

Taxation Law Notes

BLAW30002

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Topic 2 – Jurisdiction to Tax

[Chapter 3 (3.100 - 3.160)]

<p>Right to Tax Financial Year: 1 July – 30 June [s4-10(1), s995-1 of ITAA97]</p>	<p>1. S3-5 (ITAA97): Income Tax is payable for each year by each individual/company</p> <p>2. Can use “substituted accounting period’ as income year if allowed by commissioner [s18 ITAA36]</p> <p>3. Determining Tax Payable:</p>										
	<p>Tax Payable S4-10 ITAA97</p>	<p>Tax Payable = (Taxable Income x Tax Rate) – Tax Offsets</p>									
	<p>Taxable Income S4-15 ITAA97</p>	<p>Taxable Income = Assessable Income - Deductions</p>									
	<p>Assessable Income S6-1 ITAA97</p>	<p>Assessable income includes (s6-1):</p> <ul style="list-style-type: none"> ▪ AU Residents: All ordinary income [s6-5(2)] and statutory income [s6-10(4)] derived directly/indirectly from ALL sources, whether in/out of AU, during the income year ▪ Foreign Residents: All ordinary income [s6-5(3)] and statutory income [s6-10(5)] derived directly/indirectly from all AU sources & any other amounts specifically included, during the income year <p>Assessable Income = Ordinary Income + Statutory Income (Section 6-5) (Section 6-10) BUT NOT Exempted/NANE income (s6-15)</p>									
	<p>Deductions</p>	<p>Deductions = General deductions + Specific deductions (Section 8-1) (Section 8-5)</p>									
<p>Source & Residence (for tax purposes) [Chapter 4]</p>	<table border="1"> <thead> <tr> <th></th> <th>AU Source</th> <th>Foreign Source</th> </tr> </thead> <tbody> <tr> <td>AU Residents</td> <td>Y</td> <td>Y</td> </tr> <tr> <td>Foreign Resident</td> <td>Y</td> <td>N</td> </tr> </tbody> </table>			AU Source	Foreign Source	AU Residents	Y	Y	Foreign Resident	Y	N
		AU Source	Foreign Source								
	AU Residents	Y	Y								
	Foreign Resident	Y	N								
	<p>Test of Residency:</p>										
<p>Individuals [s6(1) ITAA36]</p>	<p>Companies [s6(1) ITAA36]</p>										
<p>“Ordinary Residence Test”</p> <p>Domicile Test</p> <p>183 Day Test</p> <p>Superannuation Test</p>	<p>Incorporation Test</p> <p>Central Management & Control Test</p> <p>Control of Voting Power Test</p>										

INDIVIDUALS:

- ‘**AU resident**’ = person who is a resident of Australia for the purposes of ITAA36: s995-1
- ‘**Foreign resident**’ = person who is not a resident of Australia for the purposes of ITAA36: s995-1
- Decided on a year-by-year basis, may be resident for only part of the year
- Can look at events after year-end to decide: ***[FCT v Applegate (1979)]***
- Can be a dual resident (*residents of 2 countries for tax purposes*) – look to tax treaty
- Status under migration law not determinative for tax purposes
- **4 Residency Tests in s6(1) ITAA36 - [OR TEST!!]:**

Only need to satisfy **one of the tests** to be a resident for tax purposes. If don’t satisfy any of the tests, TP is a ‘foreign resident’.

Incoming		Outgoing	
Ordinary Resident Test	183 Day Test	Domicile Test	Superannuation Test
<ul style="list-style-type: none"> - TP is a resident if resides in AU <ul style="list-style-type: none"> • Question of fact • Dwell permanently or for considerable time in a particular place <i>[Levene]</i> - Factors in applying this test <i>[ATO TR 98/17]</i> <ul style="list-style-type: none"> • Physical Presence in AU <i>[Joachim]</i> • Frequency, regularity and duration of visits <i>[Lysaght]</i> • Purpose of the visits to AU and abroad <i>[Joachim]</i> • Maintenance of a place of abode in AU during absences <i>[Joachim]</i> • Family, business and social ties <i>[Levene]</i> • Nationality • Intention to take up residency • Behaviour consistent with residing in AU 	<ul style="list-style-type: none"> - Section 6(1)(a)(ii): continuously or intermittently in AU for 183 days - Exceptions: (ONLY if BOTH satisfied) <ul style="list-style-type: none"> • USUAL place of abode is outside AU; AND • No intention to take up residence in AU - If test satisfied: treated as AUS tax resident for whole of income year <i>[Executors of the Estate of Subrahmanyam (2002)]</i> - Note: Only TP for the period they resided <i>[Grooves v Commissioner of Taxation (2011) AATA 609]</i> 	<ul style="list-style-type: none"> - Section 6(1)(a)(i): AUS resident if domicile is in AU UNLESS TP has a ‘permanent place of abode overseas’ - 2 categories of domicile <ul style="list-style-type: none"> • Domicile of Origin (<i>birthplace</i>) • Domicile of Choice (<i>intention to stay indefinitely e.g. PR, not student or working visa</i>) - Permanent place of abode overseas – Factors considered relevant: <ul style="list-style-type: none"> • Intended & actual stay in foreign country • Duration & continuity of TP’s presence in overseas (<i>2 years</i>) • Establishment of home outside AU (> temp. accom) • Durability of association with AU (bank acc; education of children; family ties) 	<ul style="list-style-type: none"> - Section 6(1)(a)(iii): members of certain Commonwealth funds/superannuation schemes are deemed to be AU residents - Relevant to individuals who generally reside in AU but leave temporarily and are not actually leaving in AU during the income year - Includes an inactive member where taxpayer is on leave without pay <i>[Baker v FCT (2012)]</i>

Topic 5 – Fringe Benefits Tax

[Chapter 7]

<p>Fringe Benefit Tax (FBT) FBTAA1986 <i>See TB pg 176 for Fid 7.1: Overall FBT Guide</i></p>	<p>1) FBT – a separate type of tax – imposed on provision of fringe benefit provided by employers to employees – to prevent people from avoiding income tax for providing non-cash benefit in exchange of salary</p> <p>2) Difference #1: Taxpayer FBT is imposed on employer, not the employee [s66(1) FBTAA]</p> <table border="1" data-bbox="412 392 1563 703"> <tr> <td data-bbox="412 392 622 499">Employer</td> <td data-bbox="622 392 1563 499">If FBT is paid: Employer can claim a deduction: for FBT + cost of providing the FB</td> </tr> <tr> <td data-bbox="412 499 622 703">(NOT) Employee</td> <td data-bbox="622 499 1563 703">If it is a FB, amount is: <ul style="list-style-type: none"> – NANE: s23L(1) ITAA36 OR Exempt Income s23L(1A) – Exempt FB – Not Ordinary Income → Not Assessable Income s23L(1) ITAA36 – Not Statutory Income and Not Caught by S15-2 ITAA97 </td> </tr> </table> <p>3) Difference #2: Tax Year FBT Tax Year – 1 April to 31 March</p> <p>4) Non-deductible expenses are deductible as FB (e.g. Entertainment s32-20 ITAA97; Recreational [s26-45(3)]; Travel [s26-30(3)]; HECS [s26-20(2)]</p>						Employer	If FBT is paid: Employer can claim a deduction: for FBT + cost of providing the FB	(NOT) Employee	If it is a FB, amount is: <ul style="list-style-type: none"> – NANE: s23L(1) ITAA36 OR Exempt Income s23L(1A) – Exempt FB – Not Ordinary Income → Not Assessable Income s23L(1) ITAA36 – Not Statutory Income and Not Caught by S15-2 ITAA97 	<p>Taxed on employer rather than employee reduces the administrative burden.</p> <p>To spread tax compliance burden to a different time in the year, ensuring that taxpayers & tax agents are able to meet the income tax & FBT obligations.</p>
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<p>Step 1: Is there a fringe benefit?</p>	<p>Step 2: Is it excluded from definition of FB?</p>	<p>Step 3: Which category of FB?</p>	<p>Step 4: Does an exemption apply?</p>	<p>Step 5: Calculate the taxable value</p>	<p>Step 6: Is there a reduction to taxable value?</p>	<p>Step 7: Determine whether FB is a Type1/Type 2 benefit</p>	<p>Step 8: Calculate the FB taxable amount</p>	<p>Step 9: Calculate the FBT liability</p>			

Topic 8 – Deductions (Part 1 – General Deductions)

[Chapter 12 excl (12.450 – 12.570)]

<p>Recall:</p> <p>Deductions are claimed when expense incurred</p>	<p>Deductions = General Deductions [s8-1] + Specific Deductions [s8-5]</p> <p>Expenses may be deductible under both general deduction provision and a specific deduction provision. S8-10: expense should be deducted under the ‘most appropriate section’ - Specific deduction > General deduction</p>	<p>NOTE: look at specific deductions first before general deductions</p> <p>Expense can only be deducted once</p>						
<p>General Deductions [s8-1 ITAA97] <i>Formerly s51(1) ITAA36</i></p>	<p>A taxpayer can deduct from assessable income any loss or outgoing, incurred during the year [s8-1(1) ITAA97]</p> <p>‘loss or outgoing’ – Loss = obligatory or involuntary outflow; Outgoing = voluntary outflow – Not limited to direct expenses of the taxpayer and can provide a deduction for loss</p> <p>‘incurred during the year’ – can claim expense in the year you incur it</p> <p>‘incur’ – a legal obligation to pay e.g. issued invoice, etc</p> <table border="1" data-bbox="394 662 1816 924"> <thead> <tr> <th data-bbox="394 662 1099 735">Positive Limbs s8-1(1) (must satisfy one to get a deduction)</th> <th data-bbox="1108 662 1816 735">Negative Limbs s8-1(2) (satisfy any one = no deductions)</th> </tr> </thead> <tbody> <tr> <td data-bbox="394 742 1099 924"> <p>To the extent that:</p> <ul style="list-style-type: none"> • It is incurred in gaining or producing your AI; or • It is necessarily incurred in carrying on a business for the purpose of gaining or producing AI </td> <td data-bbox="1108 742 1816 924"> <p>But NOT to the extent that:</p> <ul style="list-style-type: none"> • Capital or capital in nature; or • Private or domestic in nature; or • Incurred in gaining/producing exempt income; or • Specifically denied by another provision of the Act </td> </tr> </tbody> </table>	Positive Limbs s8-1(1) (must satisfy one to get a deduction)	Negative Limbs s8-1(2) (satisfy any one = no deductions)	<p>To the extent that:</p> <ul style="list-style-type: none"> • It is incurred in gaining or producing your AI; or • It is necessarily incurred in carrying on a business for the purpose of gaining or producing AI 	<p>But NOT to the extent that:</p> <ul style="list-style-type: none"> • Capital or capital in nature; or • Private or domestic in nature; or • Incurred in gaining/producing exempt income; or • Specifically denied by another provision of the Act 	<p>General deductions applies to all types of expense</p>		
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<p>Positive Limbs</p> <p>Is there a connection between the expense and the earning of income?</p>	<p>‘To the extent that’ – may be apportionment depending on proportion of the loss/outgoing is used to produce AI or carry on biz</p> <p>‘Incurred in gaining or producing assessable income’ – in the course of earning AI</p> <table border="1" data-bbox="394 1070 1816 1447"> <tbody> <tr> <td data-bbox="394 1070 719 1144">Charles Moore (1956) ‘necessarily incurred’</td> <td data-bbox="728 1070 1816 1144">Staff deposit previous day’s takings (normal operation) and was robbed on the way to bank. Stolen money - in the course of gaining income → deductible</td> </tr> <tr> <td data-bbox="394 1150 719 1351">Day (2008) ‘occasion of the expenditure’</td> <td data-bbox="728 1150 1816 1351">Legal expenses incurred in defending improper conduct charges. TP’s a customs officer. Charged with failure to fulfil his duties under public services act. He was subject to this act only bcuz he was employed as public service officer. Legal expenses incurred defending himself. Court → yes can claim deduction. He won’t be charged if not for his employment which subjected him to the public services act → sufficient nexus.</td> </tr> <tr> <td data-bbox="394 1358 719 1447">Herald & Weekly Times (1932)</td> <td data-bbox="728 1358 1816 1447">TP’s misconduct – necessarily incurred in carrying on a biz: Newspaper publisher that had to pay damage on liable claims. Damages payment – deductible because allegations were published with the purpose of selling newspapers (connection to</td> </tr> </tbody> </table>	Charles Moore (1956) ‘necessarily incurred’	Staff deposit previous day’s takings (normal operation) and was robbed on the way to bank. Stolen money - in the course of gaining income → deductible	Day (2008) ‘occasion of the expenditure’	Legal expenses incurred in defending improper conduct charges. TP’s a customs officer. Charged with failure to fulfil his duties under public services act. He was subject to this act only bcuz he was employed as public service officer. Legal expenses incurred defending himself. Court → yes can claim deduction. He won’t be charged if not for his employment which subjected him to the public services act → sufficient nexus.	Herald & Weekly Times (1932)	TP’s misconduct – necessarily incurred in carrying on a biz: Newspaper publisher that had to pay damage on liable claims. Damages payment – deductible because allegations were published with the purpose of selling newspapers (connection to	<p>– It is incurred in gaining or producing AI;</p> <p>– It is necessarily incurred in carrying on a biz for purpose of gaining or producing AI</p>
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