INCOME TAX ASSESSMENT ACT 1997

An Act about income tax and related matters

The Parliament of Australia enacts:

CHAPTER 1 — INTRODUCTION AND CORE PROVISIONS

PART 1-1 — PRELIMINARY

Division 1 — Preliminary

SECTION 1-1 Short title

1-1 This Act may be cited as the *Income Tax Assessment Act 1997*.

SECTION 1-2 Commencement

1-2 This Act commences on 1 July 1997.

SECTION 1-3 Differences in style not to affect meaning

1-3(1) This Act contains provisions of the *Income Tax Assessment Act 1936* in a rewritten form.

1-3(2) If:

(a) that Act expressed an idea in a particular form of words; and

(b) this Act appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style;

the ideas are not to be taken to be different just because different forms of words were used.

Note: A public or private ruling about a provision of the *Income Tax Assessment Act 1936* is taken also to be a ruling about the corresponding provision of this Act, so far as the 2 provisions express the same ideas: see section 357-85 in Schedule 1 to the *Taxation Administration Act 1953*.

SECTION 1-4 Application

1-4 This Act extends to every external Territory referred to in the definition of ***Australia***.

SECTION 1-7 Administration of this Act

1-7 The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

PART 1-2 — A GUIDE TO THIS ACT

Division 2 — How to use this Act

Subdivision 2-A — How to find your way around

SECTION 2-1 The design

2-1 This Act is designed to help you identify accurately and quickly the provisions that are relevant to your purpose in reading the income tax law.

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The Act contains tables, diagrams and signposts to help you navigate your way.

You can start at Division 3 (What this Act is about) and follow the signposts as far into the Act as you need to go. You may also encounter signposts to several areas of the law that are relevant to you. Each one should be followed.

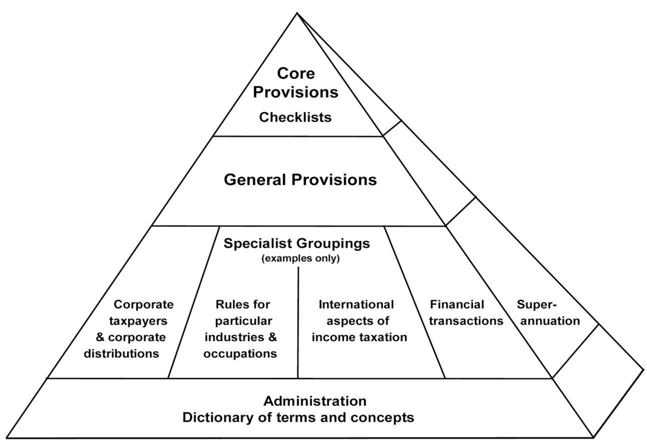
Sometimes they will lead down through several levels of detail. At each successive level, the rules are structured in a similar way. They will often be preceded by a Guide to the rules at that level. The rules themselves will usually deal first with the general or most common case and then with the more particular or special cases.

Subdivision 2-B — How the Act is arranged

SECTION 2-5 The pyramid

2-5 This Act is arranged in a way that reflects the principle of moving from the general case to the particular.

In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.



Note: The *Taxation Administration Act 1953* contains the provisions on collection and recovery of tax and provisions on administration.

Subdivision 2-C — How to identify defined terms and find the definitions

SECTION 2-10 When defined terms are identified

2-10(1) Many of the terms used in the income tax law are defined.

2-10(2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in ''*business''. The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 995-1.

SECTION 2-15 When terms are *not* identified

2-15(1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are *not* usually asterisked.

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2-15(2) Terms are *not* asterisked in the non-operative material contained in this Act.

Note: The non-operative material is described in Subdivision 2-E.

2-15(3) The following basic terms used throughout the Act are *not* identified with an asterisk. They fall into 2 groups:

Key participants in the income tax system

Item	This term:	is defined in:
1.	Australian resident	section 995-1
2.	Commissioner	section 995-1
3.	company	section 995-1
4.	entity	section 960-100
4A.	foreign resident	section 995-1
5.	individual	section 995-1
6.	partnership	section 995-1
7.	person	section 995-1
8.	trustee	section 995-1
9.	you	section 4-5

Core concepts

Item	This term:	is defined in:
1.	amount	section 995-1
2.	assessable income	Division 6
3.	assessment	section 995-1
3A.	Australia	Subdivision 960-T
4.	deduct, deduction	Division 8
5.	income tax	section 995-1

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Item	This term:	is defined in:
6.	income year	section 995-1
7.	taxable income	section 4-15
8.	this Act	section 995-1

SECTION 2-20 Identifying the defined term in a definition

2-20 Within a definition, the defined term is identified by ***bold italics***.

Subdivision 2-D — The numbering system

SECTION 2-25 Purposes

2-25 Two main purposes of the numbering system in this Act are:

- To indicate the relationship between units at different levels.

  For example, the number of Part 2-15 indicates that the Part is in Chapter 2. Similarly, the number of section 165-70 indicates that the section is in Division 165.

- To allow for future expansion of the Act. The main technique here is leaving gaps between numbers.

SECTION 2-30 Gaps in the numbering

2-30 There are gaps in the numbering system to allow for the insertion of new Divisions and sections.

Subdivision 2-E — Status of Guides and other non-operative material

SECTION 2-35 Non-operative material

2-35 In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

SECTION 2-40 Guides

2-40 The first is the ‘‘Guides’’. A ***Guide*** consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 950-150.

SECTION 2-45 Other material

2-45 The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions, but are not kept separate from them.

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Division 3 — What this Act is about

SECTION 3-5 Annual income tax

3-5(1) Income tax is payable for each year by each individual and company, and by some other entities.

Note 1: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See the *Medicare Levy Act 1986* and Part VIIB of the *Income Tax Assessment Act 1936*.

Note 2: Income tax is imposed by the *Income Tax Act 1986* and the other Acts referred to in the definition of ***income tax*** in section 995-1.

3-5(2) Most entities have to pay *instalments* of income tax before the income tax they *actually* have to pay can be worked out.

3-5(3) This Act answers these questions:

1. What instalments of income tax do you have to pay? When and how do you pay them?

   See Schedule 1 to the *Taxation Administration Act 1953*.

2. How do you work out how much income tax you must pay?

   See Division 4, starting at section 4-1.

3. What happens if your income tax is *more* than the instalments you have paid? When and how must you pay the rest?

   See Division 5 of this Act and Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

4. What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?

   See Division 3A of Part IIB of the *Taxation Administration Act 1953*.

5. What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?

   See section 3-10.

6. Do you have any other obligations under the income tax law?

   See section 3-15.

7. If a dispute between you and the Commissioner of Taxation cannot be settled by agreement, what procedures for objection, review and appeal are available?

   See Part IVC (sections 14ZL to 14ZZS) of the *Taxation Administration Act 1953*.

SECTION 3-10 Your other obligations as a taxpayer

3-10(1) Besides paying instalments and the rest of your income tax, your main obligations as a taxpayer are:

(a) to keep records and provide information as required by:

- the *Income Tax Assessment Act 1936*; and
- Division 900 (which sets out substantiation rules) of this Act; and

(b) to lodge income tax returns as required by:

- the *Income Tax Assessment Act 1936*.

Tax file numbers

3-10(2) Under Part VA of the *Income Tax Assessment Act 1936*, a tax file number can be issued to you. You are not obliged to apply for a tax file number. However, if you do not quote one in certain situations:

- you may become liable for instalments of income tax that would not otherwise have been payable;
- the amount of certain of your instalments of income tax may be increased.

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SECTION 3-15 Your obligations *other than* as a taxpayer

3-15 Your main obligations under the income tax law, other than as a taxpayer are:

- in certain situations, to deduct from money you owe to another person, and to remit to the Commissioner, instalments of income tax payable by that person.

See Part 4-5 (Collection of income tax instalments), starting at section 750-1.

PART 1-3 — CORE PROVISIONS

Division 4 — How to work out the income tax payable on your taxable income

SECTION 4-1 Who must pay income tax

4-1 Income tax is payable by each individual and company, and by some other entities.

Note: The actual amount of income tax payable may be nil.

For a list of the entities that must pay income tax, see Division 9, starting at section 9-1.

SECTION 4-5 Meaning of *you*

4-5 If a provision of this Act uses the expression ***you***, it applies to entities generally, unless its application is expressly limited.

Note 1: The expression ***you*** is not used in provisions that apply only to entities that are not individuals.

Note 2: For circumstances in which the identity of an entity that is a managed investment scheme for the purposes of the *Corporations Act 2001* is not affected by changes to the scheme, see Subdivision 960-E of the *Income Tax (Transitional Provisions) Act 1997*.

SECTION 4-10 How to work out how much income tax you must pay

4-10(1) You must pay income tax for each *financial year.

4-10(2) Your income tax is worked out by reference to your taxable income for the ***income year***. The income year is the same as the *financial year, except in these cases:

(a) for a company, the income year is the *previous* financial year;

(b) if you have an accounting period that is not the same as the financial year, each such accounting period or, for a company, each previous accounting period is an income year.

Note 1: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

4-10(3) Work out your income tax for the *financial year as follows:

$$\text{Income tax} = (\text{Taxable income} \times \text{Rate}) - \text{Tax offsets}$$

Method statement

Step 1. Work out your taxable income for the income year.

To do this, see section 4-15.

Step 2. Work out your basic income tax liability on your taxable income using:

(a) the income tax rate or rates that apply to you for the income year; and

(b) any special provisions that apply to working out that liability.

See the *Income Tax Rates Act 1986* and section 4-25.

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Step 3. Work out your tax offsets for the income year. A ***tax offset*** reduces the amount of income tax you have to pay.

For the list of tax offsets, see section 13-1.

Step 4. Subtract your *tax offsets from your basic income tax liability. The result is how much income tax you owe for the *financial year.

Note 1: Division 63 explains what happens if your tax offsets exceed your basic income tax liability. How the excess is treated depends on the type of tax offset.

Note 2: Section 4-11 of the *Income Tax (Transitional Provisions) Act 1997* (which is about the temporary budget repair levy) may increase the amount of income tax worked out under this section.

[**CCH Note:** S 4-10(3) was amended by No 16 of 2011, s 3 and Sch 1 item 1, by substituting ‘‘Note 1’’ for ‘‘Note’’ in the note at the end of the subsection. However, since Note 3 also appears at the end of s 4-10(3), ‘‘Note’’ has been renumbered as ‘‘Note 1’’ and ‘‘Note 3’’ has been renumbered to ‘‘Note 2’’, in line with an editorial change made by the Federal Register of Legislation under the *Legislation Act 2003* to bring it into line with legislative drafting practice.]

Income tax worked out on another basis

4-10(4) For some entities, some or all of their income tax for the *financial year is worked out by reference to something other than taxable income for the income year.

See section 9-5.

SECTION 4-15 How to work out your taxable income

4-15(1) Work out your ***taxable income*** for the income year like this:

Taxable income = Assessable income − Deductions

Method statement

Step 1. Add up all your assessable income for the income year.

To find out about your assessable income, see Division 6.

Step 2. Add up your deductions for the income year.

To find out what you can deduct, see Division 8.

Step 3. Subtract your deductions from your assessable income (unless they exceed it). The result is your taxable income. (If the deductions equal or exceed the assessable income, you don't have a taxable income.)

Note: If the deductions exceed the assessable income, you may have a tax loss which you may be able to utilise in that or a later income year: see Division 36.

4-15(2) There are cases where taxable income is worked out in a special way:

Item	For this case . . .	See:
1.	A company does not maintain continuity of ownership and control during the income year and does not satisfy the same business test	Subdivision 165-B
1A.	(Repealed by No 80 of 2007)	

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Item	For this case . . .	See:
1B.	An entity is a *member of a *consolidated group at any time in the income year	Part 3-90
2.	A company becomes a PDF (pooled development fund) during the income year, and the PDF component for the income year is a nil amount	section 124ZTA of the *Income Tax Assessment Act 1936*
3.	A shipowner or charterer: ● has its principal place of business outside Australia; and ● carries passengers, freight or mail shipped in Australia	section 129 of the *Income Tax Assessment Act 1936*
4.	An insurer who is a foreign resident enters into insurance contracts connected with Australia	sections 142 and 143 of the *Income Tax Assessment Act 1936*
5.	The Commissioner makes a default or special assessment of taxable income	sections 167 and 168 of the *Income Tax Assessment Act 1936*
6.	The Commissioner makes a determination of the amount of taxable income to prevent double taxation in certain treaty cases	section 24 of the *International Tax Agreements Act 1953*

Note: A life insurance company can have a taxable income of the complying superannuation class and/or a taxable income of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.

* * *

Division 5 — How to work out when to pay your income tax

Guide to Division 5

SECTION 5-1 What this Division is about

If your assessed income tax liability exceeds the credits available to you under the PAYG system, this Division explains *when* you must pay the excess to the Commissioner.

If your assessment is amended so that you must pay income tax, or pay more income tax than under the previous assessment, this Division explains:

(a) *when* you must pay the additional tax; and

(b) *when* any associated interest charges must be paid.

Note: For provisions about the collection and recovery of income tax and other tax-related liabilities, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

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Subdivision 5-A — How to work out when to pay your income tax

SECTION 5-5 When income tax is payable

Scope

5-5(1) This section tells you when income tax you must pay for a *financial year is due and payable.

Note: The Commissioner may defer the time at which the income tax is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

5-5(2) The income tax is only due and payable if the Commissioner makes an *assessment of your income tax for the year.

5-5(3) However, if the Commissioner does make an *assessment of your income tax for the year, the tax may be taken to have been due and payable at a time before your assessment was made.

Note: This is to ensure that general interest charge begins to accrue from the same date for all like entities. General interest charge on unpaid income tax is calculated from when the tax is due and payable, not from when the assessment is made: see section 5-15.

Original assessments — self-assessment entities

5-5(4) If you are a *self-assessment entity, the income tax is due and payable on the first day of the sixth month after the end of the income year.

Example:

If your income year is the same as the financial year, your income tax would be due and payable on 1 December.

Original assessments — other entities

5-5(5) If you are *not* a *self-assessment entity, the income tax is due and payable 21 days after the day (the ***return day***) on or before which you are required to lodge your *income tax return with the Commissioner.

Note: For rules about income tax returns and when they are due, see Part IV of the *Income Tax Assessment Act 1936*.

5-5(6) However, if you lodge your return *on or before* the return day and the Commissioner gives you a notice of *assessment (other than an amended assessment) *after* the return day, the income tax is due and payable 21 days after the Commissioner gives you the notice.

Amended assessments

5-5(7) If the Commissioner amends your *assessment, any extra income tax resulting from the amendment is due and payable 21 days after the day on which the Commissioner gives you notice of the amended assessment.

Note: Shortfall interest charge may be payable, on any amount of extra income tax payable as a result of the amended assessment, for each day in the period that:

(a) starts at the time income tax was due and payable on your original assessment; and

(b) ends the day before the day on which the Commissioner gives you notice of the amended assessment.

SECTION 5-10 When shortfall interest charge is payable

5-10 An amount of *shortfall interest charge that you are liable to pay is due and payable 21 days after the day on which the Commissioner gives you notice of the charge.

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Note: Shortfall interest charge is imposed if the Commissioner amends an assessment and the amended assessment results in an increase in some tax payable. For provisions about liability for shortfall interest charge, see Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

SECTION 5-15 General interest charge payable on unpaid income tax or shortfall interest charge

5-15 If an amount of income tax or *shortfall interest charge that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(a) starts at the beginning of the day on which the amount was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the income tax or shortfall interest charge;

(ii) general interest charge on any of the income tax or shortfall interest charge.

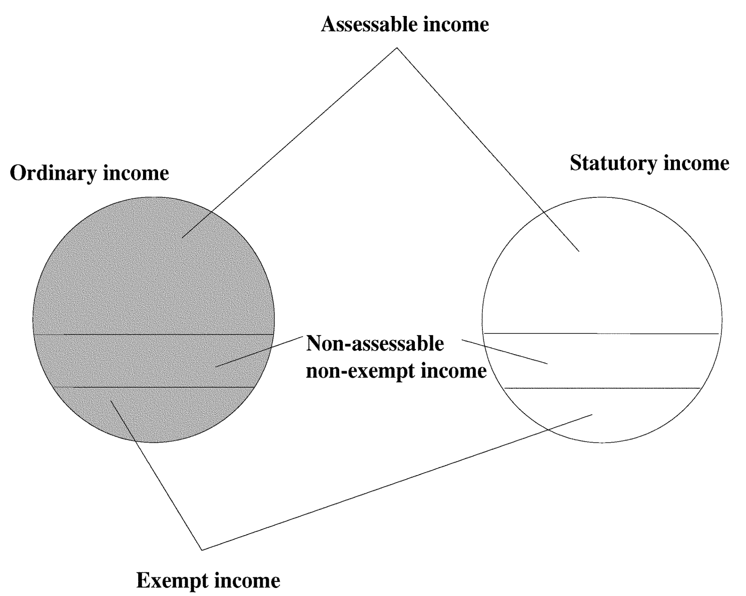
Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Note 2: Shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Division 6 — Assessable income and exempt income

Guide to Division 6

SECTION 6-1 Diagram showing relationships among concepts in this Division



6-1(1) Assessable income consists of ordinary income and statutory income.

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6-1(2) Some ordinary income, and some statutory income, is exempt income.

6-1(3) Exempt income is not assessable income.

6-1(4) Some ordinary income, and some statutory income, is neither assessable income nor exempt income.

For the effect of the GST in working out assessable income, see Division 17.

6-1(5) An amount of ordinary income or statutory income can have only one status (that is, assessable income, exempt income or non-assessable non-exempt income) in the hands of a particular entity.

Operative provisions

SECTION 6-5 Income according to ordinary concepts (*ordinary income*)

6-5(1) Your ***assessable income*** includes income according to ordinary concepts, which is called ***ordinary income***.

Note: Some of the provisions about assessable income listed in section 10-5 may affect the treatment of ordinary income.

6-5(2) If you are an Australian resident, your assessable income includes the *ordinary income you *derived directly or indirectly from all sources, whether in or out of Australia, during the income year.

6-5(3) If you are a foreign resident, your assessable income includes:

(a) the *ordinary income you *derived directly or indirectly from all *Australian sources during the income year; and

(b) other *ordinary income that a provision includes in your assessable income for the income year on some basis other than having an *Australian source.

6-5(4) In working out whether you have ***derived*** an amount of *ordinary income, and (if so) when you ***derived*** it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

SECTION 6-10 Other assessable income (*statutory income*)

6-10(1) Your ***assessable income*** also includes some amounts that are *not* *ordinary income.

Note: These are included by provisions about assessable income. For a summary list of these provisions, see section 10-5.

6-10(2) Amounts that are *not* *ordinary income, but are included in your assessable income by provisions about assessable income, are called ***statutory income***.

Note 1: Although an amount is statutory income because it has been included in assessable income under a provision of this Act, it may be made exempt income or non-assessable non-exempt income under another provision: see sections 6-20 and 6-23.

Note 2: Many provisions in the summary list in section 10-5 contain rules about ordinary income. These rules do not change its character as ordinary income.

6-10(3) If an amount would be *statutory income apart from the fact that you have not received it, it becomes statutory income as soon as it is applied or dealt with in any way on your behalf or as you direct.

6-10(4) If you are an Australian resident, your assessable income includes your *statutory income from all sources, whether in or out of Australia.

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