INCOME:

Company	30%
Super Fund	15%
Individual	Marginal Rates

s4-10

INCOME TAX = (TAXABLE INCOME x TAX RATE) - OFFSETS

also: for individual add medicare levy (1.5% x taxable income)

Framework for calculating taxable income = s4-15

		Div 6		**Div 8**
TAXABLE INCOME	=	**ASSESSABLE INCOME** (Gross income)	-	**DEDUCTIONS**

		s6-5		**s6-10**
ASSESSABLE INCOME	=	**ORDINARY INCOME**	+	**STATUTORY INCOME**

Assessable Income EXCLUDES Non-Assessable Income, Non-Exempt Income & Exempt Income

ORDNARY INCOME s6-5(1): CSG 1-17

Income according to Ordinary Concepts	*(s.6-5(1))*
Arising from employment or services	
Arising from carrying on a business	
Is regular/periodic/recurrent	*(FCT v Dixon)*
NOT a capital amount	
Amounts received from the use of property (e.g. rent, royalty)	*Eisner v. Macomber*
NOT a personal gift or windfall gain	*Scott v. FCT (1966)*
Compensation for loss of income or profits	*Liftronic Pty Ltd v FCT*
Isolated transactions entered into to derive profit	*(FCT v Myer Emporium Ltd)*
Compensation for loss of trading stock	*FCT v. Wade*
Reward for personal performance is income	*(Scott v FCT)*
Must be in money, or convertible into money	*(Tennant v Smith)*

DISTINCTION BETWEEN INCOME AND CAPITAL CSG 1-19 *has table of comparatives*

CAPITAL RECEIPTS ARE NOT INCOME: CSG 1-20

Receipt more likely to be capital if:

Gain relating to a one-off or non-recurring event (e.g. sale of building used to conduct busines	*Californian Oil Products Limited (in liq.) v. FCT*
Amount received for a restrictive covenant or sterilisation of an asset	*Dickenson v. FCT*
Gain resulting from merely realising an investment in the most advantageous way	*Scottish Australian Mining Co Limited v. FCT*
Transaction occurring outside the ordinary course of business and not entered into with the intention of making a profit	*Westfield Limited v. FCT*
Received as a lump sum payment in relation to an asset	*McLaurin v. FCT*

DERIVATION OF INCOME: CSG 1-16

SALARY&WAGES	On receipt, in accordance with the employment contract or award	*(Brent v. FCT)*	
TRADING INCOME	When stock is sold and debt is created (even if has deferred payment arrangemen	*J Rowe and Son Pty Ltd v. FCT*	
	If dispute over whether amount is owing, amount not derived until dispute resolve	*BHP Billiton Petroleum (Bass Strait) Pty Ltd v. FCT*	
INTEREST	Individual investor - Assessable only upon receipt (unless in Ord Business)	*s6-5(4)*	*TR 98/1*
INTEREST	Accrued in Ordinary Course of Business (eg banks) is Income [see CSG 1-16] [See TR 98/1 for more scenarios]	*s6-5*	*TR 98/1*
INTEREST	Interest (financial institutions and other taxpayers with Division 230 financial arrangements) Under TOFA rules, accruals basis method = default mechanism. Test applies where is sufficiently certain that there will be a gain over the duration of the arrangement		
DIVIDENDS	Derived when paid (receipted) or credited	*s44(1) ITAA 1936*	
RENT	Derived when received, unless carrying on a rental business = accruals basis method	*TR 98/1*	
ADVANCE	Amts received in Advance for services are derived when EARNED	*(Arthur Murray v FCT)*	
PROF SERVICES	Depends on whether the services provided on cash or accruals basis.		
AGENT'S CDMISSION	When comish matures into recoverable debt and agent not obliged to take any further steps before becoming entitled to the commission		

Note: see [CSG 1-16] for more

CASH vs ACCRUALS: CSG 1-15

Should "give a substantially correct reflex of taxpayers income"	*(Carden's Case)*
Sole Practioners can be assessed using CASH BASIS	*(FCT v Firstenberg)*
Large professional practices should use ACCRUALS BASIS	*(Henderson v FCT)*
Trading business (business selling trading stock) use ACCRUALS BASIS	*J Rowe and Son Pty Ltd v. FCT*
Generally, the most appropriate method for a business is the ACCURALS BASIS	

CHANGING METHODS:

In moving from Cash to Accruals, Debtors in last Cash year escape tax as ordinary income. But capital gain may arise.	*(Henderson v FCT)*

CONSTRUCTIVE RECEIPT APPROACH CSG 1-14

Where a person gives instructions on how income is to be dealt with on their behalf

Person is deemed to have received that income when it is dealt with as directed by that person (ss 6-5(4) and 6-10(3)).

REIMBURSEMENT OF DEDUCTIBLE EXPENDITURE CSG 1-18

NON CASH BUSINESS BENEFITS CSG 1-22

Assuming the benefit would otherwise be of an income nature, s. 21A(1) ITAA 1936 treats any non-cash business benefit that is not convertible to cash as if it was convertible to cash

Exemption for low value non-cash business benefits
If the total amount of benefit under s. 21A(1) ITAA 1936 (i.e. net of the above reductions) does not exceed $300, the benefit will be exempt from tax (s. 23L(2) ITAA 1936).

STATUTORY INCOME:

Amounts that are not Ordinary Income but ARE ASSESSABLE by other provisions *(s.6-10(2)) ITAA1997*

Includes:

	CSG 1-24	A Scheme that has the intention of MAKING A PROFIT	*s.15-15*	*ITAA 1997*
	CSG 1-25	Disposal of Leased car for a profit	*s. 20-110*	*ITAA 1997*
		Amount included in assessable income = lower of:		
See CSG 1-27 for LIST		Actual profit, total lease pmts deducted, notional depreciation for the lease period		
		Sale of WIP amounts received	*s. 15-50*	*ITAA 1997*
		Non-Cash business benefits Amt assessable is market value less contributions	*s.21A List 6-480*	*ITAA 1997*
		Except: when Total Annual Amount is less than $300	*s.23L(2)*	*ITAA 1997*
		It relates to non-deductable entertainment expenditure	*s.21A(4)*	*ITAA 1997*
		Royalties	*s.15-20*	*ITAA 1997*
		Reimbursed car expenses	*s. 15-70*	*ITAA 1997*
		Gain on disposal of a depreciating asset	s. 40-285	*ITAA 1997*
		Interest on overpayments of Tax and early payments of tax	*s.15-35*	*ITAA 1997*
		ETP's - Eligible Termination Payments	*s. 82-130*	*ITAA 1936*
		Excess of Closing Stock over Opening Stock	*s.70-35*	*ITAA 1997*
		Employee share schemes	*Division 83A*	*ITAA 1997*
		Dividends	*s.44*	*ITAA 1936*
		Liquidation Distributions	*s.47*	*ITAA 1936*
		Partnership Distributions	*s.92*	*ITAA 1936*
		Trust Distributions	*s.97*	*ITAA 1936*
		Deemed dividends – excessive pmtsby a private company to shareholders/associa	*s. 109*	*ITAA 1936*
		Deemed dividends – disguised profit distr by a priv comp to shareholders/associat	*Division 7A*	*ITAA 1936*
		Foreign exchange gains	*s. 775-15*	*ITAA 1997*
		Superannuation benefits	*Divisions 301–307*	*ITAA 1997*
		Gain on a Division 230 financial arrangement	*s. 230-15*	*ITAA 1997*
		Net Capital Gains	*s.102-5*	*ITAA 1997*
		Note: A net capital loss is carried forward to the next income year (to be offset against capital gain (if any)		

EXEMPT INCOME

CSG 1-28

Ordinary or statutory income that is specifically excluded from assessable income s.6-20

Net exempt income taken into account when calculating:

	A current year tax loss	*s. 36-10*	
	A prior year tax loss that can be claimed in the current year	*ss 36-15 to 36-20*	
Includes:	income of entities that are exepmt no matter what type of income it is		
	income which is exempt no matter who receives it		
	income which is exempt only if it is dervied by certain entities		
e.g	Income of religious, charitable and scientific institutions	*s.50-5*	*ITAA 1997*
	Income of public and non-profit hospitals	s.50-30	*ITAA 1997*
	Income of Trade Union and employer associations	s.50-15	*ITAA 1997*
	FOREIGN SOURCE INCOME FOR NON-RESIDENTS	s.6-5(3),s.6-10(5)	*ITAA 1997*
		s.23(r)	*ITAA 1936*
	INCOME EARNED IN OVERSEAS EMPLOYMENT	s.23AG	*ITAA 1936*
	BRANCH PROFITS OF AUSTRALIAN COMPANIES	s.23AH	*ITAA 1936*
	FRINGE BENEFITS	s.23L(1)	*ITAA 1936*
	Certain Income derived from approved overseas projects	s.23AF	*ITAA 1936*
	s.21A (Non-cash business benefits) amounts less than $300	s.23L(2)	*ITAA 1936*

NANE INCOME CSG 1-29

Non-Assessable Non Exempt Income does NOT reduce TAX LOSSES (in the way exempt income does)

e.g	Fringe benefit under the FBTAA 1986	s. 23L(1)	*ITAA 1936*
e.g	A 'non-portfolio' dividend paid by a foreign company to an Australian resident company –Aus Comp must hold 'at least 10% of the voting power' Foreign Comp	s. 23AJ	*ITAA 1936*
e.g	Taxpayers who supply g/s to which GST applies receive pmts including GST components.		
	GST component = NANE income	s. 17-5(a))	*ITAA 1997*

MUTUALITY PRINCIPLE CSG 1-31

Recognises that a person cannot make a profit when dealing with themselves

RESIDENCY **NOTE FOR QS: DETERMINE RESIDENCY THEN SOURCE**

	Resident	**Non-Resident**	CSG 1-7
Assessable Income	All sources (worldwide)	Australian Income only	
Tax-free Threshold	$18,200 (apportioned if part-year reside	NIL	
Marginal Rate	Lower	Higher	
Medicare Levy	Yes	No	
Dividends, Interest & Royalties	Not Subject to W/Holding Tax	Subject to W/Holding Tax	
CGT on disposal of asset	All assets (worldwide), CGT discount for assets held at least 12 months	Australian Assets only, no CGT discount for gains accruing after 8 May 2012	
Companies	Benefit from a range of concessions	If located in country with tax treaty with Aus,will typically pay tax on business profits sourced in Aus only if the entity has an Aus permanent establishment	

RESIDENCY TESTS FOR INDIVIDUALS s.6(1)(a) ITAA 1936: CSG 1-9

Note: one of four tests needs to be met to be considered an Australian tax resident

1.) RESIDES TEST

Residency is a question of fact and not law (*FCT v Miller*). Key factors to consider to support your argument:

Intention or pupose of visit	*TR 98/17*
History, frequency, regularity and duration of visits ie > 6 mnths	*TR 98/17*
Familiy and business/employment ties	*TR 98/17*
Social and living arrangements ie joining clubs, signs lease, intending to live in Aus to fulfil a contract etc.	*TR 98/17*
Maintance & Location of Assets ie bank accounts, M/Vehicle	*TR 98/17*

2.) DOMICILE TEST s.6(1)(a)(i)

A resident is a person whose DOMICILE is in Australia. ("Domicile" can be defined as: "The permanent residence of a person; a place to which even if he or she were temporary absent, they intend to return. In law, it is said that a person may have many residences but only one domicile") unless can be shown that permanent place of abode is outside Australia.

TYPES OF DOMICILE

- Domicile of origin
- Domicile of choice
- Domicile by operation of law

PERMANENT PLACE OF ABODE

The INTENDED and ACTUAL duration of the taxpayer's stay overseas	*Jenkins & Applegate*	*IT 2650*
Whether the taxpayer intends to return to Australia at some DEFINITE point in time	*Jenkins & Applegate*	*IT 2650*
Whether the taxpayer has an ESTABLISHED HOME outside Australia	*Jenkins & Applegate*	*IT 2650*
Duration and continuity of the taxpayer's presence in the overseas country	*Jenkins & Applegate*	*IT 2650*
Wether any residence or place of abode exists in Aus or abandoned because of the o/s absence	*Jenkins & Applegate*	*IT 2650*
Durability of association that the person has with a particular place in Australia	Jenkins & Applegate	IT 2650

3.) MORE THAN 183-DAY TEST s.6(1)(a)(ii)

The Commissioner deems any person who has physically been in Australia for more than HALF OF THE INCOME YEAR as a resident for taxation purposes for the ENTIRE INCOME YEAR.
Unless can be established that their usual place of above is outside Aus and they don't intend to take up residence in Aus

4.) SUPERANNUATION FUND TEST s.6(1)(a)(iii)

A person is a resident if they are a MEMBER of a SUPERANNUATION SCHEME for COMMONWEALTH GOV'T OFFICIALS.
OR a spouse or child of such a person

RESIDENCY TEST FOR COMPANIES s.6(1)(b) ITAA 1936: CSG 1-10

A company is a resident where it is:

1.) Incorporated in Australia (see ASIC register); OR
2.) Not incorporated but CARRIES ON BUSINESS in Australia (note: business can be active and passive operations); AND either:
  a.) CENTRAL MANAGEMENT & CONTROL/OPERATIONS is in Australia; OR — *Malayan Shipping Co v FCT*
  b.) VOTING POWER is controlled by Australian shareholders/residents

Conflicting case - as above says Carries on a Business "**AND"…** — *TR 2004/15*
- Mere fact that central management and control of comp is in Aus is not sufficient to establish that comp is carrying on business in Aus
  - For the purposes of the second statutory test, a company that has major operational activities relative to the whole of its business carries on business wherever those activities take place and not necessarily where its CM&C is likely to be located.
  - A company whose income earning outcomes are largely dependent on the investment

decisions made in respect of its assets carries on its business where these decisions are made

RESIDENCY TEST FOR TRUSTS CSG 1-10

Determined by the residency of the trustee or central management and control of the trust

RESIDENCY TEST FOR SUPER FUND CSG 1-10

Determined by the residency of the trustee

RESIDENCY TEST FOR PARTNERSHIP CSG 1-10

Net income calculated on the basis that partnership is an Australian resident. Partners residency is determined seperately.

SOURCE OF INCOME: CSG 1-11

NOTE: Consider impact of double taxation agreement (source of income may be overturned by agreemnt)

Sale of goods	Place where the contract of sale was entered into or where value was added	*CoT (NSW) v. Kirk*
Sale of shares	Place where the sales contract was entered into, although the place where the company conducts its operations is also relevant	Australian Machinery & Investment Co. v. DFCT
Sale of other property	The place where the property is located CGT provisions seek to tax non‑residents on the direct or indirect disposal of 'taxable Australian property' (e.g. Australian land)	
Salary & Wages	Source of Income is where work is performed	*French v FCT, FCT v Efstathakis*
Trading Income	Usually where goods & Services were carried out	*Cam & Sons v FCT*
Professional Services	(specialised services) Place of contract may be the source (eg Actors) Place where payment for the service was made	*FCT v Mitchum* *Evans v FCT*
Dividend Income	Place where the profits that gave rise to the dividend were made Australia Residents include Dividends from ALL sources Non-Residents include Dividends derived from Aust sources only	*Esquire Nominees v FCT* *s.44(1)(a) ITAA 1936* *s.44(1)(b) ITAA 1936*
Interest Income	Source is where funds are advanced Where loan contract was entered into	*FCT v Spotless Services Limited*
Rent from Property	Sourced where real property is located	*Rhodesia Metals Ltd v C of T*
Lease contracts	Where the lease contract is entered into	
Royalties	If arising from right to use property, sourced where property is located. If arising from intellectual property, then where contract was entered into Interest deemed to be sourced in Australia if Aus bus pays royalty to a non-resident	 *FCT v United Aircraft Corporation* *s.6C ITAA 1936*

DEDUCTIONS

INCOME TAX = (TAXABLE INCOME x TAX RATE) - OFFSETS
also: for individual add medicare levy (1.5% x taxable income)

Framework for calculating taxable income = s4-15

		Div 6		Div 8
TAXABLE INCOME	=	**ASSESSABLE INCOME** (Gross income)	-	**DEDUCTIONS**

DEDUCTIONS

Division 8 of ITAA 1997 deals with deductions and contains 3 sections:

s.8-1	GENERAL DEDUCTIONS
s.8-5	SPECIFIC DEDUCTIONS see s. 12-5 for a LIST of SPECIFIC DEDUCTIONS
s.8-10	ANTI-DOUBLE COUNTING RULES (Where multiple provisions allow dedn, the MOST APPROPRIATE applies)

Value of a tax deduction
Income tax deductions are claimed on a GST EXCLUSIVE basis by business ELIGBLE for ITC. *s27-5 ITAA 1997*

s.8-1 GENERAL DEDUCTIONS CSG 1-32

provides that a loss or an outgoing is allowed as a deduction to the extent that it is:
(note: dual purpose expenditure is apportioned *Ronpibon Tin NL v. FCT)*

s.8-1(1) POSITIVE LIMBS (Must be either:) CSG 1-38

Incurred in gaining or producing your Assessable Income *s8-1(1)(a)*
Necessarily incurred in <u>carrying on a business</u> for the purposes of gaining or producing assessable income *s8-1(1)(b)*
SEE BOX BELOW

s.8-1(2) NEGATIVE LIMBS (Cannot be any of the following:)

Outgoing is CAPITAL in nature (3 Tests s.8-1(2)(a)) *s8-1(2)(a)*
O/g is of PRIVATE or DOMESTIC nature (only relevant to individuals) *s8-1(2)(b)*
O/g is incurred in producing EXEMPT or NANE income (i.e. prevent competitic *s8-1(2)(c)*
O/g is prevented by a provision of the ITAA (tax law) *s8-1(2)(d)*

Notes
- FBT, STATE PAYROLL TAX IS A TAX DEDUCTION UNDER S8-1 AS AN EXPENSE OF EMPLOYING LABOUR
-An expense does not need to be specifically matched to assessable income that is produced in the same year as the expense. Subject to special rules dealing with prepayments, the question is whether there is a connection (or nexus) between the expenditure and the taxpayer's income-producing activity (FCT v. Smith).
- *s. 51AAA ITAA 1936* ensures that expenses incurred in relation to a CGT asset are not, for that reason alone, tax deductible.
- Under 1st pos limb, accepted that a person does not have to have paid the amount as long as it was actually incurred and there is the relevant connection to 'earning assessable income *TR 97/7*).

CARRYING ON A BUSINESS CSG 1-40

Business indicators (TR 97/11) *Note: for qs, analyse each indicator.*

Activity has a significant commercial purpose	
Taxpayer has more than just an intention to engage in business	
Taxpayer has an intention of making a profit and the activity is or will be profitable	*(FCT v. Stone)*
Repetition and regularity of the activity	*(FCT v. Whitfords Beach Pty Ltd)*
Activity is akin to comparable businesses	
Activity is planned, organised and carried on in businesslike manner	*(Ferguson v. FCT)*
Size, scale and permanency of the activity	*(Thomas v. FCT; FCT v. Walker)*
Cannot be described as a hobby, recreation or sporting activity	*(Evans v. FCT)*

ALSO CONSIDER

Non-commercial business loss rules CSG 1-40
Pre-commencement and post-cessation expenditure CSG 1-40

WHETHER CAPITAL EXPENDITURE OR REVENUE CSG 1-42

Tests *Sun Newspapers Ltd and Associated Newspapers Ltd v. FCT*

What is the character of the advantage sought?
Capital nature: If the expenditure will result in an enduring benefit to the taxpayer
What is the manner in which the advantage is to be used or enjoyed?
Capital nature: If the expenditure was a once-and-for-all benefit as opposed to a short-term benefit,
What means were adopted to obtain the advantage?
Capital nature: If the advantage was provided by a single lump sum as opposed to a series of recurrent payments

Tax recognition for non-deductible business expenditure of a capital nature CSG 1-43

CONSIDER WHETHER MAY RELATE TO :
A depreciating asset – should give rise to a capital allowance deduction under Div 40 (sometimes referred to as tax depreciation).
Construction of an income-producing building or structural improvement - should give rise to a capital works deduction under Division 43
CGT asset - expenditure should form part of the cost base of the asset

IF NONE APPLY CONSIDER:
BLACKHOLE DEDUCTION (s40-880)
Provides a deduction for business expenditure over a five-year period