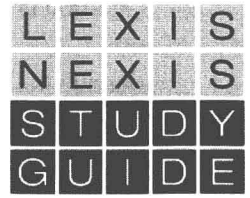


**SG**  
LexisNexis  
Study Guide

# Taxation and Revenue Law

2ND EDITION  
K Kendall

**100**  
LexisNexis®  
Butterworths 1911 to 2011



# TAXATION AND REVENUE LAW

SECOND EDITION

KEITH KENDALL

BCom (Hons), LLB (Monash), LLB (Melbourne), LLM (Chicago),  
SJD (La Trobe), CPA, FTIA

Senior Lecturer, School of Law, La Trobe University



LexisNexis Butterworths  
Australia  
2011

	LexisNexis
AUSTRALIA	LexisNexis Butterworths 475–495 Victoria Avenue, Chatswood NSW 2067 On the internet at: <a href="http://www.lexisnexis.com.au">www.lexisnexis.com.au</a>
ARGENTINA	LexisNexis Argentina, BUENOS AIRES
AUSTRIA	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
BRAZIL	LexisNexis Latin America, SAO PAULO
CANADA	LexisNexis Canada, Markham, ONTARIO
CHILE	LexisNexis Chile, SANTIAGO
CHINA	LexisNexis China, BEIJING, SHANGHAI
CZECH REPUBLIC	Nakladatelství Orac sro, PRAGUE
FRANCE	LexisNexis SA, PARIS
GERMANY	LexisNexis Germany, FRANKFURT
HONG KONG	LexisNexis Hong Kong, HONG KONG
HUNGARY	HVG-Orac, BUDAPEST
INDIA	LexisNexis, NEW DELHI
ITALY	Dott A Giuffrè Editore SpA, MILAN
JAPAN	LexisNexis Japan KK, TOKYO
KOREA	LexisNexis, SEOUL
MALAYSIA	LexisNexis Malaysia Sdn Bhd, PETALING JAYA, SELANGOR
NEW ZEALAND	LexisNexis, WELLINGTON
POLAND	Wydawnictwo Prawnicze LexisNexis, WARSAW
SINGAPORE	LexisNexis, SINGAPORE
SOUTH AFRICA	LexisNexis Butterworths, DURBAN
SWITZERLAND	Staempfli Verlag AG, BERNE
TAIWAN	LexisNexis, TAIWAN
UNITED KINGDOM	LexisNexis UK, LONDON, EDINBURGH
USA	LexisNexis Group, New York, NEW YORK LexisNexis, Miamisburg, OHIO

---

National Library of Australia Cataloguing-in-Publication entry

---

Author:	Kendall, Keith.
Title:	Taxation and Revenue Law.
Edition:	2nd edition.
ISBN:	9780409328004 (pbk).
Series:	LexisNexis Study Guide.
Notes:	Includes index.
Subjects:	Taxation — Textbook. Revenue — Textbook.
Dewey Number:	343.04.

---

© 2011 Reed International Books Australia Pty Limited trading as LexisNexis.

First edition 2008.

This book is copyright. Except as permitted under the Copyright Act 1968 (Cth), no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. Neither may information be stored electronically in any form whatsoever without such permission.

Inquiries should be addressed to the publishers.

Typeset in Optima and Helvetica Neue.

Printed in China.

Visit LexisNexis Butterworths at [www.lexisnexis.com.au](http://www.lexisnexis.com.au)

<i>Table of Cases</i>	v
<i>Table of Statutes</i>	ix
<b>CHAPTER 1</b>	
Introduction	1
<b>CHAPTER 2</b>	
Ordinary Income	13
<b>CHAPTER 3</b>	
Statutory Income	41
<b>CHAPTER 4</b>	
Recognition of Income	65
<b>CHAPTER 5</b>	
General Deductions	75
<b>CHAPTER 6</b>	
Specific Deductions	101
<b>CHAPTER 7</b>	
Taxation of Entities	121
<b>CHAPTER 8</b>	
Imputation System	129
<b>CHAPTER 9</b>	
Residency and Source	143
<b>CHAPTER 10</b>	
Part IVA	155
<b>CHAPTER 11</b>	
Fringe Benefits Tax	167
<b>CHAPTER 12</b>	
Goods and Services Tax	181
<i>Index</i>	195

References are to paragraphs; bold numbers indicate case extract

**A**

Anovoy Pty Ltd v Federal  
Commissioner of Taxation (2000)  
.... 5.26

Arthur Murray (NSW) Pty Ltd  
v Federal Commissioner of Taxation  
(1965) .... **4.14**

Avondale Motors (Parts) Pty Ltd  
v Federal Commissioner of Taxation  
(1971) .... **6.74**

**B**

Bartlett v Federal Commissioner of  
Taxation (2003) .... 6.7

BP Australia Ltd v Federal  
Commissioner of Taxation (1965)  
.... **5.37**–5.38

Brent v Federal Commissioner of  
Taxation (1971) .... **2.22**

Broken Hill Theatres Pty Ltd v Federal  
Commissioner of Taxation (1952)  
.... **5.36**

**C**

Coles Myer Finance Ltd v Federal  
Commissioner of Taxation (1993)  
.... **5.24**

Commissioner of Taxation (SA)  
v The Executor Trustee and Agency  
Co of South Australia Ltd (1938)  
.... 4.10

**D**

Dickenson v Federal Commissioner  
of Taxation (1958) .... **2.11**, 5.37

**E**

Egerton-Warburton v Deputy Federal  
Commissioner of Taxation (1934)  
.... **2.15**, 2.25

Eisner v Macomber (1920) .... 2.8

Evans v Federal Commissioner of  
Taxation (1981).... 9.25

**F**

Falcetta v Federal Commissioner of  
Taxation (2004) .... 6.7

Federal Coke Co Pty Ltd v Federal  
Commissioner of Taxation (1977)  
.... **2.16**–2.17

Federal Commissioner of Taxation  
v Applegate (1979) .... 9.7,  
**9.10**–9.12

— v Brown (1999) .... **5.27**

— v Consolidated Press Holdings Ltd  
(2001) .... 10.14

— v Cooke and Sherden (1980)  
.... **2.13**, 11.8

— v Day (2008) .... 5.9

— v Dixon (1952) .... **2.21**

— v Edwards (1994) .... **5.40**

— v Finn (1961) .... **5.43**

- v Hart (2004) .... 10.4, 10.7,  
**10.16**, 10.20
- v Hurley Holdings (NSW) Pty Ltd  
.... 2.27
- v James Flood Pty Ltd (1953)  
.... **5.14**–5.15
- v Jenkins (1982) .... **9.11**,  
9.12
- v McNeil (2005) .... 3.7
- v McNeil (2007) .... 3.7
- v Mitchum (1965) .... 9.25
- v Peabody (1994) .... **10.7**
- v Snowden & Willson Pty Ltd  
(1958) .... **5.17**–5.18
- v Spotless Services Ltd (1996)  
.... 10.16–**10.17**
- v Stone (2005) .... 2.4
- v The Myer Emporium Ltd (1987)  
.... **2.44**–2.45
- v Walker (1985).... **2.37**
- v Western Suburbs Cinemas Ltd  
(1952) .... 6.9
- v Whitfords Beach Pty Ltd (1982)  
.... **2.41**–2.44

## H

- Hallstroms Pty Ltd v Federal  
Commissioner of Taxation (1946)  
.... **5.31**, 5.33
- Handley v Federal Commissioner of  
Taxation (1981) .... **5.41**

- The Herald and Weekly Times Ltd  
v Federal Commissioner of Taxation  
(1932) .... **5.11**
- Higgs v Olivier (1951) .... **2.10**

## K

- Koitaki Para Rubber Estates Ltd  
v Federal Commissioner of Taxation  
(1940) .... **9.20**–9.21

## L

- Lindsay v Federal Commissioner of  
Taxation (1960) .... 6.9
- Lomax (Inspector of Taxes) v Peter  
Dixon and Son Ltd (1943) .... **2.28**
- Lunney v Federal Commissioner of  
Taxation (1958) .... **5.42**

## M

- Magna Alloys & Research Pty Ltd  
v Federal Commissioner of Taxation  
.... **5.18**
- Malayan Shipping Company Ltd  
v Federal Commissioner of Taxation  
(1946) .... 9.19, **9.21**–9.22
- Martin v Federal Commissioner of  
Taxation (1953) .... **2.36**
- McLaurin v Federal Commissioner of  
Taxation (1961) .... **2.17**

## N

- Nathan v Federal Commissioner of  
Taxation (1918) .... 9.25

New Zealand Flax Investments Ltd  
v Federal Commissioner of Taxation  
(1938) .... **5.13**–5.14

Nilsen Development Laboratories  
Pty Ltd v Federal Commissioner of  
Taxation (1981) .... **5.15**

## P

Phillip Morris v Federal Commissioner  
of Taxation (1979) .... 4.26

## R

Regent Oil Co Ltd v Strick [1966]  
.... 5.38

Ronpibon Tin NL v Federal  
Commissioner of Taxation (1949)  
.... **5.20**–5.21, 5.27

## S

Scott v Commissioner of Taxation  
(NSW) (1935) .... 2.3

Scott v Federal Commissioner of  
Taxation (1966) .... **2.23**

Scottish Australia Mining Company  
Ltd v Federal Commissioner of  
Taxation (1950) .... **2.40**–2.43

Steele v Deputy Federal  
Commissioner of Taxation (1999)  
.... **5.25**–5.26, 5.33

Sun Newspapers Ltd v Federal  
Commissioner of Taxation  
(1938) .... 1.24, **5.30**–5.33

## T

Tennant v Smith (Surveyor  
of Taxes) [1892] .... **2.12**–2.13,  
11.2

## U

United Dominions Corporation Ltd  
v Brian Pty Ltd (1985)  
.... 7.10

Ure v Federal Commissioner of  
Taxation (1981) .... **5.21**

## W

W Thomas & Co Pty Ltd v Federal  
Commissioner of Taxation (1966)  
.... 6.9

Westfield Ltd v Federal  
Commissioner of Taxation  
(1991) .... 2.38, **2.45**

References are to paragraphs

**Commonwealth**

A New Tax System (Goods and Services Tax) Act 1999 .... 1.5, 12.4

Pt 3-2 .... 12.45

Div 23 .... 12.35–12.36

Div 38 .... 12.40

Div 40 .... 12.43

Div 188 .... 12.38

Subdiv 38-A .... 12.41

Subdiv 38-B .... 12.41

Subdiv 38-C .... 12.41

Subdiv 38-E .... 12.41

Subdiv 38-J .... 12.41

s 9-5 .... 12.20, 12.24

s 9-10 .... 12.19, 12.28

s 9-10(2) .... 12.19

s 9-15 .... 12.22

s 9-15(1) .... 12.22

s 9-15(2) .... 12.22

s 9-15(3) .... 12.22

s 9-20 .... 12.23, 12.36

s 9-20(2) .... 12.25

s 9-25 .... 12.26

s 9-25(1) .... 12.26

s 9-25(2) .... 12.26

s 9-25(5)(a) .... 12.26

s 9-40 .... 12.18

s 11-5 .... 12.29

s 11-10 .... 12.28

s 11-15 .... 12.30

s 11-15(2)(a) .... 12.42

s 23-5 .... 12.37

s 23-15 .... 12.37

**Constitution**

s 55 .... 1.5

Corporations Act 2001 .... 1.12

s 130 .... 1.12

Fringe Benefits Tax Assessment Act

1986 .... 1.5, 11.1

Pt III .... 11.57

Div 11 .... 11.38

Div 13 .... 11.57

s 7 .... 11.18–11.19

s 7(2) .... 11.19

s 7(3) .... 11.19

s 8 .... 11.18

s 9 .... 11.22

s 9(2)(a)(ii) .... 11.23

s 9(2)(c) .... 11.24

s 9(2)(e) .... 11.28

s 10 .... 11.29

s 11 .... 11.31

s 11(1) .... 11.32–11.33

s 11(2) .... 11.33

s 16 .... 11.35

s 17 .... 11.35

s 18 .... 11.36

s 19 .... 11.37



## Fringe Benefits Tax Assessment Act

1986 — *cont'd*

- s 40 .... 11.38
- s 41 .... 11.39
- s 42 .... 11.43
- s 43 .... 11.49
- s 44 .... 11.40
- s 45 .... 11.53
- s 47 .... 11.54
- s 47(1) .... 11.54
- s 47(2) .... 11.54
- ss 47(3)–(4A) .... 11.54
- s 47(8) .... 11.54
- ss 48–51 .... 11.55–11.56
- s 52 .... 11.56
- s 58H .... 11.58
- s 58P .... 11.58
- s 58X .... 11.58
- s 58X(3) .... 11.58
- s 58X(4) .... 11.58
- s 58Y .... 11.58
- s 136(1) .... 11.5, 11.25, 11.38,  
11.41–11.42, 11.46, 11.49

## Income Tax Assessment Act 1936

- (ITAA 1936) .... 1.5–1.7, 1.9–1.11,  
1.14, 1.39–1.40, 3.7
- Pt III, Div 5 .... 7.12
- Pt IVA .... 1.39, 4.25, 7.3, 7.14,  
10.1–10.5, 10.7–10.8,  
10.13–10.14, 10.16–10.17, 10.20
- Sch 2F .... 7.23
- Div 16E .... 3.4, 5.24

## s 6(1) .... 1.39, 9.4

## s 6(1)(a) .... 9.6–9.7, 9.11, 9.14

## s 6(1)(b) .... 9.17, 9.21–9.22, 9.24

## s 21A .... 11.8

## s 23L .... 11.9

## s 23L(1A) .... 11.9, 11.57

## s 25(1) .... 1.9, 2.2

## s 44 .... 8.37

## s 44(1) .... 3.3–3.4, 7.18

## s 51(1) .... 1.9, 5.4, 5.11

## s 79D .... 10.14

## s 90 .... 7.12

## s 91 .... 7.12

## s 92 .... 7.12

## s 95 .... 7.22

## s 99 .... 7.21

## s 99A .... 7.21, 7.25

## s 177A .... 1.39, 10.5, 10.6–10.7, 10.12

## s 177A(3) .... 10.6

## s 177A(5) .... 10.13

s 177C .... 10.5, 10.9, 10.11,  
10.12

## s 177D .... 10.5, 10.12–10.17

## s 177E .... 10.3, 10.14

## s 177EA .... 10.3

## s 177EB .... 10.3

s 177F .... 10.3–10.5, 10.12,  
10.16–10.20

## s 260 .... 10.4, 10.20

## Income Tax Assessment Act 1997

- (ITAA 1997) .... 1.5–1.6, 1.9–1.11,  
1.15, 1.39–1.40

Div 10 .... 3.2	Subdiv 207-B .... 8.44
Div 25 .... 6.4–6.15	Subdiv 960-M .... 3.71
Div 26 .... 5.29	s 1-3 .... 1.10, 2.2, 5.4
Div 32 .... 5.29	s 4-5 .... 1.9
Div 35 .... 2.33, 7.8, 7.14	s 4-10(1) .... 1.9
Div 36 .... 6.55	s 4-15 .... 1.20, 1.23, 3.7
Div 40 .... 6.16, 6.22, 6.42, 6.50	s 6-1(1) .... 3.1
Div 43 .... 6.22, 6.50–6.51	s 6-5 .... 1.9, 1.25, 2.2, 2.4,
Div 67 .... 7.18, 8.41	2.18–2.19, 2.30, 2.44, 3.4–3.5,
Div 70 .... 4.5, 4.16, 4.19	3.83, 4.15, 4.20, 5.19, 10.11
Div 100 .... 3.8	s 6-5(1) .... 2.2, 9.2
Div 102 .... 3.9–3.10	s 6-5(2) .... 4.6, 9.2
Div 104 .... 3.13	s 6-5(3) .... 4.6, 9.2
Div 110 .... 3.52	s 6-5(4) .... 2.46, 2.49, 4.15
Div 112 .... 3.58	s 6-10 .... 3.2
Div 114 .... 3.68	s 6-25 .... 3.4, 3.83
Div 115 .... 3.73	s 6-25(1) .... 3.4
Div 116 .... 3.38, 3.41	s 6-25(2) .... 3.5, 6.2
Div 118 .... 3.82, 3.93	s 8-1 .... 1.9, 1.25–1.26, 4.3, 4.20,
Div 152 .... 3.81	5.4–5.6, 5.11–5.12, 5.19, 5.21,
Div 203 .... 8.19	5.24–5.25, 5.42–5.43, 6.1–6.2,
Div 855 .... 9.2	6.10, 10.2, 10.20
Subdiv 40-D .... 6.40	s 8-1(1) .... 5.7
Subdiv 40-C .... 6.27	s 8-1(1)(b) .... 1.26
Subdiv 40-E .... 6.44	s 8-1(2) .... 5.19, 5.28
Subdiv 108-C .... 3.82	s 8-1(2)(a) .... 5.30
Subdiv 110-B .... 3.57	s 8-1(2)(b) .... 1.26
Subdiv 112-C .... 3.65	s 8-5 .... 6.1
Subdiv 112-D .... 3.65	s 8-10 .... 8.2
Subdiv 165-D .... 6.59, 6.62	s 25-5 .... 6.5, 6.7
Subdiv 165-E .... 6.71	s 25-5(1)(b) .... 6.7
	s 25-5(2)(a) .... 6.5

## Income Tax Assessment Act 1997

— *cont'd*

s 25-5(2)(c) .... 6.5

s 25-5(2)(e) .... 6.6

s 25-10 .... 6.9

s 25-10(1) .... 6.8

s 25-10(2) .... 6.8

s 25-25 .... 6.10

s 25-25(1) .... 6.11

s 25-25(4) .... 6.11

s 25-25(5) .... 6.11

s 25-35 .... 6.12–6.13

s 25-35(1)(b) .... 6.14

ss 25-35(2)–(4) .... 6.14

s 36-10 .... 6.55

s 36-15(3) .... 6.56

s 36-15(7) .... 6.57

s 36-15(9) .... 6.57

s 36-17 .... 6.66, 8.43

s 36-17(3) .... 6.56

s 36-20 .... 6.56

s 36-55 .... 8.42

s 40-25 .... 6.17

s 40-25(7) .... 6.17

s 40-30 .... 6.20

s 40-30(2) .... 6.21

s 40-30(3) .... 6.22

s 40-40 .... 6.23

s 40-45 .... 6.22

s 40-70 .... 6.32–6.33, 6.35

s 40-70(2) .... 6.30

s 40-70(3) .... 6.36

s 40-72 .... 6.32, 6.35

s 40-72(2) .... 6.30

s 40-72(3) .... 6.36

s 40-75 .... 6.37, 6.53

s 40-80 .... 6.42–6.43

s 40-100 .... 6.24

s 40-105 .... 6.25

s 40-110 .... 6.26

s 40-130 .... 6.30

s 40-180 .... 6.27

s 40-185 .... 6.27

s 40-185(1) .... 6.27

s 40-190 .... 6.28

s 40-215 .... 6.29

s 40-220 .... 6.29

s 40-285(1) .... 6.41

s 40-285(2) .... 6.41

s 40-295 .... 6.40

s 40-425(1) .... 6.45

s 40-425(2) .... 6.44

s 40-425(3) .... 6.45

s 40-425(5) .... 6.44

s 40-430(1) .... 6.45

s 40-430(2) .... 6.45

s 40-440 .... 6.47

s 40-445 .... 6.49

s 43-20 .... 6.52

s 43-25(1) .... 6.53

s 43-70(2) .... 6.52

s 43-90 .... 6.54

s 63-10 .... 8.34	s 104-35(5)(a) .... 3.29–3.30
s 67-25 .... 8.41	s 104-35(5)(b) .... 3.29, 3.31, 3.33
s 70-10 .... 4.17–4.18, 6.21	s 104-60 .... 3.33
s 70-15 .... 4.20	s 104-60(2) .... 3.35
s 70-35 .... 4.22–4.23, 4.30	s 108-5 .... 3.16, 3.20–3.21
s 70-40 .... 4.24	s 108-15 .... 3.94, 3.97
s 70-45 .... 4.25	s 108-20(1) .... 3.97
s 70-50 .... 4.29	s 108-25 .... 3.97
s 70-90 .... 4.31	s 110-25 .... 3.52
s 70-95 .... 4.31	s 110-35 .... 3.28, 3.54
s 70-100 .... 4.32	s 110-35(1) .... 3.55
s 102-5 .... 3.9, 3.78, 3.83	s 112-20 .... 3.59–3.60
s 102-10 .... 3.9, 3.81	s 112-20(2) .... 3.59
s 102-20 .... 3.10, 3.12	s 112-25 .... 3.61
s 102-23 .... 3.10, 3.25, 3.32, 3.37	s 112-25(3) .... 3.62
s 102-25 .... 3.10, 3.25, 3.32, 3.34	s 112-25(4) .... 3.63
s 102-25(1) .... 3.34	s 112-30 .... 3.64
s 102-25(3) .... 3.37	s 112-30(1) .... 3.64
s 104-5 .... 3.13	s 112-30(1A) .... 3.64
s 104-10 .... 3.16, 3.21, 3.32	s 114-1 .... 3.69
s 104-10(1) .... 3.17, 3.20	s 114-5 .... 3.70
s 104-10(2) .... 3.17, 3.22	s 114-10 .... 3.69
s 104-10(3) .... 3.18	s 115-10 .... 3.74
s 104-10(4) .... 3.19, 3.44	s 115-20 .... 3.70, 3.73
s 104-10(5) .... 3.20, 3.32	s 115-25 .... 3.75
s 104-10(5)(a) .... 3.50	s 115-25(3) .... 3.73
s 104-35 .... 3.7, 3.26	s 115-100 .... 3.76
s 104-35(1) .... 3.26, 3.30	s 116-20 .... 3.39–3.40
s 104-35(2) .... 3.27	s 116-30 .... 3.42, 3.51, 3.60
s 104-35(3) .... 3.28	s 116-30(1) .... 3.44–3.45
s 104-35(5) .... 3.29, 3.32	s 116-30(2) .... 3.45–3.46

# Income Tax Assessment Act 1997

— *cont'd*

s 116-40 .... 3.49, 3.51, 3.64

s 118-5(a) .... 3.82

s 118-10 .... 3.82–3.93

s 118-10(1) .... 3.93–3.95

s 118-10(2) .... 3.93, 3.96

s 118-10(3) .... 3.97

s 118-20 .... 3.5, 3.7, 3.83

s 118-110 .... 3.85

s 118-115 .... 3.87

s 118-115(1)(b) .... 3.87

s 118-120 .... 3.87

s 118-130 .... 3.88

s 118-140 .... 3.89

s 118-145 .... 3.90, 3.92

s 118-170 .... 3.84

s 118-185 .... 3.91

s 118-190 .... 3.92

s 118-190(2) .... 3.92

s 118-195 .... 3.85

s 165-12 .... 6.59

s 165-13 .... 6.71

s 165-13(2) .... 6.80

s 165-120 .... 6.15

s 165-210(2) .... 6.78

s 165-210(3) .... 6.78

s 202-55 .... 8.16

s 202-60 .... 8.17

s 203-35 .... 8.21

s 203-40 .... 8.20

s 203-40(4) .... 8.20

s 203-45 .... 8.20

s 203-50 .... 8.24

s 203-50(1)(a) .... 8.27

s 203-50(1)(b) .... 8.29

s 203-50(2) .... 8.25–8.26

s 203-55 .... 8.23

s 205-15 .... 8.14

s 205-30 .... 8.14, 8.35

s 205-45 .... 8.32

s 205-45(1) .... 8.33

s 205-50 .... 8.33

s 205-70 .... 8.34–8.35

s 205-70(8) .... 8.35

s 207-20(1) .... 8.37, 8.39

s 207-20(2) .... 8.37, 8.40

s 207-75 .... 8.38

s 960-275 .... 3.71

s 960-275(5) .... 3.71

s 960-280 .... 3.71

s 995-1(1) .... 1.39–1.40, 7.10, 7.15

Income Tax Rates Act 1986 .... 1.5

International Tax Agreements Act

1953 .... 1.5

New Business Tax System (Franking  
Deficit Tax) Act 2002 .... 8.32

Taxation Administration Act 1953

.... 1.5

Taxation Rulings

IT 2650 .... 9.13

IT 2670 .... 4.19

IT 2650 ....	9.13	TR 2010/2 ....	6.24, 11.32
IT 2670 ....	4.19	TR 93/23 ....	4.29
TR 93/23 ....	4.29	TR 97/11 ....	2.35
TR 97/11 ....	2.35	TR 98/17 ....	6.76, 6.77, 9.8
TR 98/17 ....	6.76, 6.77, 9.8	TR 1999/9 ....	6.75
TR 1999/9 ....	6.75	TR 2004/4 ....	5.26
TR 2004/4 ....	5.26	TR 2006/8 ....	4.26
TR 2006/8 ....	4.26	TR 2010/2 ....	6.24, 11.32

# Introduction

- 1.1** Australian taxation law has a reputation for being very complicated. It would seem that not a week goes by without a politician, interest group or other organisation appearing on the news berating the complexity of the tax system. To a large extent, this is probably justified. Much of the tax legislation is written in language that is difficult for trained lawyers to understand and is completely inaccessible to the lay public. This is compounded by the fact that, as Australia is an advanced developed economy, the tax system is required to deal with extremely complex concepts and transactions. This is reflected in the complexity of the judicial decisions dealing with tax law.
- 1.2** However, also to a large extent, tax law need not be as inaccessible as the perception would suggest. While much of the detail giving rise to the complexity is the product of political compromise or a quickly implemented solution to an immediate problem, creating unforeseen consequences in other areas, the tax system is largely based on a few key principles. While these principles themselves may not necessarily be based on any particular recognisable theory, much of the system implements these principles in a consistent manner. Therefore, an appropriately systematic approach to the study of tax law should at least make the fundamentals relatively understandable.
- 1.3** This book seeks to achieve this objective. While it is impossible to cover Australia's tax system comprehensively in a book of this size (indeed, arguably of any size!), by identifying the base principles and demonstrating where specifics of the law fit in with these basic ideas, students should come away with a broad familiarity enabling them to learn about the more complex intricacies of the tax law.

## **SOURCES OF TAX LAW**

- 1.4** As with all other areas of Australian law, there are two — and only two — sources of tax law in Australia. These are legislation and cases.

### **Legislation**

- 1.5** The tax legislation, however, is a bit of a special breed. Instead of one statute, Australia has two: the Income Tax Assessment Act 1936 (Cth)



(ITAA 1936) and the Income Tax Assessment Act 1997 (Cth) (ITAA 1997). Moreover, these two statutes only deal with the levying of income tax, and will be discussed in more detail later in this chapter. For constitutional reasons, a taxing statute is only allowed to impose a tax and serve no other purpose and only allowed to deal with one aspect of taxation: s 55 of the Commonwealth Constitution. As a result, we also have the Taxation Administration Act 1953, dealing with administrative matters. Then there is the Income Tax Rates Act 1986, which specifies the actual rates of income tax, and the International Tax Agreements Act 1953, which not only incorporates all of Australia's double tax agreements into domestic law, but also deals with the interaction between these treaties and the provisions of the other tax statutes. There is also the Fringe Benefits Tax Assessment Act 1986 (see **Chapter 11**) and the A New Tax System (Goods and Services Tax) Act 1999: see **Chapter 12**. These are the main tax statutes, which do not include any of the customs and excise legislation (such as the tax imposed on petrol and tobacco products) — and this is just at the Commonwealth level. Then there are the state taxes: payroll tax, land tax and stamp duty. You start to get the idea.

However, the focus in this book is on the two income tax statutes — the ITAA 1936 and the ITAA 1997. Fringe benefits tax (FBT) and goods and services tax (GST) are also dealt with in **Chapters 11** and **12** respectively. **1.6**

The reason why Australia has two income tax statutes is because of efforts in the 1990s to simplify the tax legislation. The ITAA 1936 had been Australia's sole tax statute since the inception of the present system (Australia has had an income tax at the Commonwealth level since 1915, which was introduced primarily to fund World War I, but those statutes that existed prior to the ITAA 1936 had important differences from the present system). As with many statutes, the provisions were written in very difficult legal language, which was virtually incomprehensible to the non-specialist. **1.7**

In the mid-1990s, the Commonwealth Government embarked on a project designed to simplify the language used in the tax legislation. This was intended to make the legislation more accessible not only to **1.8**