

THE UNIVERSITY OF NEW SOUTH WALES



Faculty of Business (incorporating the AGSM)

SCHOOL OF BUSINESS LAW AND TAXATION

INTERNATIONAL BUSINESS TAXATION

LEGT 2756

COURSE OUTLINE 2007

Lecturer In Charge:

John Taylor Phn 93853292

Fax 93136658

e-mail c.taylor@unsw.edu.au

INTERNATIONAL BUSINESS TAXATION

<u>1/. COURSE STAFF</u>	<u>3</u>
1.1 Communication with Staff	3
<u>2. INFORMATION ABOUT THE COURSE</u>	<u>3</u>
2.1 Teaching times and Locations	3
2.2 Units of Credit	3
2.3 Parallel teaching in the course	3
2.4 Relationship of this course to other course offerings	3
2.5 Approach to learning and teaching	3
<u>3. COURSE AIMS AND OUTCOMES</u>	<u>3</u>
3.1 Course Aims	3
3.2 Student Learning Outcomes	4
3.3 Teaching Strategies	4
<u>4. STUDENT RESPONSIBILITIES AND CONDUCT</u>	<u>5</u>
4.1 Workload	5
4.2 Attendance	5
4.3 General Conduct and Behaviour	5
4.4 Keeping informed	5
<u>5. ASSESSMENT</u>	<u>5</u>
5.1 Assessment Details	6
5.2 Assignment Submission Procedure	6
5.3 Late Submission	10
5.4 Special Consideration and Supplementary examinations	10
5.5 Assignment Format	11
<u>6. ACADEMIC HONESTY AND PLAGIARISM</u>	<u>11</u>
<u>7. STUDENT RESOURCES</u>	<u>12</u>
7.1 Course Resources	12
7.2 Other Resources, Support and Information	13
<u>8. CONTINUAL COURSE IMPROVEMENT</u>	<u>14</u>
<u>9. COURSE SCHEDULE</u>	<u>14</u>
9.1 CONTENT OF SEMINARS	

1. COURSE STAFF

ASSOCIATE PROFESSOR JOHN TAYLOR
PHN 93853292
FAX 93136658
e-mail: c.taylor@unsw.edu.au

1.1 Communication with Staff

John Taylor will be available for consultation before the class on Tuesday evenings from 5pm to 6pm and otherwise by appointment. Communication by e-mail is encouraged.

2. INFORMATION ABOUT THE COURSE

2.1 Teaching times and Locations

Classes will be held on Mondays from 10am to 1pm

2.2 Units of Credit

This course is worth 6 units of credit

2.3 Parallel teaching in the course

This course is taught in parallel with a postgraduate course LEGT 5583 International Business Taxation. Different assessment tasks are set for graduate and undergraduate students.

2.4 Relationship of this course to other course offerings

This course builds on students knowledge of the Australian legal system gained through LEGT 1711. The course is an option in the Taxation Major and in the Business Law Co-Major in the Bachelor of Commerce degree.

2.5 Approach to learning and teaching

The philosophy of teaching and learning underpinning this course is one of problem based learning. Students will be encouraged to apply international tax law principles in the context of case studies, a simulation game and a tax planning assignment. The aim is to promote deep learning by examining alternative approaches to achieving outcomes in particular fact situations. Students will be encouraged to read widely and think critically about Australia's approaches to the design of its international tax law.

3. COURSE AIMS AND OUTCOMES

3.1 Course Aims

This course aims to:

1. Provide students with an overview of principles of Australian International Business Taxation

2. Develop students' written and oral skills in applying Australian International Business Taxation principles in the context of particular fact situations
3. Develop students' ability to research issues relating to Australian International Business Taxation
4. Develop students teamwork and negotiating skills
5. Illustrate some of the considerations relevant to international tax planning
6. Challenge students to think of alternative approaches to structuring international transactions
7. Challenge students to think critically about the design of Australian International Business Taxation rules.

3.2 Student Learning Outcomes

After completing this course you should be able to:

- Identify key international business taxation issues in a given fact situation
- Locate and use resources that will assist you in developing a response to international business taxation issues
- Explain your response to international business taxation issues through oral and written presentations
- Identify different outcomes that result when different international tax planning strategies are used
- Compare the Australian approach to selected international business taxation design issues with that taken in other OECD countries

3.3 Teaching Strategies

The course will be conducted by weekly 3 hour classes. The course is divided into three parts. Part One discusses principles applicable to the income taxation of international transactions. Emphasis will be placed on taxation principles relevant to international direct investment. At relevant points a comparison will be made with the legislation of other jurisdictions as other possible responses to these issues. Part Two examines general principles and objectives of international tax planning. Part Three will then examine the application of these general principles to hypothetical fact situations involving Australia and other specific jurisdictions.

The teaching strategy for Part One will be a blend of lecturer presentations, case study discussions and a simulation game. Written materials will be placed on Web CT Vista. Students will be required to read the materials on Web CT Vista before the class in which those materials are discussed. The materials on Web CT Vista will often contain problems and discussion questions. Students are required to attempt the problems and discussion questions before the class in which those materials are discussed. Lecturer presentations will be supplemented by in class discussion of these questions and problems.

The teaching strategy for Part Two will be lecturer presentation of common international tax planning strategies. The discussion will be supplemented by a real world case study illustrating international tax planning strategies used in combination.

The teaching strategy for Part Three will involve discussion of student presentations of tax planning case studies that they have created.

Throughout the course critical perspectives on design issues in Australian International Business Taxation will be raised through discussion of papers by M Com students on key issues.

4. STUDENT RESPONSIBILITIES AND CONDUCT

4.1 Workload

It is expected that you will spend at least **ten hours** per week studying this course. This time should be made up of reading, research, working on exercises and problems, and attending classes. In periods where you need to complete assignments or prepare for examinations, the workload may be greater.

Over-commitment has been a cause of failure for many students. You should take the required workload into account when planning how to balance study with employment and other activities.

4.2 Attendance

Your regular and punctual attendance at lectures and seminars is expected in this course. University regulations indicate that if students attend less than eighty per cent of scheduled classes they may be refused final assessment.

4.3 General Conduct and Behaviour

You are expected to conduct yourself with consideration and respect for the needs of your fellow students and teaching staff. Conduct which unduly disrupts or interferes with a class, such as ringing or talking on mobile phones, is not acceptable and students may be asked to leave the class. More information on student conduct is available at: www.my.unsw.edu.au

4.4 Keeping informed

You should take note of all announcements made in lectures, tutorials or on the course web site. From time to time, the University will send important announcements to your university e-mail address without providing you with a paper copy. You will be deemed to have received this information.

5. LEARNING ASSESSMENT

5.1 Formal Requirements

To complete and pass the course a student is required to:

- (i) attend a minimum of 80% of classes held in all parts of the course;
- (ii) complete all the written assignments which have been allocated to that student by the lecturer;
- (iii) actively participate in the simulation game;

- (iv) obtain an overall mark which will entitle the student to the grade of pass in accordance with general university guidelines.

5.2 Assessment Details

- (1) To assist in achieving Course Aims 1, 3, 4, 5 and 6 your group will be required to write a report of its role in the international tax planning simulation game which will be held in Weeks 7, 10 and 12. Your group's report of its role in the international tax planning simulation game is due no later than the Week 14 class. If you want feed back on your progress your group's report can be made progressively as the various components of the simulation game are completed. The report will be worth **20 marks**. The report should indicate the relative contributions of group members to the writing of the report. The report should include a blow by blow description of the game in the week when your group was not an active participant. The report should also include the written document that your group was required to supply to other groups in relation to a particular week. Further details on the international tax planning simulation game are set out below.
- (2) To assist in achieving Course Aims 1, 2, 3, 5 and 6 you will be required to write and present a Tax planning assignment due in the Week 13 class. The assignment is set out later in this course outline. You will be required to present a 20 minute synopsis of your tax planning assignment in either Week 13 or Week 14 of the Session. The assignment and the presentation will be worth a total of **(30 marks)**. The breakdown of marks will be 25 marks for the written assignment and 5 marks for the presentation.
- (3) To assist in achieving Course Aims 1, 2, 5 and 7 you will be required to undertake an end of session examination worth **30 marks** - the duration of the examination will be two hours. Students will be required to answer one problem question and one essay question from a total of 4 questions in the examination paper. The problem questions in the examination will be selected from problem questions discussed in classes. Each question will be worth 15 marks. The final examination will be held at a date to be advised in the University Examination period.
- (4) Participation in class discussions will be worth **20 marks**
To assist in achieving Course Aims 1, 2, 6 and 7 you will be required to participate in class discussions. Marks will be awarded for participation not for mere attendance. Each student will be advised of that student's mark for participation in the previous seminar discussion before the date of the next seminar discussion. Each student's mark for participation in seminar discussions will be the average of that student's marks for participation throughout the semester.

5.2.1 Simulation Game

Important note: No simulation game is completely realistic. This game is no exception. In particular, the meeting hypothesised in Week 9 is not a realistic meeting. It is, however, necessary for the game to 'work'. The focus in this course is on International Tax Rules and planning strategies. The focus is not on Tax Administration. Points will be deducted for attempts to avoid 'real' issues by use of procedural objections.

In each week of the Simulation Game one of the teams will not be playing a less dominant role in the game. In those weeks that team's role is to produce a written, blow by blow, description and critique of the game as played that week.

Mr Stubb Inc a company incorporated in the State of Washington USA operates a chain of cafes throughout the United States. Each local operation throughout the United States is a franchise. Stubb Inc provides espresso equipment, coffee beans, a manual, layout and design advice, details of recipes, and licences the franchisee to use its trade marks and designs. It wishes to expand its operations into Australia. Stubb Inc currently has subsidiaries in the United Kingdom and New Zealand that act as master franchisors in those countries. Stubb Inc currently has excess foreign tax credits in its general limitation basket due to withholding taxes paid on dividends and royalties and corporations tax paid for services that it provides in those jurisdictions.

For the purposes of the Stimulation Game you will be placed in one of three teams. These are:

The Stubb Inc Tax Team: the international tax team at Stubb Inc headquarters in Seattle

The Oz Tax Whizz Team: a team of Australian tax advisors who specialise in advising foreign investors of the tax implications of investing in Australia

The ATO Team: An ATO team that meets to develop a response to a private ruling request and/or an advance pricing request by the Oz Tax Whizz Team for the Stubb Inc Tax Team.

The Lecturer will be available to advise on aspects of the Simulation Game but marks will be awarded for original approaches.

SIMULATION GAME – WEEK 7

Week 7 of the Simulation Game will be a 45 minute meeting between the Stubb Inc Tax Team and the Oz Tax Whizz Team. The main purpose of the meeting will be for the Stubb Inc Tax Team to present a detailed brief to the Oz Tax Whizz Team. The brief must:

- Present a detailed plan for the Stubb Inc's investment in Australia including:
 - Commercial objectives of the investment
 - Proposed structure of the investment
 - Tax objectives of the proposed structure
 - A summary of the US tax position resulting from the proposed structure

A bullet point summary of the brief must be provided to the Oz Tax Whizz Team and to the ATO Team by the evening of the International Business Tax class in Week 6.

The Oz Tax Whizz Team in this week must ask relevant questions that ensure that it is provided with all relevant information to enable it to provide comprehensive and accurate advice on the proposed investment.

The Oz Tax Whizz Team is required to write the 'blow by blow' description of this week of the game.

Although the ATO would not normally even know of this meeting within the world of the game it will be present at the meeting. Within the world of the game it will be in order for the ATO to ask questions of the Stubb Inc Team to clarify the intentions of the Stubb Inc Team.

SIMULATION GAME – WEEK 10

Week 10 of the Simulation Game will be a 45 minute response by the Oz Tax Whizz Team to the Stubb Inc Tax Team's proposal. The Oz Tax Whizz Team's response should include:

- A comprehensive analysis of the Australian tax implications of the proposals made by the Stubb Inc Tax Team.
- Where relevant alternative suggestions for achieving the same commercial objectives in a way that has better outcomes from an Australian tax perspective.

The Oz Whizz Tax Team is to provide the Stubb Inc Tax Team and the ATO team with a bullet point summary of its advice by the evening of the Week 9 International Business Taxation class.

The Stubb Inc Tax Team should ask questions of the Oz Tax Whizz Team to clarify the advice that is being given by the Oz Tax Whizz Team. The Stubb Inc Tax Team and the Oz Tax Whizz Team should together agree on a final proposal. The teams should then put together a request to the ATO for a private ruling and (if applicable) a request for an advance pricing agreement. **This request must be provided to the ATO Team by evening of the Week 11 class in International Business Taxation.**

Again within the world of the Simulation Game it will be in order for the ATO team to ask questions of the Oz Whizz Tax Team to clarify the nature of the advice being given.

The ATO Team is to write the blow by blow description of this week of the game.

SIMULATION GAME WEEK 12

Week 12 of the Simulation Game will be in the form of a 45 minute meeting between the Stubb Inc Tax Team, the Oz Tax Whizz Team and the ATO Team. The first part of the meeting will involve the ATO team asking the other teams questions that are relevant to their requests for private rulings and (if applicable) an advance pricing agreement.

The second part of the meeting will involve the ATO team presenting the private ruling and (if applicable) their response to the request for the advance

pricing agreement. The ATO Team can indicate any other action that the ATO intends to take in response if the proposal by the Oz Whizz Tax Team and the Stubb Inc Tax Team is implemented. **The ATO Tax Team is to provide the members of the other teams with a bullet point summary of its private ruling/advance pricing determination by the evening of the Week 13 class in International Business Taxation.**

The Stubb Inc Tax Team is to write the blow by blow description of this week of the Simulation Game.

5.2.2 International Tax Planning Assignment

You are required to advise a client who is an Australian company seeking to make an investment in a foreign jurisdiction which you select;

You are required to explain details of your client's business and of the investment proposal. You are free to choose any type of business proposal you like provided that the scenario which you choose raises issues in two or more of the following areas:

- tax considerations influencing the choice of international business structures
- financing of the operation
- utilising tax incentives
- foreign tax credit/double tax relief planning
- treaty shopping
- technology transfer
- cross border leasing
- group restructuring

If in the opinion of the Lecturer in charge the scenario you create does not raise issues in relation to two or more of the areas in the above list then no marks will be awarded for the assignment.

You are required to advise the client as to how the investment proposal should be structured so as to achieve the best overall tax result in both Australia and in the foreign jurisdiction. Your research into the tax laws of the foreign jurisdiction need not go beyond the information contained in the *CCH International Tax Planning Manual* or other tax summaries available via the UNSW Library Website. You are required to indicate to the client the areas in which the client should obtain the advice of a practitioner in the foreign jurisdiction as to the effects of the structure that you propose under the tax and general law of that jurisdiction.

Your structure must involve at least one foreign jurisdiction and may involve more. The jurisdictions may be ones with which Australia has a Double Tax Agreement or may be ones with which Australia does not have a Double Tax Agreement.

Marks will be awarded for the number and complexity of the issues which the scenario you create raises. Marks will also be awarded for the creativity of the solutions which your proposed structure responds to those issues. Marks will also be awarded for the technical accuracy of the advice which you give. The commercial reality of the scenario which you create and of your proposed structure will also be taken into account in marking the assignment.

LENGTH: 3000 WORDS

ALL ASSIGNMENTS ARE TO BE TYPED, FULLY REFERENCED AND TO CONTAIN A BIBLIOGRAPHY. NO MARKS WILL BE AWARDED FOR ASSIGNMENTS WHICH, IN THE OPINION OF THE LECTURER IN CHARGE, AMOUNT TO PLAGIARISM.

5.3 Assignment Submission Procedure

All assignments should be submitted as e-mail attachments to John Taylor c.taylor@unsw.edu.au by 12 noon on the due date for the assignment. A hard copy of each assignment should also be handed in to John Taylor at the class in which the assignment is due.

5.4 Late Submission

Assignments submitted after the due date will not be accepted without penalty unless prior approval has been granted by the lecturer. Assignments that are submitted late without prior approval will have 10% of the available marks deducted and (where applicable) no mark for presentation will be awarded.

If you foresee that you will have problems submitting an assignment on time you should contact the Lecturer by e-mail immediately, explaining the circumstances in full. No extensions will be granted after the due date itself.

If illness or misadventure prevents you from submitting an assignment on time you should make an application for special consideration (see below).

5.5 Special Consideration and Supplementary examinations

UNSW policy and process for Special Consideration applies (see <https://my.unsw.edu.au/student/atoz/SpecialConsideration.html>). Specifically:

- Applications for special consideration (including supplementary examinations) must go through UNSW Central administration (within 3 working days of the assessment to which it refers) – applications will **not** be accepted by teaching staff;
- Applying for special consideration does not automatically mean that you will be granted additional assessment or that you will be awarded an amended result;
- If you are making an application for special consideration (through UNSW Central Administration) please notify your Lecturer in Charge;
- Please note: a register of applications for Special Consideration is maintained. History of previous applications for Special Consideration is taken into account when considering each case.

5.6 Assignment Format

Information about the format of assignments in this course is contained on the course Web CT Vista page.

6. ACADEMIC HONESTY AND PLAGIARISM

The University regards plagiarism as a form of academic misconduct, and has very strict rules regarding plagiarism. For full information regarding policies, penalties and information to help you avoid plagiarism see:

<http://www.lc.unsw.edu.au/plagiarism/index.html>

Plagiarism is the presentation of the thoughts or work of another as one's own.*

Examples include:

- direct duplication of the thoughts or work of another, including by copying work, or knowingly permitting it to be copied. This includes copying material, ideas or concepts from a book, article, report or other written document (whether published or unpublished), composition, artwork, design, drawing, circuitry, computer program or software, web site, Internet, other electronic resource, or another person's assignment without appropriate acknowledgement;
- paraphrasing another person's work with very minor changes keeping the meaning, form and/or progression of ideas of the original;
- piecing together sections of the work of others into a new whole;
- presenting an assessment item as independent work when it has been produced in whole or part in collusion with other people, for example, another student or a tutor; and,
- claiming credit for a proportion a work contributed to a group assessment item that is greater than that actually contributed.†

Submitting an assessment item that has already been submitted for academic credit elsewhere may also be considered plagiarism.

The inclusion of the thoughts or work of another with attribution appropriate to the academic discipline does *not* amount to plagiarism.

Students are reminded of their Rights and Responsibilities in respect of plagiarism, as set out in the University Undergraduate and Postgraduate Handbooks, and are encouraged to seek advice from academic staff whenever necessary to ensure they avoid plagiarism in all its forms.

The Learning Centre website is the central University online resource for staff and student information on plagiarism and academic honesty. It can be located at:

www.lc.unsw.edu.au/plagiarism

The Learning Centre also provides substantial educational written materials, workshops, and tutorials to aid students, for example, in:

- correct referencing practices;
- paraphrasing, summarising, essay writing, and time management;
- appropriate use of, and attribution for, a range of materials including text, images, formulae and concepts.

Individual assistance is available on request from The Learning Centre.

Students are also reminded that careful time management is an important part of study and one of the identified causes of plagiarism is poor time management. Students should

allow sufficient time for research, drafting, and the proper referencing of sources in preparing all assessment items.

* Based on that proposed to the University of Newcastle by the St James Ethics Centre. Used with kind permission from the University of Newcastle

† Adapted with kind permission from the University of Melbourne.

7. STUDENT RESOURCES

7.1 Course Resources

TEXTS AND RECOMMENDED READING

The latest available edition of ***Income Tax Legislation***, ATP or ***Australian Income Tax Legislation***, CCH is a prescribed text for all parts of the course. For this subject it is important to have an edition which contains Double Tax Agreements (usually this is in Volume 4).

Other than tax legislation, there is no prescribed text for this course. Materials will be distributed to students throughout the course. Students will find the following generally useful for reference:

(i)

For Part I

R. Hamilton and R.L. Deutsch, and J Raneri, ***Guidebook To Australian International Taxation***, 7th edition, 2001.

(ii)

For Parts II and III

CCH ***International Tax Planning Manual*** and ***CCH International Master Tax Guide*** generally useful.

R Rohatgi, ***Basic International Taxation***, Kluwer, 2002, chapter 7 on basic principles of international tax planning is recommended for Part II.

(iv)

H J Ault and B J Arnold, ***Comparative Income Taxation: A Structural Analysis***, Kluwer, 2nd edition 2004 is recommended on the features of the international tax system of selected other OECD countries.

B J Arnold and M J Mc Intyre, ***International Tax Primer***, 2nd edition, Kluwer, 2002 is recommended for an overview of principles influencing tax design choices by countries.

P R Mc Daniel and H J Ault, *Introduction to United States International Taxation*, 3rd ed., Kluwer, 1989 or R L Dornberg, *International Taxation*, 5th ed, West Group, 2001, or J Isenbergh, *International Taxation*, Foundation Press, 2000 are recommended in relation to comparisons with the United States international tax system.

WEB CT VISTA

Reading lists for further reading in relation to the various components of the subject will be made available via Web CT. The reading list will be added to progressively throughout the session.

A list of tax related internet sites will be made available via Web CT. These will be added to throughout the session. Students are encouraged to advise the lecturer of new sites that they find so they can be added to the list of tax related sites.

Notes and Power Point Slides on various topics dealt with in the subject will be made available via Web CT.

7.2 Other Resources, Support and Information

The University and the Faculty provide a wide range of support services for students, including:

- **Learning and study support**
 - FCE Education Development Unit (<http://education.fce.unsw.edu.au>)
 - UNSW Learning Centre (<http://www.lc.unsw.edu.au>)
 - EdTec – WebCT information (<http://www.edtec.unsw.edu.au>)
- **Counselling support** - <http://www.counselling.unsw.edu.au>
- **Library training and support services** - <http://info.library.unsw.edu.au>
- **Disability Support Services** – Those students who have a disability that requires some adjustment in their teaching or learning environment are encouraged to discuss their study needs with the Course Coordinator or the Equity Officer (<http://www.equity.unsw.edu.au/disabil.html>). Early notification is essential to enable any necessary adjustments to be made.

In addition, it is important that all students are familiar with University policies and procedures in relation to such issues as:

- **Examination procedures** and advice concerning illness or misadventure <https://my.unsw.edu.au/student/academiclife/assessment/examinations/examinationrules.html>

- **Occupational Health and Safety** policies and student responsibilities;
<http://www.riskman.unsw.edu.au/ohs/Policies%20&%20Procedures/UNSW%20OHS%20Accountability.pdf>

8. CONTINUAL COURSE IMPROVEMENT

Each year feedback is sought from students and other stakeholders about the courses offered in the School and continual improvements are made based on this feedback. UNSW's Course and Teaching Evaluation and Improvement (CATEI) Process (http://www.ltu.unsw.edu.au/ref4-5-1_catei_process.cfm) is one of the ways in which student evaluative feedback is gathered. Significant changes to courses and programs within the School are communicated to subsequent cohorts of students.

9. COURSE SCHEDULE

Content Of Seminars

Week 1

Introduction - Provision Of Course Information

General Framework Of Australian International Tax Rules

General introduction and provision of course information. Lecturer led discussion of general framework of Australian international taxation where a double tax treaty is not in force.

Students should refer to the following material that is available on Web CT

Reading

John Taylor “The Australian Income Tax System: A Twenty Point Basic Outline”

John Taylor “Outline of Australian International Tax Rules in the absence of Double Tax Treaties”

John Taylor – Power Point Slides And Notes “Outline Of Australian International Tax Rules”

John Taylor – Chart “Interaction Between Exemptions, FTCs, CFC and FIF Rules”

Week 2 - Fundamental Approaches - Jurisdictional Claims – Corporate Residence

Lecturer led discussion of jurisdictional claims when taxing on a worldwide basis with particular reference to Corporate Residence.

Fundamental Approaches To International Taxation

- Worldwide basis
- Territorial basis
- Remittance basis

Jurisdictional Claims When Taxing On A Worldwide Basis

- Residency – emphasis on corporate residency
- Citizenship
- Source – basic overview of approaches to determining source

Reading

Hamilton, Deutsch and Raneri [2.70] to [2.211]

“Australia’s Jurisdiction To Tax” by John Taylor is available via Web CT. It would be desirable to read these materials and to attempt the questions and activities prior to Week 2.

“Some Approaches To Determining Who Is A Resident For Tax Purposes” by John Taylor is available via Web CT. It would be desirable to read these materials and to attempt the questions and activities prior to Week 2.

John Taylor – Power Point Slides “Key Concepts In Australian International Tax Rules” is available via Web CT.

Week 3 Taxation Of Inbound Investment – Source Rules For Business Profits

Lecturer led discussion of the policy objectives relevant to the taxation of inbound investment and of the basic rules applicable to taxation of non-residents. Lecturer led discussion of the tax treatment of domestic source business profits with emphasis on the Australian general source rules and the United States concept of "US Trade of Business". Lecturer led discussion of the possibility of using the concept of "Permanent Establishment" as defined in s6(1) ITAA as the test of sufficient connection with Australia to provide a justification for taxing business profits. The use of this approach in several European countries will be examined. Lecturer led discussion of rationale behind branch profits taxes.

- Policy Objectives In Taxation Of Inbound Investment
- Basic Rules In Taxation Of Inbound Investment
 - taxation of non-residents on domestic source income
 - distinction between gross basis and net basis taxation
- Taxation of domestic source business profits

tests for characterisation as domestic source

Australia - no limit if Australian source

Pre 2006 non treaty position

Post 2006 non treaty position

United States - effectively connected with a US trade or business

European countries - connection with a permanent establishment

apportionment of deductions

branch profits taxes

Reading

Hamilton, Deutsch and Raneri [2.430] to [2.460] and [2.490] to [2.590]

John Taylor – Power Point Slides, “Key Concepts In Australian International Tax Rules” is available via Web CT.

“Taxation Of Inbound Investment By A Worldwide Basis Country” by John Taylor is available via Web CT. It would be desirable to read these materials and to complete the questions and activities prior to the Week 3 class.

“Australian Source Rules For Business Profits” by John Taylor is available via Web CT. It would be desirable to read these materials and to complete the questions and activities prior to the Week 3 class.

CASE STUDY ONE *Corporate Residency*

Hotel Inc., a company incorporated in California, U.S.A., operates a chain of hotels in various countries throughout the world including Australia. The company is based in California, U.S.A. and is owned by B.T and T.B. Ozzy, Australian resident natural persons.

Hotel Inc. owns 15% in Charlie (N.Z.) Limited, a company incorporated in New Zealand which operates a chain of grocery stores in New Zealand. Under the company's articles, control is vested in the board of Directors. The other shares in Charlie (N.Z.) Ltd are owned by Golf Inc. 15 % and Alpha (N.Z.) Pty Limited 70%.

Golf Inc. is incorporated in the U.S. and is managed and controlled by its resident U.S. shareholders. Golf Inc owns a factory in Brookvale N.S.W. at which golf balls are manufactured. These goods are packaged and sold in Australia. Independently of the factory, Golf Inc. employees located in the U.S. arrange the export of golf clubs to* Australia for pre-arranged delivery to golf professionals. Proceeds on these sales are remitted directly to Golf Inc in the U.S.

Alpha (N.Z.) Pty Limited is incorporated in New Zealand and owns and manages a sheep station. All sales and purchases are made in New Zealand. The shares in the company are owned by Australian and New Zealand residents, none of whom hold a controlling interest. The manager of the sheep station flies to Sydney each month for Board meetings which are held at Goulbourn N.S.W. where the directors of the company live. In addition to considering and directing the affairs of Alpha (N.Z.) Pty Limited, the directors review all decisions made by Charlie (N.Z.) Limited, the 70% subsidiary. The directors either ratify, or overturn the decisions and issue new directives. The financing and investment decisions for Charlie (N.Z.) Limited are made by the directors of Alpha (N.Z.) Pty Limited and are communicated directly to the board of Charlie (N.Z.) Limited.

All information given relates to the year ended 30 June 2006. There have been no changes in residence or in ownership interests since 1st July 2006.

Required

Identify the residence of each entity for Australian tax purposes. In what manner, if at all, would each of the specified items of income be subject to the taxation laws of Australia.

Reading

ITAA 1997 s 995-1 definition of 'resident'.

Malayan Shipping Co Ltd v. FCT (1946) 71 CLR 156
De Beers Consolidated Mines Ltd v. House [1906] AC 455
Koitaki Para Rubber Estates Ltd v. FCT (1940) 64 CLR 15
North Australia Pastoral Co Ltd v. FCT (1946) 71 CLR 623
Unit Construction Co Ltd v. Bullock [1960] AC 351
Esquire Nominees Ltd v FCT 72 ATC 4076; 73 ATC 4114
Mitchell v Egyptian Hotels Ltd [1915] AC 1022
Swedish Central Railway Co Ltd v. Thompson [1925] AC 351
Untelrab Ltd v Mc Gregor [1996] STC 1
Re Little Olympian Each Ways Ltd [1994] 4 All ER 561
New Zealand Forest Products Finance NV v. CIR (1995) 7 NZTC 12073

Taxation Ruling TR 2004/15 Residence of companies not incorporated in Australia – carrying on business in Australia and central management and control.

P.J. Gillies, "Understanding Company Residence: Central Management and Control" (1989) Vol 1 No.4 *CCH Journal of Australian Taxation* 52 to 62.

J.D.B. Oliver, "Company Residence - Four Cases" [1996] *British Tax Review* 505 to 541

M. Dirkis, "Australia's Residency Rules For Companies And Partnerships" (2003) 57 *Bulletin For International Fiscal Documentation* 405.

Week 4 Taxation Of Inbound Investment – Source rules for income from property – withholding taxes – jurisdictional and substantive issues involved in taxing non-resident capital gains

Lecturer led discussion of taxation of income from property derived by non-residents. Approaches based on characterising the source of income from property will be examined. The Australian rules relating to Interest Withholding Tax, Dividend Withholding Tax, and Royalty Withholding Tax will be discussed. Lecturer led discussion of the jurisdictional and substantive issues involved in taxing capital gains derived by non-residents.

- Taxation of income from property
 - United States - explicit source rules
 - Australia - source rules implicit in withholding tax rules with residual operation of explicit source rules
 - Withholding taxes on income from property
 - Dividends
(note special relationship with corporate tax system, Australian approach, New Zealand approach)
 - Interest
(note special position of banks)
 - Royalties
(note special position of software licensors)
- Taxation of capital gains
 - Australian jurisdictional and substantive rules
 - US jurisdictional and substantive rules
 - Selected jurisdictional and substantive rules in other jurisdictions
- Taxation of Foreign Bank Branches
 - Commercial reasons for choice of branch structure by foreign banks
 - Rationale behind current Australian tax treatment
- Taxation of Other Income

Reading

Hamilton, Deutsch and Raneri [2.320] to [2.420], [2.600] to [2.630], [2.670] and [2.690] and [4.10] to [4.145], [4.190] to [4.280], [4.290] to [4.347] and [4.350] to [4.410].

'Taxation Of Inbound Investment In A Worldwide Basis Country' by John Taylor is available via Web CT. Students should read this material and attempt the questions and activities before the class in Week 4.

John Taylor – Power Point Slides “ Taxation Of Inbound Investment” is available via Web CT

C Evans and M Wallace, “Capital Gains Taxation In Australia: Recent Developments Affecting The Corporate Sector” (2003) 57 *Bulletin For International Fiscal Documentation* 358.

Case Study Two- Source Rules For Business Profits

Part A

Fastscan Ltd is a company resident in the Cook Islands. It manufactures a document scanner that converts printed words into a machine readable format. It also produces software to accompany the scanner. The scanner is manufactured in the Cook Islands and the software is written there. All of Fastscan Ltd's sales of scanners are made via credit card transactions on its internet home page. Fastscan Ltd licences purchasers of its scanner to use its software if they complete an agreement via the internet. Once the agreement is completed a registered user may download the software via the internet. The server for Fastscan Ltd's internet home page is located in the Cook Islands. Following the internet sale of its scanners Fastscan Ltd dispatches the scanner to the purchaser. Several internet sales of scanners have been made to Australian resident natural persons and software licence agreements have been entered into by each Australian purchaser. Fastscan Ltd is the only manufacturer of scanners resident in the Cook Islands and is the only producer of scanning software resident in the Cook Islands.

Cooksoft Pty Ltd, an Australian resident company and a wholly owned subsidiary of Fastscan Ltd conducts extensive advertising campaigns in Australia for Fastscan Ltd's products. Cooksoft Pty Ltd also acquires large quantities of Fastscan Ltd's scanners via internet purchases. Because of the quantities which Cooksoft Pty Ltd purchases Fastscan Ltd gives Cooksoft Pty Ltd a discount of 5% on its scanners. After importing the Fastscan Ltd scanners Cooksoft Pty Ltd sells them to its retail customers in Australia. Cooksoft Pty Ltd's retail price is cost plus 5%.

Required:

1. Assuming that all events occur before 2006:

Will s38 of the ITAA 1936 deem there to be a profit derived in Australia from any of these transactions? Assuming that the import and sale of Fastscan Ltd scanners is Cooksoft Pty Ltd's only business what will the position be if Cooksoft Pty Ltd pays a dividend to Fastscan Ltd.

How would consideration of s39 affect your answer to *Part A*?

Would the position have altered for Australian tax purposes if Fastscan Ltd was a wholly owned subsidiary of Fastscan Inc a Californian resident company and if the scanners had been manufactured in California and sold to Fastscan Ltd at cost?

How would consideration of s40 affect your answer to *Part A*?

How would consideration of s42 affect your answer to *Part A*?

2. What would the position be if all events took place after 1 January 2007?

Part B

Envirocheck Ltd is a company resident in Hong Kong. It provides environmental consulting services throughout the world. Pacific Ocean Resort Pty Ltd is an Australian resident company that wishes to develop an area of Littoral Rainforest on the New South Wales north coast as a tourist resort. Prior to proceeding with the development Pacific Ocean Resort Pty Ltd has been advised that a full Environmental Impact Statement is required. In a contract entered into in Hong Kong Envirocheck Ltd agrees to prepare an Environmental Impact Statement for the development. Under the contract the 50% of the fee for the EIS will be payable in advance and 50% will be payable on completion of the EIS. All fees payable under the agreement are to be paid by direct credit to Envirocheck Ltd's bank account in Switzerland. Not having sufficient expertise in the study of Littoral Rainforests to prepare the EIS itself Envirocheck Ltd sub-contracts field research work associated with the preparation of the EIS to an Australian resident company North Coast Environmental Consultants Pty Ltd for 60% of the fees otherwise payable to Envirocheck Ltd. Consider whether the payments to Envirocheck Ltd have an Australian source. Would your answer differ if Envirocheck Ltd had used its own employees to complete the field work?

Week 5 Taxation Of Outbound Investment – Unilateral Relief Against International Juridical Double Taxation– Interaction Of FTC And Exemption System

Lecturer led discussion of the policy objectives relevant to taxation of outbound investment. Lecturer led discussion of the basic rules applicable to the taxation of residents on worldwide income. Lecturer led discussion of systems of relief against double taxation including exemption systems, foreign tax credit systems and the Australian hybrid system. Emphasis will be placed on the evolution of foreign tax credit limitations in the United States and on the interaction of the Australian hybrid system with the dividend imputation system. These points will be illustrated by exercises placed on the Lecturer's Web page.

- Policy objectives in taxation of outbound investments
- Basic rules - taxation of residents on worldwide income
- Relief against double taxation

Exemption systems

FTC systems

direct credits
indirect credits
worldwide limitation
per country limitation
basket system

Hybrid systems (eg Australia)

Required Reading

Hamilton, Deutsch and Raneri [3.10] to [3.310]

'Interaction Of Australia's FTC And Exemption Rules ' by John Taylor is available via Web CT.

'Outline of Foreign Tax Credit System' by John Taylor is available via Web CT. Students should read this material and attempt the activities and questions in it prior to the Week 5 class.

'Rationale For The Basket System Of Foreign Tax Credit Limitation' by John Taylor is available via Web CT. Students should attempt this exercise prior to the Week 5 class.

Lee Burns, "The NITA Bill And CFC Reform" University of Sydney, Faculty of Law, *The NITA Bill And The Taxation Of Foreign Income*, Seminar 17 June 2004.

Additional Reading

M J Graetz and M M O'Hear, "The 'Original Intent' Of U.S. International Taxation" (1997) 46 *Duke Law Journal* 1021

M J Graetz and P W Oosterhuis, "Structuring an Exemption System for Foreign Income of U.S. Corporations" 61 *National Tax Journal* 771.

Case Study Three **Source Of Dividends**

Alpha Pty Ltd is an Australian resident company for Australian tax purposes. On 27 June 2005 it paid a dividend of \$Aus400,000 to one of its shareholders, Beta Pty Ltd which is a non-resident company for Australian tax purposes. The dividend from Alpha Pty Ltd was Beta Pty Ltd's sole source of income for the year ending 30 June 2003. On 1 July 2005 Beta Pty Ltd paid a dividend in an amount equivalent to \$Aus400,000 to its parent Gamma Pty Ltd which is also a non-resident company for Australian tax purposes.

Comment on the assessability of the above dividends under the *ITAA* assuming:

(i) that the dividend from Alpha Pty Ltd to Beta Pty Ltd is fully franked;

and

(ii) that the dividend from Alpha Pty Ltd to Beta Pty Ltd is unfranked.

In both scenarios consider the position where Beta Pty Ltd is resident in a country with which Australia has a double tax treaty and where Beta Pty Ltd is resident in a country with which Australia does not have a double tax treaty. In both of these scenarios consider the position where Gamma Pty Ltd is resident in a country with which Australia has a double tax treaty and the position where Gamma Pty Ltd is resident in a country with which Australia does not have a double tax treaty.

References

ITAA s44(1)(b), s128B, s128B(3)(ga), s128D.

Parke Davis & Co v FCT (1959) 11 ATD 545

Nathan v FCT (1918) 25 CLR 183

Canadian Eagle Oil Co Ltd v The King (1946) AC 119

Esquire Nominees Ltd v FCT 73 ATC 4114

OECD Model DTA

Weeks 6 and 7 Deferral – CFC And FIF Rules

Lecturer led discussion of the problem of deferral and the CFC and FIF rules used in Australia, the United States and in selected other jurisdictions. These points will be illustrated by discussion of charts that may be found on the Lecturer's Web Page.

- The problem of deferral
 - CFC rules - Australia, the United States and other selected jurisdictions
 - FIF rules – Australia and other jurisdictions
 - Reform of New Zealand's FIF rules

Required Reading

Hamilton, Deutsch and Raneri [3.320] to [3.880]

'A Hitchhiker's Guide To The CFC Legislation ' is available via Web CT. Students should peruse this material prior to the class in Week 6.

'The CFC River ' by John Taylor is available via Web CT. Students should peruse this material prior to the class in Week 6.

'A Comparison Of The CFC And FIF Legislation' by John Taylor has been placed on his Web page. Students should complete the chart prior to the class in Week 6.

J Chang, "Australia's Controlled Foreign Company Regime" (2003) 57 *Bulletin For International Fiscal Documentation* 456.

Lee Burns, "The NITA Bill and CFC Reform", University of Sydney, Faculty of Law, *The NITA Bill And The Taxation Of Foreign Income*, Seminar 17 June 2004.

Lee Burns, "Design Of CFC Rules In The Global Economy" 2005 *Australasian Tax Teachers Conference*, Wellington, New Zealand.

Additional Reading

B J Arnold, "Controlled Foreign Corporation Rules: Major Features, Recent Developments, And Practical Problems", 4th Annual World Tax Conference, Sydney, Australia, 25th 27th February 2004.

B Arnold and P Dibout, "Limits on the use of low-tax regimes by multinational businesses: current measures and emerging trends: general report", 86b *Cahiers de droit fiscal international* 21.

OECD *Controlled Foreign Company Legislation*, Paris, 1996.

United States, Department of the Treasury, *The Deferral of Income Earned Through US Controlled Foreign Corporations: A Policy Study*, Washington, 2000.

Case Study Four Source Rules For Income From Property – Withholding Taxes

John Paski is a television producer who resides in the Cook Islands but was previously an Australian resident is still receiving income from his Australian investments. Between 1 July 2005 and 1 December 2005 he received: (a) an unfranked dividend of \$5,000 from shares he held in Zray Co Ltd (an Australian resident company); (b) a fully franked dividend of \$10,000 from Ultra Co Ltd (an Australian resident company); (c) a dividend of \$6,000 from Mammo Co Ltd (a Cook Islands company which derives 30% of its profits from Australian sources); (d) interest from Arm Bank Ltd (an NZ resident company) which carries on business through a permanent establishment in Australia; (e) interest on debentures issued by Sore Co Ltd (an Australian resident company). The interest paid by Sore Co Ltd was an expense of carrying on business through a permanent establishment in the Cook Islands. On 1 January 2006 John travels to Brisbane to enter into a contract with Telfox Ltd (an Australian resident multi media empire) under which he agrees to produce a video documentary "Australians In Paradise" about the lives of Australian citizens who live in Polynesia. John is paid \$100,000 as a lump sum for entering into the agreement and a royalty of 10% of the video sales. Both the lump sum and the royalty payments are made into John's bank account in Switzerland. Filming of the documentary takes place entirely in Polynesia and it is edited entirely in the Cook Islands. Twice during the filming of the documentary John travels to Australia to attend meetings with Packer Rupert, the autocratic CEO of Telfox Ltd, to report on progress in filming the documentary. Discuss whether any of the above amounts will be included in John's assessable income for Australian tax purposes.

How, if at all, would your answer differ if Arm Bank were a US resident bank?

WEEK 7 Deferral – CFC And FIF Rules

Lecturer led discussion of the problem of deferral and CFC and FIF rules.

Interaction of CFC and FIF regimes

Interaction of FTCs, Exemptions and Accruals Tax Regimes

Interaction with corporate tax system

Reading

As for Week 6

Additional Recommended Reading For This Week

I Fullerton, "Development Of Australian's Income Tax Rules For Outward Investment" (2003) 57 *Bulletin For International Fiscal Documentation* 442.

C J Taylor "Development Of And Prospects For Corporate-Shareholder Taxation In Australia" (2003) 57 *Bulletin For International Fiscal Documentation* 346.

R J Vann, "Trends in company/shareholder taxation: single or double taxation?: General Report" (2003) 87a *Cahiers de droit fiscal international* 21.

U Ilhi, K Malmer, P Schonewille, and I Tuominen, "Dividend taxation in the European Union" (2003) 87a *Cahiers de droit fiscal international* 71.

G S Cooper and S M Lanigan, "Trends in company/shareholder taxation: single or double taxation?: Branch Report For Australia" (2003) 87a *Cahiers de droit fiscal international* 131.

C J Taylor 'Approximating Capital Export Neutrality In Imputation Systems: Proposal For A Limited Exemption Approach' (2003) 57 *Bulletin For International Fiscal Documentation*, 135.

Case Study Five *Interaction Of CFC Rules, Exemptions And Imputation System*

Ozco No 1 Pty Ltd, a company incorporated in Queensland, has a wholly owned subsidiary, Ozco No 2 Pty Ltd, resident in an unlisted jurisdiction for purposes of Part X of the *Income Tax Assessment Act*. Assume that the corporate tax rate in the jurisdiction in which Ozco No 2 Pty Ltd resides is 6% and that the corporate tax base in that jurisdiction is identical to the Australian corporate tax base. In the 2002 - 2003 year of income the sole income of Ozco No 2 Pty Ltd consisted of \$500,000 of passive income for the purposes of Part X of the *Income Tax Assessment Act*. Austfur Pty Ltd, a company incorporated in Victoria, has a wholly owned subsidiary, Bunny Pty Ltd, resident in a broad exemption listed jurisdiction for the purposes of Part X of the *Income Tax Assessment Act*. Assume that the corporate tax rate in the jurisdiction in which Bunny Pty Ltd resides is 30% and that the corporate tax base in that jurisdiction is identical to the Australian corporate tax base. In the 2003 - 2004 year of income the sole income of Austfur Pty Ltd consisted of \$500,000 of active income for the purposes of Part X of the *Income Tax Assessment Act*. After payment of corporate tax in their jurisdictions of residence Ozco No 2 Pty Ltd and Bunny Pty Ltd paid dividends in the 2003 - 2004 year of income to their parents. In both cases the dividends paid represented the 2002-03 income of the subsidiary company less tax paid in the subsidiary's jurisdiction of residence.

Assuming that Ozco No 1 Pty Ltd and Austfur Pty Ltd have no other income in the 2003- 2004 year of income, compare the tax effects of a distribution by each company of its after tax distributable profit to an individual natural

person shareholder who is on a 47% marginal tax rate. Medicare levy may be ignored on grounds of simplicity. Highlight what you regard as any inequities illustrated by this problem. State any reforms that you believe should be made to interaction of the Australian tax treatment of offshore income and the Australian dividend imputation system.

How would your answer differ if Ozco No 2 Pty Ltd and Bunny Pty Ltd did not pay dividends to their parent companies until the 2004-05 tax year or a later year?

Week 8 Transfer Pricing

Lecturer led discussion of the nature of transfer pricing. Emphasis will be on OECD guidelines and on Australian Rulings.. Proposals for the use of global apportionment will also be examined.

- Transfer Pricing

Nature of the problem

Arm's Length Price Method

techniques for determining arm's length price

Global Apportionment Proposals

proposed apportionment techniques

Reading

Hamilton, Deutsch and Raneri, [5.30] to [5.266]

'Transfer Pricing' by John Taylor is available via Web CT.

John Taylor Power Point Slides 'Key Features Of Australia's Transfer Pricing Rules' is available via Web CT.

Case Study Five CFC Rules

Urban Road (Australia) Pty Ltd, an Australian resident, holds 30% of the share capital in United Mills Pty Ltd, a company resident in the United Kingdom. Kate Smith, Mini Print Australia Pty Ltd and Woolcraft Pty Ltd, Australian residents, hold 3, 7 and 10 per cent respectively of the issued share capital of United Mills Pty Ltd. United Mills Pty Ltd holds 50% of the issued share capital of Tailor Made Pty Ltd and 40% of the issued share capital of Jumbuc Packaging Pty Ltd, two companies resident in Hong Kong. In addition Urban Road (Australia) Pty Ltd holds 25% of the issued shares in Tailor Made Pty Ltd, and Woolcraft Pty Ltd holds 20% of the issued shares in Jumbuc Packaging Pty Ltd.

United Mills Pty Ltd produces woollen cloth and yarn. The company's woollen cloth is sold to Tailor Made Pty Ltd and its woollen yarn to Jumbuc Packaging Pty Ltd. Urban Road (Australia) Pty Ltd is a retailer of men's and women's fashion garments. The company's range of woollen jackets and suits is

purchased from Tailor Made Pty Ltd which, as its name suggests, produces quality woollen tailored garments. Jumbuc Packaging Pty Ltd packages the woollen yarn together with a knitting pattern into "pullover" or "jumper" craftpacks. These craftpacks are purchased by Woolcraft Pty Ltd for sale in Australia.

For the year ended 30 June 2004 the taxable incomes of the Australian entities and individuals, other than amounts attributed under Part X of the *ITAA*, are as follows:

Urban Road (Australia) Pty Ltd	\$100,000*
Kate Smith	\$ 30,000
Mini Print Pty Ltd	\$ 60,000
Woolcraft Pty Ltd	\$ 45,000

*includes a dividend of \$10,000 from its Hong Kong investment.

For the year ended 30 September 2003 relevant details of the profit and loss accounts of the Hong Kong residents are as follows:

	Tailor Made	Jumbuc
Sales	800,000	500,000
Less Cost of goods sold	<u>(400,000)</u>	<u>(300,000)</u>
	400,000	200,000
Management Fees – paid to United Woollen Mills		(80,000)
Nett Gain on disposal of fixed assets	50,000	
Profit (Loss) on Foreign Exchange		(50,000)

What is the impact of Part X of the *ITAA* on the Australian entities for the year ended 30 June 2004?

How would your answer differ if all events took place in the year ending 30 June 2005?

Week 9 Thin Capitalisation and Foreign Losses

Lecturer led discussion of thin capitalisation rules. The new thin capitalisation rules will be contrasted with Australia's former rules and will approaches taken in other jurisdictions.

- Thin Capitalisation Rules

Australian approach

Former rules

New rules

Approaches in other jurisdictions

Reading

Hamilton, Deutsch and Raneri at and [5.450] to [5.470] and [5.480] to [5.595].
John Taylor, 'Australia's Thin Capitalisation Rules' is available via Web CT.
John Taylor, 'Power Point Slides – Thin Capitalisation Rules' is available via Web CT

M Wachtel and P Janetzki, "Australia's New Thin Capitalization Regime"
(2003) 57 *Bulletin For International Fiscal Documentation* 380.

Lecturer led discussion of foreign loss quarantining rules. Present basket system will be contrasted with previous per country limitation.

- Foreign Loss Quarantining Rules
 - Position in absence of rules
 - Former per country limitation
 - Basket system

Case Study Six **Transfer Pricing**

A case study on Transfer Pricing will be distributed later in the academic session.

Week 10 **Double Tax Treaties – Major Models**

Lecturer led discussion of the history of double tax treaties and an examination of the major double tax treaty models. Lecturer led discussion of the functions of double tax treaties and of criticisms of the usefulness of double tax treaties.

- The History Of Double Tax Treaties And Major Double Tax Treaty Models
 - The history of double tax treaties
 - The OECD Model
 - The UN Model
 - The United States Model
 - The commentary on the Models
 - Approaches to the interpretation of Double Tax Treaties
- Functions Of Double Tax Treaties

Assignment of exclusive rights to tax

Limitations on taxation at source

- Business profits
 - Permanent establishment
 - effectively connected test
 - force of attraction test
- Dividends
 - limits on withholding taxes
 - relationship with corporate tax system
 - extension of imputation credits to non-residents (eg UK and France)
 - effects of US basket system of foreign tax credit limitation
- Interest
 - limits on withholding taxes
 - international tax policy considerations
 - effects of US basket system of foreign tax credit limitation
- Royalties
 - limits on withholding taxes
 - international tax policy considerations
 - effects of US basket system of foreign tax credit limitation
- Relief against double taxation
 - exemption system
 - foreign tax credit system
 - tax sparing
 - basket system
- Exchange of information
- Anti-Treaty shopping provisions

- Non-discrimination provisions

Required Reading

Hamilton, Deutsch and Raneri, Chapter 6

'The Operation Of Double Tax Treaties' by John Taylor is available via Web CT. Students should read this material and attempt the questions and activities prior to the Week 10 class.

Additional Reading

S Picciotto, *International Business Taxation*, 1992, London, Chapter 1 'History and Principles' and Chapter 2 'The Tax Treaty System'.

In Class Thin Capitalisation Rules Exercise

This exercise is available via Web CT. Students should attempt the exercise prior to the Week 10 class.

Case Study Seven – *Thin Capitalisation*

A case study on Thin Capitalisation will be distributed later in the academic session.

Week 11 Double Tax Treaties – Features Of Australian Treaties

Lecturer led discussion of some features of some of Australia's major double tax treaties

- Status of Australia's DTAs
- Treaty override in Australia
- Australia – UK Treaty
- Australia – US Treaty and 2001 Protocol
- Australia – China Treaty
- Australia – South Africa Treaty

Reading

Australia – UK DTA

Australia – US DTA

Protocol to Australia – US DTA

Protocol to Australia – Canada DTA

Australia – China DTA

Australia – South Africa DTA

International Tax Agreements Act 1953 s4, s3 and s3A

C J Taylor – Power Point Slides 'Some Features Of Australia's Double Tax Treaty Practice'

P Norman, "Australia's Recent Tax Treaties And Protocols" (2003) 57 *Bulletin For International Fiscal Documentation* 397.

Additional Reading

M Kobetsky, "The Aftermath of the Lamesa case: Australia's double tax treaty override" *Papers presented at 2005 Australasian Tax Teachers Conference*, Wellington, New Zealand, January, 2005.

Case Study Eight – Australia's DTAs

A case study on Double Taxation Agreements will be distributed later in the academic session.

Week 11 The Review Of Australia's Anti Tax Deferral Regimes

Lecturer led discussion of the current Review of Australia's International Anti Tax Deferral Regimes by the Board of Taxation

Background The Board Of Taxation's 2003 Recommendations

- The Treasury Consultation Paper 2002
- The Board of Taxation Recommendations 2003
- Treasurer's Press Releases
- Legislative Developments

We will discuss the Government's response to the Board's recommendations and legislative developments in response. Our discussion will focus on recommendations made in relation to:

- The Appropriate Treatment Of Payments Of Foreign Tax For Dividend Imputation Purposes
- The Scope Of The ITAA36 s23AJ and AH Exemptions
- The Future Of Australia's CFC And FIF Rules
- Aligning Australian treatment of capital gains of non residents with OECD practice

Readings

- Treasurer's Press Release No 032 of 2003 Review Of International Taxation Arrangements.
- Treasurer's Budget Announcement for 2005
- Australia, Commonwealth Department of the Treasury, *Review Of International Taxation Arrangements*, Canberra, 2002.
- Australia, Board of Taxation, *International Taxation: A Report To The Treasurer: Volume 1 The Board Of Taxation's Recommendations*, Canberra, 2003.

- United States, Department of the Treasury, *Detailed Description Of President's Dividend Exclusion Proposal*, Washington, 2003.
- C J Taylor 'Approximating Capital Export Neutrality In Imputation Systems: Proposal For A Limited Exemption Approach' (2003) 57 *Bulletin For International Fiscal Documentation*, 135.

Review Of Australia's Anti Tax Deferral Regimes

- The Treasurer's Press Release 2006
- The Board of Taxation's Discussion Paper 2007

Readings

- Treasurer's Press Release No 109 of 2006 Board Of Taxation Reviews
- Board Of Taxation Discussion Paper (anticipated early 2007).

A list of further readings relevant to this topic will be made available via Web CT.

Week 12 International Tax Planning - General Principles

Lecturer led discussion of general principles involved in inbound and outbound corporate international tax planning. Topics to be discussed will include:

- Structuring the foreign business - branch v subsidiary
- Financing the foreign business - loan capital v. share capital
- Acquiring a foreign business v. acquiring a foreign subsidiary
- Groups of companies and the use of offshore holding companies
- Offshore finance companies, offshore licensing companies, offshore trading companies
- Utilising tax incentives
- Profit reduction techniques
- Restructuring international groups
- Tax treaty planning
- Foreign tax credit/double tax relief planning
- Return of capital and repatriation of profits

Some of these techniques will be illustrated by a detailed examination of the 2001 restructuring of the James Hardie group.

Required Reading

- CCH International Tax Planning Manual: General Principles – Corporations

Or

- CCH International Master Tax Guide 2002: Tax Planning Toolkit For Companies
- C J Taylor, “The James Hardie Restructuring Review Of Australia’s International Tax Arrangements” (2004) 58 *Bulletin For International Fiscal Documentation* 118

Additional Reading

N Boidman, M Ellis, G Gartner, and N Pantaleo, “CFC Rules In The Context Of International Mergers And Acquisitions” *IFA International Tax Seminar*, Montreal, Quebec, 2001.

Desai, M A and Hines, J R, “Expectations and Expatriations: Tracing the Causes and Consequences of Corporate Inversions”(2002) 55 *National Tax Journal* 409

R Rohatgi, *Basic International Taxation*, Kluwer, 2002, chapter 7.

.Weeks 13 to 14 *International Tax Planning - Specific Jurisdictions*

Seminars will involve discussion of case studies and student presentations of papers illustrating practical aspects of International Tax Planning for corporate and individual taxpayers as applied in hypothetical situations involving Australia and one or more specific foreign jurisdictions.