

TAXATION / REVENUE LAW SUMMARY



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Table of Contents

PART 1: THE BROAD FRAMEWORK OF THE REVENUE AND TAXATION SYSTEM.....	8
Topic 1: Theories and sources of revenue and taxation law.....	8
1.1 Theories of revenue and taxation.....	8
1.1.1 Traditional theories of taxation	8
1.1.2 Modern conceptions of taxation.....	10
1.1.3 Optimal taxation.....	13
1.2 Sources of revenue and taxation law	13
1.2.1 Constitutional powers	13
1.2.2 Transforming taxation policy into legislation.....	14
1.2.3 Transforming press release into legislation	14
1.2.3 Statutory interpretation	15
PART 2: CONCEPTS OF INCOME	16
Topic 2: Principles of income underlying taxation law.....	16
2.1 Structure of the income taxation system.....	16
2.2 Ordinary concepts of income.....	18
2.3 Common law concepts of income	19
2.4 Statutory concepts of income.....	21
Topic 3: Income derived from property and capital gains tax.....	22
3.1 Income derived from property use	23
3.1.1 Rent and premiums	23
3.1.2 Interest and discounts	23
3.1.3 Securities.....	24
3.1.4 Annuities.....	27
3.1.5 Royalties.....	28
3.1.6 Natural resources payments.....	29
3.1.7 Intellectual property	30
3.2 Capital gains tax.....	30

3.2.1 Capital gains and capital losses	32
3.2.2 Disregarding capital gains	32
3.2.3 Common law principles of capital gains	34
3.2.4 Calculating capital gain or loss	37
3.2.5 Rollovers and personal use	45
Topic 4: Income derived from the provision of services and fringe benefits tax	46
4.1 Income derived from the provision of services	46
4.1.1 Employee remuneration through employee share schemes	47
4.1.2 Dividends	48
4.1.3 Restrictive covenants and service contracts	50
4.1.4 Superannuation contributions	51
4.1.5 Termination payments	52
4.1.6 Strategies of salary packaging and income splitting	53
4.2 Fringe benefits tax	54
4.2.1 Regulation of fringe benefits tax	54
4.2.2 Concepts of fringe benefits tax	54
4.2.3 Determining fringe benefits tax	56
4.2.3 Types of fringe benefits tax	59
4.2.4 Exemptions from fringe benefits tax	66
Topic 5: Income derived from business	67
5.1 Identifying a continuing business	67
5.2 Identifying an isolated business-like transaction	69
5.3 Identifying the scope and ordinary course of business	71
5.4 Characterising the transaction	73
PART 3: TAX DEDUCTIONS	79
Topic 6: General tax deductions	79
6.1 Allowable deductions	79
6.2 Positive limb elements	80
6.2.1 Loss or outgoing	80

6.2.2 To the extent.....	82
6.2.3 Incurred	83
6.2.4 Gaining or producing assessable income.....	83
6.2.5 Necessarily incurred	84
6.3 Negative limb elements.....	85
6.3.1 Capital or capital in nature.....	85
6.3.2 Private or domestic in nature.....	86
Topic 7: Specific tax deductions.....	87
7.1 Legislative provisions for specific tax deductions.....	87
7.2 Repairs.....	91
7.3 Bad debts.....	92
7.4 Personal and quasi-personal expenses.....	95
7.5 Capital allowances.....	96
Topic 8: Tax deductions for the expenses of individuals.....	99
8.1 Tax returns and tax liability.....	99
8.2 Deductions for expenses.....	103
8.2.1 Commuting and travel.....	103
8.2.2 Child care.....	104
8.2.3 Education.....	105
8.2.4 Working from home.....	105
8.3 Tax rates.....	106
Topic 9: Goods and Services Tax (GST).....	107
9.1 What is it?.....	107
9.2 Underlying Principles.....	107
9.3 Taxable Supplies and Taxable Importation.....	107
Taxable Supplies.....	107
Non-taxable Supplies.....	108
Input Taxed Supplies.....	108
Taxable Importations.....	109

9.4 Input Tax Credits	109
Creditable Acquisition	109
9.5 Calculating GST and net amount	110
Tax Invoice	110
9.6 GST Summary	110
1. GST on Taxable Supply	111
2. GST Free Supplies	111
3. Input Taxed Supplies	112
4. Out of Scope Supplies	112

Table of Cases

<i>A New Tax System (Family Assistance) (Administration) Act 1999</i> (Cth)	13
Abbott v Philbin [1961] AC 352	19, 47
AGC (Investments) Pty Ltd v FCT (1992) 92 ATC 4239	76
Allied Mills v FCT (1989) 20 ATR 457	74
<i>Amalgamated Zinc (De Baveys) Ltd v FCT</i> (1935) 54 CLR 295	79
Australasian Catholic Assurance Co v FCT (1959) 100 CLR 502	75
BHP Billiton Finance Ltd v FCT [2010] FCAFC 25	93
Brent v FCT (1971) 125 CLR 418	49
<i>C of T (NSW) v Ash</i> (1938) 61 CLR 263	80
C of T v Payne [2001] HCA 3	85
Californian Oil Products v FCT (1934) 52 CLR 28	73
<i>Charles Moore and Co Pty Ltd v FCT</i> (1956) 95 CLR 344	79
<i>CIC Insurance Ltd v Bankstown Football Club Limited</i> (1997) 187 CLR 38	14
Commissioner of Taxation v Sara Lee Household & Body Care (Australia) Pty Ltd (2000) 201 CLR 520	35
Constable v FCT (1952) 86 CLR 402	18
<i>Cummins</i> [2007] FCAFC 21	31
Dickenson v FCT (1958) 98 CLR 460	72
<i>Donaldson v Federal Commissioner of Taxation</i> [1974] 1 NSWLR 627	47
<i>FCT v Cooke and Sherden</i> (1980) 80 ATC 4140	14
FCT v Cooke and Sherden (1980) 10 ATR 696	20
<i>FCT v Finn</i> (1961) 106 CLR 60	82, 85, 102

FCT v Hatchett (1971) 125 CLR 494	104
<i>FCT v Hyteco Hiring Pty Ltd</i> (1992) 92 ATC 4649.....	73
<i>FCT v Ilberry</i> (1981) 12 ATR 963	79
<i>FCT v James Flood Pty Ltd</i> (1953) 88 CLR 492.....	82
FCT v Myer Emporium Ltd (1987) 163 CLR 199	71
FCT v Orica Ltd (1998) 39 ATR 66	34, 76
<i>FCT v Snowden and Wilson Pty Ltd</i> (1958) 99 CLR 431.....	80, 84
FCT v Stone (2005) 222 CLR 289	67
FCT v Western Suburbs Cinema Ltd (1952) 86 CLR 102	90
<i>FCT v Whitfords Beach Pty Ltd</i> (1982) 150 CLR 355	68
<i>Federal Coke Co Pty Ltd v FCT</i> (1977) 7 ATR 519	19
<i>Federal Coke Co Pty Ltd v FCT</i> (1977) 77 ATC 4255	71
<i>Ferguson v FCT</i> (1979) ATR 873.....	67
<i>Ferris v FCT</i> (1988) 20 FCR 202	48
<i>Fringe Benefits (Application to the Commonwealth) Act 1986</i> (Cth)	53
<i>Fringe Benefits Tax Act 1986</i>	53
<i>Fringe Benefits Tax Assessment Act 1986</i> (Cth).....	passim
GP International Pipecoaters Pty Ltd v FCT (1990) 170 CLR 124	71
Handley v FCT (1981) 148 CLR 182	104
Hepples v FCT (1991) 22 ATR 465	35
<i>Herald and Weekly Times Ltd v FCT</i> (1932) 48 CLR 113	80
Higgs v Oliver [1951] 1 Ch 899	50
<i>Income Tax Act 1986</i> (Cth).....	20
<i>Income Tax Assessment Act 1936</i> (Cth).....	passim
<i>Income Tax Assessment Act 1997</i> (Cth)	passim
<i>Income Tax Rates Act 1986</i> (Cth)	105
<i>J & G Knowles v FCT</i> (2000) 44 ATR 22.....	58
Lindsay v FCT (1968) 106 CLR 377	91
Lomax v Peter Dixon (1943) 25 TC 353	22
Lunney v FCT (1958) 100 CLR 478	85, 102, 103
Martin v FCT (1953) 90 CLR 470	67
Martin v FCT (1984) 2 FCR 260	103
<i>McCauley v FCT</i> (1994) 69 CLR 235	29
McLaurin v FCT (1961) 104 CLR 381	19
<i>MLC Ltd v FCT</i> (2002) 51 ATR 283.....	14
Montgomery v FCT (1999) 198 CLR 639	75

Murray v Imperial Chemical Industries Ltd [1967] Ch 1038	29
<i>Nilsen Development Laboratories Pty Ltd & Ors v FCT</i> 144 CLR 616	82
Point v FCT (1970) 119 CLR 453	93
Reseck v FCT (1975) 133 CLR 45	52
<i>Roads and Traffic Authority of NSW v FCT</i> (1993) FCR 223	55
Rolls-Royce Ltd v Jeffrey [1962] 1 WLR 425	74
<i>Ronpibon Tin NL v FCT</i> (1944) 78 CLR 47	81, 84
Ronpibon Tin NL v FCT (1949) 78 CLR 47	81
<i>Scott v Commissioner of Taxation</i> (1935) 35 SR (NSW) 215; 3 ATD 142	17
Scott v Commissioner of Taxation (NSW) (1935) 35 SR (NSW) 215	50
<i>Scott v FCT</i> (1996) 117 CLR 514	46
Spriggs v FCT [2009] HCA 22	83
State Chamber of Commerce and Industry v Commonwealth (1987) 163 CLR 329	13
Steele v DFC of T (1999) 41 ATR 139	83
Stewart v FCT (1973) 3 ATR 603	95
Sun Newspapers Ltd v FCT (1938) 61 CLR 337	84
<i>Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012</i> (Cth)	14
<i>Tax Rates Act 1986</i> (Cth)	20
<i>Taxation Laws Amendment Bill (No 4) 1998</i> (Cth)	14
Vestley v IRC [1962] Ch 861	26
Wangaratta Woollen Mills Ltd v FCT (1969) 119 CLR 1	97
<i>Western Gold Mines NL v C of T (WA)</i> (1938) 59 CLR 729	70
<i>Westpac Banking Corporation v FCT</i> (1996) 32 ATR 479	56

PART 1: THE BROAD FRAMEWORK OF THE REVENUE AND TAXATION SYSTEM

Topic 1: Theories and sources of revenue and taxation law

Revenue and taxation law is fundamental in Australian society and as such is influenced by a variety of contextual factors. The Australian Taxation Office (ATO) is concerned with a multitude of areas of taxation, such as goods and services tax, pay as you go (PAYG) Instalments, tax file numbers (TFNs) and tax offsets (rebates). Traditional theories have recently been mixed with social policy and welfare theory to inform the changing context of Australian tax law.¹ However, the constitutional, statute and press release procedures of law reform continue to play a role in revenue and taxation law.

1.1 Theories of revenue and taxation

Australia's Future Tax System, also known as the Henry Review, is a seminal instrument which merges traditional theories of taxation policy with a contemporary context of welfare policy.² This reflects the contextual framework of taxation and revenue law today.

1.1.1 Traditional theories of taxation

The traditional approach to justify taxation law is that the government needs to generate revenue in order to provide for public goods.³ In reference to the *Strategic Statement 2010-15* of the Australian Taxation Office, The Commissioner of Taxation and Registrar of the Australian Business Register promotes this traditional approach. It is stated that: "Revenue from Australia's tax system helps fund public goods and services that give effect to

¹ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.10].

² P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.10].

³ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.20].

economic and social policies".⁴ Public goods are those which will not be supplied by the market, or will not be sufficiently provided by the market for everyone to enjoy. Accordingly, public goods must not be incurred at an individual's expense, and all individuals must be included in the benefit.⁵ The need for the government to create revenue is often taken as a 'given', but that need should satisfy certain criteria of a 'good taxation system'.⁶ The traditional criteria are equity, efficiency and simplicity.⁷ The following extract from the Henry Review demonstrates how these factors also now encompass contemporary concerns of sustainability and policy consistency.⁸

Henry Review: Design principles for the tax and transfer system

Equity

The tax and transfer system should treat individuals with similar economic capacity in the same way, while those with greater capacity should bear a greater net burden, or benefit less in the case of net transfers. This burden should change more than in proportion to the change in capacity. That is, the overall system should be progressive. Considerations about the equity of the system also need to take into account exposure to complexity and the distribution of compliance costs and risk.

Efficiency

The tax and transfer system should raise and redistribute revenue at the least possible cost to economic efficiency and with minimal administration and compliance costs. All taxes and transfers affect the choices people and businesses make by altering their incentives to work, save, invest or consume things of value to them. The size of these efficiency costs varies from tax to tax (see [Chart 1.5 in Box 1.1](#)) and from transfer to transfer, reflecting, in part, the extent to which they affect behaviour. Instability in policy settings can reduce economic efficiency by increasing uncertainty about the expected payoffs to long-term decisions such as investing in education, choosing retirement products, investing in long-lived productive assets and the choice of business structure. These costs represent a net loss to society as a whole, whereas revenue raised through a tax is redistributed among members of society through government expenditure, including transfer payments.

⁴ M D'Ascenzo, 'Strategic Statement 2010-15' *Australian Taxation Office* (18 June 2010) <<http://www.ato.gov.au/government/content.aspx?doc=/content/00243384.htm&pc=001/001/002/008&mnu=39504&mfp=001/061&st=&cy=>>>

⁵ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.20].

⁶ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.30].

⁷ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.30].

⁸ Australia's Future System Final Report, Chapter 2: Designing a future tax and transfer system, Section 2.2, Box 2.1 'Design principles for the tax and transfer system' <http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/FinalReport_Part_1/chapter_2.htm>

Simplicity

The tax and transfer system should be easy to understand and simple to comply with. A simple and transparent system makes it easier for people to understand their obligations and entitlements. People and businesses will be more likely to make the most beneficial choices for themselves and respond to intended policy signals. A simple and transparent system may also involve lower compliance costs for taxpayers and transfer recipients.

Sustainability

A principal objective of the tax system is to raise revenue to fund government programs, including transfer payments. The tax system should have the capacity to meet the changing revenue needs of government on an ongoing basis without recourse to inefficient taxes. To be sustainable the tax system, together with the transfer system, must contribute to a fair and equitable society. The cost of the transfer system needs to be predictable and affordable in the light of demographic change. Sustainability also means that the structural features of the system should be durable in a changing policy context, yet flexible enough to allow governments to respond as required. Legal and administrative institutions and frameworks should also be robust to maintain the effectiveness of the system and underpin the legitimacy of the system. Policy settings should also contribute to environmental outcomes that are sustainable.

Policy consistency

Tax and transfer policy should be internally consistent. Rules in one part of the system should not contradict those in another part of the system. To the extent possible, tax and transfer policy should also be consistent with the broader policy objectives of government. However, the primary objectives of the tax and transfer system, to raise revenue and provide assistance to those in need, should not be compromised by other policy objectives.



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