

**Assessable Income**

**Individual**

Item	Law and Reasoning	AI
Accrued leave transfer payments	Accrued leave payments are assessable. No OI clause.	AI under s15-5
Allowance, gratuity, compensation, benefit, bonus or premium in respect to employment or service rendered  Note: NOT apply to fringe benefits subject to FBT.	<p><u>Statutory Income</u>                      -Consequences of t/p employment; made t/p eligible to receive the payment; Obligated t/p to do the best of his skill and ability: <b>Kelly case &amp; Smith case</b>                      - Even paid by other than employer, it can still connected to service rendered: <b>Holmes case</b>                      s15-2(3)(d): express contrary intention, thus if amount is OI, s6-5 prevails.</p> <p><u>Ordinary Income</u>                      It can also be assessable under s6-5, because of directly related to employment/ service rendered: <b>British Columbia case.</b></p>	AI as SI under s15-2 or s6-5 OI
Award, Bonus	<p><u>Statutory Income</u>                      If paid to an employee, there is a clear connection to employment/ service rendered: <b>British Columbia case</b>                      s15-2(3)(d): express contrary intention, thus if amount is OI, s6-5 prevails.</p> <p><u>Ordinary Income</u>                      If paid voluntary (e.g. as Christmas Bonuses), show that the amount is incidental to employment or services rendered: <b>Kelly case &amp; Rowe case</b> → eligible to receive by virtue of your employment if you work well enough; connection between the receipt and the employment is NOT a mere historical one and thus incidental</p> <p>Otherwise, argue even the amount is unrelated to employment or services rendered → it does NOT mean the receipt CANNOT be OI, reasonable expectation on continue to receive payment; dependence on the receipts; commercial consideration: <b>Harris case &amp; Blake case</b></p>	Assessable as OI under s6-5 or as SI under s15-2
Bounties and Subsidy	<p>The payment was made for the purpose of assisting persons to COB or to commence a business in future: <b>Squatting Investments case</b></p> <p><u>CGT</u>                      Consider CGT event D1: creating contractual or other rights</p> <p><u>Statutory Income</u>                      -relationship between the nature of the bounty or subsidy and the course of the business                      -must be a "real connection" but NOT a merely remote one, ie payment assisted in carrying on the business activities: <b>First Provincial Building Society Ltd case</b>                      s15-10(b): express contrary intention, thus if amount is assessable as OI, s6-5 prevails.</p>	AI as SI under s15-10 unless OI

	<p><u>Ordinary Income</u>                      -Ordinary course of business? → <b>Californian Copper Syndicate case</b>                      -Incidental? → so <b>intimately connected or close relationship between the receipts and business activities carried on by recipient; recipient expected to receive such amount:</b>  <b>Reynolds case</b></p>	
<p><b>Business Receipts (when t/p COB)</b></p> <p>Compare and contrast with “mere realization” &amp; “Profit-making or undertaking”</p>	<p><u>Ordinary Income</u>                      For it to be income, the receipt may have the following characteristics:</p> <ul style="list-style-type: none"> <li>▪ Arises in the course of business (consider scope of business):                             <ul style="list-style-type: none"> <li>✓ <u>Ordinary course:</u>                                      Day-to-day, main focus of business: <b>Californian Copper Syndicate case &amp; Memorex case</b></li> <li>✓ <u>Incidental to business:</u>                                      Commonly arising from business activities, likely to happen → so <b>intimately connected or close relationship between the receipts and business activities carried on by t/p: Reynolds case &amp; Warner Music Australia case</b></li> <li>✓ <u>Extraordinary/Isolated Transaction:</u> <ol style="list-style-type: none"> <li>1. You need to mention that the transaction was neither part of ordinary course of business or incidental to it.</li> <li>2. If there is <b>an intention to make a profit upon entering to the transaction</b>, then it is assessable under s6-5: <b>Myer Emporium</b></li> <li>3. If the transaction was neither part of ordinary course of business or incidental to it, but <b>t/p does NOT have purpose to profit upon entering into the transaction</b>, then the amount is NOT income: <b>Westfield case</b></li> <li>4. If the <b>profit-making intention is absent</b>, then it is NOT income: <b>Spedley Securities case</b></li> </ol> </li> </ul> </li> <li>▪ Transaction is of a recurrent nature</li> <li>▪ Transaction entered into with a profit-making purpose</li> <li>▪ Accords with ‘business conceptions’ for the receipts to treat on revenue account: <b>GP International Pipecoaters case</b></li> <li>▪ Replaces an item of revenue</li> <li>▪ Commercial reasons in paying the amount</li> <li>▪ Periodical, recurrent and regular (see lease payments): <b>Citibank case</b></li> <li>▪ Money or convertible into money (note the effect of <b>21A</b> for non-cash business benefits).</li> </ul>	<p>AI as OI under s6-5 if classified as income.</p> <p>If capital, then CGT provisions may apply.</p>
<p><b>Capital Loss</b></p>	<p>-NO indexation for reduced cost base                      -<b>CL are used to reduce any CG made ONLY, cannot be deducted for AI: s102-10(2)</b>                      -Unapplied NCL can be carried forward indefinitely: s102-15(3)</p>	<p>Losses\ carried forward to offset against future gain</p>
<p><b>Car Allowance or reimbursement</b></p> <p><b>Note: Employee car</b></p>	<p>-Refer to <b>Allowances in respect to employment or services.</b>                      -However, for <b>Employee car expense reimbursed by employer</b>, show:</p> <ul style="list-style-type: none"> <li>✓ Car owned by or leased to the employee</li> <li>✓ Reimbursement paid by employer</li> <li>✓ Calculated by reference to the distance travelled by the car</li> </ul> <p>then apply s15-70.</p>	<p>AI under s15-2 or s6-5</p> <p>AI under s15-70</p>

<p>expense reimbursed by employer is an exempt fringe benefit under FBT and such it is assessable on the employee.</p>		
<p><b>Car Expenses</b></p>	<p>-Individual whose car travelled more than 5,000 AI producing kms. Therefore, all 4 methods are available: s28-10 &amp; s28-12</p> <p>-SD under s28-25 for the “cents per km” for a car with engine capacity of XXXcc is kms*cents = \$ amt deduction NJo substantiation is required: s28-35</p> <p>-SD under s28-45 for “12% original value” of a MV of \$\$\$ (which is within the “car limit” in s40-230(3) of \$\$\$ for the 2014 IY) is 12% of MV = \$ amt deduction. This is subject to a reduction for X car-less days. No substantiation is required: s28-60</p> <p>-SD under s28-70 for the “1/3 actual expenses” is 1/3 of \$\$\$ = \$ amt deduction because all car expenses consisting of fuel, services, registration and insurance, and lease payments qualify as a deduction under s8-1 as outgoings incurred in gaining or producing AI because the car was used for work, and all “non-capital nature” Car expenses must be substantiated if this method is used: s28-80</p> <p>-SD under s28-90 for “log-book” is business km percentage* actual expenses because all car expenses qualify as a deduction under s8-1 Car expenses must be substantiated for this method: s28-100(1) Also, a log-book and odometer records must be kept: s28-100(2) &amp; (3)</p>	<p>SD for either method /GD under s8-1</p>
<p><b>Child care costs</b></p>	<p>-NOT GD under s8-1 because their character as child care costs for the t/p’s child is neither relevant nor incidental to the t/p’s income producing activities of selling houses by which t/p gained or produced AI. The fee were not incurred in or in the course of selling houses: <b>Lodge case</b></p> <p>-(In an case, the costs are of a domestic nature because they relate solely to the family of the person incurring them: <b>Case 50</b>)</p>	
<p><b>Clothing Expense</b></p>	<p>-NOT GD under s8-1 because conventional clothing generally lacks the essential character of a work expense (or of private nature as it relates solely to the person incurring it as an individual member of a society of human beings: <b>Case 50</b>) and the circumstances are NOT special as in <b>Edwards case</b></p>	<p>0</p>
<p><b>Compensation</b></p>	<p><b>Generally, what the payments compensates or replaces is the most important factors</b></p> <p><u>Payment for loss of income or income earning capacity</u></p> <ul style="list-style-type: none"> <li>▪ If it is to <b>replace lost income</b> (weekly or fortnightly) and is clearly of an income nature under general principles, then it is AI as OI under s6-5, UNLESS it is exempt: <b>Dixon case</b></li> <li>▪ Compensation made to replace income losses is income: <b>Tinkler case</b></li> <li>▪ Compensation made under personal disability insurance policy for substituting income losses is income: <b>DP Smith case</b></li> <li>▪ Because <b>income-earning capacity</b> is a capital asset: <b>Atlas Tile case</b>, so <b>compensation for the loss of income earning capacity</b> was NOT income: <b>Slaven case</b></li> </ul>	<p>Usually AI as OI under s6-5 unless exempt or capital in nature.</p>

	<p><u>Payment for the loss or “permanent useless or unproductive” of capital assets</u></p> <ul style="list-style-type: none"> <li>▪ Compensation for <b>the loss or sterilisation of capital assets</b> is generally NOT income: <b>Glenboig Union Fireclay Co case</b></li> <li>▪ However, amounts <b>compensating for temporarily deprived</b> of asset is income: <b>Burmah Steamship case</b></li> </ul> <p><u>Payment for cancellation or variation of business contract</u></p> <ul style="list-style-type: none"> <li>▪ Payments generally made to <b>compensate for loss of profit</b> that otherwise would have been made is income: <b>Heavy Minerals case</b></li> <li>▪ If the <b>cancellation or variation substantially affects the “structure of business”</b>, <b>AND</b> it is <b>NOT a normal incident of the business</b>, the amount is NOT income: <b>Van Den Berghs case</b></li> <li>▪ If the <b>agency is one of the several held</b>, <b>AND</b> the <b>cancellation is normal incident of the business</b>, then the payment is income: <b>Allied Mills Industries case</b></li> <li>▪ If the <b>agency is the source of a whole or dominant part of the business</b>, <b>AND</b> the <b>cancellation is NOT a normal incident of the business activities</b>, (result in a <b>destruction of profit-making structure</b>) → NOT income: <b>California Oil Products case</b></li> </ul> <p><u>Undissected Composite Lump Sum Compensation Payment</u></p> <ul style="list-style-type: none"> <li>▪ If t/p accepted a <b>lump sum payment in full settlement of legal action</b>, the payment is NOT income but capital: <b>McLaurin case</b></li> <li>▪ <b>Undissected lump sum payment that include compensation for damage to business goodwill and reputation</b> are capital: <b>Spedley Securities Ltd case</b></li> </ul> <p><u>Wrongful Dismissal:</u> AI as OI if it is to <b>replace lost income rather than earning capacity</b>: <b>AAT Case 13,012</b>.</p> <p><u>Return to work payments:</u> e.g. inducement to end strike: AI as SI under 15-3. But if it is voluntarily paid from a Strike fund to support financial, it is not assessable: <b>Ruling TR 2002/8</b>. However, if the T/P relies on such payments to meet regular living expenditure, they may be AI as OI. This case, s15-2 does NOT apply, as there is no connection to employment (the t/p is striking). NOTE: You can mention this in the exam: s15-2 does NOT apply because the compensation is NOT related to the employment/service rendered; rather it is a consequences compensation payment of injury.</p>	
<p><b>Director fees</b></p>	<p>Same as <b>Wages</b></p>	<p>Receipt from personal exertion – AI under s6-5</p>
<p><b>Disposal of Home (Property)</b></p>	<p><b>CGT event A1</b> occurs because there is a disposal of a CGT asset – there is a <b>change in beneficial ownership</b>: s104-10</p> <p>CG/CL is disregarded, if it is made from CGT event that happen to <b>dwelling that was a main residence</b>: s118-110</p>	<p>AI under CGT *Apportionment may require.</p>

	<p>The exemption will only apply if the property was the t/p <b>main residence for the whole of the ownership period</b>: s118-185</p> <p>If the property used for the <b>purpose of producing assessable income</b>, then the capital gain/losses are <b>not exempt</b>: s118-190</p> <p>Apportionment may required, if the <b>half of ownership period is used to rent out, and half of it you stay</b>: s118-185 &amp; s118-190</p> <p>If a loss is made, it is not deductible under 1<sup>st</sup> limb of s8-1 because there is no connection or relevance between it and AI. Also, it is a loss of capital or domestic nature as it relates solely to the home of the person incurring it: <b>Case 50</b></p>	If main residence, then not AI.
<b>Dividends and Franking Credit</b>	<p>Dividends are AI under <b>s44(1)</b> because they are “dividend” (other than non-share dividends) paid to shareholder by a company</p> <p>Franking Credits are AI as SI under s207-20(1) because it is a ‘franking credit’ on a franked distribution paid by an Australian resident corporate tax entity to an Australian resident entity.</p>	<p>AI as SI under s44(1)</p> <p>AI as SI under s 207-20</p>
<b>Fines</b>	s26-5 prevents a deduction because the fines are an amount payable by way of penalty under the act, which is an “Australian law”.	(D)
<b>Gambling</b>	<p>Generally NOT assessable as there is a <b>degree of chance</b> involved: <b>Brajovich case</b></p> <p>More factors:</p> <ol style="list-style-type: none"> <li>Whether the gambling is related to a business activities, eg horse trainer gamble in horse race</li> <li>Primarily for profit or pleasure</li> <li>Whether the form of gambling rewards skill and judgement rather than on chance</li> </ol>	Generally not assessable as OI.
<b>Gift and Voluntary Payment</b>	<p>Gifts are generally not income as they are <b>isolated, lump-sum</b> and <b>voluntary</b>: <b>Squatting Investment case</b></p> <p><b>Scott case:</b> Not assessable because it was <b>not given or received as a payment for service rendered</b>. (No Connection)</p> <p><b>Hayes case:</b> Voluntary payment of money or transfer of property is prima facie not income.</p> <p><b>Dixon case:</b> If there is <b>no connection to employment, services rendered, a business, or another income-producing activities</b>, <b>BUT</b> still expected, periodic and dependent upon living expense &amp; for that purpose (along with other fact), then it is assessable as OI.</p>	<p>Generally not assessable</p> <p>Can be AI as OI under 6-5</p>
<b>Gift from employers</b>	<p>Likely to be <b>Fringe Benefit</b> unless it is established that the gift was made to the individual in a non-employee capacity. Connection test: <b>British Columbia case</b>.</p> <p>If it is a once-off gift then it is not assessable as OI: <b>Scott case, Squatting Investment case</b></p>	AI to employer if Fringe Benefit. Otherwise, not assessable

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<b>Illegal Activities</b>	<p>Treat the amount as if carrying a business: <b>Patridge case</b></p> <p>When <b>systematically engages in an illegal activity</b> AND the elements of a business such as <b>organisation, repetition, regularity and view to a profit</b> are present then the proceeds from that activity will be income: <b>La Rosa case</b></p>	AI as OI or SI
<b>Incidental Rewards – eg. frequent flyer/flyby programs</b>	<p>Rewards received under customer loyalty programs will be assessable under s6-5, if the reward is <b>received as part of an income earning activity</b> and if:</p> <ul style="list-style-type: none"> <li>- There is a <b>business/employment/service rendered relationship between the recipient of the award and the reward provider</b> <u>AND</u></li> <li>- The benefit is <b>convertible to money’s worth</b></li> </ul> <p><b>Cooke &amp; Sherden case</b></p> <p>However, if the <b>reward received in the course of business is a result of a personal contractual relationship that is not employment or business linked</b> then it is not assessable: <b>Payne case</b>(Flyer miles case)</p>	AI as OI under s6-5 if connection to income earning capacity established
<b>Income from a prearranged plan to obtain funding</b>	<p>Assessable under <b>s6-5</b></p> <p>It’s clear that there are profits making purpose/profit-making scheme when there is a pre-arranged plan: <b>Myer Emporium case</b></p>	AI under s6-5
<b>Interest Income</b>	<p>Interest is assessable under 6-5(1) as OI because it (returns that come in periodically) arises from the use of property: <b>Citibank case</b></p>	AI as OI under s6-5
<b>Lease Incentive</b>	<p>Lease incentives (in the form of cash payments)- Profit received during the course of business, where making such a profit was an <u>ordinary incidental</u> that form part of business activities of the firm.</p> <p>Therefore it is income under ordinary concepts: <b>Cooling case</b></p> <p>The existence of profit making purpose in entering into a transaction will make the business receipts an ordinary incidental to business (business is form to make profit) and therefore ordinary income: <b>Montgomery case</b></p>	AI as OI under s 6-5 (if cash payment)
<b>Magazine subscription</b>	<p>GD under s8-1 as it falls within the first limb in s8-1(1)(a) because the subscription has the essential character of a work nature as it is a specialist magazine that is “directly” relevant and “incidental” to work activities that produce AI, and was incurred for a work purpose.</p> <p>Not an outgoing of “capital, or of a capital nature” under s8-1(2)(a) because no lasting advantage is acquired from the subscription, the expense relates to the process of operations and is of a recurrent nature: <b>Sun Newspapers case</b></p> <p>NO apportionment is required, either under <b>Coles Myer Finance case</b> because not a special financing transaction: <b>Woolcombers case</b>, and <b>s82KZM</b> because it is “excluded expenditure” of less than \$1,000: <b>s82KZL(1)</b></p>	(D)
<b>Maintenance Payment</b>	<p>If it <b>periodical or regular receipt</b> for the t/p to maintain him or herself, or their family, it is of an <u>income</u> nature: <b>Dixon case</b></p> <p>However, payments made to a <b>spouse, former spouse, or for the benefit of the maintenance payer’s child</b> are generally <u>exempt</u> under s51-30 &amp; 51-50</p>	Generally, the amount is EI under

	<p>Because it is an amount in the nature of maintenance paid to an individual who was the payer’s spouse, but assuming the maintenance payer did not divest AI producing assets or divert AI on which the payer would otherwise have been liable to tax.</p>	<p>s51-30 &amp; 51-50</p>
<p><b>Match Payment</b></p>	<p>Directly/Indirectly related to employment/service rendered: <b>British Columbia case</b></p> <p>Could be assessable under s15-2, but <b>s15-2(3)(d)</b> will apply, and hence AI under <b>s6-5</b>.</p>	<p>AI under s6-5</p>
<p><b>“Mere realization”</b></p>	<p><b>-“Mere” realisation</b></p> <ul style="list-style-type: none"> <li>▪ <b>Scottish Australian Mining case:</b> <ol style="list-style-type: none"> <li>1. If activities did NOT constitute carrying on a business, rather what has been done was merely to realise to the best advantage asset acquired for the original purpose, then such gain is NOT income (Capital transaction rather than revenue transaction; tree NOT fruit)</li> <li>2. Even a business may have been constituted on what has been done, because the asset was acquired for a different purpose originally (lack of profit making for the business), the gain from the activities is NOT income, rather the activities are consider to be the necessary steps to realise the asset to the best advantage, especially when the original purpose is no longer businesslike to carry out ~<b>Westfield case; McClelland ≠ Whitfords Beach case; Myer Emporium</b></li> </ol> </li> <li>▪ <b>McClelland case &amp; NF Williams case:</b> <ol style="list-style-type: none"> <li>1. realising an asset in an enterprising way so as to secure the best price does NOT make the receipt income</li> <li>2. a realization does NOT cease to be such merely because extensive work is done in order to fetch the best price</li> </ol> </li> </ul> <p><b>-Beyond “mere” realisation</b></p> <ul style="list-style-type: none"> <li>▪ <b>Myer Emporium case:</b> <ol style="list-style-type: none"> <li>1. Profits made on a realization or change of investments may constitute income if the investments were initially acquired as part of a business with the intention or purpose that they be realized subsequently in order to capture the profit arising from their expected increase in value</li> <li>2. Profit made is income if the decision to sell is taken by way of implementation of an intention or purpose, existing at the time of acquisition, of profit making by sale, at least in the context of carrying on or out a business, business operation or commercial transaction</li> </ol> </li> <li>▪ <b>Moana Sand case:</b> <ol style="list-style-type: none"> <li>1. Profit from transaction with the intention of making a profit within the context of a business, a business operation or commercial transaction is income</li> </ol> </li> <li>▪ <b>Whitfords Beach case***</b> <ol style="list-style-type: none"> <li>1. Profit arising from the carrying on or carrying out of a profit-making scheme that in itself constitutes the whole of the t/p’s business is taxable.</li> <li>2. By going beyond mere realisation meant that an advantageous realization was converted into a profit making scheme</li> <li>3. If the t/p engaged in an adventure in the nature of trade or carrying out a</li> </ol> </li> </ul>	

	<p>profit-making scheme, t/p is going beyond “mere” realisation</p> <ol style="list-style-type: none"> <li>4. A profit-making scheme which exhibited the characteristics of a business deal EVEN THOUGH it did NOT amount to the carrying on of a business</li> <li>5. In deciding what was done was an operation of business, it is relevant to consider the purpose with which had been acted</li> <li>6. There was a profit-making undertaking or scheme which exhibited the characteristics of a business deal EVEN THOUGH it did NOT amount to the carrying on of a business. If what has happened amounted to no more than the mere realisation of an asset then it was not a profit-making undertaking or scheme</li> <li>7. The change of the firm’s character is essential to the successful achievement of the t/p’s purpose</li> </ol>	
<b>Non-cash Business Benefits</b>	<p>The benefits could not be transferred or converted to money’s worth, therefore not assessable: <b>Cooke &amp; Sherden case</b></p> <p><b>s21A</b> treats non-cash business benefits as if convertible to cash, however does not make that amount income.</p> <p><b>s21A</b> is limited to <b>business t/p</b>, so NOT applicable to individuals.</p> <p><b>Approach:</b> such section does NOT make an amount of non-cash business benefit becomes income, rather you have to first determine whether such amount is income or not in order for <b>s21A</b> to apply and then use <b>s21A</b> to calculate the amount that is being assessable</p>	Not AI
<b>PAYG Instalment</b>	Deductible from tax liability	NOT AI
<b>Prizes/ Lottery</b>	<p>CGT event A1 may occur, but because lottery is a windfall gain, it is exempt from CGT: <b>s118-15(d)</b></p> <p>Since there is an absence of profit-making purpose (get the car because of luck), this is mere realisation of property, hence it’s not income: <b>Scottish Australian Mining case</b></p> <p>Not OI because of the reason above, and it is a windfall gain. Also, there is an isolated transaction, lump sum and unexpected payment – Not characteristic of income.</p> <p><b>BUT</b> if reward for skills, “incidental” connected to employment or some other business activity, received by virtue of that skill/employment/connection → income: <b>Kelly case</b></p>	NOT AI
<b>Profit-making undertaking or Plan</b>	<ul style="list-style-type: none"> <li>✚ Undertaking or Plans must be a profit making purpose: <b>XCO case</b></li> <li>✚ However, merely the possibility of realising a profit subsequently is NOT enough: <b>Westfield case</b></li> <li>✚ The profit-making purpose <u>need not be</u> the sole or dominant purpose: <b>Moana Sands case</b></li> <li>✚ The undertaking or plan must be carried out by the t/p or on their behalf: <b>Clowes case</b></li> <li>✚ “undertaking or plan” requires there be a plan of action, <b>BUT NOT</b> necessarily for every step in the plan be precisely formulated beforehand: <b>Clowes case,</b></li> </ul>	<p>AI as SI under s15-15</p> <p>OI, if s15-15(2)(a) applies</p> <p>CGT, if s15-15(2)(b) applies</p>

	<p><b><i>Buckland case &amp; Steinberg case</i></b></p> <ul style="list-style-type: none"> <li>✚ Does NOT include “mere realisation” or “undertaken in an enterprising way to secure the best price” :<b><i>Scottish Australian Mining case, Steinberg case</i></b></li> <li>▪ <b><i>Steinberg case &amp; Gauci case:</i></b> Acquisition with the purpose of profit-making by sale <u>does not</u> exist, where an acquisition is for:             <ol style="list-style-type: none"> <li>1. Purpose of <b>long-term investment</b>, or</li> <li>2. Investment as a <b>hedge against inflation</b></li> </ol> </li> </ul> <p>NOTE:  s15-15(2)(a): express contrary intention, thus if amount is assessable as OI, s6-5 prevails  s15-15(2)(b): Does not apply to sale of property acquired on/after 20/9/85</p> <p><u>Ordinary Income</u>  <b><i>Myer Emporium:</i></b>  You apply this case, you need to have: <ul style="list-style-type: none"> <li>✚ Purpose of profit making</li> <li>✚ Reselling at a profit (There must be a profit/gain)</li> </ul> However, it is not a PMP if a connection to business income can be established (It’s not extraordinary!)</p>	<p>(where the amount arises from sale of property acquired on or after 20/9/1985)</p>
<p><b>Receipts of land at no consideration to build business on</b></p>	<p>Same as bounties and subsidies.</p> <p>The land is received in relation to carrying on a business: <b><i>First Provincial Building Society case</i></b> - there was a real relationship between the land and the business t/p carries on</p>	<p>AI under s15-10</p>
<p><b>Recoupment and Reimbursement</b></p>	<p>A recoupment or a loss or outgoing is assessable under <b>s20-20</b> if the deduction was obtained any of the ways listed in s20-30.</p> <p>If the amount is otherwise assessable in OI or other SI provisions, then s20-20 will not apply: <b>s20-20(1)</b></p> <p>Under general law: If recoupment is from business expense, then generally is assessable (because the amount is intimately connected to t/p business): <b><i>Warner Music Australia case</i></b></p> <p>If recoupment is from non-business expense e.g. personal legal fees, can be treated as compensation and made assessable (There must be a connection between the amount of recoupment and t/p employment): <b><i>Rowe case</i></b></p>	<p>AI as SI under s20-20, if not OI or SI elsewhere</p>
<p><b>Rent</b></p>	<p>Rent is generally assessable under <b>s6-5</b> as OI because it is a <b>periodical</b> receipt from the use of property: <b><i>Citibank case</i></b></p> <ol style="list-style-type: none"> <li>1. Lease payments were income because they represented a return from</li> </ol>	<p>AI as OI under s6-5</p>

	<p>property put out to income producing use by the t/p.</p> <p>2. They had the character of periodicity.</p>										
<b>Rental unit Expense</b>	<p>GD under s8-1 as they fall within the first limb because they have the essential character of investment property expenses that are “directly connected” and relevant to rental AI produced, and they are all “non-capital in nature”</p> <p>But the expenses should be apportioned to allow as a GD only 50/52 as “fair and reasonable” based on 2 weeks out of 52 being non-income producing or domestic use: <b>Ronpibon Tin case</b></p>										
<b>Restrictive Covenants</b>	<p><u>CGT</u>  <b>CGT event A1</b> does NOT apply as there is no disposal of a CGT asset – NO property changes hand/there is NO change of beneficial ownership: s104-10</p> <p><b>CGT Event D1</b> applies, as entering into a restrictive covenant would lead to the <b>creation of a contractual (legal) right</b> – the right to receive money in exchange for not doing &lt;activity&gt; or exclusive employment: s104-35(1)</p> <p>However, s118-20: Capital Gain will be reduced by the OI amount</p> <p>receipt is a <b>normal incident of business activities; replacement for income forgone</b> (for entering into the restrictive covenant) →income: <b>Thompson case</b></p> <p><b>amount received solely as consideration for being restricted; the restrictive covenant is NOT accompanied or followed by a contract for employment</b> →NOT income: <b>Woite case</b></p> <p>payment received to <b>induce change of business feature DESPITE the restriction operate for only a limited time; receipt of the payment is NOT for carrying on business and not an ordinary or natural incident of the business; payment is for consideration of restriction on future income earning capacity</b> →NOT income: <b>Dickenson case</b></p>	AI as CGT, but may be OI									
<b>Return to work payments</b>	<p>Assessable under SI.          No OI clause.</p>	AI as SI under s 15-3									
<b>Royalties</b>	<p><b>Approach:</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;"></td> <td style="width: 30%; text-align: center;"><b>Ordinary Royalty</b></td> <td style="width: 30%; text-align: center;"><b>Royalty under s995-1(1)</b></td> </tr> <tr> <td style="color: red;"><b>Assessable as OI (income derived from the right to use property, ie trademark)</b></td> <td style="text-align: center; color: red;">s6-5</td> <td style="text-align: center; color: red;">s6-5</td> </tr> <tr> <td style="color: red;"><b>NOT assessable as OI</b></td> <td style="text-align: center; color: red;">s15-20</td> <td style="text-align: center; color: red;">NOT AI (may be CGT)</td> </tr> </table> <p>-Ordinary royalty: compensation paid to the owner of the right for the use of it</p> <p>*Note the extended definition of ‘royalty’ in <b>s6(1)</b> has very specific examples like</p>		<b>Ordinary Royalty</b>	<b>Royalty under s995-1(1)</b>	<b>Assessable as OI (income derived from the right to use property, ie trademark)</b>	s6-5	s6-5	<b>NOT assessable as OI</b>	s15-20	NOT AI (may be CGT)	AI as SI under s15-20 unless OI.
	<b>Ordinary Royalty</b>	<b>Royalty under s995-1(1)</b>									
<b>Assessable as OI (income derived from the right to use property, ie trademark)</b>	s6-5	s6-5									
<b>NOT assessable as OI</b>	s15-20	NOT AI (may be CGT)									

	copyrights, television rights, etc.	
<b>Sale of collectables</b>	<p>Collectables are CGT assets that are mainly used or kept for personal use and enjoyments: s108-10 (Example: artwork, jewellery, antiques, postage stamp or first day cover, rare folio, manuscript or book, etc)</p> <p>Capital gain/losses are disregarded if it is from a collectable acquired for \$500 or less: s118-10(1)</p> <p>Capital loss from collectables CAN ONLY reduce a capital gain from collectables: s108-10(1)</p> <p>The capital loss from collectables is carried forward indefinitely and to be applied only on capital gains of collectables: s108-10(4)</p> <p>NOTE: index or discount the cost base</p>	AI if more than \$500
<b>Sale of personal asset</b>	<p>Personal Assets are CGT assets (other than collectables) that are mainly used or kept for personal use and enjoyments: <b>s108-20</b></p> <p>However, personal use asset does not include land, or a buildings that is taken to be a separate asset under Subdiv 108-D: <b>s108-20(3)</b></p> <p>Capital gain is disregarded if the personal use assets are acquired for \$10,000 or less: <b>s118-10(3)</b></p> <p>Capital loss from a personal use is DISREGARDED in working out a net capital gain or less: <b>s108-20(1)</b></p>	AI if acquired for more than \$10000
<b>Sale of Pre-CGT Property (Before 20/9/85)</b>	<p><u>CGT</u> CGT event K6 occurred and the amount are generally exempt because it is otherwise assessable as SI or OI: s118-20</p> <p><u>Statutory Income</u> If there is a profit-making intention, <b>s25A</b> applies, and the amount is assessable under SI.</p> <ol style="list-style-type: none"> <li>The profit making purpose must exist when at the time the asset is acquired: <b>Annalong case</b></li> <li>The profit making purpose must be sole or dominant purpose: <b>Pascoe case</b></li> </ol> <p><u>Ordinary Income</u> Look at <b>Profit-making undertaking or Plan</b> But NO contrary intention express in the specific provision.</p>	AI under <b>s25A</b>
<b>Sale of car</b>	<p><u>CGT</u> Car is an exempt asset under s118-5, any CG/CL is disregarded</p> <p><u>Statutory Income</u> Look at <b>Profit-making undertaking or Plan</b> <b>s15-15(2)(a): express contrary intention, thus if amount is assessable as OI, s6-5 prevails.</b></p>	Generally NOT AI unless profit is made

	<p><u>Ordinary Income</u> Look at <b>Profit-making undertaking or Plan</b></p>	
<p><b>Sale proceeds from CGT assets (eg property)</b></p>	<p><i>Step 1: Is there a CGT asset?</i> s108-5 (It is kind of property, or legal or equitable right that is not property)</p> <p><i>Step 2: Is it an exempt asset?</i> <b>Exempt Asset</b> include:</p> <ol style="list-style-type: none"> <li>CGT asset acquired before 20/9/85.</li> <li>Car, motorcycle and valour decoration: s118-5</li> <li>Collectables acquired for \$500 or less: s118-10(1)</li> <li>Personal use asset acquired for \$10,000 or less: s108-10(3)&amp; s108-20(1)</li> <li>Asset use solely to produce exempt income or non-assessable non-exempt income (subject to exemption): s118-12</li> <li>Compensation or damages received for a wrong or injury suffered in an occupation: s118-37(1)(a)</li> <li>Compensation or damages received for a wrong, injury or illness suffered personally by an individual or relative: s118-37(1)(b)</li> <li>Winnings or losses from gambling, a game or competition with prizes: s118-37(1)(c)</li> </ol> <p><i>Step3:</i> <b>CGT event A1</b> occurs because there is a disposal of a CGT asset – there is a change in beneficial ownership: s114-10</p> <p><i>Step4:</i> Capital gain = Proceeds – cost base</p> <p><i>Step5:</i> If the CGT asset acquired <u>before 21/9/99 [s114-10(1)]</u> and <u>held for more than 12 months [s114-10(1)]</u>, the cost base may be indexed for inflation up to 30/9/99. <b>(Indexation frozen at 30/9/99 at 123.4)</b></p> <p><i>Step6:</i> OR you can get the 50% discount of the capital gain worked out: s115-100 <b>(Events D1, F1 and H2 cannot be discounted).</b></p> <p><i>Step7:</i> Capital gain = Proceeds – Indexed cost base</p> <p>If CGT event A1 does not occur, then <b>CGT event D1</b> occurs as a contract of sale of &lt;property&gt; is entered into: s104-35</p> <p>If neither CGT event A1 or D1 occurs than <b>CGT event H2</b> may occur as money is received for the sale of CGT assets: s104-155</p> <p><u>Generally</u> In all cases, CGT event A1 applies, unless exemption applies. Note: the capital gain or loss is calculated at the time that the CGT event occurs: s108-20</p> <p>s118-20: The CGT gain will be reduced by the amount recognised in OI or SI.</p> <p><u>Ordinary Income</u> It can be OI if the property is realised with a profit-making purpose at the time of acquiring the property: <i>Myer Emporium</i> (Such a purpose can be inferred from the facts)</p> <p>However, if it is for long-term investment, then arguably, a profit-making intention cannot be inferred → <i>Myer Emporium</i> would not apply and it would be accounted under CGT.</p> <p><u>s15-2(3)(d) &amp; s15-15(2)</u> Also rule out s15-15 (either because amount is OI or because the amount is arises from sale of property acquired on/after 20/9/85).</p>	<p>Because of a CGT event, an amount is also AI under a provision outside Pt3-1, the capital gain from that CGT event is reduced by that amount (s118-20).</p> <p>Net cap gains = (current year) – (previous years losses).</p> <p>NCG are included in AI s102-5(1)</p>

<p><b>Separate CGT asset</b></p>	<p><u>Capital Improvement made to a CGT asset (s108-70)</u>                  Capital Improvement (on or after 20/9/85) to land before 20/9/85 is a separate asset (treated as CGT asset and subject to GCT) if the threshold test is met.</p> <p><b>s108-70(2)&amp;(3):</b>                  Threshold test:</p> <ol style="list-style-type: none"> <li>1. "Improvement Threshold" <b>AND</b></li> <li>2. 5% of the total CP</li> </ol>	<p>Can be a CGT asset</p>
<p><b>Share Disposal</b></p>	<p><u>CGT</u>  <b>CGT event A1</b> occur because shares are property and hence a CGT asset (s108-5) and the sale of shares result in a change in ownerships to another entity [s104-10(1)&amp;(2)]</p> <p>The capital proceeds were XXX, because this is the amount of money that received: s116-20. The cost base was XXX, because was the money paid for the shares: s110-25. Hence, the t/p made a capital gain of XXX: s104-10(4)</p> <p>If the t/p holds the shares for more than 12 months (<b>s115-25</b>), and the t/p is an individual, trust or complying superannuation entity (<b>s115-10</b>), then the amount can be discounted by 50%.</p> <p><u>Ordinary Income</u>                  AI under <b>s6-5</b> because it arises from a sale of property with a profit-making purpose (intention to make a profit at the time of acquisition).                  This can be inferred from the fact that "she bought the shares after having received a tip that it's a good investment in short-term..."                  The decision to sell the shares implements an "intention or purpose, existing at the time of acquisition, of profit-making by sale in the context of carrying out a commercial transaction": <b>Myer Emporium case</b></p> <p>OR Mere Realisation (no profit-making purpose): <b>Scottish Australia Mining</b></p> <p>NOTE:                  You need to mention that <b>s15-15</b> does not apply because of <b>s15-15(2)</b>: the shares are acquired after 20/9/1985 and it is assessable under OI</p> <p><u>Exemption from CGT</u>  <b>s118-20</b>: The CG will be reduced to zero because it does NOT exceed the amount included in OI</p>	<p>AI under s6-5</p>
<p><b>Sign on fee</b></p>	<p>Refer to <b>Restrictive covenant</b></p>	
<p><b>Tips</b></p>	<p><u>Statutory Income</u>                  If the payment was made for services rendered – that provision includes such things as allowance or gratuities -&gt; assessable under <b>s15-2</b> (provided if it is not OI~ <b>s15-2(3)(d)</b>)</p> <p><b>Holmes case</b>: Income under <b>s15-2</b>; amount not paid by employer; not related employment contract; but there was a 'real connection' between services performed and amount received.</p> <p><u>Ordinary Income</u></p>	<p>OI under S 6-5</p> <p>Or SI under 15-2.</p>

	<p>Tips are income from personal exertion with an indirect connection to employment/service rendered, and the amount is received by virtue of that skill/employment: <b>Kelly case</b></p> <p>If direct connection: <b>British Columbia case</b></p> <p>Other Relevant Factors:</p> <ol style="list-style-type: none"> <li>1. It is reasonable expected</li> <li>2. Dependant to meet regular living expense</li> <li>3. Made with genuine commercial considerations</li> <li>4. Recurrent or regular</li> <li>5. Paid as money or in a form convertible into money</li> </ol> <p>If the payment is a reward for services rendered, it is assessable as OI under <b>6-5</b>, regardless if the amount was paid by the employer (<b>Dixon case</b>), or made voluntarily (<b>Hayes case</b>).</p> <p><b>Fringe benefit</b></p> <p>However, if the payment was made by the employer as a fringe benefit, then under <b>s 23L</b>, it is <u>non-assessable, non-exempt income</u>.</p>	
<p><b>Trading Stock</b></p>	<p><u>Disposed in the ordinary course of the business</u> Day-to-day transaction of business, hence it is assessable under s6-5: <b>California Copper Syndicate case</b></p> <p><u>Disposed outside the ordinary course of business</u> The market value of the trading sock, on the day of the disposal, is included in assessable income as statutory income s70-90(1) The amount actually received is classified as non-assessable, non-exempt income:s70-90(2)</p> <p><u>Excess of ending value over opening value</u> SI → s70-35(2)</p> <p><u>Excess of opening value over ending value</u> SD → s70-35(3)</p>	<p>AI under s70-35(2), s70-90 or s6-5</p>
<p><b>Travelling cost</b></p>	<p>Not SD under s25-100 because the cost are not “travel between workplaces” as in s25-100(2), not between 2 places at which t/p engaged in AI producing activities</p> <p>Not a GD under s8-1 because the costs were incurred in getting work and not in doing work as an employee, and so came at a point too soon to be regarded as incurred in gaining or producing AI: <b>Maddalena case</b></p>	
<p><b>Wages, Commissions and pensions</b></p>	<p>Wages, etc are “income derived from personal exertion”: <b>s 6(1)</b>. AI as OI under <b>s6-5</b> because they are <b>directly related to employment/ service rendered</b> in so far as they <b>are immediately received in return</b> for it: <b>British Columbia case</b></p> <p>If it is accidentally paid, then not income: TD 2008/9.</p> <p><u>Other factors to support it include:</u></p> <ol style="list-style-type: none"> <li>1. <b>Reasonable expectation:</b> Wages and salaries are reasonably expected to be received (why else would the person work);</li> </ol>	<p>Receipt from personal exertion – AI under 6-5.</p>

	<ol style="list-style-type: none"><li>2. <b>Dependence</b>: depended upon to meet regular living expenses; the payment is made involuntarily;</li><li>3. <b>Genuine commercial considerations</b>: in making the payments (if payments are made under contract).</li><li>4. <b>Periodic</b>: The payments are also periodical, recurrent and regular;</li><li>5. Money or convertible into money</li></ol>	
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**Partnership – Assessable income & Deductions**

<b>Depreciation</b>	SD under s40-25 because the item is “depreciating assets” that are “assets” that have limited effective lives and are reasonably expected to decline in value over the time they are used (s40-30), and held only for “taxable purpose” of producing AI.	(D) under s40-25
<b>Fines</b>	[Incurred for speeding] Necessary incurred in gaining and producing income: s8-1(1)(b) ? s26-5(1) <b>prevents a deduction</b> because the fines are an amount payable by way of penalty under the Local Government Act 1999 (SA) which is an “Australian law” that is in turn defined as a law of the State	0
<b>Interest paid on partner loan</b>	Interest would be deductible if the loan funds had been used to produce AI: <b>Leonard case</b> because it is a working capital repayment and had revenue nature.  Interest paid to a partner on a CAPITAL account is not deductible to partnership, it is treated as an agreed distribution of profits in determining a partner’s individual interest: <b>Beville case</b>	(D)
<b>Lease documentation expense</b>	SD under s25-20	(D)
<b>Monitoring fees</b>	The \$\$ received in advance is not derived until the services are provided: <b>Arthur Murray Pty case</b> Monitoring fees received is receipt <b>directly from service rendered</b> in carrying on the business: <b>British Columbia case</b> <b>AI = \$\$\$ - rec in adv = \$\$\$</b>	AI as OI
<b>Payment to subcontractors</b>	Business taxpayer: thus is deductible under 2 <sup>nd</sup> limb of s8-1(1) as an outgoing necessarily incurred in carrying on the business. It is reasonably appropriate to incur the expense to [engage subcontractors/pursue the business end] and so seen by the t/p: <b>Magna Alloys case</b>  It is not capital because <b>no lasting</b> advantage is acquired, they <b>relate to the process of operating</b> and is <b>recurrent</b> expenses: as “constant demand which must be answered for operating the business”: <b>Sun Newspaper case</b>	(D)
<b>Personal income tax</b>	<b>Tax itself is NOT deductible: s25-5(2)</b>  Incurred only after producing income and therefore it is <b>not connected to the income</b> . No deduction allowable under s8-1(2). It is incurred at a point <b>too soon</b> and the <b>connection is too remote: Maddalena case</b>	0
<b>Prepaid Rent</b>	GD Under 2 <sup>nd</sup> limb of s8-1(1) as an outgoing necessarily incurred in carrying on the business. It is reasonably appropriate to incur the expense to [engage subcontractors] and so seen by the t/p: <b>Magna Alloy &amp; SA Battery</b> reasonably appropriate to pursue the business ends However, there is <b>prepayment extend to next financial year</b>  Cannot rely on <b>Coles Myer Finance</b> because of the absence of <b>special financing arrangement</b> , apportionment is not appropriate: <b>Wool combers</b>  <b>s82KZM (service period less than 12mths/turnover of less than \$)</b> not apply because the thing done within 13mths <b>Thus NO need apportionment, whole amt is deductible</b>	(D)
<b>Purchase of trading stock</b>	<u>Positive part</u> <b>GD</b> under s8-1 because outgoing to acquire trading stock are necessarily incurred in carrying on business: <b>Cecil Bros case</b>	(D)

	<p>Deductible under 2<sup>nd</sup> limb of s8-1 since it is necessarily incurred in <b>carrying on the business</b> <i>Magna Alloys case</i></p> <p><u>Negative part</u> It is not capital because <b>no lasting</b> advantage is acquired, they relate to the process of operating and is <b>recurrent</b> expenses: <i>Sun Newspaper case</i> Outgoing for trading stock deemed not to be capital or capital in nature: s70-25</p>	
<b>Repair</b>	<p><i>Is this a repair, replace entirety or improvement?</i></p> <p><u>Repair or Part:</u> s25-10(1): expenditure incurred by the top for repairs to premises, part of premises, or a depreciating asset held or used by t/p solely for the purpose of producing AI is deductible because the painting is <b>a part of</b> [the shop building] and <b>not the entire</b> building: <i>Lurcott or W Thomas case</i></p> <p><u>Not capital</u> Not capital expenditure because it merely restored efficiency in function and there are no considerable advantages over the old shop front window: <i>W Thomas &amp; Western Suburbs Cinema case</i> Therefore deduction under s25-10 Ie: roof, window (still part of the building and the building is entirety)</p> <p><u>Entirety</u> -If not just repair but replace the entirety then not deductible: s25-10(3) -Separately identifiable -&gt; principal item of capital equipment: <i>Lindsay case</i></p> <p><u>Improvement</u> Refer to <b>individual deduction</b></p>	(D)
<b>Salaries</b>	<p><b>Not deductible</b> to a partnership in working out net income Agreed distribution of profits: <i>Ellis V Joseph Ellis</i> RT 2005/7: not truly a salary – distribution of partnership profits, cannot result in an increase in a partnership loss</p>	0
<b>Surrender fees</b>	<p><u>GD</u> It would be deductible under s8-1(1) as an outgoing <b>necessarily incurred in carrying on the business</b>. It is reasonably appropriate to incur the expense to [engage subcontractors], and so seen by the t/p: <i>Mango Alloys</i> reasonably appropriate to pursue the business ends.</p> <p>It is <b>not capital</b> nature since when the surrender fee is paid, there is only [1 year] left of the lease term. Hence not as <i>Sun Newspapers case</i> <b>[Not] lasting</b> advantage since there is only [1 year] Fee is replaced of <b>periodical</b> rental payments – revenue account</p>	(D)
<b>Tax related matter</b>	<p><b>SD</b> under s25-5 as it is expenditure in managing tax affairs for complying the obligation by t/p, but <b>assuming</b> the advice was provided by a recognized tax advisor and was not capital expenditure</p>	(D)

**NI: AI – D**

Net partnership income = 152000 – salary = \$\$\$

Share net partnership income = 1/2x\$\$\$

**Distribution of income under partnership**

S92 (1): included in partner’s net income

General Law: a partner’s individual interest is determined by the agreement bow the partner’s as to sharing profits and bearing losses

S1 Partnership Act: partnership: carrying on biz w common view for profit and genuine intention to act as partners

2 partner: should be 50/50 (if not stated explicitly otherwise)

NOT general law partnership: not allowed to assert a division of profit or loss bw partners that would require the elements of a general law partnership was validity

**McDonald:** mere co ownership under which income was derived jointly and losses incurred jointly according to their interest despite any agreement

S92 (1): partner’s individual interest in that net income is included in the partner’s own assessable income

S92 (2) as with the loss

General law look to agreement

Statutory joint receipt looks further into the actual interest substance

**Trust –AI & D**

<p><b>How share in net income is taxed</b></p>	<p>-J is under a legal disability because he is a minor under 18 years who cannot give a valid discharge for the payment received: <b>Taylor case</b> Therefore, his share of the net income is assessed to the trustee who is liable to tax at rates that apply to J: <b>s98(1)</b></p> <p>-<b>Div6AA</b> tax rates apply to J because he is a minor. His share in the trust net income remains subject to <b>Div6AA</b> because none of it is “expected AI” or “excepted trust income”. However, his wages are “excepted AI” from employment that are not subject to <b>Div6AA</b>. The wages are AI under s6-5 as OI: <b>British Columbia case</b></p> <p>-Mr and Mrs and M are not under a legal disability because they are all adults who can give a valid discharge for a payment received: <b>Taylor case</b>. Therefore their share of the trust net income is included in their AI: <b>s97(1)</b></p>	
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