

## CGT (SI)

- ❖ Only apply to asset acquired **after 20/9/1985** (**s104-10(5)(a)**)
- ❖ For CGT **asset** acquired **before 21/9/1999**, CGT **event** happen **after 21/9/1999**, cost base could calculate by choosing between indexation/discount

### Has CGT event occur?

Priority if more than one occur: A1 – D1 - H2 (**s102-25**)

\*\* Asset is acquired when become owned (**s109-5(1)**)

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
A1 Disposal of a CGT asset  <i>[s 104-10]</i>	when disposal contract is entered into or, if none, when change of ownership	capital proceeds from disposal <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
B1 Use and enjoyment before title passes  <i>[s 104-15]</i>	when use of CGT asset passes	capital proceeds <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C1 Loss or destruction of a CGT asset  <i>[s 104-20]</i>	when compensation is first received or, if none, when loss discovered or destruction occurred	capital proceeds <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C2 Cancellation, surrender and similar endings  <i>[s 104- 25]</i>	when contract ending asset is entered into or, if none, when asset ends	capital proceeds from ending <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
D1 Creating contractual or other rights  <i>[s 104- 35]</i>	when contract is entered into or right is created	capital proceeds from creating right <i>less</i> incidental costs of creating it	incidental costs of creating right <i>less</i> capital proceeds

## Statutory Income

### 1. Employment or services rendered related benefit (s15-2)

- Allowance, gratuity, compensation, benefit, bonus or premium
  - Must be received during the employment or due to termination (Dixon)
- Connection: directly or indirectly related to employment or service
  - ✓ Kelly: incidental – eligible to receive by virtue of that employment – require to perform well
  - ✓ Smith: award for completing a course given by employee
  - ✓ Holmes: Not necessary from the employer
- Provided to the employee
- Provided in money or other form (s15-2(2))
- × If the amount is also OI, this section does not apply (s15-2(3))

### 2. Business related bounties and subsidies (s15-10)

- Bounty or subsidy
  - Payment received to assist person to carrying on a business or to commence business in the future (Squatting)
- Connection: in relation to
  - Can be direct or indirect
  - Need a real connection, not merely remote one (First Provincial)
- Carrying on a business
- × If the amount is also OI, this section does not apply (s15-10(b))

### 3. Profit making undertaking/plan (s15-15)

- Profit arising from carrying on or out of profit making undertaking plan
- × If the amount is also OI, this section does not apply; only apply to sale of pre-CGT asset (s15-15(2))
  - Must be carried out with the purpose of making profit (XCO)
  - Profit making scheme (Myer)
  - An undertaking plan requires a plan of action, but need not to have precise steps (Clowes)

### 4. Royalties (s15-20)

- Ordinary meaning: Compensation paid to the owner of a right
- Examples: Patent, amount paid to author, composer for his work
  - × If the amount is also OI, this section does not apply (s15-20(1))

**5. Employee car expenses reimbursed by an employer (s15-70)**

- Reimbursement: make repayment for expense or loss incurred (s22 FBTA)

**6. Return to work payments (s15-3)****7. Accrued leave transfer payments (s15-5)****8. Amount for lessee's failure to comply with a lease obligation to repair (s15-25)**

.....more in the notes

## Ordinary Income

### Characteristic of income

\*\*Receipt from illegal activities is still assessable (La Rosa)

**i. Periodicity, regularity & recurrence of receipt**

- ✓ **Dixon**: War time pay – voluntary but periodic - t/p depend on it to meet expense
- ✓ **Prendergast**: remuneration even paid in lump sum still income – not decisive

**ii. Receipt of money or convertible into money worth**

- × **Cooke**: Not income if not convertible into money – free holiday – non transferable  
UNLESS

➤ **Carry on business**

- treated non cash benefit as if it is transferable (s21A)
- Arm's length value – owner's contribution
- IF < \$300, exempted (s23L(2))

**iii. NOT mutual receipts**

- × **Bohemians**: surplus after paying cost of club – not income – eg. contribution to business

**iv. NOT capital receipts**

Income	Capital
<ul style="list-style-type: none"> <li>• Periodic, recurrent, regular (expected)</li> <li>• Substitute revenue item</li> <li>• Realization that constitutes carrying on a business</li> </ul>	<ul style="list-style-type: none"> <li>• Lump sum</li> <li>• Substitute capital item</li> <li>• Mere realization of asset (no profit making intention – <b>Myer</b>)</li> </ul>

### 1) Receipt from personal exertion

- **Receipt of employment/service rendered personally**
- **Sufficient connection**

**i. Direct**

- Immediate return, eg. Wages, salaries, fees and commissions (**British Columbia**)

**ii. Incidental**

- Receipt in connection to the employment

- Doesn't matter if comes from someone else (**Dixon**)
- Receipt by virtue of the employment and depends on worker performance (**Kelly**)
- iii. Unrelated – generally not income
  - Received gift of shares – not income (**Hayes**)
  - Gift from client to solicitor – not income (**Scott**)
  - Unexpected, ex gratia lump sum payment for unindexed bank – not income - t/p did not depend on it to meet expense (**Harris**)
- **Reasonable expectation payment would be received**
- **Dependence upon to meet regular living expenses**
  - ✓ **Dixon**: Although voluntary but periodic - t/p depend on it to meet expense
  - × **Harris**: Unexpected and not depend upon to meet expense

.....more in the notes

## General deduction

### Positive part

#### Limb 1 – all entities (s8-1(1a))

- In the course of gaining or producing AI
  - Expected is enough, not need actual gain (**Ronpibon**)
- Sufficient connection to AI
  - × Compensation payment after business ceased (**Amalgamated**)
  - × Fees incurred in getting a job (**Maddalena**)
  - × Travel from home to regular workplace (**Lunney**)
  - × Travel from part time to full time (**Payne**) – SD s25-100
  - × Child care expense (**Lodge**)
  - × Meal/food & drink – despite required by employer – not pay to eat (**Cooper**)
  - ✓ Conventional clothing – rarely had chance to wear for private (**Edwards**)
  - ✓ Interest on loan used for producing AI purpose (**Munro**)
  - ✓ Business admin & management fee incurred during business was suspended (**Ronpibon**)
  - ✓ Income protection insurance premiums (**DP Smith**)
  - ✓ Self-education – certain will increase salary and be promoted (**Finn**)
  - ✓ Must likely increase AI, not enough just to make t/p a better employee (**Hatchett**)
  - ✓ Home study electricity (**Faichney**)

#### Limb 2 – business entities (s8-1(1a))

- In the course of gaining or producing AI
  - Expected is enough, not need actual gain (**Ronpibon**)

- Loss & outgoing is necessary to meet the business ends in t/p's view (Magna)
  - × Travel from home to business place (Hayley)
  - × Legal fee in defending business acquisition (Fairfax)
  - ✓ Advertising & legal fees (Snowden)
  - ✓ Legal fee in defending director – director is the one who manage company (Magna)
  - ✓ Damage settlement & legal fees paid after business ceased (Placer)
  - ✓ Business premium – cover business risk (WD & HO)
  - ✓ Loss of stolen money (SD s25-45) – despite it was illegal business (La Rosa) BUT s26-54 prevent deduction

.....more in the notes

**Includes: Specific deduction, prevented deduction, tax accounting and all other topics that are examinable.**