

WEEK 2

INCOME

1. TAXABLE INCOME

	Income Tax = (Taxable Income x Rate) – Tax Offsets	s 4-10 (1997)
	Taxable income = Assessable Income - Deductions	s 4-15 (1997)
NB	Income tax worked out by reference to taxable income for income year. Same as financial year, except a) For company – income year is previous financial year b) If have different accounting period, each such accounting period, or for a company, each previous accounting period	s 4-10 (2) (1997)

2. ASSESSABLE INCOME

	Assessable Income consists of ordinary income and statutory income, and excludes: non assessable non exempt and exempt income.	s 6-1 (1) (1997)
Ordinary	Income according to ordinary concepts	s 6-5(1) (1997)
Statutory	Amounts that aren't ordinary income, but included in assessable income by provisions about assessable income	s 6-10(1) (1997)

3. INCOME ACCORDING TO ORDINARY CONCEPTS?

	Ordinary income is determined in accordance with ordinary concepts and usages of mankind	Scott v C of T (NSW)
	Income is the fruit from the tree (capital)	Eisner v Macomber

GENERAL CHARACTERISTICS:

1	Capital Receipts are not income (income as a flow)	Eisner; Myer
2	Generally exhibits periodicity, recurrence and regularity	Dixon; Keily
YES	Top up payments on military salary when offered job on return by employer	Dixon
YES	Pension and pension top up payments	Keily; Blake; s 27H (1936)
3	Sufficient nexus with an earning activity (e.g. no windfall gain/gift)	Hayes; Scott

4	'Comes in' to the recipient beneficially (has been realised)		Tennant v Smith; FC of T v Cooke & Sherden
NO	Saving in an outgoing will generally not be income,		
	NO	Free employee accommodation – not convertible to money	Tennant v Smith
	NO	Free holiday if sold certain amount – not convertible to money	Cooke & Sherden
	YES	Saved expenditure in course of business	FCT v Unilever
NO	Reduction in liability – doesn't come in to taxpayer		International Nickel
YES	Cheque given even though don't want it and cancel it		Case AATA 822
YES	Amounts subject to contingency (get 10 grand if released from old club)		R107
5	Must be capable of being converted to money or moneys worth		Ss 21, 21A 1936
NO	Frequent Flyer Points (employer paid for flights, she got points)		Payne; TR 1999/6
NO	Free employee accommodation		Tennant v Smith
NO	Free holiday		Cooke & Sherden
YES	In respect of employment: Allowances, gratuities, compensation, benefits, bonuses and premiums are income, regardless of convertibility to money, or if provided in money or any other form		s 15-2 (1997)
	NO	<ul style="list-style-type: none"> a) Superannuation lump sum or employee termination payment b) Unused annual leave or long service payment c) Dividend or non-share dividend d) Amount assessable as ordinary income under s 6-5 e) ESS interests which Subdivision 83A-B or A-C applies 	s 15-2(3) (1997)
NB	Statutory Provisions in next week – s 21, 21A 1936, s 15-2 1997		
6	Income characterised in hands of the recipient at time received		Federal Coke Co; McNeill; Constable; Gair
NB	Irrelevant if had different character at later/earlier point in time (e.g. superannuation fund adjustment)		Constable v FC of T
7	Measured on a gross basis (not net)		s 6-5 (1997)
8	Must be received by and belong to the taxpayer		Countess of Bective v FCT
NO	Money received to pay for maintenance of daughter		
NO	Money stolen from his employer		Zobory's Case

NOT INCOME:

Exempt (s 6-1)	Because entity is exempt entity (e.g. charity, union, society)	s 11-5
	Because type of income is considered exempt (e.g. scholarship)	s 11-10
	Because income is exempt as it derives from certain entities	s 11-15
Non-assessable, non-exempt (s 6-1)	For non-assessable, non exempt provisions	S 11-55
	For particular amounts	S 59

COMMON TYPES OF ORDINARY INCOME:

1	Income derived from personal exertion
2	Income from property
3	Income from business and profit making schemes (next week)

1. INCOME FROM PERSONAL EXERTION?

YES		Payment for services rendered	s 6(1)
	NO	Rent, dividends or non-share dividends, interest (unless in respect of a debt due to taxpayer for goods/services)	s 6(1)
YES		Salaries and wages	Dean v FCT; s 6(1)
NB		Must consider connection between receipt and services provided	FCT v Dixon
NO		Gifts (rendered services and paid additional over fee, not income)	Hayes; Scott
	NO	Cheque on top of executor payment	Scott v FC of T
	NO	Gift of shares to accountant	Hayes v FC of T
NO		Payment from superannuation fund at a later date (payments to the fund are not assessable income)	Constable v FCT
YES		Illegal or immoral receipts – ordinary income	
YES		Bribes, Drug Smuggling etc	Lindsay v IRC
NB		Deductions for illegal or immoral receipts not deductible (i.e. got drug money, and then got robbed of it, have to pay the tax)	s 26-54 (1997) reversed La Rosa
NO		Mutual Receipts (e.g. club membership, body corporate) – you get the benefit too as a member, must be from an outside source	Bohemians Club v FC of T

NO	Voluntary payments		
Consider	<ul style="list-style-type: none"> - Degree of connection to employment or services rendered - Reasonable expectation payment would be made - Dependence upon payment to meet usual living expenses - Payment replaces income - Motive of payer or donor - Periodical, concurrent and regular - Money or convertible to money 		
Gifts	NO	Gift from client on top of payment	Scott v FC of T; Hayes; Brown
	YES	Gift as payment for/incidental to service (i.e. unit not \$1m)	
Prizes/ Grants	YES	When left job to train full time, was performance based and connected with her job at the time	Stone v FC of T
	YES	Prize by television station for being good football player, based on performance and connected to profession	Kelly v FC of T
	NO	Prizes and lordship for winning world cup – not income (wasn't repeated, already paid by employer, not entitled to under contract, didn't know about till after performed)	Moore v Griffiths
	YES	Reward for being in a successful salvage operation	FCT v Holmes
YES	Top up payments on salary (pay difference in military wages)		FCT v Dixon
YES	Tips		s 6-5
YES	Cricketer gets crowd collection while playing – was written in contract and regular		Moorhouse v Dooland
NO	Legal fees compensation when already deducted		FCT v Rowe
YES	Payment to counteract tax		AAT Case 7422
YES	Paying for your education – linked to employment		Smith v FCT
NO	Payments for restriction of rights		Jarrold v Boustead
	Generally Capital in nature		
NO	NO	Paid not to act before big movie not to dilute brand – Capital	Higgs v Olivier
	NO	Paid to give up amateur status and sign as professional footballer – Capital	Jarrold v Boustead
	NO	Paid not to play until decided who was playing for – Capital	FC of T v Woite
BUT	If bound to play for club afterwards, may be income as is normal in footballer's contract		
BUT	If is normal incident of employment type, or no real restriction (rather way of packaging the payment) – is income		