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Deductions Summary		
Area	**Section/Case**	**Description**
General Deductions		
• **General Deduction Rule**		**NOTE:** This section was formerly s 51(1) ITAA36.
	S 8-1(1)	You can deduct from your assessable income any loss or outgoing to the extent that:
	(a)	It is incurred in gaining or producing your assessable income; or
	(b)	It is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.
	(2)	However, you cannot deduct a loss or outgoing under this section to the extent that:
	(a)	It is a loss or outgoing of capital, or of a capital nature; or
	(b)	It is a loss or outgoing of a private or domestic nature; or
	(c)	It is incurred in relation to gaining or producing your exempt income or your non-assessable non-exempt income; or
	(d)	A provision of this Act prevents you from deducting it.
• **Positive limbs**		**NOTE:** If you are in a business context, look at the second positive limb, if you are in a property/services context, look at the first limb.
	S 8-1(1)	You can deduct from your assessable income any loss or outgoing to the extent that:
	(a)	It is incurred in gaining or producing your assessable income; or
	(b)	It is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.
		NEXUS: Do the expenses need to be necessarily incurred in gaining or producing your assessable income?
	Charles Moore (1956)	Employee of a retailer was robbed on the way to the bank, where the daily takings were being deposited. Employer tried to claim a deduction from the amounts being robbed. High Court said it is deductible for the following reasons: -"in gaining or producing assessable income" should be understood as "in the course of earning assessable income." Going to the bank was in the course of earning assessable income → banking is part of the daily business. Broad approach taken. -"loss or outgoing" contemplates that the loss does not necessarily need to be a voluntary loss. It could be involuntary or unforeseen. Stolen money is an example.

	W Nevill (1937)	A company had two directors on 10-year contracts. Halfway through the contract, the company fired one of the managers, given that the arrangement wasn't working. They terminated their contract and had to pay them compensation. Was the compensation deductible? TP said that we have made our business more efficient by firing the manager. We will earn more assessable income in the future by reducing our expenses in salary going forward. HC found that an expense which improves the TP's overall business efficiency and operation would be incurred in gaining or producing assessable income. The court also found that an expense that reduced future deductible expenditure (salary and wages) is incurred in gaining or producing assessable income. <u>Courts will take a broad approach to the two positive limbs.</u>
		<u>Is the court going to allow expenses for misconduct to be deducted?</u>
	Herald & Weekly Times (1932)	TP was a newspaper publisher that published a defamatory article. TP was sued for liability and had to pay damages. Were the damages paid deductible? HC said yes. The reason is because you need to publish articles to increase sales. To be made liable is a common incident of newspaper publishing. There is a sufficient connection between the cause of the expense and the TP's business.
	Snowden & Wilson (1958)	A building company became subject to investigation claims that were made public. The company paid money to defend their reputation. HC said they can deduct. Defending their reputation is a legitimate business purpose. It is done to continue attracting business, which will increase assessable income. Allegations of wrongdoing are an ordinary incident of business and expenses incurred in defending the TP are necessary for continued operation of the business. TP's guilt or innocence is irrelevant.
	La Rosa (2003)	The business was a drug dealer of illegal drugs. Some of their drugs were stolen. HC said that **Charles Moors (1956)** could be applied.

		There is nothing in tax law about illegality. The money you are earning on your illegal business is assessable income. However, if this case were to be decided today, the deduction would be denied by **s 26-54**.

Fringe Benefits Tax Summary		
Area	Section/Case	Description
Overview		
• General		**NOTE:** Make clear when using this Act.
	Fringe Benefits Tax Assessment Act 1986	FBTAA 1986
	S 66(1)	The tax is imposed on the employer, not the employee.
	S 136(1)	The FBT year of tax is from April 1 to 30 June
Steps		
• Existence of Fringe Benefit		**NOTE:** Definition of a fringe benefit.
	S 136(1)	**a) A benefit** = any right, privilege, service or facility provided under an arrangement in relation to the performance of work. Must be received in an employment context → benefits can be monetary, non-monetary or non-convertible. **b) Provided during the year of tax** = 1st of April to 31st March
	S 318 ITAA36	**c) By an employer, associate or 3rd party** = -Employer: A person who pays or is liable to pay "salary and wages." Includes current, future and past employers. -Associate: May include relatives, partners, companies formally or informally controlled by the employer. If the employer is a company, its associates may include sister companies, subsidiaries, or holding companies. -Third party: Employer participates in or facilitates the provision or receipt of the benefit. For example, discounts from retailers.
	318 ITAA36	**d) To an employee or an associate** = -Employee: Someone who receives salary and wages and includes current, former, and future employees. -Associate: May not be provided to an employee directly, but to an associate of the employee. For example, spouses. **e) In respect of the employee's employment =** includes by reason of, by virtue of, or for or in relation directly or indirectly to, that employment.
	J & G Knowles (2000)	There must be a "sufficient and material relationship" between the employment and benefit provision. A useful question to ask is whether the taxpayer would have received the benefit if they were not an employee? For example, where there are conflicting relationships. Might want to look at gift v income factors here for guidance on the strength of relationship. ATO's Guide.

• **Exclusions**		**NOTE:** If an exclusion is satisfied, then the amount cannot be a fringe benefit by definition.
	S 136(1)	Examples include: -Salary and wages (includes commissions, bonuses, and allowances) -Superannuation contributions -Payments from superannuation funds -Benefits available under an employee share scheme -Payments on termination of employment
• **Category**		**NOTE:** Pick the most specific one.
	Div 2	**Car fringe benefit** Employer provides a car for an employee's private use: **s 7(1) FBTAA** That is, it is not used exclusively in the course of producing assessable income.
	Div 3	**Debt waiver fringe benefit** Arises where an employee owes an amount to an employer and the employee is released of this obligation to repay all or some of the amount. **s 14 FBTAA** Debt must be waived due to the employment relationship.
	Div 4	**Loan fringe benefit** Arises in each year when an employer provides an employee with a loan. This regards the interest that the employee saves.
	Div 5	**Expense payment fringe benefit** Arises where an employer pays an expense incurred by the employee **(a)** or reimburses an employee for expenditure incurred by the employee **(b)**. **s 20 FBTAA**

Income from Business Summary		
Area	Section/Case	Description
Tax Consequences Overview		**NOTE:** If it is not defined as a business, what are the other consequences.
• Business		
	Rule	Receipts will constitute ordinary income. Expenditure may be deductible.
• Hobby		
	Rule	Receipts will not constitute income. Expenditure will not be deductible.
• Investment		
	Rule	Receipts from the sale of an investment will not constitute ordinary income. Some expenses are not deductible → capital gains provisions.
Is there a business?		**NOTE:** Need to identify its existence, and when commenced/ended.
• General		
	S 995-1	Any profession, trade, employment, vocation or calling, but not occupation as an employee.
	Ferguson (1979); Thomas (1972); Walker (1985); Stone (2005)	The fact that the TP works full time does not mean that they cannot be carrying on a business. This is even so if the business activities are done by someone else.
• Identifying a business		
	Ferguson (1979) **TR 1997/11, TR 2005/1**	Factors are derived from Ferguson (1979). They are accepted by TR 1997/11 (farming business examples), and TR 2005/1 (professional artist business).
	Stone v FCT (2005)	**Existence of a profit-making intention** This is an objective test, not a subjective one. Need to look at all of the actions and circumstances of the TP. Some conclusions can be drawn from this case: **1)** If the tax-payer actually makes a profit, this is good evidence for there being a profit-making intention. Difficult to say otherwise. **2)** Just because the TP makes a loss, does not mean that they don't have a profit-making intention. **3)** If the taxpayer charges for their cost, there is no-profit making intention. $100 for material → $100 for cost, for example. Once charging for time → turning skill into profit, which is a profit-making intention.
	Factor **Walker (1985)**	**Size and scale of activities** The greater the size and scale, the more likely it is that you have a business (turnover, for example). -Has a significant investment been made?
	Factor	**Repetition and regularity** The more regularly that transactions and activities occur, the more likely it is that the TP has a business.

	Factor	**Nature of the activities** If activities are reasonably commercial, it is more likely to be a business. Commerciality can be found in distinctive logos, having lessons in something, having special equipment → people more likely to pay for it. -Also, do you have a business plan, commercial premises, special knowledge or skill, or have commercial sales?
	Factor	**Organisation and system** The more organised and systematic you are, the more likely it is that you have a business.
	Evans (1989)	No one particular factor is decisive. Profit-making intention generally has stronger weight than the other factors. However, consider **Stone (2005)**. An operation can still be a business despite the lack of a profit motive.
• **Primary Production Cases**		**NOTE:** Farming cases. Work full-time in another profession.
	Thomas (1972)	Barrister and planted different kinds of trees on land. Argued he was carrying out a farming business. Found to be a business. It doesn't matter that: -It was carried out on a small scale -He won't make profit in the short term -He has another job as a barrister -He is inefficient Although the land is relatively small, more than you would have for a hobby → sought technical advice about the tree planting.
	Ferguson (1979)	Navy officer and had 5 cattle with the intention of breeding 200 when he retired. He had a manager to regulate the cattle. Argued it was a business. Found to be a business. Small scale doesn't matter, nor does the fact that he wasn't running it himself → important that it was conducted in a commercial manner. He hired a professional manager, who was an expert in cattle breeding.

Capital Gains Summary		
Area	Section/Case	Description
Overview		
• General		**NOTE:** CGT is not a separate tax from income tax.
	S 102-5(1)	Net capital gains included in assessable income as statutory income.
	S 118-20	CGT is a residual taxing provision. If an amount is considered ordinary or statutory income under another provision of ITAA97 or ITAA36, then you cannot use s 102-5(1). You need to explain why ordinary and statutory income does not apply.
3 Step Approach to CGT		
• **Has the taxpayer made a capital gain or a capital loss?**		
	S 102-20(1) **S 104-5** **S 104-10(1)** **ss 104-20(1); 104-25** **s 104-35**	**1) Is there a CGT event?** A capital gain or loss only arises if a CGT event happens. A list of CGT events. A1 Disposal of a CGT asset – selling an asset, such as a house or shares. C1 & C2 End of a CGT asset – when a CGT asset ends. C1 is the loss or destruction of a CGT asset, such as a house burning down. C2 is the cancellation or surrender of an asset, such as cancelling shares or terminating a contract. D1 Creating contractual or other rights – this includes restrictive covenants: the creation of contractual rights in another person.
	S 108-5(1) **S 108-5(2)**	**2) Is there a CGT asset?** Any kind of property, or a legal or equitable right that is not property. A CGT asset also includes an interest in a CGT asset. For example, a boat is a CGT asset. The contract to buy the boat is also a separate CGT asset. The option is an interest in the asset.
	S 104-10(5) **S 104-20(4)** **S 104-25(5)**	**3) Do any exceptions, special rules or exemptions apply?** **a) Pre-CGT assets** -Asset acquired pre 20 September 1985 -Any capital gain or loss is disregarded before this point = CGT Event A1 = CGT Event C1 = CGT Event C2 -A CGT Event D1 is disregarded

		b) Collectables
	S 108-10(2)	A collectable is:
	(a)	-artwork, jewellery, antique, coin or medallion
	(b)	-rare folio, manuscript or book
	(c)	-a postage stamp or first day cover
	S 108-10(3)	These are also collectables"
	(a)	An interest in any of the things in (2).
		THAT is used or kept mainly for your personal use or enjoyment.
	TD 1999/40	An antique is an object of artistic or historical significance that is of an age exceeding 100 years.
		<u>If a collectable:</u>
	S 118-10(1)	If the cost is less than $500, the capital gain or loss is disregarded.
	S 108-15(2)	Note the anti-avoidance section. If something is part of a set, you need to look at the cost of the whole set. You cannot break it up into components.
	S 108-10(1)	Losses are always quarantined. Losses from collectibles can only be used to reduce gains from collectables. Losses can be brought forward to the following year.
		c) Personal Use Assets
	S 108-20(2)(a)	Personal use assets are mainly kept for your personal use or enjoyment. This does not include collectables.
	S 108-20(3)	A personal use asset does not include land or buildings
		<u>If a personal use asset:</u>
	S 118-10(3)	If the cost is less than $10,00, the capital gain or loss will be disregarded.
	S 108-25(2)	Note the anti-avoidance section. If part of a set, cannot break up into component parts.