Australia Taxation – Advanced

CPA Program subject outline

Ninth edition

Australia Taxation – Advanced is a key component of the overall skills base of today's professional accountant. Business leaders appreciate that there are taxation implications that flow on from most business and investment decisions. A sound knowledge of Australian taxation law is essential to ensure quality input into the strategic decision-making process of a business, and to provide post-implementation taxation advice. Business structures may involve different types of entity or combination of entities (such as individuals, partnerships, trusts and companies), and it is important to consider the taxation advantages and disadvantages of each of them.

This edition of the subject has been updated so that it explores some of the complex areas of taxation in greater detail. It is an extension of *Australia Taxation* and requires prior undergraduate-level learning in Australian taxation. The subject allows candidates to gain an advanced understanding of tax theory and policy, as well as the practical application of complex tax knowledge across core and specialist tax areas. In particular, this subject examines advanced tax issues including income tax law for a variety of business structures and investment entities; goods and services tax; tax implications arising from international transactions; and anti-tax avoidance regimes. It also considers the tax implications of complex business structures and corporate financing arrangements, to equip candidates with the skills they need to advise their corporate clients. Completing the subject will generate a competitive advantage for candidates in professional tax advisory areas.

On completion of this subject, you should be able to:

- understand the principles of tax theory and explain how tax policies will impact on business decisions
- advise on the tax implications arising from various complex business structures, superannuation and associated investment decisions
- recommend an appropriate business or investment structure to achieve commercial and personal goals within the remit of Australian taxation law
- explain the tax consequences of various corporate financing arrangements
- apply advanced taxation knowledge in complex business areas at local and international levels, such as transactions involving complex goods and services tax (GST) law, cross-border tax issues and antitax avoidance.

The *Australia Taxation – Advanced* subject reflects legislation in place as at 1 January 2023. Exam questions will be based upon the 2022-23 tax year.

Exam structure

The *Australia Taxation – Advanced* exam consist of multiple-choice questions and extended response questions.

Subject content

The "weighting" column in the following table provides an indication of the emphasis placed on each module in the exam, while the "recommended proportion of study time" column is a guide for you to allocate your study time for each module.

Module	Recommended proportion of study time (%)	Weighting (%)
1. Tax theory, policy, reform and anti-avoidance	13	13
2. Trusts and trust distributions	12	12
3. Superannuation	12	12
4. Companies and company distributions	13	13
5. Consolidations	10	10
6. Complex business structures	10	10
7. Corporate financing	10	10
8. International transactions and cross-border tax issues	10	10
9. Advanced GST issues	10	10

Module descriptions

The subject is divided into nine modules. A brief outline of each module is provided below.

Module 1: Tax theory, policy, reform and anti-avoidance

This module commences by discussing the different goals of tax systems by considering tax theory criteria that have wide acceptance in Australia and in other jurisdictions. The trade-offs that need to be made by policymakers when designing and implementing tax reforms are introduced. These trade-offs involve balancing efficiency and growth-oriented criteria with those involved in achieving distributional outcomes in terms of horizontal and vertical equity. This part of the module also discusses how tax policy is influenced by administrative, institutional and political environment factors. The module then examines Australia's major tax reviews including their key recommendations and consequential reforms. Australia's tax system and tax mix are considered, and Australia's tax system is compared with those of other Organisation for Economic Co-operation and Development (OECD) countries. The module examines how an increasingly open global economy can potentially influence our thinking about how to design a domestic tax system that is capable of handling international developments and pressures and considers how case law developments can affect tax law reform. The remainder of this module then focusses on various integrity measures within the domestic legislation and Australia's extensive network of Double Tax Agreements (DTAs) which are designed to ensure that taxpayers pay an appropriate amount of tax in Australia. In particular, the general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act 1936* (Cwlth) (ITAA36) which empowers the Commissioner of Taxation

(Commissioner) to deny a tax benefit obtained in relation to certain schemes is discussed. The scope of arrangements that may be subject to anti-avoidance provisions is illustrated and guidance is provided on managing client risk in relation to tax planning. This module also discusses those elements of Part IVA specifically directed at international tax avoidance techniques (the Multinational Anti-Avoidance Law and the Diverted Profits Tax) and highlights the information gathering opportunities at the disposal of the Australian Taxation Office (ATO) to identify tax avoidance in the cross-border context and support the ATO's enforcement activities. The role of DTAs in allocating taxing rights between international jurisdictions to ensure income is not subject to tax both in Australia and overseas is explained. This module concludes with a focus on the various anti-avoidance measures that can apply when structuring a business in Australia. Whether a client is establishing an initial structure or altering an existing group structure, the tax adviser must consider a raft of tax considerations, including the general anti-avoidance provisions of Part IVA, and the specific anti-avoidance provisions of the personal services income (PSI) regime.

Module 2: Trusts and trust distributions

This module provides an advanced consideration of the taxation of trusts and trust distributions as trusts are commonly used as a structure both for business operations and for investment. It considers the difference between the income of a trust estate and the net income of the trust. The meaning of 'income of the trust estate' is based on trust law principles, to be ascertained by the trustee, applying appropriate accounting principles and the relevant terms of the trust deed. The module explains how to determine the share of net income to which a beneficiary is entitled, and the tax obligations following distribution. A beneficiary presently entitled to a share of trust income will be assessed on a proportionate share of net income, other than where there is a specific entitlement to a capital gain or franked dividend. In determining whether the trustee or beneficiary is assessed on the net income of the trust, it is critical to determine whether a beneficiary has been made presently entitled to a share of trust income. Distributions to minors and corporate beneficiaries, the issues associated with unpaid present entitlements (UPEs) and, briefly, testamentary trusts are also discussed. CGT events E1 to E10 are CGT events that can only potentially apply to a trust and the module then explains the tax consequences of a trust realising a capital gain or capital loss, particularly arising from CGT Event E4 (ITAA97 s. 104-70), where any potential application needs to be monitored as there is a risk that trustees may not realise that the cost base of units and fixed interests in trusts may be reduced by the distribution of certain non-assessable amounts. Importantly, trusts can often access both the CGT discount and the CGT small business concessions where the eligibility conditions for these tax concessions are satisfied. This module concludes by considering the determination of whether fixed and non-fixed trusts may carry forward trust losses and the implications of making a family trust election.

Module 3: Superannuation

This module commences by discussing the regulatory environment of superannuation, and covers the different types of superannuation funds. It then describes the different types of superannuation contributions, and how they are taxed. The module then explains the different phases of superannuation accounts and how investment earnings are taxed based upon these different phases and types of income stream where applicable. The taxation implications of receiving superannuation benefits are explored, including a discussion of when members can access their superannuation and the taxation consequences of withdrawals in lump sum amounts or as income streams. Entitlement to a deceased's superannuation balance and how it is taxed in the hands of the recipient are also discussed. This module concludes by discussing the responsibilities and tax issues relevant to self-managed superannuation funds (SMSFs). These comprise a significant part of the superannuation sector, which provide fund members with a level of control and investment opportunities that are generally unavailable to members of larger superannuation funds.

Module 4: Companies and company distributions

This module begins by discussing the calculation of taxable income and tax payable by a company, the special rules that apply to the utilisation of company losses, tax incentives available in respect of companies carrying on innovative activities, and capital gains tax (CGT) concessions that may apply to certain companies and their shareholders. To determine a company's taxable income, adjustments are made to the accounting profit for items that are treated differently for accounting and tax purposes in order to arrive at taxable income. The applicable company tax rate depends upon whether the company qualifies as a base rate entity. Tax offsets, such as the franking credit tax offset, foreign income tax offset and R&D tax incentive offset may apply to reduce the tax payable by a company. For a limited period, certain companies may be able to carry back tax losses in order to generate a refundable tax offset. The continuity of ownership test and/or the business continuity test must be applied where a company wishes to claim a loss from a prior year to reduce current year taxable income. The module then examines the imputation system, which seeks to ensure that company profits are not double taxed when distributed to shareholders as a dividend. This module concludes by discussing the various situations in which shareholders (and certain other entities) may be taxed as if they have received an amount or benefit which is deemed to be a dividend, including share buy-backs, liquidator's distributions and the specific anti-avoidance rules applying to private company loans, payments and forgiven debts.

Module 5: Consolidations

This module provides an overview of the key features of the consolidation regime, which is set out in Part 3-90 of the *Income Tax Assessment Act 1997* (Cwlth) (ITAA97). It commences with a discussion of the eligibility criteria that must be satisfied for a resident company to be the head company of a consolidated group, and when a wholly owned resident company, trust or partnership will be an eligible subsidiary member of the group. It also discusses the separate rules that apply to the formation of a multiple entry consolidated (MEC) group. This module then discusses the key consolidation rules that need to be applied upon the formation and operation of a consolidated group and the implications of a subsidiary member subsequently exiting a group: the single entity rule; the entry history rule; and the exit history rule. It addresses the special rules that apply to the payment of PAYG instalment tax by a head company, and to the transfer and recognition of franking credits and foreign income tax offsets following a subsidiary member joining a consolidated group. The module then sets out the tax cost setting process that applies at the time a subsidiary member joins a consolidated group, and the assets of the joining entity become the assets of the head company in accordance with the single entity rule. The potential transfer of preconsolidation losses to the head company and use of such losses by the group if modified versions of the continuity of ownership test or business continuity tests are satisfied, is explained. While the choice to consolidate is irrevocable, the head company may at a later point dispose of some or all of its membership interests in a particular subsidiary member to a third party. The module concludes by explaining how a head company determines a gain or loss of the sale of membership interests in a subsidiary member exiting the group. It does this by determining the cost base of the membership interests in a calculation that somewhat reverses the cost base determined at the time the subsidiary joined the group.

Module 6: Complex business structures

This module begins by discussing the key factors that should be considered when determining what type of entity or group of entities should be used as the appropriate legal structure for a small-to-medium enterprise (SME) to carry on a business given the commercial and regulatory environment in which the business operates. This discussion examines the four major categories of legal entity, (private company, discretionary trust, unit trust or partnership, or a combination of these), typically used by an SME in carrying on a business, together with related group entities that may be set up for other investment and strategic purposes. The key commercial issues to consider (asset protection, admission and exit of business owners, business flexibility and succession planning) when determining which of these legal entities is the most appropriate for a particular business are examined, and the relative tax advantages and disadvantages of each category of legal entity are discussed. This module concludes with a discussion on a multi-entity combination of structures involving a trust and other related legal entities in order to provide the most commercially robust group of entities to meet the business and investment needs of an SME and address the various commercial, investment and tax requirements of the business owners.

Module 7: Corporate financing

This module provides a discussion of the role and application of specific legislation surrounding certain areas of corporate finance, most of which was implemented in response to tax minimisation or shifting strategies. The module commences by considering the debt and equity rules and how to apply the tests to determine whether an interest is a debt interest or an equity interest for tax purposes. This is important because it determines which interests may be frankable (and non-deductible) and which interests are deductible (and non-frankable). The module then considers the value shifting regime, which operates to prevent value being shifted between existing interest holders, or between existing and new interest or rights holders, of an entity. Value shifting is considered in three broad categories: interest direct value shifting; created rights direct value shifting; and indirect value shifting. The module then discusses the thin capitalisation provisions that operate to deny certain deductions for companies which are heavily funded by debt. It explains the application and calculation of the debt amounts denied. The module concludes by considering the taxation of financial arrangements (TOFA) regime, which aims to better align the timing of deductions for payments on instruments and the timing of the assessability of gains made in relation to financial arrangements, and discusses the financial instruments excluded from the TOFA regime.

Module 8: International transactions and cross-border tax issues

This module begins by explaining how the Australian tax legislation deals with issues arising from a taxpayer using or owning foreign currency. The rules regarding the conversion of foreign currency into Australian dollars are discussed, as are the tax consequences of foreign exchange gains and losses. The transfer pricing rules, which are designed to ensure that income and expenses arising from cross-border transactions are appropriately allocated between Australia and other jurisdictions, are then explained. The module then outlines the conduit foreign income (CFI) rules that were introduced in Subdivision 802-A of ITAA97 as part of the government's plan to encourage the establishment of regional holding companies in Australia, and explains that the rules allow the Australian company to act as a 'conduit' for foreign income received by foreign residents through an interposed Australian corporate tax entity. The module then discusses Australia's complex set of specific anti-avoidance measures that have a broad objective to attribute income to Australian residents that has been derived through foreign entities and is not subject to tax comparable to Australia's tax system. The module concludes with a discussion that as Australia assesses a resident taxpayer on their worldwide income, there is a potential for foreign-sourced income to be taxed twice, once in the income's source jurisdiction and again in Australia. It outlines methods such as recognising a credit for foreign taxes paid, or recognition of a tax credit for foreign taxes paid by Australia's obligation under DTAs, for the mitigation of this exposure.

Module 9: Advanced GST issues

This module begins by explaining a selection of some of the more complex areas of GST. The module aims to expand upon the general GST rules and to apply them to new emerging areas (e.g. digital currencies and the sharing economy) together with specific rules that apply to specific transactions. In order for GST to apply, providers operating in the sharing economy need to be carrying on an enterprise, meet the GST turnover threshold (with the exception of ride-sourcing arrangements which satisfy the definition of taxi travel), and be making taxable supplies. The module then presents a detailed discussion of the advanced application of the GST Act to financial supplies, cross-border transactions and the rules affecting property transactions. An in-depth understanding of these more complex areas of commercial transactions is important for making critical commercial decisions and meeting the compliance requirements of the GST Act. The important areas of compliance with the more complex attribution rules and adjustment events are then discussed. The GST legislation provides for increasing or decreasing adjustments to the net amount of GST payable by a taxpayer which must be allocated to the correct tax period. The module concludes by discussing the anti-avoidance provisions specific to GST. The general anti-avoidance provisions are designed to counter schemes with a dominant purpose of obtaining a GST benefit and allows the Commissioner to cancel the benefit gained and compensate another entity disadvantaged by the scheme. The specific anti-avoidance provisions are designed to attack specific attempts to avoid a GST liability.