

Taxation Law I Notes

Lecture Notes + Analysis

Topic 1: Introduction to Tax Law

Topic 2: Tax Payable and Introduction to Income

Topic 3: Income from Personal Services and Employment

Topic 4: Fringe Benefits Tax

Topic 5: Income from Business

Topic 6: Income from Property

Topic 7: Taxation of Capital Gains

Topic 8: Jurisdiction to Tax

Topic 9: Deductions

Topic 10: Taxation of Entities

Topic 11: Goods and Services Tax

Examinable Cases (preview)

- 5.1. Tennant v Smith: taxpayer was agent for a bank and was given accommodation for free for only himself to use. House of Lords decided the accommodation was not income as it was neither **cash or cash-convertible**
- 5.2. FCT v Cooke and Sherden (1980): similar facts to CS5.1; precedent in Australia
- 5.3 Hochstrasser v Mayes (1960): taxpayer required to sell house at lower price due to employer request for him to move cities and employer reimburses the difference in the house value; court assess the receipt to not be income because **there is no real gain received by the taxpayer**; rather it is considered compensation for work-related expenses

- 5.4 Keily v FCT (1983): government aged pension considered as ordinary income as it was regular, expected, and depended on the taxpayer for support – even if it has no nexus to any income earning activity
- 5.5 FCT v Dixon (1952): compensation for loss of wage due to going to war by employer – considered as income as compensation replaces wages, which in itself is considered income
- 5.6 Federal Coke v FCT (1977): Bellambi instructed Le Nickel to pay receipt to its subsidiary Federal Coke; court decides the receipt was not ordinary income in the hands of Federal Coke; FCT should have used constructive receipt rule (s6-5(4)) against Bellambi
- 5.7 RACV v FCT (1973): RACV was a membership based-club that provide a number of services to members and non-members – some of its activity are considered mutual activities and other non-mutual activities
- 6.1 Brown v FCT (2002): the apartment received by Brown is considered as ordinary income because it is received as a result from the services undertaken by Brown; the reward would only be forthcoming if the deal was finalised
- 6.2. FCT v Harris (1980): Harris receive a one-off payment of \$450 as a pension top-up accounting for inflation; court decided to not consider it as ordinary income as it has no nexus to Harris' past services, only related to his pension; however s27H of ITAA36 would now consider this as assessable income
- 6.3 Laidler v Perry: Christmas bonus received by employees are considered as ordinary income; even though it is voluntary payment. It arose out of employment and hence has nexus.
- 6.4 Scott v FCT: High court held that the cash paid by client to Scott was a personal gift and not income; See Factors for Gift v Income (Topic 3) – importance of personal relationship of the parties in distinguishing between gift and income
- 6.5 Hayes v FCT (1956): Hayes was given 12000 shares from Richardson as a sign of gratitude; FCT argues that it is income under s15-2 ITAA97; High Court held that it is a personal gift as Hayes have been remunerated for his services and the gift arise form a personal relationship between Hayes and Richardson
- 6.6 Kelly v FCT: prize received by Kelly considered as ordinary income as it has nexus to his services and skills as a football player
- 6.7 Payne v FCT (1996): Reward received by Payne through frequent flyer points that are obtained through work travel are not ordinary income as the rewards are not cash or cash-convertible; it is also not assessable under s1502 as it is not provided to the taxpayer and it does not cover the nexus requirements of s15-2, as the free tickets were rewards for flying with Qantas and not because of her employment with KPMG
- 6.8 Brent v FCT (1971): Brent's earning from the agreement to tell her life story were considered by the High Court to be ordinary income; Income derived as a result of her services of telling her story; she has not given up or dispose of any property, hence it is not considered as capital receipt
- 6.9 Bennett v FCT (1947): payments made to Bennett considered as capital in nature; the payments in exchange of the removal of the rights that Bennett originally possessed in the original agreement
- 6.10 Higgs v Olivier [1952]: court held that the payment received by Higgs not to appear or direct any film for 18 months after he appeared in the film "Henry V" is considered capital in nature; it was considered not

to be a result of his services (agreement had ceased) as an actor but rather the giving up of a right (which is capital)

- 6.11 Hepples v FCT (1991): \$40K paid to not divulge employer's secrets considered capital payment on the termination of employment
- 6.13 FCT v Woite (1982): payment made to Woite to not play for any other team in Victoria considered as capital payment; Note: if Woite had decided to play with North Melbourne after the agreement, payment could have been considered as income → restrictive covenant payments made as part of an ongoing contract are more likely to be considered as income
- 6.17 Smith v FCT (1987): money paid to Smith to complete degrees related to his employment; High Court held that the payments were assessable as income as it has nexus to employment as well as the fact that Smith was eligible to the rewards by being employed by the donor of the gift; Court stated that it is easier for services-related gains to be assessable under s15-2 compared than to constitute ordinary income
- FCT v Holmes: "salvage payments" made to Holmes for salvaging a leaking tanker successfully is considered assessable income under s15-2 as there is sufficient nexus between the gains and the services provided; ordinary income was not considered as the predecessor of s15-2 does not exclude amounts that could have been ordinary income
- AAT Case 7752 (1992): compensation payment for losing the right to have a day off every fortnight; not ordinary income but assessable under s15-2, as taxpayer's employment is the cause of the payment
- Ferguson v FCT (1979): Court held that Ferguson was carrying on a business; repetition and regularity are considerations, but a business could involve a single transaction and must commence with a single transaction; having other sources of income did not preclude the activity from being a business; activities were more than preparation to begin a future business
- FCT v JR Walker (1985): **characteristic of business; small-scale**; court decided that the taxpayer was carrying on a business partially due to the existence of a profit-making intention; supported by the fact that they were repetition and regularity in the breeding activities and highly influenced by the TP's commercial approach by his keeping accounts, joining the Angora Breeding Society, etc; TP was running a business even if the operation was small
- Thomas v FCT: **characteristic of business; business vs hobby; small-scale**; High Court decided that Thomas's plantation effort is a business even though it is conducted on a small scale and has little to no prospect of profit; distinction between hobby and business – tree planting was much greater than would be needed for domestic purposes'
- Trautwein v FCT (1936): **gambling part of business of horse racing**; court held that the gambling activities were part of the racehorse business, hence earnings are ordinary income – gambling was closely associated and integrated with his horse-racing business: Trautwein raced his own horses as well as others; frequent and systematic betting; wagering on large money; employment of other people (scale)