# TAXATION LAW 2017

## EXAM SUMMARY NOTES

## PERFECT FOR TAKING INTO EXAM

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Ordinary Income

- There are four established categories of income:
    1. Income from personal exertion;
    2. Income from business;
    3. Income from isolated profit-making undertakings; and
    4. Income from property.

## PERSONAL INCOME

1. Income from Personal Exertion

- 1.1 Salary and wages
    - Receipts for personal services (i.e. salary and wages) are generally ordinary income: *Dean v FCT*
    - Relevant factors in deciding whether receipts are salary and wages from *Dixon's Case*:

        *i.* Must be relationship between services provided and payment;

        *ii.* Periodicity, recurrence and regularity;

        *iii.* Is relied on by the taxpayer to survive;

        *iv.* Money or money's worth; and

        v. "Comes" to the taxpayer.

- **1.2 VOLUNTARY PAYMENTS THAT RELATE TO PROFESSIONAL ACTIVITIES**
    - Relevant factors:
        i. The degree of connection to employment or services rendered;
        ii. Reasonable expectation payment would be made;
        iii. Dependence upon payment to meet usual living expenses;
        iv. Payment replaces income;
        v. Motive of the payer or the donor (though this isn't decisive: see *Hayes v FCT*);
        vi. Periodical, concurrent and regular; and
        vii. Whether the payment is money or convertible into money.

- 1.3 Payments for relinquishing rights
  - Amounts received for relinquishing rights are generally of a capital nature: *Jarrold v Boustead*
    - Payment to a rugby player for giving up his amateur status was capital: *Jarrold v Boustead*
    - Inducement (in the form of shares) paid to an accountant to leave private practice and work for a company was a capital receipt (as his employment was not to commence for six months and he might have died before <u>*services were rendered*</u>): *Pritchard v Arundale*
- 1.4 Payments for entering into restrictive covenants
  - Payments received for entering into restrictive covenants are generally capital: *Higgs v Olivier*
  - Payments received for entering into restrictive covenants may be income where that is a normal incident of the particular type of employment: *FCT v Woite*
- 1.5 Compensation payments
  - Compensation payments will take the form of the thing they replace: *Van den Berghs v Clark*
    - Compensation to replace salary while injured will be income;
    - Compensation for loss of a limb will be capital.
  - <u>Compensation for contractual losses</u>
    - Compensation for loss or destruction of an asset is capital, but compensation for temporary disablement of a revenue-producing asset is income: *Beak v Robson*
- 1.6 Payments that are a substitute for salary
  - Payments made by previous employers have been held to be of an income nature where they can be relied upon to substitute or supplement salary or wages: *FCT v Dixon*
- 1.7 Illegal or immoral receipts
  - Illegal or immoral receipts may be ordinary income: *Lindsay v IRC*
- 1.8 Section 15-2 *ITAA 1997* (Statutory income)
  - **Section 15-2 *ITAA 1997* makes the value of** allowances, gratuities, compensation, benefits, bonuses and premiums provided in respect of employment **to be income, regardless of whether they are convertible to money.**

## BUSINESS INCOME

- 2.1 Is the taxpayer carrying on a business?
  - **The business indicators from *TR 97/11* are generally relevant:**

    **An activity that is a business will generally be organised and have a system associated with it, including the following:**

    i. System and organisation of record keeping
       - Use of accountancy systems;
       - Expert advice;
       - Professional membership; and
       - Use of methods and procedures similar to other businesses.

    ii. Scale of activities
       - A business generally operates on a scale beyond that of domestic needs: *Rutledge v IRC*
       - The scale of an operation is not determinative, and a business may still be carried on despite a small scale: *FCT v Walker*

    iii. Commercial character of transactions
       - Businesses typically trade on the open market, but not necessarily: *TR 2005/1* (art business)
       - Relevant if taxpayer's conduct is characteristic of other businesses of similar type: *TR* 97/11

    iv. Sustained, regular and frequent transactions
       - Businesses typically have regular transactions over a lengthy period of time.
       - A sufficiently large one-off transaction will sometimes be sufficient: *FCT v Shield*

    v. Profit motive
       - Businesses are typically motivated by a profit motive but a lack of profit is not decisive:
       - The absence of profit-motive is not determinative: *Stone v FCT*

    vi. Characteristics/quantity of goods
       - There will typically be a business where the character of goods (or the quantity thereof) is inherently unsuited to domestic use: *Rutledge v IRC*

    vii. Inherent characteristics of taxpayer (hobby, a form of recreation, or sporting activity)
       - If the activity is better described as a hobby, recreational activity, or sporting activity, it is probably not a business: *Stone v FCT* (javelin