

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 services were rendered): *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.
 - Compensation for contractual losses
 - 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)