Steps for Calculating Tax

1) Work out which type of payment is it?
    a. Compensation payment
    b. Periodic payment (interests, annunities)
    c. Income from service
    d. Fringe benefit (benefit given by employer to employee, non-cash)
    e. Business income (business activities, or isolated transactions)
    f. CGT
2) Assess whether it is an assessible tax?
    a. Assess whether it falls under ordinary income, if not assess whether it is captured by CGT?
    b. Whether it is exempted? Or NANE?
3) If it is taxable, calculate the amount.

Income tax = (**Taxable income** x **Rate**) – Tax offsets – Credits = **Net tax payable**
ITAA 1997 s4-10

Taxable income = Assessable income – Deductions ITAA 1997 s4-15

- **Assessable income** = Ordinary income + Statutory income
- **Deductions** = General deductions + Specific deductions

Tax rate:

For resident: with taxfree threshold Sch 7 Pt1 ITRA 1986

Resident tax rates 2025–26	
Taxable income	**Tax on this 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

Compensation Receipts

3 possibilities:
• Receipt replacing income – ordinary income
• Receipt to compensate loss to capital asset – not ordinary income – subject to CGT
  ○ Caused by personal injury – exempted in CGT s118-37(1)
  ○ Caused by destruction of capital asset – CGT Event C1 s104-20
• Allowable deductions

1. Receipt replacing income vs. Receipt to compensate for loss or damage to capital assets
    a. A receipt which is compensation for an item that would be characterised as an ordinary income Proposition 15; s15-30 ITAA 1997
    b. Salary
        i. Whether the payment is a replacement of income is determined by the form of the payment, rather than the source of calculation Phillips
        ii. Phillips: Compensation for termination of employment was held to be ordinary income, as it was <u>paid periodically</u> in a manner resembling salary, and the form of the payment (monthly) determined its character
            1. If the money is paid in a lump sum, then unlikely ordinary income
    c. Insurance/statute proceeds
        i. Whether the payment is a replacement of income is determining by characterising the terms of the Act/Policy, periodicity of payment as a supportive factor Slaven; Smith
        ii. Insurance → Where the purpose of the insurance was to fill the place of a revenue receipt, then this revenue is categorised as an income Carapark Holdings
            1. Slaven: the Motor Accidents Act describe payment as a compensation for the deprivation or impairment of earning capacity, rather than payment for loss of income. The court concluded that the compensation is for loss of capital assets despite

that the amount was calculated based on the earnings lost, thus, not ordinary income. [not ordinary income, but subject to CGT]

    a. A lump sum is not decisive. Slaven

2. Carapark Holdings: The insurance proceeds were income as it compensates for the loss of a dead employee's income-earning capacity.
3. Smith: the compensation is income as the purpose of insurance policy is to compensate for the loss of income due to the lost of earning capacity of the doctor. Paid in monthly basis is another indicator of income

d. Damages/settlements

i. Whether the payment is an income is determining by assessing its cause of action, not only look at the calculation method Sydney Refractive Surgery Centre; Spedley Securities

1. Sydney Refractive Surgery Centre: The damages were a capital receipt as the cause of action is the injury to business reputation caused by the defamation, rather than loss of specific income, despite the calculation method involves the consideration of revenue.
    a. Business reputation is a capital asset as it impacts the company's earning capacity Sydney Refractive Surgery Centre
2. Spedley Securities: The damages were a capital receipt as they compensated for the loss of business goodwill, as the cancellation of the transaction damaged the taxpayer's commercial reputation and future income-generating capacity, rather than merely replacing a specific commission.
3. Liftronic: The damages were ordinary income as they compensated for the loss of sales and service contracts caused by the supplier's defective products, which led to termination of the contracts and loss of trading income.

Capital Gains Tax

[Only applies to assets acquired after 19 September 1985]

1. There is a CGT asset of…as it falls under the definition under s108-5(1).
    a. A CGT asset is: s108-5(1)
        i. (a) Any kind of property; or
        ii. (b) A legal or equitable right that is not property
    b. Including goodwill, an interest in an asset of a partnership s108-5(2)
    c. E.g., land, building, shares, units in a unit trust, options, debts owed to you, rifht to enforce a contractual obligation, foreign currency
2. Determine the CGT Event
    a. **CGT event A1 – Disposal of a CGT asset** s104-10
        i. There is a change of ownership of… s104-10(2)
        ii. The time of event is ...[When you entered into K for the disposal; if no K, when the change of ownership occurs] s104-10(3)
        iii. Disregard CGT if acquired the asset before 20 September 1985 s104-10(5)
    b. **CGT event C1 – End of CGT Assets** s104-20
        i. The CGT asset of… is destroyed.
        ii. The time of event is ...[When you received compensation; if no, when the destroyed/lost occurred] s104-20(2)
    c. **CGT event C2 – End of an intangible CGT Assets** s104-25
        i. The intangible CGT asset of… ends by being redeemed / cancelled / discharged / expiring / abandoned / option being exercised / convertible interest being converted s104-25(1)
            1. A lease is taken to have expired even if it is extended or renewed s104-25(4)
        ii. The time of event is ...[When you entered into K; if no K, when the asset ends] s104-25(2)
        iii. Disregard CGT if acquired the asset before 20 September 1985 s104-25(5)
    d. **CGT event D1 – Creation of CGT Assets** s104-35

i. There is a creation of a legal or equitable right in another entity s104-35(1) but not if: s104-35(5)
   1. Rights arise by borrowing money from the entity 借钱给别人
   2. Rights require you to sell an asset to the entity 你签合同答应卖房
   3. Rights created are a share in a company 公司发行股票

ii. E.g., easement, create a contractual right for someone, grant an option / licence, restrictive covenant

iii. The time of event is ...[When you entered into K; if no K, when the right is created] s104-25(2)

3. Calculate the cost base
   a. Costs = the sum of:
      i. **(1) Money to buy the asset** s110-25(2)
         1. 如果没付钱/价格不合理，market price
      ii. **(2) Incidental costs** 获得资产时的其他费用 s110-25(3)

Examples: 1. Cost of transfer s110-35(3) 2. Stamp duty s110-35(4) 3. Legal fees s110-35(4) 4. Remuneration for services of surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser s110-35(2) 5. Advertising or marketing fee to find a seller/buyer s110-35(5) 6. Cost of valuation or apportionment s110-35(6) 7. Search fee s110-35(7) 8. Cost of a conveyancing kit s110-35(8) 9. Loan application fees & mortgage discharge fee s110-35(9)

         1. 但如果这些费用已经可以 tax deduction，就不能算进 cost base s110-45(1B)
      ii. (3) Costs of owning 拥有资产期间的费用 s110-25(4)

ii. GP International Pipecoaters: a taxpayer received an establishment fee from a government authority to build a plant for a pipeline project, which was held to be income as it was received as part of the contractual arrangements to perform the business, rather than a separate capital contribution.

iii. First Provincial Building Society: refunds of contributions to a contingency fund originally paid in the course of business were held to be income as they retained a real, albeit indirect, connection to the taxpayer's business activities. 要求该款项与业务之间存在"真实联系"，但这种联系可以是间接的，只要该款项是"与业务相关"的即可满足要求。

c. **Isolated commercial transaction** – one-time transaction → Profit-making undertaking or plan s15-15

   i. According to s15-15, assessable income includes profit arising from the carrying on or carrying out of a profit – making undertaking or plan.

   ii. Under the Myer Emporium principle, profit from an isolated transaction will be ordinary income where:

      1. (1) the transaction is a business operation or commercial transaction; and

         a. See above extract from TR 97/11

      2. (2) the taxpayer entered into the transaction with a profit-making purpose.

支持	不支持
• 明确计划 resale • 购买时就预期升值 • 做了 financial projections / feasibility study • 借钱投资（融资行为） • 不是自用 no personal use	• 自住房 • 兴趣/娱乐

   iii. As clarified in Westfield, it is also relevant that:

6. Revocable trusts and trusts for children – trustee is assessed at settlor's marginal rate s102 如果你建一个 trust 但你还能随时拿回钱，或给小孩避税，则直接按 settlor 的税率算，防止滥用 trust
7. Trustee liability only in representative capacity s254 trustee 交税时，只能代表信托，不是他自己的钱
8. Calculation of trust's net income
   a. By using proportionate approach from Bamford
      → 用 trust law income 来计算交税比例，再用 net income 来算要交多少税
      → Taxable income = Trust law tax proportion x Net income

假如 trustee 根据 trust deed 算下来 trust 的总收入是$300 (= rent income 150 + interest income 150 + exempt income 50 – expense 50) → trust law income ATO 的算法会忽略 exempt income，所以收入是 250 → Net income from ATO perspective **Proportionate approach:** 如果 Beneficiary A 应获得其中的$100, Beneficiary B 获得剩下的$200, 则: A entitlement = 100/300 = 1/3; B entitlement = 200/300 = 2/3 [用 trust law income 来算] A's taxable income = 250 x 1/3; B's taxable income = 250 x 2/3 [用 net income 来算]

9. Trust loss: trust losses can be carried forward and offset against the trust's assessable income in future years. Sch2F ITAA1936

a. A distribution is frankable to the extent that it is not unfrankable under s202-45. S202-40

b. 默认可以 frank unless 被列入禁止名单中 s202-40. List of unfrankable distributions: s202-45

   i. Return of capital 把股东原本投入的钱还回去

   ii. Distribution regarding non-equity share (debt per Div974)直接从公司拿钱（既不是工资也不是正式贷款）

   iii. Deemed dividends under Div7A/s109 (no deduction) 债务

3. <u>(c) The entity allocates a franking credit to the distribution</u>

iii. The **maximum** franking credit amount for a particular distribution = Amount of distribution x [corporate tax rate/(1-corporate tax rate)] s202-60

   1. I.e., For large corporates, **max credit** = Amount of distribution x 30/70

iv. **Minimum** franking credit: All distributions made in the period must be franked to the same extent as the first distribution s203-25

   1. Franking period = Financial year in AU

v. The company <u>may choose the amount to frank</u> a distribution up to the maximum franking amount. Distributions can be fully franked, partially franked, or unfranked

Example: 一家公司 net income = 100, tax rate 30%, 交完税后剩 70 net profit. 公司发了 70 的 dividend 以及 fully franking credit, 则: Distribution of net profit = 70; Gross up for franking credit = 30 <u>Total assessable income = 70 + 30 = 100</u> Assume shareholder’s tax rate = 47%, thus Tax payable = 100 x 47% - 30 franking credit = 17 Alternatively, assume shareholder’s tax rate = 19%, thus Tax payable = 100 x 19% - 30 = -11, which means ATO would refund 11 to shareholder

iii. 发放 dividend 后，不同股东如何缴税

Australian resident company's distributed income	Resident shareholder	Non-resident shareholder
Australian-sourced (franked*)	Taxed on receipt but receive franking credits	No withholding tax, franking = final tax
Australian-sourced (unfranked)	Taxed on receipt	Withholding tax
Foreign source (franked (Australian CIT paid))	Taxed on receipt but receive franking credits	No withholding tax, franking = final tax
Foreign source (unfranked, because exempt or FTO)	Taxed on receipt but no franking credits (for foreign tax pd)	Withholding tax (unless CFI)

1 – 澳洲公司赚 100，交税 30，发 70 dividend & 30 franking credit

Resident: ATO 会认为 AI = 100 = 70 收到的 dividend + 30 franking credit

Non-resident: No Dividend Withholding Tax, 完全不交税

2 - 澳洲公司发 100 dividend，没有 franking credit

Resident: ATO 会认为 AI = 100 收到的 dividend

Non-resident: 澳洲会要求交 Dividend Withholding Tax，所以交给 ATO 100 dividend x DWT% tax

3 – 澳洲公司在美国赚 100，带回澳洲，交税 30，发 70 dividend & 30 franking credit

Resident: ATO 会认为 AI = 100 = 70 收到的 dividend + 30 franking credit

Non-resident: No Dividend Withholding Tax, 完全不交税

4 - 澳洲公司在美国赚 100，带回澳洲, 享受债务豁免，公司发 100 dividend，没有 franking credit

Resident: ATO 会认为 AI = 100 收到的 dividend

Ethnical Conduct and Rules To Counter Tax Avoidance

Tax Avoidance	Tax Planning	Tax Evasion
To be discouraged via monetary penalties	Legitimate	Criminal behaviour – deliberate fraud

General Anti-Avoidance Rule – GAAR

If there is a scheme, having regard to the matters in s177D, gives rise to a tax benefit and the sole or dominant purpose of entering into or carrying out the scheme is to obtain that tax benefit, the Commissioner may cancel the tax benefit pursuant to s177F.

1. **A scheme**
    a. A scheme includes: s177A(1)
        i. (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
        ii. (b) any scheme, plan, proposal, action, course of action or course of conduct.
    b. May focus on small part of transaction that is part of overall transacrion that has commercial legitimacy Hart ATO 不一定要把整个商业安排当作 scheme, 可以只挑出其中产生税务利益的部分
2. **It secures a tax benefit**
    a. E.g., non-inclusion of income, creation of a deduction, access to a tax credit
    b. Tax benefit includes: s177C
        i. <u>Amount not included in TP's AI</u> for income year 收入没有被纳入 AI
        ii. <u>Deduction allowable</u> to TP in relation to income year where that deduction would not have been allowable if the scheme had not been carried out 获得额外的 deduction