

LECTURE01. INTRODUCTION AND OVERVIEW OF AUSTRALIAN TAX SYSTEM

s 3-5 of ITAA 1997: Income tax is payable for each year by each individual and company and certain other entities

Income Tax Formula

- s 4-10 ITAA 1997: **Income Tax = (Taxable Income X Rate) – Tax Offsets**
- s4-15 of ITAA 1997: **Taxable Income = Assessable Income – Deductions**
 - **Assessable Income**
 - s6-1(1) of ITAA 1997: Assessable income consists of ordinary income and statutory income
 - Assessable Income = Ordinary Income + Statutory Income, but not exempt income or NANE income
 - **Ordinary Income**
 - s6-5(1) of ITAA 1997: Ordinary Income = income according to ordinary concept
 - If Australian Resident, assessable income includes ordinary income you derived directly/indirectly from all resource, whether in/out of Australia, during the income year
 - If foreign resident, assessable income includes;
 - Ordinary income you derived directly/indirectly from all Australian sources during the income year; and
 - Other ordinary income that provision includes in your assessable income for the income year on some basis other than having an Australian source
 - In working out whether you have derived an amount of ordinary income, and (if so) when you derived it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct
 - This ensures that tax payers cannot avoid paying income tax by directing that the income be paid to a different person and not receiving the money themselves = known as ‘**constructive receipt rule**’
 - **Statutory Income**
 - s6-10(2) of ITAA 1997: Amount that are included in the taxpayer’s assessable income by a specific provision in the income tax legislation
 - **Non-Assessable Income**
 - s6-15(1): if amount is not ordinary income and not statutory income (i.e. not subject to tax)
 - ss6-15(2) & (3), s6-20, s6-23: if legislation stipulates that it is ‘exempt income’/NANE
 - **NANE Income**
 - Not assessable income, not exempt income
 - Not taken into account in working out the amount of tax loss
 - Ex) s11-55: GST Payable on a supply (s17-5), receipt of FB by employees (s23L(1) of ITAA 1936)
 - **Exempt Income**
 - May be taken into account in working out the amount of tax loss under s36-10
 - s11-5: where the entity is exempt regardless of what type of income it has (ex. Charitable institutions, local governments etc....)
 - s11-15: where the ordinary/statutory income is of a kind that is exempt (ex. Certain education scholarships, family assistance benefits, and qualifying foreign employment income)
 - **Deductions** = expenses which are incurred by the taxpayer in gaining or producing assessable income, and therefore, reduce the tax payable by a taxpayer on their assessable income
 - s8-1: General Deductions
 - s8-2: Specific Deductions
 - **Tax Offsets**
 - Tax offsets/rebates are deducted from income tax payable and reduce the amount of income tax, which must be paid by the taxpayer
 - Tax Offset reduces tax payable (Deductions reduce taxable income)

Sources of Law

- Legislation
 - Income Tax Legislation: Income Tax Assessment Act (ITAA 1936, ITAA 1997)
 - Rating Acts: imposes actual tax
 - Income Tax Rates Act 1986
 - Medicare Levy Act 1986
- Case Law
- Rulings: Australia’s income tax law, Fringe benefit tax law and GST law all operate on ‘self-assessment’ system
 - Private Rulings

- Public Rulings
- Other
 - Fringe Benefit Tax Legislation: Fringe Benefit Tax Assessment Act (FBTAA 1986)
 - GST Legislation

Tax Rates

- Individuals
 - Progressive: taxpayer's tax burden increases as their taxable income increases
 - For resident, first \$18,200 for an individual with \$200,000 of taxable income is tax-free
 - For foreign resident, taxable income below \$80,000 pays \$0.325 for each \$1.00
- Other entities
 - Companies are subject to tax at the general corporate tax rate of 30% on their taxable income, regardless of their total amount of taxable income
 - Small business entities are subject to lower tax rate of 28.5%
 - Companies with aggregated annual turnover of less than \$2 million

Administration = ATO's key purpose

- Taxpayer's Charter
- Advice
- Tax Process
 - Lodge tax return
 - ATO Assessment
 - Refund/Tax Debt
 - Taxpayer can appeal

Law Interpretation and Application

- Basic Rule = What can be taxed, what is excluded
- Courts play a part
 - Substance v Form
 - Set Case Law = Precedents
- Anti-avoidance v Evasion (Illegal)
- The Choice principle: Taxpayer makes choices that reduce tax payable
- Tax Rulings (made by tax commissioner): TR.../IT... (not law)