Tax Law

Week 2 Topic 2 Lect 1

Summary of Cases

Cash/ Convertible to Cash – Cooke v Sherden

Real Gain- RACV

Periodical/Relied upon- Dixon

Flow concept- Eisner v Macomber (trust); Woite (ability to earn) note if you give up the ability to earn, it is capital- not income.

Gifts

□ Not all receipts flow from capital or services □

□ If regular and the person relies on it, it can still be considered as ordinary income even □though no source exists eg student youth allowance from government □**Special situations** □

○ Receipts from **personal compensation**- compensation takes the character of what is replaces.

□ Replaced income- **Meeks (1915)** case- insurance was used to cover lost wages. □

□ Replaced capital- **Glenboig Union Fire Clay Co Ltd (1922)-** concluded there was a loss of □ability to earn because they lost their reputation (what they rely on to earn income and it is the basis of their capital)- even though lost income was considered, it was the loss of reputation that was the focus of this case. Thus, loss of capital. □

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Income Tax Law □ **Business compensation**- cancelled agency agreements-

Heavy Minerals Pty Ltd (1966)- mines a product called routile. Sold on world market, and they had fixed price contracts. The world wide price of this product plummets. Those stuck in these fixed pice contracts, pay damages for breach of contract so they can get it cheaper elsewhere. Heavy Minerals then had no sales and went broke. Court looked at what HM were being compensated for? Contracts to supply for a certain price. The company still has its sources- ie mine, equipment etc. This compensation was therefore income. The business failed because it couldn't economically survive in the market. Ability to earn was still there.

Californian Oil Products Ltd (1934)- co set up in Aus to sell oil products from an American company. It was its only form of product in its business. All its product came from one American supplier. US co paid the Aus company to liquidate their company and close up. The US company wanted to set up in Aus. The Aus co lost its ability to earn. Loss of capital.

Allied Mills Industries (1989)- distributes Arnotts biscuits. Had an agreement to distribute these biscuits. Allied Mills was compensated for the cancellation of its contracts. They distributed for other suppliers, wasn't the absolute core of their business. AM argued that the contract was the source of the income. The source was the business (infrastructure, planes, trucks etc)- thus, deemed as income. Compensation was income.

Generally, you need to question has the source of the income been lost??

If it can be classed as both capital and income, apply **McLaurin's case (1961)-** will be treated as capital by the courts.

- Receipts from **illegal transactions**- All of the normal tests apply even though it is illegal- treat it the same ie 2 prerequisites, and 2

characteristics.

- **Constructive receipts s6-5(4)**-

The income belongs to the person it is earnt by ie nominating $20,000 of your $80,000 wage to your wife. The person who earns the full $100,000 will be their ordinary income. The wife who earns $20,000 will not need to declare it as ordinary income.

Federal Coke Co Pty Ltd (1977)

Balambi, Le Nikel and Federal Coke- look up this case.

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Income Tax Law

Tax Law

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Assessable Income = Ordinary Income + Statutory Income – Exempt Income

Ordinary Income – **s6-5** Statutory Income- **s6-10** Both OI and SI- **s6-25-** you apply the statutory provision unless it states otherwise

□ Income from **property** Are the prerequisites satisfied? Does this receipt have the characteristics?

Property income is knows as passive income. It is the result of an investment, dividends, rent, royalties, interest.

Interest- courts deem it as 'payment for the use of money'.

Myer Emporium– were receiving interest but sold the right to receive the interest and passed it onto someone else in return for a lump sum of money. This was known as the second limb. ME tried to show the money as capital, but the court recognised that they were trying to conceal this ordinary income as capital. Court deemed it as capital.

Whitaker (1966)- Mrs W had an issue with her eyes and saw a surgeon who said he could operate on one eye so if anything bad happened, she would still have one eye to rely on. Result of surgery was that both eyes lost vision. Court had to work out damages + pre-judgment interest (for the time it took for her to finally get her money because she had to wait for court proceedings). Court said the interest is part of the compensation, and not income. The damages and interest for loss of sight/ability to seek was deemed to be capital. It then went through an appeal process, and there was postjudgement interest, which was deemed as income. Finally, this post-judgment income was deemed exempt pursuant to **s51-57**, and not taxed and deducted.

 Income from **dividends** Flows from shares so they are ordinary income. Dividends are statutory income from **s44 ITAA 1936.** Income from **rent** Rent flows from ownership of property- income. Lease premiums are known as capital.

ATO WEBSITE- Deductions

General Rules

 To make a deductions claim, you must have made the purchase in the course of earning your assessable (taxable) income and it must not be a private, domestic or capital expense. If the expense was both work-related and private or domestic, you can only claim a deduction for the work-related portion.

The basic rules for claiming a deduction are that you:

✓ must claim the deduction in the same income year that you made the purchase ✓ can't claim an expense that you have been, or will be, reimbursed for ✓ may have to substantiate your claims with written evidence.

If GST is included in the price, it is part of the total expense and therefore part of any allowable deduction. (Excluding GST).

You can't claim a deduction for:

× fines imposed under a law of the Commonwealth, a state, a territory, a foreign country, or by a court, such as speeding tickets and car parking fines

× costs you incur earning income from illegal activities

Income Tax Law

  

Vehicle and Travel expenses-

- You can claim vehicle and other travel expenses **directly connected with**

Step 1

1- Has a CGT event happened to the taxpayer? *(It will be one of the following)-*

	CGT Event	Event description	Event example	Time
A1	Disposal s104-A	Disposal occurs where there is a change of ownership because of an event. Most common CGT event.	Entering a contract	When the taxpayer the contract. IF **no contract**, wh change of ownershi (s104- 10(3)). IF **multiple contra** date will be the con gives rise to the obl sell/transfer the ass held in the case of I Lee Household & E (2000)). IF contract is **oral,** ct is date of acquisi (McDonald v FCT 10(3). IF contract is **preli**

				acquisition date wil latter contract (Elm (1993)).
C1	End of a tangible CGT asset s104-C	Loss or destruction of a CGT asset- ie the asset the taxpayer owns is lost or	Factory burning down	S104-20(2) time- **If insured/compen** When the taxpayer received compensat