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Assessable income

1. ORDINARY INCOME

'Income' must receive its natural or ordinary meaning. *FCT v WE Fuller P/L*

It must be determined in accordance with ordinary concepts and usages of mankind, except in so far as the statute states or otherwise indicates an intention to the contrary. *Scott v CT (NSW)*

SCOTT V CT (NSW) (1935) 3ATD 142

PRINCIPLE: The word 'income; is not a term of art (a special technique meaning which judges/lawyers know), and what forms of receipt are comprehended within it, and what principles are to be applied to ascertain how much of those receipts are to be treated as income, must be determined in **accordance with the ordinary concepts and usages of mankind**, except in so far as the statute states or indicates [an intention to the contrary].

FCT V WE FULLER P/L (1959) 101 CLR 403

PRINCIPLE: The word 'income' must receive its **natural and ordinary** legal meaning and has no artificial meaning fixed upon it by the Assessment Act.

2. GENERAL CHARACTERISTICS

- 1) It must be derived from directly or indirectly during the income year.
- 2) It must be convertible into money
- 3) Principle of mutuality denies a receipt the character of income
- 4) Periodical and regular gains usually have the character of income
- 5) Receipts from illegal activity are taxable

DERIVATION (WHAT GOES INTO HIS POCKET')

In working out whether you have derived an amount of ordinary income, and (if so) when you derived it, you are taken to have received the amount as soon as it is **applied or dealt with** in any way **on your behalf or as you direct**. *ITAA 1997 s 6.5(4)*

TENNANT V SMITH (SURVEYOR OF TAXES)

FACTS: Bank manager was provided by the bank with rent-free accommodation that he was bound to occupy. The yearly value of this privilege was £50.

ISSUE: Was this sum income?

HELD: Income tax is a tax on income in the proper sense of the word. It is a tax on what comes in; on actual receipts. If the taxpayer had to find lodging for himself he might have to pay for them. His income goes further because he is relieved of that expense. BUT a person is chargeable for income tax NOT on what he saves his pocket but what goes into his pocket.

PRINCIPLE: A saving is not an income

ITAA 1997 SECTION 15.2

Allowances and other things provided in respect of employment or services

(1) Your assessable income includes the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums * provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you (including any service as a member of the Defence Force).

(2) This is so whether the things were * provided in money or in any other form.

(3) However, the value of the following are not included in your assessable income under this section:

- (a) a * superannuation lump sum or an * employment termination payment;
- (b) an * unused annual leave payment or an * unused long service leave payment;
- (c) a * [dividend](#) or * non-share [dividend](#);
- (d) an amount that is assessable as * ordinary income under section 6-5;
- (e) * ESS [interests](#) to which Subdivision 83A-B or 83A-C (about employee share schemes) applies.

Note: [Section 23L](#) of the [Income Tax Assessment Act 1936](#) provides that fringe benefits are non-assessable non-exempt income.

The taxpayer must be the beneficial owner of any money received. *Zobory v FCT*

A guardian or trustee who receives dividends, interest or rent on behalf of another is not the owner, in the eyes of equity. This income would not be theirs, but the beneficiaries.

ZOBORY V FCT

- FACTS:** A dishonest employee embezzles employer's money. The employee invested that money in shares and debentures¹.
- ISSUE:** Was tax assessable on dividends and interest earned?
- HELD:** Dividends and interest held on constructive trust so the employee could not be taxed as the employer was the true owner.

It is not necessary that an item of income be paid over to T. It is sufficient, according to ordinary concepts and usages that it be dealt with on his behalf or as he directs. *ITAA 1997 s 6.5(4)*

If an amount would be statutory income apart from the fact that you have not received it, it becomes statutory income as soon as it is applied or dealt with in any way on your behalf or as you direct.

ITAA 1997 SECTION 6.5(4)

Income according to ordinary concepts (ordinary income)

(1) Your assessable income includes income according to ordinary concepts, which is called ordinary income .

Note: Some of the provisions about assessable income listed in section 10-5 may affect the treatment of ordinary income.

(2) If you are an [Australian](#) resident, your assessable income includes the * ordinary income you * derived directly or indirectly from all sources, whether in or out of [Australia](#), during the income year.

(3) If you are a foreign resident, your assessable income includes:

- (a) the * ordinary income you * derived directly or indirectly from all * [Australian](#) sources during the income year; and
- (b) other * ordinary income that a provision includes in your assessable income for the income year on some basis other than having an * [Australian](#) source.

(4) In working out whether you have derived an amount of * ordinary income, and (if so) when you derived it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

CONVERTIBLE INTO MONEY

¹ a long-term security yielding a fixed rate of interest, issued by a company and secured against assets.

Ordinary income must be convertible into money. An amount must be convertible into cash to be income. *FCT v Cooke & Sherden*; *Payne v FCT*

FCT V COOKE & SHERDEN

FACTS: Taxpayer received the benefit of free holidays as an incentive by a soft drink manufacturer. The taxpayer carried on a business as a soft drink retailer. The holidays could not be converted into cash because the travel was not transferrable.

HELD: The benefit was not income since it was not convertible into money.

PAYNE V FCT

FACTS: An employee of an accounting firm travelled frequently for work. She joined the frequent flyer program and paid the membership fee herself. The program allowed her to exchange points for free travel and could be assigned to family members. The tickets were not transferrable and subject to cancellation if sold. The points accumulated were from work purpose travels that were paid by her employer. She used the points to buy tickets for her parents. The Commissioner assessed the taxpayer on the market value of the tickets.

HELD: The points were not income because they were not money, as they could not be converted or transferred and were subject to cancellation if sold.

If it is not cash or convertible to cash it may still be statutory income under ITAA 1936 s 21A; ITAA 1997 s 15.2(1).