Topic 1: Outline - General Principles

Concept of income

ITAA 1997, s 15-2 & Division 6 - ITAA 1936, ss 6, 21, 21A

Section 4-15(3): Taxable income includes a TP's Assessable income less deductions.

Section 4-10(3): working out assessable income: Taxable income x rates (found in the *Tax Rating Act*) – Tax offsets (these come straight off the tax payable but there is not too many of them; examples; low income tax offset; franking credits; spouse rebate, remote area rebate, medical expenses rebate) = F/T Payable.

Section 6-1: AI is made up of ordinary and statutory income but does not include exempt or non-assessable income.

Section 6-5 (1): **Ordinary income** is income according to ordinary concepts.

Section 6-5 (4): OI is derived when the amount is applied or dealt with in any way on your behalf or as you direct. (constructive receipt provision)

- Includes: income from person exertion, carrying on a business, property.
- Prerequisites: must be cash/convertible to cash *(Cook and Sherden; Tennant v Smith)*
- Characteristics: regular/periodic: flow *(Eisner v Macomber:* Fruits and tree concept)

Section 6-10: **statutory income** includes amounts included in a TP's AI by a specific provision under s6-10(2).

- *Section 10-5*: list of receipts that are assessable as SI and applicable provisions
- *Section 6-10(3):* Constructive receipt rule applies to SI
- *Section 6-25(2):* income caught as OI and SI will be assessable as SI unless the specific provision specified otherwise.

(b) Receipt of money or money's worth

- To be income, the receipt must be either money or something capable of being converted into money.

Tennant v Smith [1892] AC 150: Facts: A bank employee required as part of his duties a bank house but could not sub-let or use it for anything other than bank purposes. Issue: had the taxpayer received assessable income? HELD: An employee cannot be assessed on the yearly value of rent free residence even if there is a nexus with an earning activity, a benefit that is not money and cannot be converted into money is not ordinary income.

FCT v Cooke and Sherden (1980) 10 ATR 696; 80 ATC 4140; Facts: A married couple were in the business of selling some drinks direct to he public (on a door to door basis) were provided with a free holiday by the soft drink manufacturer. The holidays were non-transferable to anyone else and could not converted to cash. Issue: Was the value of the holiday assessable under either s25(1) or s26(e)? HELD: For a receipt to be assessable as income according to ordinary income, it must be money or something capable of being converted to money. Furthermore, the receipt of a nonpecuniary item does not become income just because it saves the taxpayer from incurring expenditure: income is what comes in, it is not what is saved from going out. It was also held, section 26(e) does not apply because....