



AUSTRALIAN TAXATION LAW

27TH EDITION

ROBIN WOELLNER
STEPHEN BARKOCZY
SHIRLEY MURPHY
CHRIS EVANS
DALE PINTO

2017

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FOREWORD TO THE FIRST EDITION

If two of the important criteria of a 'good' taxation system are simplicity and certainty (¶1-190 and ¶1-195), the Australian taxation system and particularly the *Income Tax Assessment Act 1936* fail the test miserably. The spate of anti-avoidance legislation, a reaction to the excesses of the tax avoidance era of the seventies, and the more recent taxation reform package have brought about legislation of almost unrivalled complexity.

The legislation is in some cases unintelligible: without a commerce or law degree the ordinary taxpayer stands no chance of finding his way through the morass and even with these qualifications his advisers will of necessity have to struggle to make sense of language that is as convoluted as it is confusing. Nor is the task of the taxation officer any easier. Many provisions in the legislation are not applied for the simple reason that no one is able to comprehend them. The need for a work that will operate as a guide to the traveller through these murky waters is painfully apparent.

In 1946, Mr Hannan, in his 'Treatise on the Principles of Income Taxation', while advertng to the desirability of enunciating a series of authoritative propositions (on s 51(1)), resignedly accepted the impossibility of such a task. Some 40 years on, the possibility of formulating authoritative principles on any matter relating to tax is even more daunting. The torrent of decisions, judicial and administrative, that has been handed down over that time, together with the outpourings of the legislature, have made the study of taxation almost unmanageable.

The need for a systematic approach to the study of taxation is obvious enough to the student. If the student were to see taxation as involving no more than an endless series of individual instances no overview of the subject would be possible. But it is not only the student who is in need of a systematic approach to the problem. The practitioner who is unaware of the system will have endless difficulty even finding the problem, let alone proceeding to a solution for that problem.

So it is not the student alone who will benefit from the present work. Indeed there are to be found discussed in these pages many of the great taxation issues of the present, without an appreciation of which it would be impossible to predict the outcome of particular factual situations.

By way of example, no issue could be more significant in the judge-made law of income taxation than the issue of the role of purpose in s 51(1) of the Act. The course of authority from *Ure v FC of T* 81 ATC 4100 and *Ilbery v FC of T* 81 ATC 4661 to the more recent cases of *FC of T v Just Jeans Pty Ltd* 87 ATC 4373 and *FC of T v John* 87 ATC 4713 have been a judicial reaction to tax avoidance; yet the boundaries of the doctrine (that purpose is relevant) are far from clear.

Two taxpayers incurring the same outgoings in circumstances identical save for their subjective motives and purposes should be treated in the same way for the purposes of an income tax law. To grant a taxation deduction to the taxpayer who is naive, while denying it to the taxpayer who is sophisticated, would be arbitrary. If an outgoing is incurred in circumstances where there is, objectively seen, a connection between the incurring of the outgoing and the activity which is directed towards the production of assessable income, that outgoing should satisfy the tests of deductibility irrespective of either subjective motivation or purpose.

Once it is accepted (as it must presently be) that subjective purpose intrudes to some extent into the issue of deductibility (albeit not necessarily as a test of deductibility), there is opened up the question whether the relevant purpose is the sole purpose, the dominant purpose or some purpose less than the dominant purpose. For the present these issues are best discussed, in *Magna Alloys & Research Pty Ltd v FC of T* 80 ATC 4542, in judgments in which two members of the present High Court, then sitting in the Federal Court, participated.

What, however, has not yet been the subject of discussion is the problem thrown up when a deduction is disallowed on the basis, say, that it was incurred for the sole purpose of obtaining a tax deduction, yet assessable income is in fact derived in the course of the scheme. Is the assessable income to be ignored, or is the result that the deduction only is to be ignored, leaving the taxpayer nevertheless in receipt of the assessable income upon which he is then to be taxed? Further in deduction cases, what role does an anti-avoidance section play?

In the long run, however, it is not the 'common law' of taxation that holds the greatest significance. If there is one lesson that must be learned by anyone who wishes to understand taxation it is this: Go back to the Statute and read it!

One of the all time great taxation advisers was once asked a question by a client concerning s 51(1). The adviser had undoubtedly read the section hundreds, perhaps thousands of times. Yet, perhaps to the surprise of his lay client, he opened the Statute, perused the words and tested the issue by reference to the words he read.

There is no other alternative.

So it is, that the authors of the present work return the reader to the Statute, offering on the way a helpful summary of its salient features.

Australia has over the years been well served by its taxation literature—the present work continues the tradition.

23 September 1987
Graham Hill, QC

PREFACE TO THE TWENTY-SEVENTH EDITION

Taxation law has experienced considerable changes over the past few decades, and the deluge shows no signs of abating. Recent years have witnessed the introduction of substantial and complex legislative changes to superannuation, trust streaming, the introduction of a carbon tax and a minerals resource rent tax (both subsequently repealed), laws penalising ‘phoenix’ behaviour and the promotion of tax exploitation schemes, the introduction of a ‘remedial’ power enabling the Commissioner to avoid unintended consequences of legislation, a new attribution regime for managed investment trusts, CFC integrity rules, proposals for a ‘backpackers’ tax (almost immediately changed), the ‘Netflix’ tax on digital imports, MAAL (Multinational Anti-Avoidance) legislation, a proposal for a Diverted Profits Tax, and the announcement but subsequent deferral of a Tax White Paper.

All this has been accompanied by endless tinkering with superannuation, CGT rules, small business concessions, corporate and individual tax rates and various other aspects of the already complicated tax system in Australia.

The stream of significant court and tribunal decisions also continues apace, with a regular flow of key decisions that impact on the interpretation and operation of the tax laws—including, for example, the series of High Court decisions that forced the government to amend the general anti-avoidance provisions in Pt IVA, and major decisions in 2016 such as *Donoghue* and *Anglo-American* (indicating, among other things, that the ATO can make use of illegally obtained information to make an assessment) and *Chevron* (clarifying the rules for transfer pricing).

In addition, the ATO continues to produce a steady stream of rulings, determinations, advices, taxpayer alerts, decision impact statements and other materials, including the new Law Companion Guidelines and Practical Compliance Guidelines.

Australian Taxation Law aims to provide guidance in clear and simple language through this morass of complex and ever-changing laws. To make it easier to understand the application of the law to practical situations, we have made extensive use of flow charts and practical examples.

While the book covers State land tax, payroll tax and stamp duties, the primary focus of *Australian Taxation Law* remains the federal taxation system, with particular emphasis on income tax, capital gains tax, corporate tax, fringe benefits tax, goods and services tax, and the operation of the tax administration system that drives the whole process.

This 27th edition of *Australian Taxation Law* incorporates the major legislative, case law and administrative reforms up to 1 September 2016, as well as various key developments since that date, ensuring that it remains the most relevant and up-to-date tax text available.

The authors would like to thank all those who have provided insightful feedback, comments and assistance in updating chapters for this new edition. In particular, Robin thanks Prof Steve Graw for his assistance with aspects of Chapter 17, and Chris would like to mention Tim Russell, who has provided very useful comments on aspects of Chapter 25.

Most importantly, we particularly wish to thank our families, whose ongoing support, encouragement and sacrifices make completion of each edition possible.

October 2016

Robin Woellner, Stephen Barkoczy, Shirley Murphy, Chris Evans and Dale Pinto

ABOUT THE AUTHORS

Robin Woellner is a Chartered Tax Adviser and Fellow of the Australian Institute of Management. Robin is currently an Adjunct Professor in the School of Law at James Cook University and the School of Taxation and Business Law in the Business School at the University of New South Wales. He has practised in taxation in the private sector and in the ATO, and has for many years taught revenue law and advanced revenue law courses at undergraduate and postgraduate level, as well as teaching in a wide range of other commercial law subjects. He has been a member of editorial panels on various tax journals, and is the author/co-author of numerous books, articles and conference papers.

Stephen Barkoczy is a Professor in the Faculty of Law at Monash University. He is also an external consultant to the ATO and a member of the Innovation Investment Committee of Innovation Australia. He was previously a consultant with the law firm, Blake Dawson. Stephen is the author/co-author of several books and articles on taxation law and is a former editor of the *Journal of Australian Taxation*. In 2008, he received the Prime Minister's Award for Australian University Teacher of the Year.

Shirley Murphy has taught in the areas of taxation and superannuation law at a number of tertiary institutions and has acted as a taxation and superannuation consultant to industry groups. She has written in the areas of taxation and superannuation for many years, is the co-author of the *Australian Master Superannuation Guide*, and has contributed over many years to a wide range of publications including the CCH *Australian Master Tax Guide*.

Chris Evans is a part time Professor in the School of Taxation and Business Law (Atax) in the Business School at the University of New South Wales and a part time Extraordinary Professor at the University of Pretoria in South Africa. He is also an International Research Fellow at the Centre for Business Taxation at Oxford University and a Senior Research Fellow at the Tax Law and Policy Research Group at Monash University. He is the author/co-author of numerous books, articles and conference papers, and is the former Editor of the *Australian Tax Review*.

Dale Pinto is Professor of Taxation Law and Head of the Taxation Department of the Curtin Law School at Curtin University in Western Australia. He is also a Fellow of the Taxation Law and Policy Research Group at Monash University. Dale is the author/co-author of numerous books, refereed articles and national and international conference papers, and is on the editorial board of a number of journals as well as being the Editor-in-Chief of several refereed journals. Dale is a Chartered Tax Adviser and the Chair of the Tax Institute's National Education Quality Assurance Board (EQAB). Dale served as an inaugural member of the National Tax Practitioners Board and is a current

member of the Board of Taxation's Advisory Panel and the ATO's Tax Technical Panel. He was appointed to the Divisional Council of CPA Australia (WA Division) in October 2014 and is currently Vice-President.

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LIST OF ABBREVIATIONS

The following abbreviations are used in *Australian Taxation Law*.

AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975</i>
ABN	Australian Business Number
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ABR	Australian Business Register
ADF	Approved deposit fund
ADI	Authorised deposit-taking institution
ADJRA	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AFOF	Australian venture capital fund of funds
AFTS Report	Australia's Future Tax System Report to the Treasurer (Final Report of the Henry Tax Review)
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
ATC	<i>Australian Tax Cases (CCH)</i>
ATO	Australian Taxation Office
ATR	<i>Australian Tax Review</i>
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWOTE	Average weekly ordinary time earnings
BAS	Business Activity Statement
BELC	Broad-exemption listed country
CFC	Controlled foreign company
CGT	Capital gains tax
COT	Continuity of ownership test
CPI	Consumer price index
DAC	Departure authorization certificate

DFC of T	Deputy Federal Commissioner of Taxation
DPO	Departure prohibition order
DTA	Double taxation agreement
DVS	Direct value shift
EST	(Australian) Eastern Standard Time
ESVCLP	Early stage venture capital limited partnership
ETP	Employment termination payment
FBT	Fringe benefits tax
FBTAA	<i>Fringe Benefits Tax Assessment Act 1986</i>
FC of T	Federal Commissioner of Taxation
FIF	Foreign investment fund
FIFO	First in first out
FLA	<i>Family Law Act 1975</i>
FLIC	Film licensed investment company
FMD	Farm management deposit
FOIA	<i>Freedom of Information Act 1982</i>
FTC	Foreign tax credit
FTRA	<i>Financial Transaction Reports Act 1988</i>
GIC	General interest charge
GST	Goods and services tax
GSTA	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
GVSR	General value shifting regime
HECS	Higher Education Contribution Scheme
HELP	Higher Education Loan Programme
IED	Income equalization deposit
IGOT	Inspector-General of Taxation
IRDB	Industry Research and Development Board
ISC	Insurance and Superannuation Commissioner

ITAA36	<i>Income Tax Assessment Act 1936</i>
ITAA97	<i>Income Tax Assessment Act 1997</i>
ITAR	Income Tax Assessment Regulations 1997
ITR	Income Tax Regulations 1936
ITRA	<i>Income Tax Rates Act 1986</i>
ITTPA	<i>Income Tax (Transitional Provisions) Act 1997</i>
IVS	Indirect value shifting
JALTA	<i>Journal of the Australasian Law Teachers Association</i>
LILO	Last in last out
LPR	Legal personal representative
LTA	<i>Land Tax Act 1956</i>
LTMA	<i>Land Tax Management Act 1956</i>
MRRT	Minerals resource rent tax
OSSA	<i>Occupational Superannuation Standards Act 1987</i>
PAYE	Pay-as-you-earn
PAYG	Pay As You Go
PDF	Pooled development fund
PPLL	Paid parental leave levy
PPS	Prescribed payments system
PRRT	Petroleum resource rent tax
PRRT Act	<i>Petroleum Resource Rent Tax Act 1987</i>
PRRTAA87	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
PST	Pooled superannuation trust
R&D	Research and development
RBA	Running balance account
RBL	Reasonable benefit limit
RPS	Reportable payments system

RSA	Retirement savings account
RSAA	<i>Retirement Savings Accounts Act 1997</i>
RSAR	Retirement Savings Accounts Regulations 1997
SBT	Same business test
SCTACA	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
SCTIA	<i>Superannuation Contributions Tax Imposition Act 1997</i>
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>
SGAR	<i>Superannuation Guarantee (Administration) Regulations 1993</i>
SGC	Superannuation guarantee charge
SGCA	<i>Superannuation Guarantee Charge Act 1992</i>
SISA	<i>Superannuation Industry (Supervision) Act 1993</i>
SISR	<i>Superannuation Industry (Supervision) Regulations 1994</i>
SME	Small or medium enterprise
SPOR	Shorter period of review (taxpayers)
SSAA	<i>Small Superannuation Accounts Act 1995</i>
STCT	Small Taxation Claims Tribunal
STS	Simplified Tax System
TAA	<i>Taxation Administration Act 1953</i>
TBRL	Temporary budget repair levy
TFN	Tax file number
TLIP	Tax Law Improvement Project
TPTACA	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>
UAP	Uniform administrative penalty
VCA	<i>Venture Capital Act 2002</i>
VCF	Venture capital franking
VCLP	Venture capital limited partnership
VCMP	Venture capital management partnership

KEY TAX WEBSITES

KEY TAX AND TAX REFORM SITES

Australia's Future Tax System (Henry Tax Review): www.taxreview.treasury.gov.au
Australian Taxation Office: www.ato.gov.au
Board of Taxation: www.taxboard.gov.au
Tax Practitioners Board: www.tpb.gov.au

FEDERAL GOVERNMENT

Australian Business Register: www.abr.business.gov.au
Australian Competition & Consumer Commission (ACCC): www.accc.gov.au
Australian Government Entry Point: www.australia.gov.au
Australian Prudential Regulation Authority (APRA): www.apra.gov.au
Australian Securities & Investment Commission (ASIC): www.asic.gov.au
Commonwealth Ombudsman: www.comb.gov.au
Department of Finance & Deregulation: www.finance.gov.au
Department of Treasury: www.treasury.gov.au
Inspector-General of Taxation: www.igt.gov.au
Parliament House: www.aph.gov.au
Single Business Service: www.business.gov.au
Tax Issues Entry System (Ties): www.ties.gov.au
Treasurer: www.treasurer.gov.au

STATE AND TERRITORY REVENUE OFFICES

Australian Capital Territory: www.revenue.act.gov.au
New South Wales: www.osr.nsw.gov.au
Northern Territory: www.nt.gov.au/ntt/revenue
Queensland: www.osr.qld.gov.au
South Australia: www.treasury.sa.gov.au
Tasmania: www.treasury.tas.gov.au
Victoria: www.sro.vic.gov.au
Western Australia: www.finance.wa.gov.au

COURTS

ACT Supreme Court: www.courts.act.gov.au/supreme
Administrative Appeals Tribunal: www.aat.gov.au
Family Court of Australia: www.familycourt.gov.au
Federal Court of Australia: www.fedcourt.gov.au
High Court of Australia: www.hcourt.gov.au
Supreme Court of NSW: www.lawlink.nsw.gov.au/sc
Supreme Court of Victoria: www.supremecourt.vic.gov.au
Supreme Court of Queensland: www.courts.qld.gov.au
Supreme Court of Tasmania: www.supremecourt.tas.gov.au
Supreme Court of Western Australia: www.supremecourt.wa.gov.au

OTHER USEFUL SITES FOR SOURCE MATERIALS

Australasian Legal Information Institute: www.austlii.edu.au
Australian Tax Law Library: www.austlii.edu.au/au/special/tax
ComLaw (Commonwealth Law): www.comlaw.gov.au
Worldlii: www.worldlii.org

KEY TAX AND SUPERANNUATION ASSOCIATIONS/ORGANISATIONS

Association of Superannuation Funds of Australia (ASFA): www.superannuation.asn.au
Self-Managed Super Fund Professionals' Association of Australia (SPAA): www.spaa.asn.au
Taxation Institute of Australia: www.taxinstitute.com.au

ACCOUNTING ASSOCIATIONS/ORGANISATIONS

Association of Taxation & Management Accountants: www.atma.com.au
CPA Australia: www.cpaaustralia.com.au
Institute of Chartered Accountants in Australia: www.charteredaccountants.com.au
Institute of Public Accountants: www.publicaccountants.org.au
National Tax & Accountants Association: www.ntaa.com.au

INTERNATIONAL TAX AUTHORITIES

Canada (Canada Revenue Agency): www.cra-arc.gc.ca
China (State Administration of Taxation): www.chinatax.gov.cn
Hong Kong (Inland Revenue Department): www.ird.gov.hk
Malaysia (Inland Revenue Board of Malaysia): www.hasil.gov.my

New Zealand (Inland Revenue): www.ird.govt.nz

Singapore (Inland Revenue Authority of Singapore): www.iras.gov.sg

United Kingdom (HM Revenue & Customs): www.hmrc.gov.uk

United States of America (Internal Revenue Service): www.irs.gov

United States of America (US Department of the Treasury): www.treasury.gov

Chapter 1

Introduction To Income Tax Law

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Historical background: general ¶1-020 – ¶1-045

Introduction ¶1-020

Early developments ¶1-030

Beginnings of the modern taxation system ¶1-040

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Impact of the GST on Commonwealth–state tax relations and the vertical fiscal imbalance ¶1-620

[¶1-000] Overview

Before proceeding to a technical analysis of taxation law in later chapters, it is useful to provide a broader context and perspective on income and other taxes. This overview involves a brief analysis of the history of taxation and its socio-economic and political role and implications, and the present structure of taxation in Australia.

It is all too easy to lose sight of these wider aspects, and to focus exclusively on the

increasingly intricate technical principles and practices of taxation law. However, taxation is a social process and, without some understanding of how and why taxation develops and changes, it is difficult to understand the present system or the dynamics which precipitate change, or to develop a feeling for likely future changes and directions.

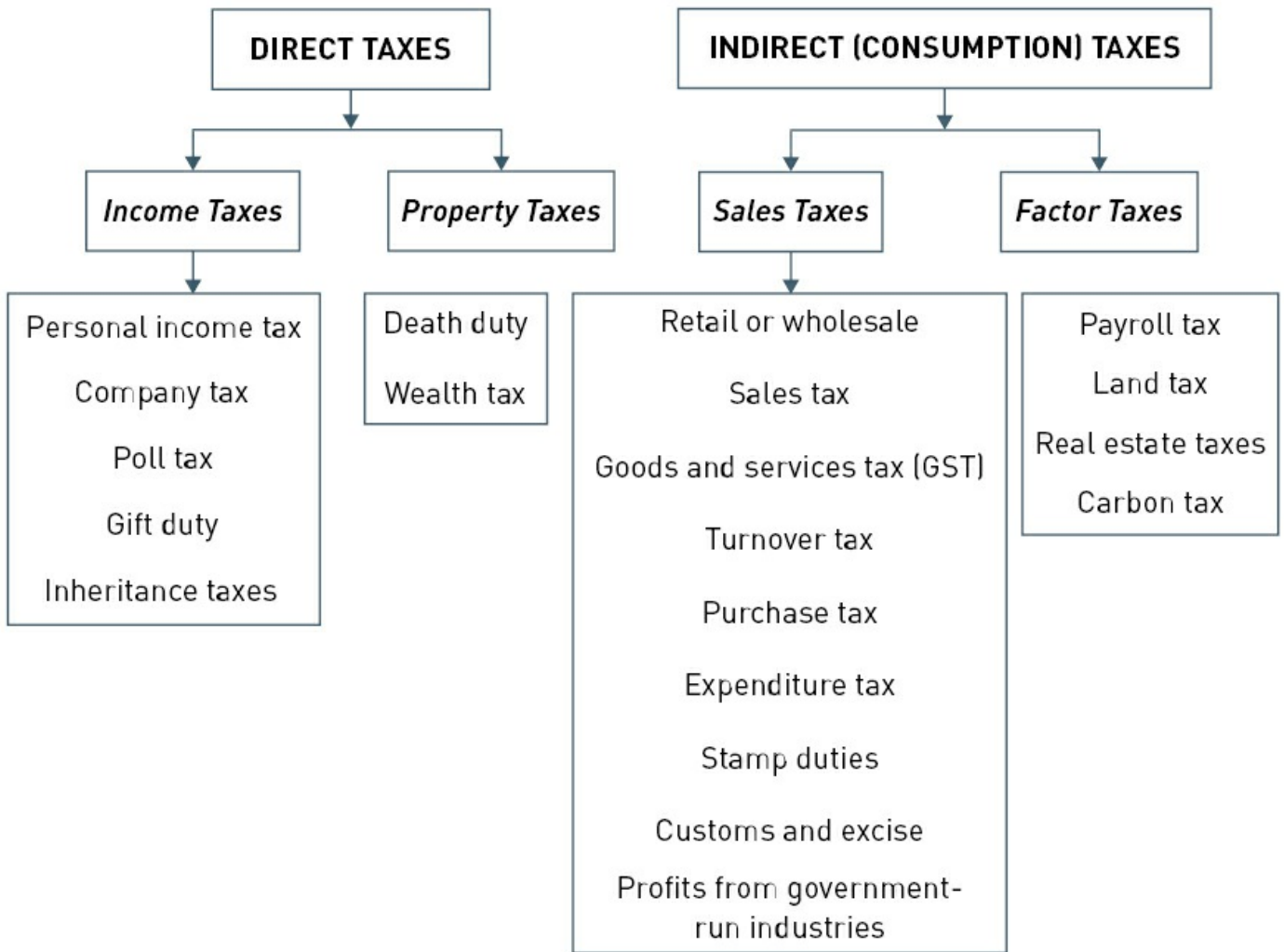
What is a tax?

There are technical definitions of a ‘tax’ for constitutional law and other purposes, which are discussed at ¶1-550. However, at a general level, the *Concise Oxford Dictionary* defines a ‘tax’ as a ‘compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions etc’, while the OECD defines a tax as ‘a compulsory, unrequited transfer ... to the general government sector’.¹

Allan prefers the wider view of tax as ‘any leakage from the circular flow of income into the public sector, excepting loan transactions and direct payments for publicly produced goods and services up to the cost of producing these goods and services’.² This view would regard profits made by nationalised postal services as taxes levied on postage; and would also cover ‘taxes in kind’, such as the loss or ‘cost’ to the owner of property compulsorily acquired by a government at less than free market prices. On this view, pensions and subsidies would also be seen as (negative) taxes.

There is a wide range of possible taxes—one possible categorisation of common taxes is set out in Figure 1.1.³

Figure 1.1 Common taxes



Historical Background: General (¶1-020 – ¶1-045)

[¶1-020] Introduction

It has long been recognised that a democratic government needs to raise revenue in order to govern effectively, and that one of the most effective means of raising this revenue is by the imposition and collection of taxes.⁴ Indeed, as Mills observes:

It is one of the empirical certainties of history that no structural society has ever arisen without taxation. [The] power of taxation is one which is particularly liable to abuse ... but without that power no Government ... is possible. ‘The power to tax is the one great power upon which the whole national fabric is based. ... It is not only the power to destroy, but the power to keep alive.’⁵

It is not surprising, therefore, that attitudes to taxation vary radically. At one extreme, Justice Oliver Wendell Holmes (Jr) observed in *Compania de Tabacos v Collector* that ‘taxes are what we pay for civilized society’.⁶ This view was echoed more recently by the Hon Bill Shorten, who commented in 2011:

With taxes you buy civilisation ... Taxes fund the provision of goods and services that the private sector cannot or will not provide, but are of crucial importance to the way we live ... [and also] provide us with resources to pay for vital community services such as roads, hospitals and medical care, schools, colleges and universities, defence of the nation, courts, police, museums, libraries, sporting facilities, [and] parks.⁷

Not all commentators have been so positive. A more cynical view is that the ‘art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing’,⁸ and it has also been said that ‘there is one difference between a tax collector and a taxidermist—the taxidermist leaves the hide’.⁹

Whatever view one takes, an understanding of the history and dynamics of taxation is important—the lessons of the past can be instructive for modern proposals and reforms, and many of the older taxes have their modern equivalents. The politicians and citizens of different countries and times have shared many of the visions and problems which modern taxation systems still face—questions of tax equity, simplicity, incidence and efficiency have been perennial difficulties, as have the existence and implications of tax avoidance and evasion (see ¶1-045 for a definition of these terms).

The main focus of this book is on income tax, and the following segment accordingly deals mainly with the development and introduction of the Australian income tax. The goods and services tax (GST) which changed the face of taxation in Australia is dealt with in Chapter 27; state taxes are dealt with in Chapter 28; and CGT and FBT are dealt with in Chapters 7–8 and 26 respectively.

[¶1-030] Early developments

Taxation has been part of organised society for much of recorded history.¹⁰ In early times, the emphasis was on indirect taxes. In ancient Persia, for example, taxes included tributes paid as a proportion of produce and by the provision of personal service, as well as dues paid at ferries and market places.

Customs duties (*portoria*) were levied by Roman kings up to the 7th century BC, reintroduced together with a broad-based excise tax by the Emperor Augustus in the Roman Empire,¹¹ and brought by the Romans to Britain upon its conquest. Other Roman taxes included consumption taxes and, under Julius Caesar, a 1% general sales tax, as well as a ‘head’ tax (later extended to land holdings) and temporary property taxes levied in times of war to support the state’s military needs.

Other taxes followed: in England a ‘subsidy’ on goods and land was levied in the early Middle Ages, while the ‘Danegeld’ (a form of land tax based on the amount of land held) was originally levied in times of emergency as a direct tax on landowners,¹² but became a regular tax under the Norman kings until it was abolished in the 12th century.¹³

Other taxes levied in medieval England included ‘scutage’ (‘shield money’, 1159–1332), which was payable by a feudal landowner in lieu of military service in the King’s army. There were also taxes on movable goods, beginning with the ‘Saladin tithe’, levied in 1188 to fund the Crusade against the Saracens, which was the forerunner of modern property taxes.

In the early 17th century, ‘ship money’ was levied by the Stuart kings for the defence of the realm, and poll taxes were also levied from time to time as required.¹⁴

[¶1-040] Beginnings of the modern taxation system

In 1715, customs and excise duties produced some 73% of total English tax revenue, and this proportion grew to 82% by 1755. The heavy reliance in England on indirect taxation of goods continued up to the end of the 18th century. During this period, English taxes were levied mainly on the external indicia of wealth; for example, the ‘window tax’ of 1696 levied a progressive tax based on the number of windows in a house, while the ‘assessed taxes’ were levied on carriages, female servants, racehorses, hair powder, clocks, watches and the like.

Direct taxation and income tax did not become a regular feature in England until the 19th century, and even then direct taxation was usually imposed only when additional revenue was needed for extraordinary purposes; for example, during times of war or other social upheaval.

One reason for the ad hoc nature of taxes up to the 19th century may have been a lack of the administrative infrastructure and expertise necessary for the efficient control of an ongoing broad-based system of taxation. Indeed, until the 17th century, it was not uncommon for the Crown to sell the right to collect taxes to private individuals (‘farming the revenue’), as had been the case in ancient Rome. It was not until the latter half of the 17th century that the practice ceased, and government officials (‘inspectors’) were appointed to administer and collect taxes.

Gradually, an efficient staff and system of taxation administration began to develop in England, and by the end of the 18th century the administrative machinery for regular taxation was in place. However, as so often happens in the history of taxation, the final impetus came from a national emergency.

Introduction of income tax

By 1798, the armies of Emperor Napoleon Bonaparte controlled continental Europe. England and its allies were hard-pressed to resist the French advance, and widespread evasion by taxpayers meant that the 1797 ‘triple assessment’ on ‘taxable establishments’ had failed to produce adequate revenue to support the War.

William Pitt, who was Prime Minister of England at the time, viewed a tax on incomes as ‘repugnant to the customs and manners of the nation’. Nevertheless, the desperate military situation forced Pitt to impose a general tax ‘on all the leading branches of income’.

Ironically, in light of subsequent developments, Pitt justified the move to an income tax on the basis of the need ‘to prevent all evasion and fraud’ which had plagued the triple assessment.

The first *Income Tax Act* (in 1799) was only moderately successful in its revenue-

raising aims, yielding some 50% of targeted revenue. With the temporary peace following the Treaty of Amiens in 1802, the tax was abolished, but renewed hostilities with the French shortly afterwards saw the reintroduction of income tax under the pseudonym of ‘duties on land and property’. The *Income Tax Act 1803* introduced the concept of the five schedules or categories of taxable property which still characterises the English taxation system, as well as the concept of deduction of tax at source for certain classes of income.¹⁵

The 1803 income tax was repealed in 1816, apparently because it was feared that the tax might become a permanent feature, and a ‘potential instrument of tyranny’.

England remained free of income tax until the next social crisis, in 1842. Then, at a time of great commercial depression and social unrest, Sir Robert Peel reluctantly felt compelled to impose a tax on incomes at a maximum rate of some 3%. The tax was intended to be an experiment for three years only, but the ‘experiment’ has survived (with various modifications) to the present day—a story by no means unusual in the taxation context.

[¶1-045] Tax resistance through the ages

From the earliest biblical times, taxes and tax collectors have been unpopular, and historical commentaries suggest that some people have always tried to evade or avoid the payment of taxes.

Not surprisingly, therefore, taxes and taxation systems have regularly been the cause of heated (and sometimes violent) controversy. The Boston Tea Party, with its slogan of ‘no taxation without representation’, is perhaps the best-known ‘revolt’ against perceived tax injustices. However, the Stuart ‘ship money’ taxes were a factor contributing to the outbreak of the English Civil Wars in the 1640s; and the poll tax introduced by the British Thatcher Government was widely seen as a factor in that government’s fall.

While many tax protests are symbolic, this is not always the case: during the 1381 ‘Peasants’ Revolt’ in England, a group of citizens aggrieved at a poll tax and oppressive collection methods cut off the Chief Justice’s head and paraded it round Bury St Edmunds on a pike; frustrated taxation reform was a factor in the onset of the French Revolution; and the imposition of miners’ licence fees was a factor in the bloodshed of the Eureka Stockade rebellion on the Ballarat goldfields in 1854.

A more subtle but equally significant revolt against taxation is through *tax avoidance* (the creation by legitimate means of a situation in which a taxpayer is liable to pay less or no tax) or *tax evasion* (the intentional non-declaration of income or over-claiming of expenditure or other benefits).

In a sense, tax avoidance/evasion ‘is the Siamese twin of the charge to tax in any system based upon certain statutory enactment. No other area of the law touches human activity at so many points, so that it is scarcely surprising that tax avoidance should be so widespread and ingrained in our consciousness’.¹⁶

Tax avoidance and evasion are not new. The actions of 17th-century English taxpayers who sought to avoid the window tax by blocking up windows until the tax collector had gone and then reopening them were merely somewhat less subtle predecessors of the tax avoidance schemes of modern times.

Yet however understandable tax avoidance and evasion may seem from some perspectives,¹⁷ they can have serious consequences for the equity of a taxation system. For example, the underground or untaxed ‘cash’ economy in Australia has been estimated at up to 5% of GDP; that is, around \$74.33 billion,¹⁸ with organised crime estimated to account for around \$15 billion pa.¹⁹ This means that billions of dollars in tax revenue are lost each year through evasion, and this lost revenue must then be made up by other means; for example, by imposing higher rates on those who do pay tax.

Chapter 25 considers tax evasion and avoidance in more detail.

Historical Background: Australia (¶1-050 – ¶1-070)

[¶1-050] History of income tax in Australia

Early taxes

Although the different Australian states had levied taxes of various types from the time of their establishment, the first income tax in Australia (on land and incomes) was introduced by the *South Australian* Government in 1884. The history of income tax in Australia began with commendable moderation, with the South Australian tax imposing a flat rate of 1.25% on income from personal exertion, 2.5% on income from property, and 0.2% on landholdings.

Victoria imposed an income tax in 1895 through the *Land and Income Tax Assessment Act 1895*, which was motivated by economic necessity—Victoria had a huge deficit of more than £650,000, almost 10% of total revenue.

New South Wales had attempted to introduce an income tax in 1886, but opposition was so vehement that the proposal was dropped. Indeed, one member of parliament is quoted as saying that: ‘If the Devil had sent a representative here to institute a means of destroying the morality of the people, he could have found no better instrument than an income tax.’²⁰

However, an income and land tax was successfully introduced into New South Wales in 1895, again following heated debate and driven by economic necessity: the New South Wales Government faced a large revenue deficit. The New South Wales income tax was levied at a flat rate of 2.5%, with a number of exemptions. The land tax was levied at a flat rate of 0.42%, with a threshold of £240.

In 1899, *Western Australia* introduced a tax on company dividends and profits at a rate of 5%, and ultimately introduced a general income and land tax in 1907, with a flat rate of tax on incomes at 1.66% for residents (2.49% for non-residents).

Tasmania had introduced a tax on dividends as early as 1880, but did not introduce a general income tax until 1902, when income tax was levied at progressive rates on property income between £100 and £400, and above that amount at a flat rate of 5%.

Queensland followed in 1902 with an income tax at progressive rates up to a maximum of 5% on personal exertion income and a flat rate of 3.75% on property income.