2. Income does not include capital sums

***We draw a distinction between amounts of an income nature (assessable) and capital nature (not assessable):**

- *Myer Emporium 212-3*: **Profits derived in a business operation or commercial transaction carrying out any profit-making scheme are income, whereas the proceeds of a mere realization or change of investment or from an enhancement of capital are not income.**
- **Fruit and tree concept – income is a flow severed from a capital source, rather than a (possibly unrealised) accretion to wealth.**
    - The economic (gain-based) concept of income does not apply in Australia. The gains concept does not care where the gain comes from – the source concept that we use does.
    - The US gains approach captures all gains, then makes exclusions. In Australia, we have a patchwork quilt of recognised gains determined by source.
    - Our differentiation between income and capital comes from the 'trusts' concept of income – which differentiated a payment from the trust estate, and a payment from the *produe* of the trust estate.

***The character of an amount is determined after considering a range of factors, no one of which is necessarily determinative, including:**

- **Regularity of the receipts**
    - An element of recurrence or repetition is strongly suggestive that the amounts are income.
    - "The periodicity, regularity and recurrence of a receipt has been considered the hallmark of its character as income" (*Myer*)
    - "That a receipt is periodical is a characteristic tending to show that it is received as income" (*Anstis*).
    - But *periodicity itself is not necessarily sufficient to give receipts an income character* (*Anstis*) – even an isolated, unusual transaction can produce income (e.g. *Myer*).
- **Motives/purposes behind the transaction**
    - **What is the relationship between the parties?**
        - If the receipt motivated by a family/personal relationship → More likely capital.
    - **Was there an objective entitlement or criteria behind the payment?**
        - If objective entitlement/criteria → more likely income.
            - *Anstis* – Youth Allowance payments had objective criteria set out in legislation.
            - *Dixon* – Receipt of fortnightly payments from employer while fighting in the war had a sense of entitlement.
            - *Keily* – aged pension was income, because the pensioner had a "continuing expectation of receiving periodic payment…arising out of established government policy".
        - If subjective/discretionary → more likely capital.
            - E.g. Motivated by family/personal relationship
    - **Asset sale – What was the intention at the time of acquiring the asset?** (*Myer*)
        - If the asset was initially acquired with the intention of realizing it later in order to capture the profit arising from its expected increase in value → more likely income.
        - If the decision to sell it for profit existed at the time of acquisition → more likely income.
            - ***Myer***: Myer made a loan to Finance, then assigned the right to receiving the interest payments to Citicorp, in exchange for $45 mil. The loan and assignment were *related and interdependent* – Myer would not have made the loan unless it knew that Citicorp would afterwards take the assignment. *At the time of making the loan (asset), the assignment (sale) was already intended* – the two transactions were essential and integral elements in the overall profit-making scheme → The $45 mil was income.
            - ***Californian Copper***: CC bought a mining property, but never intended to work theproperty with a view to deriving income from the mining operations on the property. They bought it for the purpose of exploiting it so that they could resell it at a profit.
        - If the investment was purchased with the intention to hold it as an income-producing asset, or consume it, or for the pleasure of enjoyment → more likely capital.
        - If the decision to sell the asset is made after its acquisition → more likely capital.
- **Nature of consideration given for the payment (if any)**
    - Trading stock, assets acquired for the purpose of profit, asset that is part of a profit-yielding structure (e.g. tangible asset such as real property and intangible asset such as goodwill).

3. Income must be *received* beneficially

***An amount can be income if the recipient has power to apply the amount for their own benefit, rather than holding the amount on behalf of or for the benefit of another.**

1. **Generally, income is a flow to a person rather than the avoidance of an outgoing**
   See above, '1. Income must be money or money's worth' (*Payne*).
   - *Payne* – the frequent flyer points merely saved her the expense of paying for the tickets herself.
   - *Orica* (discussed in *Montgomery*) – Orica issued promissory notes in return for a loan of $99 mil. They then entered into an agreement with another entity under which that entity promised to repay the lenders, in exchange for $63 mil. In essence, Orica saved themselves $99 – 63 = $36 mil. This merely the saving on an expense.

2. **Income must be received for the benefit of the recipient.**
   - *Zobory* – the recipient must not be holding it on trust for someone else.
   - "There is no suggestion that s/he holds the amounts on behalf of someone else."

4. Income *generally* is a regular and recurrent flow

***Generally, income exhibits the characteristic of being a flow rather than a one-off receipt.**

- e.g. wages, interest, rent, trade receipts, annuities
- An element of recurrence or repetition is strongly suggestive that the amounts are income.
  - *"The periodicity, regularity and recurrence of a receipt has been considered the hallmark of its character as income" (*Myer*) – but this is not determinative of the income question.
  - "That a receipt is periodical is a characteristic tending to show that it is received as income" (*Anstis*).
    - *Anstis* – Youth allowance considered income.
- The concept of income includes the idea that income is the product of recurrent severance of amounts from a source (fruit and tree metaphor).

***However, regularity itself is not enough to give receipts an income nature (*Anstis*) – amounts received under a one-off transaction can be of an income nature (e.g. *Myer*)**
→ see above, "2. Income does not include capital sums".

5. Income does not include mutual receipts

***The principle of mutuality holds that a person cannot earn income from themselves (*Bohemians*). This has particular relevance in the case of recreational clubs.**

- Capital
  - Contributions to a common fund in pursuit of a common purpose, the excess of which is returned to the contributors (e.g. *Bohemians* – Surplus arising from excess club membership subscriptions over club's expenses).
  - Trading receipts generated by dealings between members, united by pursuit of a common purpose but not pursuit of profit (e.g. sale of drinks/meals at a club dining facility).
- Income
  - If the entity extends its activities to non-members, in dealings out of which a profit is made.
  - Trading receipts are generated by dealings between members, but the pursuit of profit predominates (business/commercial venture) (*Music Traders*)