# 79017 Taxation Law Final Exam Study Notes

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# 1. Overview of the Australian Taxation System

## 1.1 What is Tax?

**Elements: What is a Tax:**

1. A compulsory payment
2. For a Government purpose
3. Not a payment for services
4. Systematic

**Taxation relates to**:

'Raising money for the purposes of government by means of contributions from individual persons: ***R v Barger***

'A compulsory exaction of money but a public authority for public purposes, enforceable by law, and is not a payment for services rendered: ***Matthews v Chicory Marketing Board***

'Compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions etc.': ***Oxford Dictionary***

**Direct Tax v Indirect Tax**:

- **Direct Tax**: Economic burden of the tax is borne by the person who pays the tax (e.g. Income Tax)
- **Indirect Tax**: Person who pays the tax is able to pass on the economic burden of the tax to a third party (e.g. GST)

**Tax Policy Objectives [1-130] – [1-170]**:

- **Raise Government Revenue**
  - Public Goods
  - Social Goods
  - Merit Goods
- **Influence social outcomes**

**Tax Expenditures**:

- Can be provided in many forms (e.g. tax exemptions, deductions, tax offset, concessional tax rates, deferred tax liability)
- **Positive Tax Expenditures** provide a benefit to specified groups (e.g. GST food exemption, CGT main residence exemption)
- **Negative Tax Expenditures** impose a higher cost on specified groups (e.g. higher excise duties on certain cigarettes)
- Less transparency/accountability than direct payments

## Features of a Good Tax System:

- **Fairness/equity**: E.g. horizontal equity, vertical equity
- **Simplicity**: The costs in money, effort and stress involved in taxpayers meeting their obligations should be low
- **Certainty**: Should be able to predict with certainty, who actually bears tax burden, amount of tax liability, extent of evasion/avoidance & government tax revenue
- **Efficiency/Neutrality**: Admin/compliance costs should be minimised (admin efficiency), and impact of tax should not unintentionally influence individual or business choices (neutrality)
- **Flexibility**: Tax structure/rates should be easily adjustable, any changes should have a speedy impact on revenue
- **Evidence**: Taxpayers should have full information/know about/be aware of their tax liabilities
- **Other Criteria**: E.g. discal adequacy (should generate enough govt revenue), political acceptability, macro-economic objectives sch as boosting economic growth, lowering unemployment and inflation

## Key Terms/Structural Features of a Tax System:

| | |
|---|---|
| **Taxpayers** | The legal entities who are liable to pay the tax and from whom unpaid tax can be recovered |
| **Tax Base** | The property, transaction, activity or concept on which the tax is imposed |
| **Tax Periods** | The period in relation to which tax is paid |
| **Tax Rates** | May be single rate (e.g. flat rate) or differing rates (e.g. progressive rates) |

## 1.2 Australian Income Tax

### Key Legislation:

| Provision | Application |
|---|---|
| ***S 4-1 ITAA97*** | Imposes an obligation to tax, on taxpayers.<br>Income tax is payable by 'each individual and company, and by some other entities' |
| ***S 4-10(1)*** | **Tax Period**: The income tax must be paid for each 'financial year' |
| ***S 995-1(1)*** | **Financial year**: Defined as 1 July to 30 June |
| ***S 4-10(3)*** | **Tax Base**: Income tax = (Taxable Income x Rate) – Tax Offsets |
| ***S 4-15*** | **Taxable Income** = Assessable Income - Deductions |
| ***Assessable Income*** | • ***S 6-5***: Ordinary Income<br>• ***S 6-10***: Statutory Income |
| ***Deductions*** | • ***S 8-1***: General Deductions<br>• ***S 8-5***: Specific Deductions |

### Sources of Tax Law:

- **Legislation** (Statutes/Acts of Parliament)
- **Case Law** (Decisions made by Courts)
- **ATO 'Rulings'** (Not strictly law, however can be binding by ATO)

### Key Sources of Legislation:

| | |
|---|---|
| **Income Tax** | ***Income Tax Assessment Act 1997 Cth*** ("ITAA97") |
| | ***Income Tax Assessment Act 1936 Cth*** ("ITAA97") |
| **Fringe Benefits Tax (FBT)** | ***Fringe Benefits Tax Assessment Act 1986 Cth*** ("FBTAA") |
| **Goods & Services Tax (GST)** | ***A New Tax System (Goods and Services Tax) Act 1999 Cth*** ("GST Act") |
| ***S 51(ii) Constitution*** | Cth has power to make laws "with respect to taxation".<br>Prohibits Cth taxation laws that discriminate on States |
| ***S 90 Consitution*** | Cth has exclusive power to impose customs * excise duties |
| ***S 55 Constitution*** | Laws imposing tax shall deal only with the imposition of taxation. |

# 2. Residences and Sources; Tax Rates, Offsets and PAYG

## 2.1 Residence

**Overview**:

| | | |
|---|---|---|
| **Residents** | Residents are assessed on their ordinary income and statutory income from ALL sources | ***S 6-5(2) ITAA97; 6-10(4) ITAA97*** |
| **Foreign Residents** | Foreign Residents are assessed on ordinary income and statutory income from Australian sources | ***S 6-5(3)(a) ITAA97; 6-10(5)(a) ITAA97*** |

**Residence**:

Defined for tax purposes under ***s 995-1 ITAA97; s 6(1) ITAA36***

***s 995-1 ITAA97; s 6(1) ITAA36***
A resident or resident for Australia means:
(a) A person, who resides in Australia, includes a person:

- (ii) Whose domicile is in Australia, unless Commissioner satisfied that the person's permanent place of abode is outside Australia; or
- (ii) Who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless Commissioner is satisfied that the person's usually place of abode is outside Australia or does not intent to take up residence in Australia; or

(b) A company, which is incorporated in Australia, or which not being incorporated in Australia, carries on business in Australia and has either:

- Central management or control in Australia; or
- Voting power controlled by shareholders who are residents in Australia

**Tests for Residence**:

| **Individuals**: | **Companies**: |
|---|---|
| 1. The person resides in Australia | 1. Place of incorporation |
| 2. The persons domicile is in Australia, unless Commissioner satisfier their abode is outside of Australia | 2. Central Management & Control |
| 3. 183-day test | 3. Control of voting power |
| 4. Commonwealth superannuation test | |

### Individual Test 1 – 'Reside'

- Reside means to dwell permanently or for a considerable time
- Question of fact and degree: ***FCT v Miller***
- Look at quality/character of a person's behaviour while in Australia

***TR 98/17***:
- Taxpayer's intention or purpose of presence
- Taxpayer's family and business/employment ties
- Maintenance and location of taxpayer's assets
- Taxpayer's social and living arrangements
- Period of taxpayer's physical presence in Australia is also relevant (but not determinative)

***Joachim v FCT***:

**Facts**:
- Sri Lankan maritime employee, migrated with family to Australia in 1994
- He spent 316 days during the relevant income year outside Australia
- During time, had Australian permanent residency and had a home in Australia

**Held**:
- "Physical presence and intention will coincide for most of the time, but few people are always at home."
- "Once a person has established a home, even involuntary, a person does not cease to be resident there because he/she is physically absent

**Ratio**: The "continuity of association with the place, together with an intention to return to that place and an attitude that the place remains home."

***Levene v IRC***:

**Facts**:
- UK subject always live in London; left UK to live abroad on medical advice
- Surrendered lease on house – between 1919 and 1925 had no fixed abode
- Returned to UK for 5 months each year

**Held**:
- Taxpayer was an ordinary residency of the UK given his habits of life, regularity of visits was a "bird of passage of almost mechanical regularity"

***IRC v Lysaght***:

**Facts**:
- Taxpayer moved to Ireland, subsequently appointed to UK company & required to visit UK company for one week every month

**Held**:
- Taxpayer was an ordinary resident of UK (despite the fact he had a home in Ireland and had no established home in the UK).

### Individual Test 2 – Domicile

- An individual 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: s ***6(1)(a)(i) ITAA36***
- Defined in Domicile Act 1982 as:
    - Domicile of origin at birth
    - Domicile of choice – country where taxpayer tends to live indefinitely

***IT 2650***: Commissioners views on whether P has a permanent place of abode outside Australia

- Intended and actual length of individual's stay in Country (2+ Years substantial)
- Any intention to return to Australia at some definite point
- Establishment of a home outside Australia
- Abandonment of any residence in Australia
- Duration/continuity of the individual's presence in the overseas country
- Durability of association the individual has with a particular place in Australia

***FCT v Applegate***:

**Facts**:

- Taxpayer moved to Vila to establish an office of a Sydney law firm
- He stayed there for two years but returned on one occasion when his wife had a baby. Taxpayer become ill several years later and returned to Australia

**Held**:

- Court held that permanent does not mean everlasting/forever and is assessed objectively each year
- Taxpayer was found to have a permanent place of abode outside Australia (despite the fact he ultimately intended to Australia & did return when he became ill)

**Ratio**: What is important is assessing whether the taxpayer has abandoned any residence or place of abode he may have had in Australia

### Individual Test 3 – '183 Days'

An individual is a resident if he has "actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia": ***s 6(1)(a)(ii) ITAA36***

This assists in determining whether a person has commenced residing in Australia. Generally not relevant for taxpayers departing Australia (e.g. domicile test)

### Individual Test 4

A member of a Commonwealth superannuation fund, who is an eligible employee (e.g. Commonwealth public servants such as foreign diplomats living abroad) and the member's family are deemed to be tax residents of Australia.