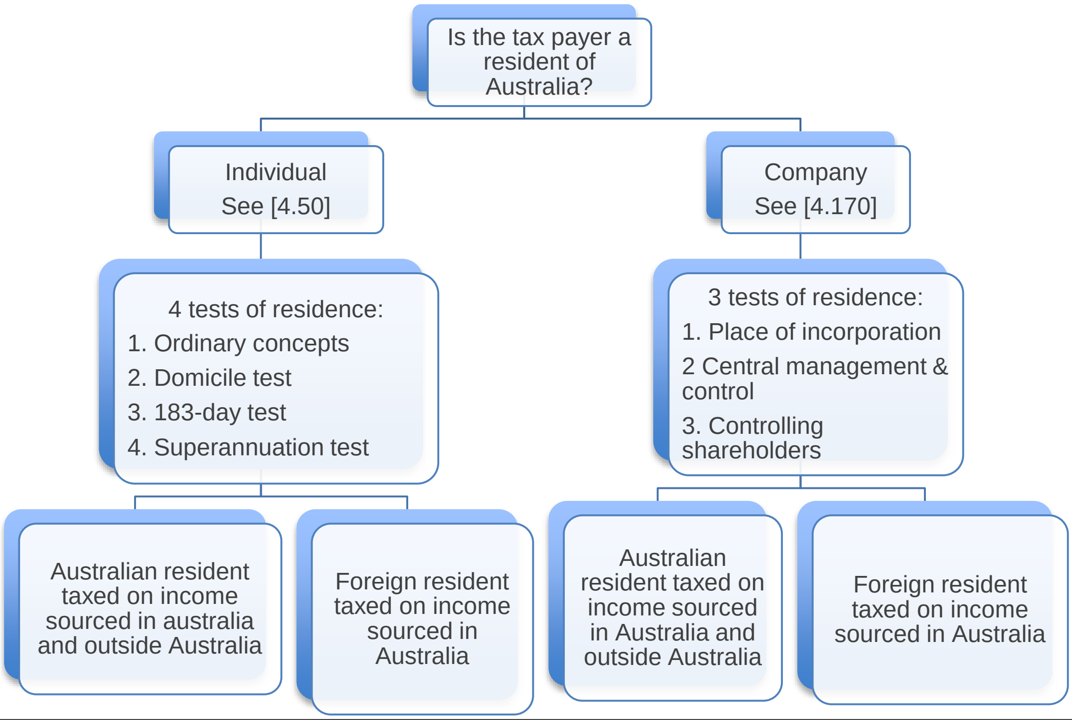
- An important difference between tax law advice and accounting advice is the relative level of certainty.
- There are 5 key technical differences between tax law and accounting: (page 7)
    1. Not all receipts are recognised for tax purposes;
        - If a receipt is genuinely unexpected or unusual, the *accountant* will note that it is unanticipated or one-off receipt so readers of the accounts are alerted to the fact that the receipt should not be regarded as typical and likely to be repeated each year.
        - In contrast, some receipts are not recognised at all for *tax law* purposes while others are recognised but partially excluded from tax accounts.
    2. Income tax law distinguishes between capital and revenue expenses;
        - *Accounting* principals recognise all outgoings of a business; all expenses are recognised and recorded as deductions in financial accounting, but if an expense yields a benefit that lasts beyond the accounting period, the outgoing will be partially or fully offset by the inclusion of a new asset in the accounts.
        - In contrast, *tax law* distinguishes between two broad categories of expenditures: *'revenue' expenses & 'capital' expenses*.
    3. Income tax law excludes some income and expenses for policy reasons;
        - In terms of the profit and loss account, *accountants* pursue a single objective of measuring net gains in the accounting period.
        - Politicians to achieve a wide variety of social and economic objectives in contrast, use the tax law.
        - For example, while an accountant will record all income and receipts for financial accounting purposes, the tax law explicitly exempts some types of otherwise assessable receipts for policy reasons.
    4. Income tax law ignores some transactions on the basis of anti-avoidance provision;
        - Financial *accounting* measures net profits on an entity-by-entity basis. If one entity pays an excessive amount to another related entity, accounting will ignore the relationship between the two entities.
        - *Tax law* may ignore the transfer, however, if it falls afoul of an anti-avoidance rule that seeks to prevent taxpayers shifting profits from one entity subject to a high tax rates to a related party subject to low tax rates.
    5. Timing rules differ in income tax law and accounting principals.
        - Financial *accounting* principals roughly align with a business' economic position. Receipts are recorded on an accrual basis and offset by provisions if the receipts relate to future obligations. Outgoings are similarly recorded on an accrual basis and offset by assets if assets are acquired as a result of the expenditure.
        - In contrast, income *tax law* measures receipts when they are 'derived' and evaluates expenses when they are incurred.

Sources of tax law – page 12

- Tax is sourced from 3 main sources:
    1. Parliament: Create legislation (Income, GST, FBT Taxing Acts)
    2. Courts: Cases (Scott's case, Payne etc)
    3. ATO - i.e., the Commissioner – Rulings
        - There's 2 different types of rulings by the commission:
            - Private rulings – taxpayers who are genuinely unsure how the law will apply to a particular transaction can protect themselves from the risk of a penalty by asking the Commissioner for a 'private ruling' on how the ATO would apply the law to that transaction.
            - Public ruling – the Commissioner often issues public rulings, which set out more generally to the ATO's views on the way in which a provision of an Act should be applied to determine the extent of tax liability. A public ruling may also be used to explain which factors will be taken into account by the Commissioner when exercising a discretion provided in the tax law and how those factors will affect the decision the Commissioner is empowered to make.

CHAPTER 4
RESIDENCE & SOURCE

<u>Legislative framework – page 83</u>



- The jurisdiction or power to tax is contained in *Div 6 ITAA 1997*:
  - **<u>S 6-5(2)</u>** taxes Australian residents on their worldwide income
  - **<u>S 6-5(3)</u>** taxes non-residents on their Australian sourced income (or any other income included by specific provision)
- Tax Rates differ according to whether the taxpayer is an Australian Resident or Foreign Resident, the following applies to foreign residents:
  - No tax free threshold for foreign residents
  - Foreign residents initially pay tax at a higher rate
  - Foreign residents denied certain tax offsets
  - Foreign residents do not pay Medicare levy
- *Section 995-1 of ITAA 1997* provides that Australian resident means a person who is a resident of Australia for the purpose of the *ITAA 1936*.
- Per **<u>s 6 (1)</u>** of *ITAA 1936* contains the definition of a *'resident'* containing 4 separate and exhaustive tests for determining whether an individual is a resident of Australia for taxation purposes. It provides that:
  a) A person, other than a company, who resides in Australia and includes a person:
     I. Whose domicile is in Australia, unless the Commissioner is satisfied that his permanent place of abode is outside Australia;
     II. Who has actually been in Australia, continuously or intermittently, during more than one-half of the year if income, unless the Commissioner is satisfied that his usual place of abode is outside Australia and he does not intend to take up residence in Australia;

III. Who is:
    A. A member of the superannuation scheme established by deed under the *Superannuation Act 1990; or*
    B. An eligible spouse for the purpose of the *Superannuation Act 1976*; or
    C. The spouse, or a child under 16, of a person covered by sub-subparagraph (A) or (B).

- A taxpayer need satisfy only one test to be considered a resident of Australia.
- The 4 tests (1 common law test and 3 statutory tests) can be summarised as follows:
    1. A person who resides in Australia;
    2. The domicile test – permanent place abode;
    3. The 183-day test;
    4. The superannuation test.

Residence according to ordinary concepts – page 85

- The question of whether a person resides in Australia is a question of fact or degree: **Miller v FCT (1946) 73 CLR 93.** The leading authority on what constitutes ordinary residence is the UK case **Levene v IRC [1928] AC 217.**
    - Taxpayer had always been a resident of the UK;
    - Retired and sold his house;
    - For the prior years, he lived in hotels in the UK and abroad;
    - During this time he spent 4 or 5 months a year in the UK to obtain medical advice, visit relatives and attend religious ceremonies;
    - The court held that until the taxpayer took out a lease on a flat in Monte Carlo, he was a UK resident;
    - Significant ties to with the UK and temporary nature of time abroad were taken into consideration.

Domicile test – page 90

- The *domicile test* provides that a person is a resident of Australia if his or her domicile is in Australia, unless the Commissioner is satisfied that the person has a permanent place of abode outside Australia.
- The domicile test generally applies to outgoing individuals where that person moves overseas, but does not change his or her domicile.
- *Domicile* is a legal concept to be determined according to the *Domicile Act 1982 (Cth)* and the common law rules. It broadly means the jurisdiction with which a person has permanent legal ties.
- As this test generally applies to individuals leaving Australia, the person will have an Australian domicile. Therefore, the individual will be a resident of Australia only if it is demonstrated that he or she does not have a 'permanent place of abode outside Australia'.
- **FCT v Applegate (1979) 9 ATR 899**
    - Taxpayer was sent by employer to Vanuatu to open and operate a branch.
    - Gave up leave on flat, leaving no assets and left Sydney with his wife.
    - Obtained residency status in Vanuatu as well as a lease on a house.
    - Returned to Australia 2 years later ill to seek medical treatment. Subsequently the Vanuatu office was closed.
    - While no time frame was specified, the taxpayer and his employer intended for his return.
    - The court ruled that the taxpayer did have a permanent place of abode outside Australia and was not a resident.

- **FCT v Jenkins (1982) 12 ATR 745**
  - A bank employee was transferred to Vanuatu for 3 years.
  - Prior to leaving, the taxpayer was unsuccessful in selling the family home.
  - He maintained a bank account in Australia but cancelled his health insurance policy.
  - After 18 months he was sent back to Australia.
  - The court determined that using the facts in *FCT v Applegate (1979) 9 ATR 899*, the taxpayer had a permanent place of abode outside Australia.
- In response to *FCT v Applegate* and *FCT v Jenkins*, the Commissioner issued **Ruling IT 2650**, setting out the various factors which will be taken into account in ascertaining whether a taxpayer has a permanent place of abode outside Australia. Factors considered relevant include:
  - The intended and actual length of the taxpayer's stay;
  - Whether the taxpayer intended to stay in the overseas country only temporarily;
  - Whether the taxpayer has established a home;
  - Whether any residence or place of abode exists in Australia;
  - The duration and continuity of the taxpayer's presence in the overseas country;
  - Durability of presence here (i.e., whether maintain Australian bank accounts, whether receive family allowance payments, where kids educated, etc)

183-day test – page 93

- This test that applies to incoming individuals.
- The 183-day test requires physical presence in Australia for more than one-half of the year.
- Under the test, an individual will be considered a resident of Australia where he or she is in Australia for more than 183 days, whether continuously or intermittently, unless the Commissioner is satisfied that the person's usual place of abode is outside Australia and that he or she does not intend to take up residence in Australia.
- As **Ruling TR 98/17** (at paras 37-38) explains, "in most cases, if individuals are not residing in Australia under ordinary concepts, their usual place of abode is outside Australia." However, "there may be situations where an individual does not reside in Australia during a particular year but is present in Australia for more than one-half of the income year (perhaps intermittently) and intends to take up residence in Australia."

Superannuation test – page 94

- The superannuation test applies to Commonwealth superannuation fund members and their families.
- This test applies to relevant individuals who generally reside in Austral but leave temporarily and are not actually in Australia during the income year.
- **Subdiv 768-R**: the objective is to provide temporary residents with tax relief on most foreign sourced income and capital gains. As such, where a taxpayer is an individual who is a resident of Australia for tax purposes but qualifies as a temporary resident, he or she generally will not pay tax on his or her foreign income. A temporary resident will pay tax at the Australian resident income tax rates.
- Taxpayers are temporary residents if:
  - They hold a temporary via;
  - They are not Australian residents;
  - Their spouse is not an Australian resident.

Residence in Australia – companies – page 96

- The definition of a "resident" in **s 6 (1)** of *ITAA 1936* provides that a company is a resident of Australia if the following 3 tests are passed:
    1. The place of incorporation;
        - A company incorporate in Australia is automatically a resident of Australia regardless of any factors.
    2. The place of central management and control test;
        - A company is a resident of Australia if it carries on a business in Australia and has its central management and control in Australia.
        - The Commissioner's approach to the central management and control test is contained in **Ruling TR 2004/15**. In the ruling, the Commissioner provides guidelines for determining whether a company that is not incorporated in Australia is a resident of Australia.
        - In **Ruling TR 2004/15** the Commissioner draws a distinction between a company with operational activities and one which is more passive in it's dealings. A company with major operation activities, such as trading, the provision of services, manufacturing or mining activities, carries on business where those activities take place. This will not necessarily be where the central management and control is located.
        - The central management and control of the company will be the location of the actual decision making, rather than the formal execution of the director's resolutions: **Malayan Shipping Co Ltd v FCT (1946) 71 CLR 156.**
    3. The controlling shareholders test;
        - A company is a resident of Australia where its voting power is controlled by Australian residents and it carries on business in Australia.
        - The control of voting power appears to refer to the control of majority, i.e. more than 50% of the voting power at general meetings.
        - A shareholder is a person who is entered on the company's register or is absolutely entitled to be registered. It does not look through to the ultimate beneficial owner of the shares: **Patcorp Investments Ltd v FCT (1976) 140 CLR 247; 6 ATR 420.** The residence of individual shareholders is determined by reference to the tests of residency.

Source – page 99

- Different source rules have been adopted for different classes of income
- Income therefore must first be classified into its relevant class
- In **Nathan v FCT (1918) 25 CLR 183** it was held that source is "something which a practical man would regard as a real source of income" and a "practical, hard matter of fact"

- The following are categories of income:
    - Sale of goods – place where activities take place
    - Sale of real property – physical location of land
    - Sale of (intangible) property – multiple factors – e.g., place of contract, place of negotiation, place of payment
    - Services – place of performance; or place of contract: **FCT v French**
    - Interest – where contract made or money advanced: ***CIR v Philips Gleilampenfabrieken***
    - Dividends – location of profits from which dividends paid: **Esquire Nominees v FCT**
    - Royalties – **s 6 (C)** *ITAA 36* deems outgoing royalties to all be Australian, otherwise location of industrial or intellectual property

CHAPTER 5
ASSESSABLE INCOME

- ITAA97 **s 3-5 (1)** – Income tax is payable for each year by each individual and company, and by some other entities.
- ITAA97 **s 4-15 (1)** – Taxable Income = Assessable Income – deductions.
- Assessable income [AI] consists of **ordinary** income [OI] and **statutory** income [SI]: **s 6-1 (1)** ITAA97
- AI = OI **(s 6-5)** + SI **(s 6-10)** – Exempt Income **(s 6-20)**
- ITAA97 **s 6-5**: Your assessable income includes income according to ordinary concepts, which is called ordinary income.
- Your assessable income also includes some amounts that are not ordinary income: **s 6-10 (1)** ITAA97
- Amounts that are not ordinary income, but are included in your assessable income, are called statutory income: **s 6-10 (2)** ITAA97
- Where the same gain can be classified as either ordinary or statutory income, then it will be included only once in assessable income: **s 6-25 (1)** ITAA97
- The following are classic examples of overlapping categories:
  1.Employment allowances or benefits **(s15-2)**
    - ITAA97 **s 15-2** (formerly ITAA36 s 26(e))
    - ITAA97 **s 15-2 (1)**: "Your assessable income includes the value to you of all allowances, gratuities, compensations, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you"
    - ITAA97 **s 15-2 (2)**: "this is so whether the things were provided in money or in any other form"

  2. Profit-making undertaking **(s15-15)**
    - ITAA97 **s 15-15**: your assessable income includes profit arising from the carrying on or carrying out of a profit-making undertaking or plan: **s 15-15 (1)**
    - Only applies if profit not ordinary income and property acquired before 20 September 1985: **s 15-15 (2)**
- Other statutory income includes:
  - Capital Gains Tax
  - Car expense reimbursements **(ITAA97 s26(eaa))'**
  - Return to work payments **(ITAA97 s15-3)**
  - Accrued leave transfer payments **(ITAA97 s15-5)**
  - Bounties and subsidies **(ITAA97 s15-10)**
  - Interest on overpayments and early payments of tax **(ITAA97 s15-35)**
- There are 3 categories of Ordinary Income
  1. Income from personal services and employment – Ch 6
  2. Income from business – Ch 8
  3. Income from property – Ch 9
- Capital gains are not ordinary income
- There are 2 essential prerequisites of a receipt being ordinary income, they are:
  1. Cash or convertible to cash
     - If a gain is cash or cash convertible, it might be ordinary income. On the other hand, if it is not cash or cash convertible, then it definitely will not be ordinary income: **FCT v Cooke and Sherden (1980) 10 ATR 696**
     - Courts have said that if it is illegal to sell a good, then receipt of that good cannot be regarded as cash convertible: **Payne v FCT (1996) ATR 516**

- **S 21 A** of ITAA 1936 deems non-cash business benefits as being cash-convertible. This means that for business taxpayer's benefits can be assessable income despite not being cash or cash-convertible.
- ITAA 36 **s 21 A (3)** – a non-cash business benefit is income derived by the taxpayer.
- ITAA 36 **s 21 A (4)** – a non-cash business benefit is income derived by a taxpayer is income.
  - Had the case of **FCT v Cooke and Sherden** been decided after **S 21 A** was introduced, then it is very likely that the court would have decided that the free holiday was assessable as this decision would deem it to be convertible to cash.
  - **S 21 A** relates to non-cash business benefits whereas **S 15-2 (1)** is for individuals.
- **FCT v Cooke and Sherden (1980) 10 ATR 696**
  - ⇒ Taxpayer sold drinks 'door-to-door';
  - ⇒ Taxpayer received a free (non-transferrable) holiday for meeting quota;
  - ⇒ Court deemed that holiday was not ordinary income as it wasn't cash convertible.

2. A real gain to the tax payer
   - If a receipt is a genuine gain (i.e. the taxpayer is better off), then it could be ordinary income. But if it is not, then it generally will not be ordinary income: **Hochstrasser v Mayes [1960] AC 376**
     - Taxpayer's employer required him to move cities;
     - Taxpayer sold his house, at a loss;
     - As a result, employer reimbursed him for the loss;
     - Court deemed the payment was not assessable because it wasn't a real gain as it was merely compensation for a work-related expense.

- There are 6 characteristics in identifying ordinary income, they are as follows:
  1. Regular/periodic – a gain that is regular or periodic is more likely to be ordinary income.
     - The cases **of FCT v Blake (1984) 15 ATR 1006** and **FCT v Harris (1980) 10 ATR 869** involved near identical facts – except that in **FCT v Blake** the receipt was regular while in **FCT v Harris** it was regarded as a one-off. Consequently, in **FCT v Blake**, the court held that the receipt was of an income nature, whereas in **FCT v Harris** the court held that it was not ordinary income but capital.
  2. Flow – this means that income must have a nexus with an earning source and able to be severable from that source.
     - The concept of 'flow' is articulated in a paragraph from a US judgement **Eisner v Macombe 252 US 189 (1920),** where the concept of flows was expressed in terms of fruit and trees. Contrarily, **Keily v FCT (1983) 83 SASR 494**, where pension held to be ordinary income because regular, expected and relied upon despite lack of flow.

3. Compensation – takes on the character of the loss being compensated.
    - Refer to **Hochstrasser v Mayes [1960] AC 376.**
4. Legality of receipts – the fact that a receipt is from an illegal activity does not prevent it being assessable.
5. Constructive receipt – if someone is entitled to receive income, but arranges to have someone else receive it, then the person originally entitled to receive the income has constructively received it.
    - **Federal Coke Co Pty Ltd v FCT (1977) 7 ATR 519**
        - ⇒ Bellambi (parent) owned Federal Coke (subsidiary) who was a supplier to Le Nickel;
        - ⇒ Price decline for coke since the contract price;
        - ⇒ Le Nickel wished to be released from contract;
        - ⇒ Le Nickel paid compensation to Bellambi;
        - ⇒ Bellambi returned moneys as they were advised it would be treated as assessable income;
        - ⇒ Le Nickel then paid compensation to Federal Coke;
        - ⇒ It was not deemed assessable under Federal Coke by the courts as there's no contract;
        - ⇒ Furthermore, the courts ruled that compensation is assessable in Bellambi's hands as it was received through constructive receipt.
    - ITAA97 **s 6-5 (4)** – in working out when ordinary income has been derived, you are taken to have received the amount as soon as it is applied or dealt on your behalf or as you direct.
    - ITAA97 **s 6-10 (3)** – if an amount would be statutory income apart from the fact you have not received it, it become statutory income as it is applied or dealt with in any way on your behalf or as you direct.
6. Principal of mutuality – funds given to a club/association from its members and the refund of those fees back to the members is not assessable because there is no real gain.
    - **RACV v FCT (1973) 4 ATR 567**
        - ⇒ RACV offered services such as driving lessons, breakdown assistance, advertising, insurance and etc;
        - ⇒ Taxpayer argued that its receipts were not assessable under the mutuality principal;
        - ⇒ Court made a distinction of mutual and non-mutual activities;
        - ⇒ Court ruled that activities such as advertising, insurance services were non-mutual activities.

CHAPTER 25
GOODS AND SERVICES TAX (GST)

Introduction – page 774

- GST came into effect on 1 July 2000.
- GST is a tax on consumption.
- GST is administered by the ATO and distributed to the States.
- The GST is imposed on the consumption of most goods and services in Australia.
- The legislation is found in A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act).

Overview

- GST is a multi-stage tax:
  - Effectively charged on the "value added" at each stage.
  - Collected at each stage of the commercial / supply chain (with a credit mechanism to avoid cascading).
  - Borne by final consumer.
- Key terms:
  - Value = GST - exclusive.
  - Price = GST - inclusive (i.e. value + GST).
- GST is 10% on the 'value' of the supply or 1/11th of 'price'.

Registration – page 779

- Registration is required if entity:
  - "Carrying on an enterprise": **s 9-20**.
  - Annual turnover > $75K (profit entities), $150K (non-profit entities): **s 23-5**.
    - Annual turnover = GST sales revenue from carrying on enterprise: GSTR 2001/7.
    - Period includes current-year (preceding 12 months) & projected annual turnover (following 12 months).
    - **NB** Entity can still register if annual turnover < $75K BUT must carry on business.
- Entity must register within 21 days of being required to register.
  - GST registration normally entails obtaining ABN.
- An entity with annual turnover < $75,000 may choose to register for GST provided it is carrying on an enterprise.
- Taxi drivers must register for GST regardless of turnover, unless employees.

Enterprise – page 778

- Under **s 9-20** GST Act, an enterprise includes an activity or series of activities conducted:
  - In the form of a business;
  - In the form of an adventure or concern in the nature of trade; or
  - In the form of leasing, licensing or other grant of an interest in property on a regular or continuous basis.
- Exclude certain activities under **s 9-20 (2)**, including:
  - Provision of labour as an employee;
  - Private recreational pursuits;
  - An individual or partnership without a reasonable expectation of profit or gain.

Taxable supply – page 780

- Taxable supplies create the obligation to pay (and charge) GST.
- A taxable supply arises under **s 9-5** if an enterprise:
  - Makes a supply;
    - **S 9-10** GST Act defines supply as any form of supply whatsoever and specifically includes:
    - A supply of goods;
    - A supply of services;
    - A provision of advice or information;
    - A grant, assignment or surrender of real property;
    - A creation, grant, transfer, assignment or surrender of any right;
    - An entry into, or release from, an obligation to do anything, to refrain from an act or to tolerate an act or situation.
      - **FCT v Reliance Carpet Co Pty Ltd (2008) 68 ATR 158**
        - The taxpayer granted the purchaser an option to buy commercial property in Victoria;
        - The purchases exercised the option and paid a deposit;
        - Purchaser subsequently defaulted, under the agreement, the deposit was forfeited;
        - The Commissioner assessed the taxpayer for GST on the forfeited deposit under **s 99-10**;
        - The High Court found that the deposit was consideration for supply.
      - **FCT v Qantas Airways [2012] HCA 41**
        - The taxpayer was a supplier of domestic and international air travel;
        - Question arose as to whether GST was payable where a passenger books and pays for a domestic flight but subsequently cancels or does not turn up for the flight;
        - The Full Federal Court held that the relevant supply was the provision of travel and it was inappropriate to artificially split the transaction into book and travel;
        - The taxpayer was liable for GST in respect of bookings made by customers where the customer did not travel on the booked flights.
  - Supply is for consideration;
    - Consideration is defined in **s 9-15** GST Act as including any payment or any act or forbearance in connection with the supply.
      - Not limited to provision of money;
      - Anything of value, e.g. provision of goods and services;
      - Barter transactions;
      - Does not have to be voluntary.
    - Note that the consideration does not have to be voluntary or even provided by the recipient of the supply: **s 9-15(2)**.
  - Supply is made in the course or furtherance of an enterprise;
    - Any supply connected to the enterprise is made in furtherance of the enterprise.

- The supply is connected with Australia;
  - **S 9-25** details when a supply would be connected with Australia, for example where:
    - The goods are delivered or made available to the recipient in Australia;
    - The supply involves goods being removed from Australia;
    - The supply is of Australian land;
    - The supply takes place in Australia;
    - The supply is made through an enterprise carried on in Australia.
- The entity is registered or required to be registered for GST;
  - An entity that makes a taxable supply is liable to pay GST on the taxable supply: **s 9-40**.

Consequences of making a taxable supply – page 783

- The entity making the supply is liable to pay the GST on the supply: **s 9-40**.
- The GST payable is 10% of the value of the taxable supply: **s 9-70**.
- The value of the taxable supply is ten-elevenths of the price of the supply: **s 9-75**.

GST-free supply – page 784

- **Div 38** GST Act lists GST-free supplies as follows:
  - Food – fresh unprocessed, not restaurant: **s 38-A**;
    - "Food" includes food & beverages for human consumption and constituent ingredients, including spices, fats and oils.
      - Broad rule of thumb: only fresh, unprocessed food is GST-free.
    - GST-free beverages listed in Sch 2 (viz., milk products, soy milk, tea, coffee, fruit juices, drinks for infants and non-carbonated water).
    - However, food is taxable if:
      - Consumed on premises (i.e., cafes, restaurants, food courts);
      - It is hot takeaway food; or
      - Listed in Schedule 1:
        - Prepared food (e.g., quiches, sandwiches, pizzas, burgers, prepared meals but not soup);
        - Biscuits, cookies, pretzels, wafers, crackers (including mini ciabatte: **Lansell House [2011] FCAFC 6)**;
        - Cakes, cheesecakes, pavlovas, scones, pastries;
        - Chips, caviar, salted nuts;
        - Chocolate, lollies, marshmallows, popcorn, muesli and health food bars;
        - Flavoured milk, ice-cream food.
  - Health: **s 38-B**;
    - Supply of "medical service": **s38-7**.
      - Service for which Medicare is payable: **s195-1** includes:
        - Acupuncture, chiropractic, nursing, dental etc services supplied by recognised professional GST-free: **s38-10**;
        - Hospital treatment: **s38-20**, residential care: **s38-25**, etc.

- Education: **s 38-C**;
  - Supply of "education course" and any directly related administrative services: **s38-85**.
    - Pre-school, primary, secondary, tertiary etc: **s195-1**.
- Child care: **s 38-D**;
- Exports: **s 38-E**;

- Supply of "going concern" for consideration where recipient registered for GST and:
  - Parties agree in writing that supply is of going concern (i.e., supply of everything necessary for continued operation of enterprise: *Midford*; **GSTR 2002/5**).

Input taxed supply – page 789

- Input taxed supplies are also exempt from GST and are listed in **Div 40** of the GST Act.
  - Financial supplies: **s40-A**;
    - **Div 40-A** Financial supplies does NOT include:
      - Advice, health insurance, legal, accounting and tax agent services, safe custody, payroll services: Reg 40.5.13;
      - When an item is listed as both a financial supply and not a financial supply, it will not be a financial supply: GSTR 2002/2
  - Residential rent: **s40-B**;
    - **Div 40-B** Lease or rent of "residential premises" includes land or building occupied, intended to be occupied or capable of being occupied as residence: **South Steyne Hotel Pty Ltd v FCT [2009] FCAFC 155**
      - Vacant land not residential: **Vidler [2010] FCAFC 59**
      - "Commercial residential premises" (hotel, motel, etc: **s195-1**) not covered: see GSTR 2000/20 and **Sunchen [2010] FCAFC 138**: **s40-65 (2)(a)**
  - Residential premises: **s40-C**;
  - Precious metals: **s40-D**;
  - School tuckshops and canteens: **s40-E**;
  - Fund raising events by charities: **s40-F**;
- An entity that makes input taxed supplies is not required to pay GST on the making of the supply: **s 40-1**.

Creditable acquisitions – page 794

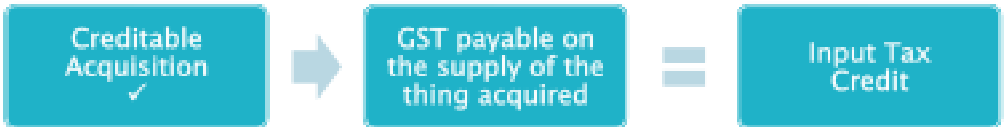
- An entity's entitlement to "input tax credits" (i.e. a refund of GST paid on acquisitions it makes) arises when the entity makes a "creditable acquisition".
- You make a creditable acquisition if under **s 11-5** if:
  - You acquire anything solely or partly for a creditable purpose;
  - The supply of the thin to you is a taxable supply;
  - You provide, or are liable to provide, consideration for the supply;
  - You are registered or required to be registered for GST;

Acquisition – page 795

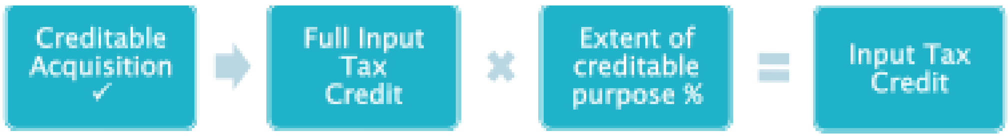
- GST Act **s 11-10** states an acquisition is any form of acquisition whatsoever and includes:
  - An acquisition of goods;
  - An acquisition of services;
  - A receipt of advice or information.

Creditable purpose – page 795

- GST Act **s 11-15** states
    - You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.
    - However, you do not acquire the thing for a creditable purpose to the extent that:
        - The acquisition relates to making supplies that would be input taxed; or
        - The acquisition is of a private or domestic nature.
- An entity that makes a creditable acquisition is entitled to input tax credits on the acquisition: **s 11-20**.
    - Acquisition used for a **fully creditable purpose**:



    - Acquisition used only **partly for a creditable purpose**:



- Acquisition will not be creditable acquisition if, e.g., non-deductible expense: **s 69-5**.
    - Penalties, recreational expenses, family maintenance expenses, entertainment expenses

Operation of the GST system

Importation – page 801

- The rules regarding importations are covered in **Div 13** GST Act and are different to the general rules regarding GST as they:
  - Apply regardless of whether an entity is registered for GST;
  - Only apply to the importation of goods; and
  - Impose the liability to pay GST on the importer, not the supplier.

Taxable importation – page 801

- Under **s 13-5**, an entity makes a taxable importation where:
  - Goods are imported; and
  - The goods are entered for home consumption (i.e. the goods are brought to Australia for use in Australia).
- Non-taxable importations under **s 13-10** are as follows:
  - Goods that would have been GST-free or input taxed supplies if they were supplies in Australia.
  - Duty free goods under customs law.
    - Duty free goods are those with a customs value of <$1,000 if imported by post or <$250 if imported other than by post.
- GST of 10% is payable on the *value* of the taxable importation: **s 13-20 (1)**.

How much GST is payable on taxable importations?

- **S 13-20** GST Act states that:
  - The value of a taxable importation is the sum of:
    - The customs value of the goods imported;
    - The amount paid for transport of the goods to Australia;
    - The amount paid to insure the goods;
    - Any customs duties payable;
    - Any wine tax payable.

Creditable importation – page 803

- Entitlement to input tax credits arises in respect of ‘creditable importations’
- A ‘creditable importation’ is made under **s 15-5** where:
    - An entity imports goods solely or partly for a creditable purpose;
    - The importation is a taxable importation; and
    - The entity is registered or required to be registered for GST.
- Consequences of making a creditable importation:
  - Input tax credits are equal to the GST-payable on the importation: **s 15-20**.

Administration – page 804

- Registered entities must complete and lodge BAS on quarterly basis: **s 27-5**.
- BAS lodged monthly if entity: **s 27-15**.
  - > $20M annual turnover;
  - Carrying on business in Australia < 3 months;
  - Has bad compliance history.
- Other entities can choose lodgement period.
- Entities generally must report GST obligations on accruals basis but can choose cash basis if:
  - Account for income on cash basis, and
  - Annual turnover < $2M: **s 29-40**; **GSTR 2000/13**.

- GST obligations are generally reported on a non-cash (accruals) basis.
    - Cash basis may be adopted where the entity's annual turnover < 'cash accounting turnover threshold' of $2 million.
- Attribution rules:

	Non-cash basis	Cash basis
GST payable on taxable supplies	Attributed earlier of: •Invoice; or •Payment	Attributed when: •Payment made
Input tax credit on creditable acquisitions	Attributed earlier of: •Invoice; or •Payment (but must have tax invoice)	Attributed when: •Payment made; and •Tax invoice received

- Tax invoices are required to claim input tax credits.
    - Attribution of input tax credits cannot occur until a valid tax invoice is held.
- A document will be a valid tax invoice if it contains certain information, such as:
    - Supplier's identity and ABN;
    - Recipient's identity or ABN where consideration > $1,000;
    - Details of the thing supplied, including quantity and price;
    - Extent to which the supply is taxable;
    - Date the document is issued.
- Tax invoices not required for low-value transactions ($75).

Adjustments – page 806

- Net amount on BAS is increased or decreased for any adjustments: **s 17-5 (2)**.
    - Adjustments occur if:
        - Supply or acquisition cancelled;
        - Change in consideration or nature of supply/acquisition.
- Adjustment is attributable to period when entity becomes aware of change.
    - Cash basis entities must adjust when consideration paid or received: **s 29-20 (2)**.
- An adjustment note (i.e., amended tax invoice) is required if > $75: **s 29-80**: **reg. 29.80.02**.

Interaction with other taxes – pages 808

Transaction	Interaction
GST taxable supplies and assessable income	Assessable income excludes GST component (s 17-5 ITAA97).
GST creditable acquisitions and deductions	Deduction is reduced to the extent an input tax credit is claimed (s 27-5 ITAA97).