Taxation Law

Contents

AUSTRALIAN RESIDENT TAX RATES 2025–26

Taxable income

- 0 – $18,200 Nil
- $18,201 – $45,000 16c for each $1 over $18,200
- $45,001 – $135,000 $4,288 plus 30c for each $1 over $45,000
- $135,001 – $190,000 $31,288 plus 37c for each $1 over $135,000
- $190,001 and over $51,638 plus 45c for each $1 over $190,000
- The above rates do not include the Medicare levy of 2%.

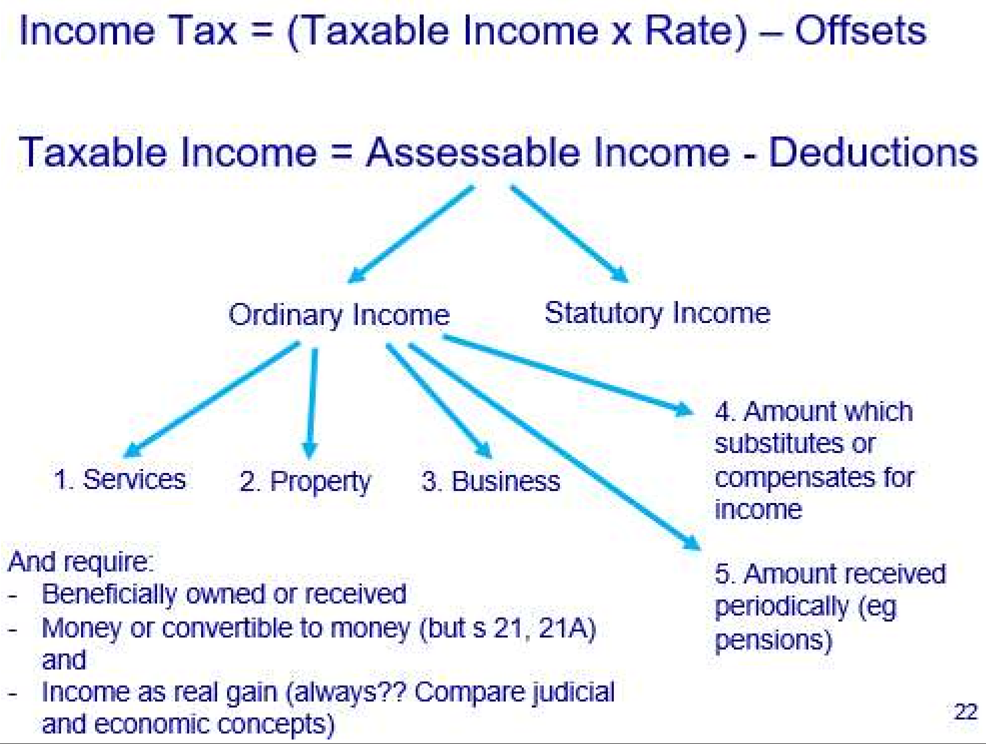
AUSTRALIAN COMPANY TAX RATE

- Full Company Tax Rate 30%
- Reduced Company Tax Rate 25%

2 Concept of Income

Overview

Basic income tax calculation
• Step 1: assessable income = ordinary income + stat. income [excl. exempt income and non-assessable non-exempt income] ss 6-5, 6-10, 6-15, 6-25 • Step 2: deductions = general + specific deductions, ss 8-1, 8-5 • Step 3: taxable income = assessable income – deductions, s4-15 • Step 4: income tax on "taxable income", s4-10 • Step 5: tax offsets, s13-1 (list) • Step 6: income tax = (taxable income x rate) - tax offsets, s4-10(3)



Ordinary Income: s6-5

Ordinary Income
ITAA 1997 s995-1: ordinary income has the meaning given by section 6-5. ***ITAA 1997 s6-5***: Your assessable income includes **income according to ordinary concepts**, which is called ordinary income What is income must be determined according to the **ordinary concepts and usages of mankind**: ***Scott v CoT per Jordan CJ***.
1. Realisation, derivation, or income as a flow
Income is generally taxed when it is **realised or derived**, meaning when it is severed from its source and available for use, not as it accrues (***Eisner v Macomber***).
Eisner v Macomber [2.50] – bonus share held to be capital because not realised • "Income" is not a gain *accruing* to capital nor a growth or increase in value; it is a gain *derived* from capital, *severed* from it, and *received by* the taxpayer for his *separate use*. • A stock dividend, unless sold, merely reflects an increase in the value of the shareholder's existing capital interest. • Any gain becomes income only upon realisation (e.g. sale of shares).
2. Income as a **real** gain
Must be an actual gain (beneficially derived by the taxpayer). Pure compensation or a saving on expenditure is generally not

income i.e. imputed income excluded. • *Tennant v Smith* [1892] AC 150 [Text 2.220]– *[Income tax] is a tax on what 'comes in' – on actual receipts…a person is chargeable for income tax…not on what saves his pocket, but on what goes into his pocket.* (at 164)
Hochstrasser v Mayes [1960] AC 376 (Text [2.80]) – pure compensation for moving home because of relocation is not income. Facts: Mr Mayes was required by his employer to relocate for work. He sold his house at a loss due to the move. His employer reimbursed (£350) him for that loss. Held – not taxable • It was compensation for a loss incurred *because of* employment, not a reward for services. • similar to compensation received for work-related injuries; but distinguished from an employer indemnifying employee's losses from the stock exchange, where the indemnity would really become a reward for services.
3. Income is generally a *product* of an earning activity, and 4. must not be capital in nature
• Income from services, and not capital (see below). • Income from property, and not capital.(see below). • Income from business, and not capital (see below). • Status of gifts/windfall gains: Generally NOT income; exceptions where the facts are such as to establish a nexus making the gift really a product of services/property/business.   o Gambling – generally seen as windfall. • competition/prizes: Generally Not income. exceptions where the prize can be seen as reward for services (e.g. appearance fee) or an incident as the taxpayer's business (See ***FCT v Stone***).
5. Income must be beneficially derived (by the taxpayer)
Income must not only be derived but must also be received beneficially by the taxpayer—that is, for their own use and benefit, not merely held or received on behalf of another (***Federal Coke***).
(a) identify the correct taxpayer
Courts have consistently emphasised that **the character of a receipt must be determined in the hands of the actual recipient,** not by reference to the intention of the payer or what the payment might have represented in someone else's hands (***Federal Coke***). whether a particular receipt has the character of the derivation of income depends upon its quality in the hands of the recipient, not the character of the expenditure by the other party: ***FCT v McNeil***
Federal Coke p53 – payments received by the subsidiary rather than the parent held not to be income • Bellambi contracted with Le Nickel to supply coke which later asked to vary the contract. Le Nickel agreed to pay $1m compensation; Bellambi redirected the payment to Federal Coke. • the court held that a $1 million payment could not be taxed as income in the hands of Federal Coke merely because it may well have been income if received by its parent company, Bellambi. The court rejected the Commissioner's argument and stressed that the proper inquiry is the nature of the receipt in the hands of the recipient.
Legislative intervention - Doctrine of constructive receipt ***s 6-5(4) and s6-10(3) of ITAA1997*** now deem income to be derived when it is applied or dealt with **on behalf of, or as directed by, the taxpayer**, even if not physically received. Bellambi would then be subject to income tax under constructive receipt; and Federal Coke might be subject to CGT (s104-155).
(b) timing – identify the taxable event
An amount must be characterised at the moment of its derivation. It is irrelevant that the amount may have a different character if derived at an earlier or later time: ***Constable***.
Constable v FCT p56 – *employer* contributions to super funds derived later held not to be income Facts: The taxpayer, Constable, was an employee of Shell. Both Constable and his employer made contributions to the super fund equaling 10% of his salary.

Constable's entitlement to the employer's contributions was conditional—he would forfeit them if he left the Co.
Due to **changes in the superannuation fund's rules**, Constable was given the option to withdraw all contributions, including:
(i) His own employee contributions
(ii) interest thereof.
(iii) the employer contributions
(iv) interest thereof.
It is agreed that (i) the employee contributions form part of ordinary income because it was paid out of income which had already been derived by Constable at the time of payment of salary.
The issue was whether the employer contribution was part of his assessable income.
Held (Majority) – No because in the year it was 'derived' it was not 'allowed, given or granted' to him.
(i) the year out? They were not "allowed, given, or granted" to Constable during the relevant tax year. The right to withdraw these amounts only arose because the fund's regulations changed. All that occurred during that year was that a future and contingent right became vested. thus, the sum represented a capital sum rather than income.
(ii) the year in? Actual payments by the employer to the fund in the year of the contribution *also NOT income*.
Not income because the money was not received by the taxpayer at the year of contribution.
Can doctrine of constructive receipt help? No because Constable was not 'presently entitled' to the money at the year of contribution. It was merely a 'future and contingent right'.
Held (Minority Webb J) – Not income because despite it was OI at the time of contribution its character changed later.
(i) the year out? Not income because the contributions to the fund were invested and thus lost their character as remuneration. When the money was withdrawn, it was no longer employment-related income but a capital sum.
(ii) the year in? Yes. the money paid into the fund by the Co was part of remuneration for services and became a 'benefit' to Constable at the time of contribution: they ceased to be the employer's property and then ensued for the employee's benefit albeit contingently.

Payne v FCT – Free airline ticket accumulated through frequent flyer scheme held NOT income
Facts: Ms Payne, a KPMG employee, accumulated **frequent flyer points** from flights taken for work and paid for by her employer. Under Qantas's frequent flyer program, she used the points to obtain **free airline tickets for her parents**.
Held: value of the tickets was **not assessable income**.
[on the timing/taxable event issue]

- It is not 'allowed, given or granted' in the relevant year: what happened was a contingent right becoming absolute (the crystallisation of the contractual entitlement): citing ***Constable***.

(c) the taxpayer must be *beneficially* entitled to the amount

Where a person receives funds as an agent or trustee, and for the benefit of another party, it is not assessable income in their hands (***Countess of Bective; Zobory***).

Countess of Bective - Not assessable income in the hands of Countess who received money as a mere trustee for her daughter
Dixon J: Their inclusion in her assessable income could be supported if the true purpose was a gift to *her* with a contingency to provide for her daughter. On the other hand, if she is not an object *intended to be benefited at all* by the provision for maintenance, the payments ought not, in my opinion, to be included as assessable income of the taxpayer.

Zobory – Interest on embezzled money Not assessable income of the thief who held the sum in CT for his victim (employer).

6. Income is money or convertible into money

Income is only treated as such when it can be valued in money or money's worth: *Tennant*.

Legislative intervention: s15-2, FBT and ss 21, 21A
If not OI, three alternative ways to tax non-cash benefits

	S15-2, ITAA 1997	FBT, FBTAA	S21A, ITAA 1936
	Your assessable income includes the value to you of all „,benefits... in relation to your employment or	Definition in s136, FBTAA	A non-cash benefit that is inconvertible to cash shall be *deemed* as if convertible.

	services		
Valuation rule	Subjective: 'value to you'	Market value	Market value: What would be the amount if the parties were trading at arm's length minus taxpayer's costs
context	Employment or services	Employment only	Business (Non – employment) only
Note	Difficult to enforce so superseded by FBT; limited scope today. Note exceptions in s15-2(3).	Only the employer is taxed. The FBT is NANE of taxpayer (s23L).	Note deduction rule in s21A(3),(4). Amount not exceeding $300 is exempt income (s23L).

Tennant v Smith – rent-free flat unable to be sold or sublet held NOT income

- Not OI.

Today, s15-2 or FBT would apply since it is an employment relationship.

FCT v Cooke & Sherden – holidays, tickets and accommodation unable to be transferred or sold held NOT income

Facts: The taxpayers were **independent contractors** selling soft drinks. They were not employees of the soft drink manufacturers but rather bought soft drinks from the company and sold them independently. The soft drink manufacturers offered free holidays to incentivise performance. The taxpayers could not sell or transfer these holiday rewards for cash.

Held:

- Not OI because not in money or convertible into money.
- s15-2 (former s26(e)) or FBT would not apply because it is not an employment context.

Today, s21A (business relationship) would apply to overcome its effect.

Payne v FCT – Free airline ticket accumulated through frequent flyer scheme held NOT income

[on the issue of money or convertible to money]

Held:

- Not OI because the reward tickets could only be used by the member or their nominees, cannot be transferred or sold.
- s15-2 (Former s26(e)) cannot help because the benefit is not given 'in relation to' her employment [see below].

Today, FBT also cannot help because it is usually hard to prove Qantas falls under para(ea): see TB194; ATO TR 99/6.

s21A also would not apply because it was a private contractual relationship between Payne and Qantas, not a business relation.

Abbot v Philbin – Call options to buy shares, despite not transferrable in itself, is held as convertible to money

Facts:

- In 1954, Abbott paid £20 for the option, which allowed him to buy shares at 68s 6d per share.
- The option was non-transferable, meaning he could not sell the option itself.
- By 1956, the market price had increased to 82s per share, and he exercised his option, acquiring 250 shares at the lower price.
- The Revenue sought to tax the difference between the market price and the option price in 1956.

Issue: Should the share option be taxed at the time it was granted (1954) or when it was exercised (1956)?

Held:

- The House of Lords ruled that the taxable event occurred in 1954, when the option was granted, not in 1956 when it was exercised.
- The option itself was a valuable right from the moment it was granted because it allowed Abbott to buy shares at a potentially lower price in the future.
- The court dismissed the argument that the option had no value because it was non-transferable—it was still economically valuable since Abbott **could exercise the options and immediately sell the shares at a profit**.
- Therefore, the Revenue could not tax the difference between the market price and the option price in 1956—if any tax applied, it would have been in 1954 when Abbott purchased the option.

7. Compensation for ordinary income is generally ordinary income

If a payment replaces something that would have been ordinary income, the payment itself generally becomes ordinary income: