

Contents

- TOPIC 2: ASSESSABLE INCOME..... 6
 - INTRODUCTION..... 6
 - BASIC EQUATIONS..... 6
 - ORDINARY INCOME - GENERAL 6
 - OVERVIEW..... 6
 - DEFINITION..... 7
 - PREREQUISITES 7
 - CHARACTERISTICS 8
 - NOT INCOME..... 8
 - OTHER ISSUES 8
 - ORDINARY INCOME FROM PERSONAL SERVICES..... 9
 - NEXUS REQUIREMENT 9
 - GIFTS 10
 - PRIZES, GAMBLING AND WINDFALL GAINS 11
 - CAPITAL VS PERSONAL EXERTION..... 12
 - ORDINARY INCOME FROM PROPERTY 13
 - GENERAL 13
 - INTEREST RECEIVED 14
 - DIVIDENDS..... 14
 - RENT RECEIVED 14
 - ANNUITIES..... 14
 - ROYALTIES 15
 - ORDINARY INCOME FROM CARRYING ON A BUSINESS 16
 - GENERAL 16

CARRYING ON A BUSINESS.....	16
SCOPE OF BUSINESS ACTIVITIES.....	17
ISOLATED AND EXTRAORDINARY TRANSACTIONS.....	18
EXAM PLAN	21
BUSINESS COMPENSATION.....	21
GENERAL	21
STATUTORY INCOME.....	22
GENERAL	22
ALLOWANCES AND OTHER THINGS PROVIDED IN RESPECT OF EMPLOYMENT (ITAA97 S 15-2)	23
ROYALTIES (ITAA97 S 15-20)	24
DIVIDENDS (ITAA36 S 44).....	24
NON-CASH BUSINESS BENEFITS (ITAA36 SS 21 & 21A).....	25
EXEMPT INCOME	25
TOPIC 3: CAPITAL GAINS TAX	26
INTRODUCTION.....	26
STEP 1: IS THERE A GAIN OR LOSS?.....	26
CGT ASSET	26
CGT EVENT	28
STEP 2: DETERMINE AMOUNT OF GAIN OR LOSS (GROSS)	31
CAPITAL PROCEEDS (DIV 116).....	31
COST BASE (ITAA97 S 110-25).....	32
REDUCED COST BASE (ITAA97 S 110-55)	34
STEP 3: CALCULATE NET GAIN OR LOSS BY APPLYING EXEMPTIONS AND CONCESSIONS	34
GENERAL	34
CONCESSIONS	35

EXEMPTIONS (ITAA97 DIV 118).....	36
CGT LOSSES	39
ROLL-OVER CONCESSIONS	39
ORDER OF CALCULATING NET CAPITAL GAIN/LOSS.....	39
RECORD-KEEPING REQUIREMENTS.....	40
TOPIC 4: DEDUCTIONS	41
INTRODUCTION.....	41
GENERAL DEDUCTIONS (ITAA97 S 8-1)	41
PROVISION	41
POSITIVE LIMBS (ITAA97 S 8-1(1)).....	42
NEGATIVE LIMBS (ITAA97 s 8-1(2))	44
SPECIFIC DEDUCTIONS (ITAA97 S 8-5)	49
GENERAL	49
VARIOUS PROVISIONS UNDER ITAA97 DIV 25 – ESP REPAIRS	50
GIFTS (ITAA97 DIV 30).....	52
TAX LOSSES (ITAA97 DIV 36)	52
CAPITAL ALLOWANCES (DEPRECIATION) (ITAA97 DIV 40).....	52
BLACK HOLE EXPENSES (ITAA97 S 40-880)	53
TRADING STOCK (ITAA97 DIV 70).....	53
TOPIC 5: ENTITIES.....	56
INDIVIDUALS	56
COMPANIES.....	56
GENERAL	56
DIVIDEND IMPUTATION SYSTEM (ITAA97 DIV 207).....	56
TRUSTEES AND BENEFICIARIES	57

PARTNERS AND PARTNERSHIPS	59
TOPIC 6: FRINGE BENEFITS TAX	61
INTRODUCTION.....	61
STEPS.....	61
1. IS THERE A FRINGE BENEFIT?	61
2. WHAT IS THE TYPE OF FRINGE BENEFIT?	63
3. TAXABLE VALUE OF THE BENEFIT AND THE FBT LIABILITY.....	63
4. REDUCING THE TAXABLE VALUE OF A BENEFIT	63
TOPIC 7: TAX AVOIDANCE	65
TAX PLANNING VS TAX AVOIDANCE VS TAX EVASION.....	65
PART IVA ANTI-AVOIDANCE (ITAA36)	65
INTRODUCTION.....	65
APPLICATION.....	65

- $CG = CP - CB$
 - Capital loss if capital proceeds are less than reduced cost base
 - $CL = RCB - CP$
- Indexation / discount
 - Indexation available for capital gains only if asset acquired before 21 September 1999
 - 50% discount available if event occurred after 21 September 1999
- **NB: Often the initial creation of those rights will be a D1**
- D1 – Creating contractual or other rights in another entity (ITAA97 s 104-35)
 - D1 is only considered if no other CGT event (except H2) applies (s 102-25(3))
 - D1 does not happen if the right requires you to do something that is another CGT event (e.g. buying a house creates a contractual right for the buyer to enforce completion (A1)) (s 104-35(5)(b))
 - Deems a capital gain to arise where payment is received for the creation of a contractual right
 - Examples:
 - Restrictive covenants (*Hepples*)
 - Lease premiums paid to lessees (tenants)
 - Timing (s 104-35(2)):
 - When you enter into the contract or create the other right
 - Date of the contract must be post-Sep 1991 to trigger a CGT event
 - If pre-Sep 1991 contract is breached post-Sep 1991, consider C2 instead
 - No CGT asset
 - Calculating capital gain / loss (s 104-35(3)):
 - Capital gain if capital proceeds are more than incidental costs
 - $CG = CP - INC$
 - Capital loss if capital proceeds are less than incidental costs
 - $CL = INC - CP$
 - Indexation / discount
 - Not eligible for indexation as no cost base
 - **Not eligible for general discount (s 115-25(3))**

- **NB: When the contractual right ends, there is often a C2 for the other party**
- F1 – Granting, renewing or extending a lease (ITAA97 s 104-110)
 - Taxes lease premiums (lump sum payments to the lessor / landlord)
 - Timing (s 104-110(2)):
 - For grant of lease, when contract is entered into or, if no contract, start of lease
 - For renewal or extension, at the start of renewal or extension
 - No CGT asset
 - Calculating capital gain / loss (s 104-110(3)):
 - Capital gain if capital proceeds are more than expenditure incurred
 - $CG = CP - EXP$
 - Capital loss if capital proceeds are less than expenditure incurred
 - $CL = EXP - CP$
 - Indexation / discount
 - Not eligible for indexation as no cost base
 - **Not eligible for general discount (s 115-25(3))**
 - **NB: When the lease ends, there is often a C2 for the lessee (tenant)**
- H2 – Receipt for event relating to a CGT asset
 - H2 is only considered if no other CGT event applies (s 102-25(3))
 - **Not eligible for general discount (s 115-25(3))**

STEP 2: DETERMINE AMOUNT OF GAIN OR LOSS (GROSS)

CAPITAL PROCEEDS (DIV 116)

- General rule:
 - CP = money or property received or entitled to receive as a result of the CGT event (s 116-20(1))
 - If money is to be paid in 4 yearly instalments, the full capital proceeds are assessed in year 1
- Modifications:
 - Market value modification (ITAA97 s 116-30)

- Where no money is received or transaction was not at arm's length (*Elmslie & Ors v FCT*)
- **CP is replaced with market value**
- Non-receipt rule (ITAA97 s 116-45)
 - Where unlikely to receive part of CP and have made reasonable attempts
 - **CP is reduced by unpaid amount**
- Repaid rule (ITAA97 s 116-50)
 - Where non-deductible amount paid as compensation resulting from CGT event (e.g. sued post-settlement because of termites, and lost)
 - CP reduced by amount repaid
- Assumption of liability rule (ITAA97 s 116-55)
 - Where purchaser also takes on a liability
 - **CP increased by amount of liability**
- Misappropriation rule (ITAA97 s 116-60)
 - Where an agent or employee misappropriates funds
 - **CP reduced by misappropriated amount**

COST BASE (ITAA97 S 110-25)

- Use this for capital gains (not losses)
- CB is made up of the addition of 5 elements (ITAA97 s 110-25(1))
 - Element 1 – Money or value of property given for acquisition (ITAA97 s 110-25(2))
 - Modifications (ITAA97 Div 112)
 - Market value substitution rule (ITAA97 s 112-20)
 - Where no money is paid or transaction was not at arm's length (*Elmslie & Ors v FCT*)
 - **Element 1 of CB and RCB are replaced with market value at time of acquisition**
 - Split, changed or merged assets (ITAA97 s 112-25)
 - Where one asset is split into several
 - Each element of CB must be reasonably apportioned for each new asset

- Where 2 or more assets are merged into 1
 - Each element of CB is the sum of the elements of each original asset
 - Apportionment rule (ITAA97 s 112-30)
 - Where one amount is paid for multiple assets
 - **Element 1 of CB and RCB must be reasonably apportioned**
 - Assumption of liability rule (ITAA97 s 112-35)
 - Where you assumed a liability on acquisition
 - **Element 1 of CB and RCB includes amount of liability**
- Element 2 – Incidental costs related to acquisition and CGT event (ITAA97 s 110-25(3))
 - List of incidental costs (ITAA97 s 110-35)
 - (2) Surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser
 - (3) Costs of transfer
 - (4) Stamp duty or similar
 - (5) Advertising and marketing
 - (7) Search fees
 - (8) Conveyancing fees or similar
 - (9) Borrowing expenses
 - Loan application fees
 - Mortgage discharge fees
 - **NOT interest paid on mortgage** (normally deductible under s 8-1 so excluded from CB)
 - Deductible expenditure is excluded from this element (ITAA97 s 110-45(1B))
- Element 3 – Costs of ownership for assets purchased after 20 August 1991 (ITAA97 s 110-25(4))
 - List of ownership costs
 - (a) Interest on money borrowed
 - But NOT if this is deductible (s 110-45(1B))
 - (b) Costs of maintaining, repairing or insuring
 - But NOT if the repair or maintenance is deductible (s 110-45(1B))

- (c) Rates or land tax
 - Disallowed costs:
 - **Deductible expenditure** (s 110-45(1B))
 - **This element is disallowed for collectables or personal use assets** (ss 108-17 & 108-30)
 - **This element cannot be indexed** (s 110-36(1))
- Element 4 – Capital expenses to increase, preserve, install or move the asset (ITAA97 s 110-25(5))
 - Examples:
 - Renovations
 - Installing or moving the asset
 - Does not include goodwill
- Element 5 – Capital expenses relating to title (ITAA97 s 110-25(6))
 - Examples:
 - Preserving title
 - Defending title
 - Establishing title
- Disallowances:
 - **Deductible expenditure if asset acquired after 13 May 1997** (ITAA97 ss 110-45(1B) & (2))
 - Penalties, bribes, entertainment, illegal activities (s 110-38)

REDUCED COST BASE (ITAA97 S 110-55)

- Use this for capital losses (not gains)
- **No indexation for RCB** (s 110-55(1))
- All elements of RCB are the same as CB except element 3 (ITAA97 s 110-55(2))
 - **Element 3 does not include costs of ownership** (s 110-55(3))

STEP 3: CALCULATE NET GAIN OR LOSS BY APPLYING EXEMPTIONS AND CONCESSIONS

GENERAL

- **Net capital gain is assessable income** (ITAA97 s 102-5)
- Must use the gross amount and adjust it for exclusions, concessions and rollovers