

Assessable Income

General Concepts and Derivation

The assessable income of an entity for an income year is the sum of the entity's ordinary income and statutory income for that year (**s6-1(1) ITAA97**).

There are two types of income that are not assessable income. They are (a) non-assessable non-exempt income; and (b) exempt income.

Ordinary income (s6-5) is divided into income from personal exertion, income from property and income from business.

Statutory income (s6-10): the most important type is capital gain (CGT). FBT (Fringe benefit) is not included in statutory income.

Ordinary income (s6-5)

In determining **whether an amount is ordinary income**, the courts have established the following principles:

- What receipts ought to be treated as income must be determined in accordance with the ordinary concepts and usage of mankind, except in so far as a statute dictates otherwise.
- Whether the payment received is income depends on a close examination of all relevant circumstances,
- It is an objective test.

Relevant factors in determining **whether an amount is ordinary income** include:

- (1) Whether the payment is the product of any employment, services rendered or any business. (**Harris v FCT**)
- (2) The quality or character of the payment in hands of the recipient (**Blake v FCT**)
- (3) The form of the receipt {whether it is received as a lump sum or periodically} (**Dixon v FCT**)
- (4) The motive of the person making the payment (**Hayes v FCT**)

→ Value of **non-cash benefits**:

Where a non-cash benefit is ordinary income, the money value of the benefit may be included in assessable income.

The value of non-cash benefits may be included in assessable income as follows:

- **S15-2 ITAA97** may include the value to the taxpayer of allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to the taxpayer in respect of any employment or serviced rendered
- **S21 ITAA36** provides that, if any non-cash consideration is paid or given to a taxpayer, the money value of that consideration is deemed to have been paid or given to the taxpayer, and
- **S21A** provides that a benefit of property or services provided in respect of a business relationship is, in determining whether the benefit is income, deemed to be convertible into cash, and the amount of income is the arm's length value of the benefit.

Identify the Ordinary Income:

1. Income – must be ‘earned’

[Case] **Arthur Murray (NSW) Pty Ltd v FCT** – not income in this moment

The taxpayer provided dance lessons. It invoiced customers and collected payment in advance for lessons to be provided over several years. For accounting purposes it credited payments received to ‘unearned income’ and transferred payments to ‘earned income’ as lessons were provided. **The Court held that amounts received in respect of services to be provided in future years are **not earned** until the future obligations for which they are paid are discharged. Only as receipts are earned will they acquire to character of income derived by the taxpayer.

a) payment for services

- Salary & Wages are ordinary income

[Case] **Moorehouse v Dooland** – to be **income**

The taxpayer was a professional cricketer entitled under the terms of his contract of employment to collections from spectators whenever he performed outstanding cricketing feats. The money collected from spectators on these occasions was held **to be income** from personal exertion.

[Case] **Brent v FCT** – **assessable/ordinary income**

The taxpayer, who was the wife of the infamous train robber Ronald Biggs, sold her life story to a newspaper. **The court held that the payments were **assessable as ordinary income** because the taxpayer derived the income by providing personal services through agreeing to make herself available for questions about her experiences.

- Voluntary payments linked to the provision of services are also ordinary income

[Case] **Calvert v Wainwright** – **assessable/ordinary income**

The classic example of this is a tip paid in appreciation of the quality of the services rendered.

- Includes payments made by third parties if incidental to employment

[Case] **Kelly v FCT** – **assessable/ordinary income**

The taxpayer played league football, being paid a fixed amount for each match played. The taxpayer was aware of the fact, which got a medal, and then the television station (3rd parties) provides a cash prize to him. **The Court held that a prize won in a contest would normally not be ordinary income because it would be the product of the taxpayer, services, business activities or property. However, if the prize was related to the taxpayer’s income producing services, it might acquire **an income character** as an indirect product of the services.

b) payments to former employees

An ***unsolicited gift*** is ***not income*** according to ordinary concepts

Case: ***Scott v FCT (1966)***

The test: whether the payment is a real personal gift or is in reality a form of remuneration. There are some factors to consider, as following:

- If the recipient is already adequately remunerated, more likely to be a gift.
- If the recipient had an expectation of payment, more likely to be remuneration.
- If the recipient depends on the payment, more likely to be remuneration.
- Recurrence suggests income

2. Income – distinguished from ‘capital’

Capital: A receipt attributable to the disposal or giving up of the taxpayer’s profit-making structure (or part thereof is ‘Capital’)

Income: A receipt attributable to the workings of the profit-making structure is ‘Income’.

Common law tests:

- 1) **Once and For all Test** – Money spent in a lump sum is capital in nature.

[Case] ***Jeffery v Rolls Royce Ltd*** – **Capital in nature**

- 2) **Enduring Benefit Test** – Lasting qualities (capital in nature)

[Case] ***Van den Berghs Ltd v Clark*** – **capital**

The taxpayer, a margarine manufacturer, had entered into a market-sharing agreement with a Dutch competitor. Following a number of disputes between the parties over profit-sharing requirements in the contract, the contract was terminated with the Dutch party making a lump sum payment to the English taxpayer in respect of the cancellation. **The Court held that it was **capital receipt** since the cancelled agreements related to the structure of the taxpayer’s profit-making structure.

- 3) **The Business Entity Test**

[Case] ***Sun Newspapers Ltd and Associated Newspapers Ltd v FCT*** – **Capital in nature**

A newspaper publisher sold newspapers in Sydney. The taxpayer wished to prevent the competitor in the Sydney market and then paid £ 86.500 (by instalments) to a competitive publisher in consideration of its competitive agreeing to sell the taxpayer its interest in a newspaper it was publishing and agreeing not to produce a competitive newspaper for 3 years within 300 miles of Sydney. **The Court held that the expenditure was **not deductible** because it was of **a capital nature**.

The Following Cases for Capital Receipts (“mere” realization of a capital asset)

Isolated Transactions (Commercial Transactions)

[Case] ***Californian Copper Syndicare v Harris*** –: **Ordinary Income**