

# INTRODUCTION

Students undertaking a tertiary taxation law course are confronted with a daunting task. They are required to sift through convoluted legislative provisions spread over several Acts, and grapple with a developed body of complex case law. The reading required often surpasses many other law subjects in both volume and complexity. Furthermore, given the range of diverse topics typically covered in a standard course, and the fact that many introductory courses are taught over just one semester, students will inevitably be required to absorb large amounts of information in relatively short spaces of time. What makes studying taxation law even more difficult is the fact that this field of law is continually evolving through seemingly incessant legislative amendments and the handing down of significant court decisions. A particular change may require an entire discrete area of law to be re-evaluated and re-examined, and placed in a new context in the overall scheme. As a result of the pace of change, it is always important for students to refer to up-to-date references in their studies and research.

To complete a taxation law course successfully, students need to adopt efficient study techniques. As students are typically required to conduct independent research and present written work by way of assignments and exams, it is crucial that they have good research, writing and exam techniques. As with any law subject, it is not just necessary that students understand principles of law; they must also demonstrate their knowledge by applying the relevant principles to practical problems and factual situations posed in their assignments and exams. This book is designed to assist taxation students undertaking law, commerce and business courses, and is intended to serve as a reference text to be used in conjunction with other texts, such as *Foundations of Taxation Law* (which is a general taxation law textbook) and the *Australian Tax Casebook* (which is a casebook that contains summaries of over 650 leading tax cases).

## STUDY GUIDE

Part 1 of this book contains a short study guide designed to assist students to prepare for a tertiary course in taxation law and conduct basic taxation law research. This part of the book refers to key reference material as well as useful websites and electronic research tools. There is also a style guide that sets out how to cite references to legislation, cases, articles, rulings and reports for assignments. In addition, there is a section that provides guidance on note taking, essay writing and exam preparation and answering techniques.

## CORE TAX LEGISLATION

Part 2 is the largest section of the book. It reproduces the major provisions in Commonwealth tax legislation, regulations and treaties that students will confront when undertaking a typical undergraduate taxation law course. It also contains many of the important provisions covered in specialist graduate taxation law courses. In the past, students studying taxation may have needed to use up to five volumes of legislation. In practical terms, this inevitably proved to be

## 2 Core Tax Legislation and Study Guide

cumbersome, particularly where students were required to bring their legislation (as well as other texts) to lectures. One of the major purposes of this book is to bring together the core provisions into one user-friendly text.

Part 2 of the book is divided into the following parts:

- Part 2A: Income Tax Assessment Act 1997 provisions
  - *Income Tax Assessment Act 1997* (Cth)
- Part 2B: Income Tax Assessment Act 1936 provisions
  - *Income Tax Assessment Act 1936* (Cth)
- Part 2C: International income tax provisions
  - *International Tax Agreements Act 1953* (Cth)
  - *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* ('United States Convention')
  - *Protocol Amending the Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* ('United States Protocol')
  - *Agreement between the Government of Australia and the Government of the Commonwealth of the Bahamas on the Exchange of Information with respect to Taxes* ('Australia and Bahamas Tax Information Exchange Agreement')
- Part 2D: Income tax rates and levies provisions
  - *Income Tax Act 1986* (Cth)
  - *Income Tax Rates Act 1986* (Cth)
  - *Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974* (Cth)
  - *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* (Cth)
  - *Diverted Profits Tax Act 2017* (Cth)
  - *Medicare Levy Act 1986* (Cth)
  - *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999* (Cth)
- Part 2E: Income tax regulations and transitional provisions
  - *Income Tax Assessment (1936 Act) Regulation 2015* (Cth)
  - *Income Tax Assessment (1997 Act) Regulations 2021* (Cth)
  - *Income Tax (Transitional Provisions) Act 1997* (Cth)
- Part 2F: Goods and services tax provisions
  - *A New Tax System (Goods and Services Tax) Act 1999* (Cth)
  - *A New Tax System (Goods and Services Tax) Regulations 2019* (Cth)
  - *A New Tax System (Goods and Services Tax Imposition—General) Act 1999* (Cth)
  - *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999* (Cth)
  - *A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999* (Cth)
  - *A New Tax System (Luxury Car Tax) Act 1999* (Cth)
  - *A New Tax System (Luxury Car Tax Imposition—General) Act 1999* (Cth)
- Part 2G: Fringe benefits tax provisions
  - *Fringe Benefits Tax Assessment Act 1986* (Cth)
  - *Fringe Benefits Tax Act 1986* (Cth)
  - *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* (Cth)
- Part 2H: Superannuation provisions
  - *Superannuation Industry (Supervision) Act 1993* (Cth)
  - *Superannuation Industry (Supervision) Regulations 1994* (Cth)

- *Superannuation Guarantee (Administration) Act 1992* (Cth)
- *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth)
- *Superannuation (Excess Non-Concessional Contributions Tax) Act 2007* (Cth)
- *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007* (Cth)
- *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013* (Cth)
- *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016* (Cth)
- *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* (Cth)
- *First Home Super Saver Tax Act 2017* (Cth)
- Part 2I: Constitutional, administrative and other provisions
  - *Commonwealth of Australia Constitution Act 1900*
  - *Acts Interpretation Act 1901* (Cth)
  - *A New Tax System (Australian Business Number) Act 1999* (Cth)
  - *Taxation Administration Act 1953* (Cth)
  - *Taxation Administration Regulations 2017* (Cth)
  - *Administrative Appeals Tribunal Act 1975* (Cth)
  - *Administrative Decisions (Judicial Review) Act 1977* (Cth)
  - *Inspector-General of Taxation Act 2003* (Cth)
  - *Tax Agent Services Act 2009* (Cth)
  - *Tax Agent Services Regulations 2009* (Cth)
  - *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)
  - *Charities Act 2013* (Cth)

PART 1

STUDY GUIDE

# STUDY GUIDE

## 1 Introduction

### [1.1] Overview

Taxation law is a complex and voluminous area of law. As a student of taxation law, you will inevitably be confronted with a massive amount of legislation, cases, rulings and reports. It is therefore imperative that you adopt efficient study techniques from the outset. As students are often required to conduct independent research and write essays, you will need to have solid research skills and sound writing and presentation styles. Furthermore, to pass your final exams, you will need to have effective exam-answering techniques. The following discussion sets out some basic study, research, writing and presentation techniques as well as some tips for answering taxation law exam questions.

## 2 Study techniques

### [2.1] Study regime

As with any subject, you should have a focused and disciplined study regime. Cramming at the end of the semester is unwise, particularly in a subject as large and complex as taxation law. You should therefore allocate time each week for study. This time should be spent on revising lecture material, undertaking prescribed reading, making notes and preparing answers to mock exam questions.

When studying a particular area make sure that you understand where it fits within the broader subject material. Ask yourself: Why is the topic being covered, and how does it relate to the other topics covered in the course? The answers to these questions will enable you to better understand the subject as a whole and appreciate how concepts are connected with each other.

### [2.2] Note making

To facilitate understanding of the subject material, you should compile notes taken from lectures, readings and research into a tight set of study notes, broken down into discrete topics. It is the accuracy of your notes, not their length, that is paramount. Having a lot of notes on a particular topic is not necessarily a good thing—it may mean that you have not grasped the essential principles covered and are therefore unable to provide a concise explanation of the key points. For example, if you have lengthy notes on a particular case, this may indicate that you are not able to express the *ratio decidendi* of the case precisely. You should rewrite your notes until they are as succinct as possible. By doing this, you will clarify and reinforce the principles learned. Also, make sure that your notes are organised in a logical order so that each area covered builds progressively on earlier areas. Doing this will assist you in presenting your arguments in an exam. As many taxation law exams are open-book exams, your notes will be of utmost importance, so it is imperative that they be clear, concise and set out in an organised and user-friendly form.

### [2.3] Preparing answers to past exam questions

It is recommended that you read past exam questions set by your lecturers and prepare mock answers to these questions within strict time constraints. Where possible, you should seek to have your answers reviewed by your tutors or lecturers. It can also be helpful to discuss your answers with

fellow students to benefit from their insights. Discussing questions can help identify issues and alternative approaches to tackling a problem. Some hints on how to answer exam questions are set out below ¶5.1]–[¶5.5].

## 3 Researching a tax problem

### [¶3.1] Overview

The answer to a tax problem will rarely be found in one place. In researching a tax problem, you may need to refer to diverse reference material, including:

- legislation [¶3.2]
- case law [¶3.3]
- Australian Taxation Office ('ATO') rulings and publications [¶3.4]
- government publications [¶3.5]
- Board of Taxation publications [¶3.6]
- professional publications [¶3.7]
- academic and professional journals and conference papers [¶3.8]
- textbooks [¶3.9]
- cases and materials books [¶3.10]
- international resources [¶3.11]
- internet resources [¶3.12], and
- electronic tax libraries [¶3.13].

### [¶3.2] Legislation

Most tax problems will require you to interpret key provisions in tax legislation. The key legislative provisions relevant to most undergraduate taxation courses are contained in Part 2 of this book.

In interpreting tax legislation, you will need to bear in mind the common law rules of statutory interpretation. In addition, you should be aware of s 15AB of the *Acts Interpretation Act 1901* (Cth), which allows the courts to refer to extrinsic material in certain circumstances to ascertain the meaning of legislation. As a result, in appropriate cases, the courts may use material such as Explanatory Memoranda, Second Reading Speeches, Parliamentary Debates, and Government and Law Reform Commission reports to assist with the interpretation of taxation provisions.

Of all the various kinds of extrinsic material, the most important are Explanatory Memoranda that accompany Bills introduced into Parliament. Explanatory Memoranda outline the reason for the introduction of the relevant Bill and explain (generally) how the proposed legislation is intended to operate and be interpreted.

### [¶3.3] Case law

Over the years, a substantial body of case law has developed out of litigation concerning provisions in taxation legislation. The common law therefore comprises an important source of primary research material. In reading any court decision, it is important to be aware of the doctrine of precedent. Under this doctrine, decisions of a higher court bind those of a lower court in the same court hierarchy. In the Australian federal taxation jurisdiction, the basic hierarchy of courts (from highest to lowest) is as follows:

- High Court
- Full Federal Court, and
- Federal Court.

The Administrative Appeals Tribunal ('AAT') also hears taxation cases. Although the AAT is strictly an administrative body, rather than a judicial body, taxpayers may nevertheless appeal AAT decisions to the Federal Court on questions of law.

Court and AAT decisions are reported in the following law reports:

- *Australian Tax Cases* ('ATC'), which contain reports of AAT, Federal Court and High Court tax decisions handed down since 1969
- *Australian Tax Decisions* ('ATD'), which contain reports of tax decisions handed down between 1930 and 1969
- *Federal Court Reports* ('FCR'), which contain authorised reports of Federal Court decisions, and
- *Commonwealth Law Reports* ('CLR'), which contain authorised reports of High Court decisions.

Cases can also be accessed via the internet from the relevant court's website or through other websites such as the Australasian Legal Information Institute website [¶3.12].

### [¶3.4] Australian Taxation Office ('ATO') rulings and publications

The Commissioner of Taxation's views on the operation of the tax laws are often set out in rulings and other forms of advice published by the ATO. Since 1 July 1992, a 'binding ruling system' has operated in Australia. Under this system, the Commissioner can issue 'public rulings' on how the tax law applies to entities generally or to a class of entities. The Commissioner is generally bound to apply the law in the way set out in a binding ruling. Taxpayers that rely on a binding ruling are protected from having to pay any tax shortfall, penalties or interest in respect of the matters covered in the ruling if it turns out that the ruling is incorrect.

The main kinds of binding public rulings are:

- Taxation Rulings ('TRs'), which cover topics such as income tax and fringe benefits tax ('FBT').
- GST Rulings ('GSTRs'), which provide guidance on goods and services tax ('GST').
- Product Rulings ('PRs'), which outline how the tax law applies to investors in certain products (eg managed investment schemes).
- Class Rulings ('CRs'), which deal with the tax effects of particular arrangements on a class of taxpayers (eg shareholders in a company undertaking a share buy-back).
- Law Companion Rulings ('LCRs'), which explain the Commissioner's views on the application of new tax laws and are usually developed around the same time as Bills are drafted.

The ATO also issues determinations which are typically shorter than most rulings and generally only address specific questions. The following determinations are binding on the Commissioner: Taxation Determinations ('TDs') and GST Determinations ('GSTDs').

Rulings and determinations that were issued before the binding ruling system was introduced on 1 July 1992 are not binding on the Commissioner. These include the old Income Tax Rulings ('ITs') series. The ATO also publishes a range of non-binding superannuation rulings and determinations, such as Superannuation Guarantee Rulings ('SGRs'), Self Managed Superannuation Fund Rulings ('SMSFRs'), Superannuation Guarantee Determinations ('SGDs'), Superannuation Contribution Determinations ('SCDs') and Self Managed Superannuation Fund Determinations ('SMSFDs'). Although taxpayers that rely on non-binding rulings are not protected from having to pay any tax shortfall, they are generally protected from having to pay certain penalties and, if they relied on the document reasonably and in good faith, they are also protected from having to pay interest.

The ATO also publishes Interpretative Decisions ('IDs'), which set out the way the Commissioner has interpreted the law in particular instances, and Decision Impact Statements ('DISs'), which set out the Commissioner's views on the outcome of particular court and tribunal decisions. Furthermore, to provide guidance on ATO administrative practices and assist ATO staff in performing their duties, the

ATO issues Practice Statements Law Administration ('PS LAs'). More recently, the ATO has started to publish Practical Compliance Guidelines ('PCGs'), which provide broad guidance on significant administrative and compliance issues. IDs, DISs, PS LAs and PCGs are not binding on the Commissioner. They are, nevertheless, made publicly available for information and transparency purposes.

A large amount of general advice is also published on the ATO website. This includes bulletins, guidelines, taxpayer alerts, policy statements, media releases and consultative documents. Over the years, the ATO has also produced useful guidebooks detailing the practical operation of the tax laws (eg *Guide to the Debt and Equity Tests*) and helpful manuals with questions and answers (eg *Consolidation Reference Manual*). Practical information can also be obtained from ATO publications designed to assist taxpayers in compiling their tax returns (eg *Individual Tax Return Instructions*). Another important ATO document is the *Taxpayer's Charter*, which outlines the respective rights and obligations of taxpayers and the ATO. ATO publications can be found on the ATO website [¶3.12].

### [¶3.5] Government publications

From time to time, the government releases discussion papers, reports, research documents and exposure drafts in order to foster awareness of an issue or as part of the consultative process before the release of a Bill. For example, it is common for the Treasury to issue an Exposure Draft Bill for public comment and submissions on important proposed alterations to the taxation laws before a Bill is formally introduced into parliament.

Many government publications also contain useful policy information and reform recommendations, which often form the basis of future taxation laws. In the late 1990s, the Review of Business Taxation published two important discussion papers (*A Strong Foundation* (1998) and *A Platform for Consultation* (1999)) as well as a major report recommending reforms to the Australian business tax system (*A Tax System Redesigned* (1999)). A number of significant papers and reports were also produced by the Henry Tax Review. These included *Architecture of Australia's Tax and Transfer System* (2008) and *Australia's Future Tax System: Report to the Treasurer* (2009). More recently, the Abbott Government published its *Re:think* (2015) discussion paper.

### [¶3.6] Board of Taxation publications

The Board of Taxation, an advisory board that assists the government in the development and implementation of the taxation laws, has also published several interesting papers and reports over the years, including the following:

- *Evaluation of the Tax Value Method: A Report to the Treasurer and Minister for Revenue and Assistant Treasurer* (2002)
- *International Taxation: A Report to the Treasurer* (2003)
- *Post-Implementation Review into Certain Aspects of the Consolidation Regime* (2009)
- *A Tax Transparency Code: A Report to the Treasurer* (2016)
- *Review of the Tax Treatment of Bare Trusts and Similar Arrangements—A Report to the Minister for Revenue and Financial Services* (2017), and
- *Reforming Individual Tax Residency Rules—A Model for Modernisation* (2019).

These publications can be accessed via the Board of Taxation website [¶3.12].

### [¶3.7] Professional publications

Professional bodies often make submissions or release consultative documents or research papers concerning various taxation matters. These bodies include:

- the Taxation Institute of Australia
- the Australian Tax Research Foundation

- the Corporate Taxpayers' Association
- Chartered Accountants Australia and New Zealand
- CPA Australia
- the State Law Societies, and
- the Law Council of Australia.

The publications of these organisations contain useful insights and perspectives on the law and can often be accessed via their relevant websites [¶3.12].

In addition, many law and accounting firms (particularly the larger firms) produce their own publications dealing with aspects of taxation law. These publications usually have a useful practical focus. Publications from law and accounting firms are often freely available via their websites [¶3.12].

### [¶3.8] Academic and professional journals and conference papers

Journal articles and conference papers are an excellent secondary research source as they usually contain a focused and critical analysis of particular topics. Some of the main specialist Australian tax journals are:

- *Australian Tax Forum*
- *Australian Tax Review*
- *CCH Tax Week*
- *eJournal of Tax Research*
- *Journal of Australian Taxation*
- *Journal of the Australasian Tax Teachers Association*
- *Revenue Law Journal*
- *Taxation in Australia*
- *Tax Specialist*, and
- *Weekly Tax Bulletin*.

Taxation articles can also be found in university law reviews (eg *Melbourne University Law Review*), professional accounting journals (eg *Australian CPA* and *Charter*), state law society journals (eg *Law Society Journal* and *The Law Institute Journal*) and general law journals (eg *Australian Law Journal* and *Australian Business Law Review*).

Taxation papers are presented at conferences conducted throughout the year by various professional bodies including the Taxation Institute of Australia, CPA Australia and Chartered Accountants Australia and New Zealand. These papers often have a highly practical and current focus. Taxation papers are also presented at academic conferences such as those conducted by the Australasian Tax Teachers Association, the Australasian Law Teachers Association and the Accounting Association of Australia and New Zealand. These papers are often more theoretical and policy-orientated in nature.

Journal and conference paper details can be accessed by using databases found in professional and university libraries such as the Attorney-General's Information Service ('AGIS'), the Australian Public Affairs Information Service ('AP AIS') and the Social Science Research Network ('SSRN').

### [¶3.9] Textbooks

Textbooks are perhaps the most useful starting point in conducting tax research. They enable the reader to gain an overview and basic understanding of a particular issue. Textbooks usually provide a conceptual framework and introduction to the law as well as a structured discussion of the relevant legislation, cases and rulings in the area. There is also often a critical analysis and synthesis of the

legal principles covered. The most widely used and comprehensive annually updated Australian taxation law textbooks designed for practitioners are:

- Wolters Kluwer, *Australian Master Tax Guide*, and
- R Deutsch, M Friezer, I Fullerton, P Hanley and T Snape, *Australian Tax Handbook*.

A useful general textbook for students is: S Barkoczy, *Foundations of Taxation Law*. This book provides a concise overview and introduction to the key principles of taxation law. It also contains study questions to help with exam preparation and reference lists to help with undertaking research for assignments on particular topics.

In addition to the above, there are also a number of Australian textbooks that focus on specialist areas, such as:

- goods and services tax (eg P McCouat, *Australian Master GST Guide* and I Murray-Jones, *Australian GST Handbook*)
- superannuation (eg J Leow and S Murphy, *Australian Master Superannuation Guide* and S Jones, *Australian Superannuation Handbook*), and
- fringe benefits tax (eg C Willmot, *FBT Compliance Guide*).

The Australian Tax Research Foundation also publishes useful books and other resources containing in-depth research studies on particular taxation law topics.

Given the pace of change in the field of taxation law, care should always be taken to ensure that the textbook used is up to date.

### [13.10] Cases and materials books

With the proliferation of tax cases over the years, casebooks play a useful part in short-circuiting tax research. In general, casebooks provide the reader with the basic facts of a case as well as critical parts of the leading judgments. Some casebooks go beyond merely providing summaries and extracts of cases to also include other materials as well as commentary and questions.

The following is a list of some useful Australian tax cases and materials books:

- S Barkoczy, C Rider, J Baring and N Bellamy, *Australian Tax Casebook*
- C Coleman, G Hart, B Bondfield, M McKerchar, J McLaren, K Sadiq and A Ting, *Australian Tax Analysis: Cases, Commentary, Commercial Applications and Questions*
- G Cooper, M Dirkis, M Stewart and R Vann, *Income Taxation Commentary and Materials*, and
- M Kobetsky, C Brown, R Fisher, S Villios and P Gillies, *Income Tax: Text, Materials and Essential Cases*.

Although casebooks may be of considerable time-saving value, there is usually no substitute for reading the full reports of important decisions.

### [13.11] International resources

While the taxation laws of each country vary dramatically, there are many common taxation issues. For instance, many countries adopt similar concepts of 'income' and 'deductions'. Many countries also have similar kinds of international taxation rules (eg 'transfer pricing' regimes). Likewise, many principles of taxation theory are of universal concern. Policy issues, such as what are the features of a 'good' tax system, affect all jurisdictions. It is also interesting to look at alternative taxation systems for comparative purposes. For these reasons, it is appropriate in many cases to extend one's research beyond Australia and investigate the international literature. This includes using foreign books published by international publishers such as Cambridge University Press, Wolters Kluwer, LexisNexis and Thomson Reuters, as well as those published by international organisations such as the International Bureau of Fiscal Documentation and the Organisation