TAXATION and REVENUE Case notes

1. General principles 2
2. Income from personal services 16
3. Income from property 25
4. Income from Business 31
5. Capital Gains Tax 39
6. Allowable deductions 43
7. Taxation of Companies and Shareholders 56
8. Partnerships 61
9. Trusts and the Taxation of Children 64
10. Goods and Services Tax 68
11. Returns, assessments, Objections and Appeals 74
12. Collection and Recovery 83
13. General Anit-avoidance Provisions and Ethics 87

FREE SAMPLE | LPAB12 Taxation: Case Notes | Sample page 1 of 4 | Full version: 88 pages

1. General principles

Case	Facts	Rule
Legislative Framework		
Income Tax Assessment Act 1997, Chapter 1 **(a) Constitutional aspects of taxation**	**Overview** • Chapter 1 of the ITAA 1997 provides the core rules for income tax and situates the legislation within the Commonwealth's constitutional power. • The constitutional validity of Commonwealth taxation legislation rests primarily on s 51(ii) of the Constitution – the taxation power – which allows Parliament to make laws with respect to taxation, but not so as to discriminate between States or parts of States. **Key Constitutional Aspects** 1. Source of Power ○ Income tax laws are enacted under s 51(ii) Constitution. ○ Must be a law with respect to taxation (tax = compulsory exaction of money, enforceable by law, for public purposes, not a penalty: *Matthews v Chicory Marketing Board (Vic) (1938) 60 CLR 263*). 2. Non-Discrimination Requirement ○ The Commonwealth cannot pass taxation laws that discriminate between States (*Fortescue Metals v Commonwealth (2013) 250 CLR 548* clarified scope). 3. Separation from Appropriation ○ Tax laws must be distinguished from appropriation laws (s 81, Constitution). Tax laws raise revenue; appropriation laws authorise expenditure. 4. No Property Acquisition Without Compensation ○ Tax laws must avoid characterisation as an acquisition of property otherwise than on just terms under s 51(xxxi) (*MacCormick v FCT (1984) 158 CLR 622*). 5. Characterisation Principle ○ Even if a law has a non-tax purpose or effect, it is valid if it can reasonably be seen as a law with respect to taxation (*Luton v Lessels (2002) 210 CLR 333*). **Significance** • Constitutional challenges to tax laws rarely succeed because the High Court adopts a broad interpretation of s 51(ii). • The ITAA operates within this framework, ensuring Commonwealth income tax is uniform, non-discriminatory, and a true tax rather than a disguised penalty.	
(b) Structure of the *Income Tax Assessment Act 1997* and relationship to the	**Purpose of ITAA 1997** • Introduced to **rewrite** the complex and outdated ITAA 1936 into **plain English** and a more logical structure. • Aim: simplify and modernise the law without substantively changing core principles. **Structure of the ITAA 1997**	

FREE SAMPLE | LPAB12 Taxation: Case Notes | Sample page 2 of 4 | Full version: 88 pages

Income Tax Assessment Act 1936	1. **Chapter 1 – Introduction** ○ Core rules and constitutional basis of taxation. ○ Defines concepts like *assessable income, deductions, taxable income, tax offsets*. 2. **Chapter 2 – Core Provisions** ○ Main rules for working out taxable income and tax payable. ○ Includes: assessable income (Div 6–20), deductions (Div 25–30), offsets, losses, etc. 3. **Chapter 3 – Specialised Provisions** ○ Deals with specific entities and regimes: companies, partnerships, trusts, non-residents. ○ Foreign income, capital gains tax (Part 3-1 and 3-3), franking, etc. 4. **Chapter 4 – Administration and Collection** ○ Cross-references to the **Taxation Administration Act 1953** for returns, assessments, objections, collection, penalties. 5. **Chapter 5 – Dictionary** ○ Consolidates definitions in a single location. **Relationship with ITAA 1936** • **ITAA 1936 remains in force**, but progressively stripped back to preserve transitional and complex provisions not yet rewritten. • **Examples of retained provisions in ITAA 1936:** ○ **Part IVA** – General anti-avoidance. ○ Company loss rules, franking credits (until rewritten). ○ Certain international tax provisions. • The two Acts are read **together as a single body of law**: ○ **ITAA 1997** → modern, principle-based provisions. ○ **ITAA 1936** → residual, often complex rules.
(c) Direct versus indirect taxation	**Overview** • The distinction matters mainly for the **constitutional validity of Commonwealth vs State taxes**. • States are **prohibited** from imposing **duties of excise** (s 90 Constitution), which are considered a type of **indirect tax**. • The High Court has developed tests to distinguish **direct** and **indirect** taxes, though the line is often blurred. **Direct Taxation** • **Definition:** A tax levied directly on a person or entity, who bears the legal and economic burden (cannot readily be shifted). • **Examples:** ○ Income tax (ITAA 1936, ITAA 1997). ○ Land tax. • **Case authority:** *MacCormick v FCT (1984) 158 CLR 622* – income tax = direct tax. **Indirect Taxation** • **Definition:** A tax imposed on transactions, goods, or services, where the legal burden falls on one party but the economic burden can be **passed on to consumers**. • **Examples:**

FREE SAMPLE | LPAB12 Taxation: Case Notes | Sample page 3 of 4 | Full version: 88 pages

	○ Goods and Services Tax (GST Act 1999). ○ Excise duties (on alcohol, tobacco, fuel). • **Case authority:** *Ha v NSW (1997) 189 CLR 465* – "excise" broadly defined as a tax on goods at any step prior to consumption; States cannot impose.
Concept of income	
Income Tax Assessment Act 1997, Division 6	• Division 6 sets out **core rules for assessable income**, the foundation for calculating taxable income. • It explains **what counts as income** and how it is included in a taxpayer's return. **Key Points** • **s 6-1**: Assessable income = ordinary income (s 6-5) + statutory income (s 6-10). • **s 6-5**: Ordinary income is income according to ordinary concepts (salary, business income, interest, rent, etc.). • **s 6-10**: Statutory income = amounts included by specific provisions (e.g. capital gains, allowances). • **s 6-15**: Exempt income is excluded from assessable income. • **s 6-20**: Non-assessable non-exempt income (NANE) is disregarded for tax purposes. **Division 6 provides the conceptual framework: taxable income = assessable income – deductions.**
Income Tax Assessment Act 1936, ss 6	• **6(1)** provides crucial definitions, including: ○ **"income tax"** = tax imposed by the Assessment Acts. ○ **"resident"** of Australia (for individuals and companies) – residency status determines worldwide income liability. ○ **"prescribed payment"**, **"exempt income"**, etc. **Residency definition is central because residents are taxed on worldwide income, non-residents only on Australian-source income.**
Income Tax Assessment Act 1936, s21	**Conversion of Non-Cash Benefits** • Provides that **non-cash benefits ("in kind" consideration)** are to be **valued at their money equivalent** and included in assessable income. • Prevents taxpayers from avoiding tax by taking goods/services instead of cash. • **Case law:** *Cooke & Sherden v FCT (1980) 10 ATR 696* – non-transferable airline tickets were not "income" under s 21, because they lacked money value to the taxpayer. **Ensures the substance of income (not its form) is taxed, upholding fairness and preventing avoidance.**
Tennant v Smith [1892] AC 150 ***Income must be money or money's worth***	A bank employee was provided with free accommodation as part of his employment. The employee did not have legal ownership or the right to sublet or otherwise profit from the property.	**Decision** The court held that the value of the free accommodation was **not assessable as income**. The employee received **no money or money's worth** — he couldn't sell, assign, or otherwise turn the benefit into cash. **Because the benefit was non-transferable and non-convertible, it did not constitute income.** **Legal Principle**

FREE SAMPLE | LPAB12 Taxation: Case Notes | Sample page 4 of 4 | Full version: 88 pages