

Administration of the taxation system/Regulation of Practitioners

Taxable income Formula: (Page 203 FTL diagram)

1. For the financial year: s4-10 (3) ITAA97 (p. 92)
 - a. Income tax = (taxable income x tax rate) – tax offsets.
2. For the income: s4-15 (1) ITAA97 (p.92)
 - a. Taxable income = Assessable income – Deductions.
 - b. Note: assessable income is made up of ordinary income and statutory income.
 - c. Note: deductions are made up of general deductions and specific deductions.

Assessable income:

- ORDINARY INCOME:
 - Not defined by legislation but under common law understanding it is salary/wages, ordinary business receipts, interest received on bank deposit or rent derived from investment property.
 - S6-5 ITAA97 (p.96)
- STATUTORY INCOME:
 - Definition of statutory income: S6-10 ITAA97 (p.97)
 - Refers to amounts that are not ordinary income in nature but are nevertheless assessable income. Can find a list of statutory incomes in section SS 10-5 ITAA97 (p.101)
- NOT ASSESSABLE INCOME: s6-15 ITAA97 (p.98)
 - 1) if an amount is not ordinary income, and is not statutory income, it is not assessable income.
 - 2) exempt income is not assessable income
 - 3) Non assessable non-exempt income is not assessable income.
- EXEMPT INCOME 11-5 (entities that are exempt) and 11-15 (personal income that is exempt) (p. 112- 113) ITAA97

- 11-5 examples: health benefit organisations, sports organisations, registered charity etc
- 11-15 examples: Family assistance, school kids bonus, income from a scholarship, defence force allowances, social security etc.

Characteristics of income/Arguments to prove something is income(not capital etc):

1. Income is derived from a source. That is work and employment is the source of income or wages.
2. *Gp international Pipecoaters Pty Ltd v FCT 90 ATC 4413P*: Income will be clearly revealed by Periodicity, Regularity, Recurrence, Scope of transaction and Reason by which money is received (intention)
3. **Gain Concept:**
 - a. Gain is only realised once it crystallises: if you trade in shares only when you sell your shares does your gain crystallise. Income must be some form of gain. For example being lent money is not income as you are in debt; you have not gained anything, whereas income from work is gained for your benefit without attached debt.
 - b. Income is not a mere realisation of assets such as selling a house. Although you have made some money off this sale, it is not classified as income but more of capital gains (discussed later).
4. **Accretion, flow and trust.**
 - a. Fruits & tree concept: *Eisner v Macomber (1920)US 189*
 - b. Any exploitation (use) from capital assets is ordinarily of an income nature
 - i. Rent arising from lease of land
 - ii. Interest received on loan money
 - iii. Royalties derived from grant of a license
 - iv. Dividend
5. **Reliance, Recurrence & Regularity:**
 - a. Must be recurring and regular not a Windfall like in *FCT v Harris 80 ATC 4238* (employee not assessable on good will from employer as is one off)
 - b. *Keily v FCT 83 ATC 4661*: pension payments were of income nature as they were recurring and there was continued expectation of them.

6. Income must be money or Convertible to money:

- a. *Tennant v Smith (1892) AC 150*: Income must be in some cash or cash convertible form or else there is no gain that can be taxed. In this case attempt was made to include free accommodation in taxable income House of Lords concluded this is not possible.
- b. **NOTE there are statutory non-cash rules under s21 ITAA36 (p.1296)** whereby non-convertible considerations such as property or service provided wholly or partly in a business relationship maybe treated as convertible into cash

Residence- Taxable income:

- 6-5(2) ITTA97 if you are an Australian resident, your assessable income includes the ordinary income that you derived directly or indirectly from all sources, whether in or out of Australia, during the income year.
- Generally a person who lives in Australia or has been here intermitted for one half of the tax year. A person who is a member of a superannuation fund, an eligible employee OR a company that has been incorporated, carries on business or has **central management** in Australia REFER TO s6 (1) ITAA36 (p.1288).
- *DeBeers case*: Most decisions made in South Africa. But higher order decisions made in London. Court found the company was a resident of LONDON. Also contests the idea of carrying on of business. You can argue that because central management of control in Africa not in London, they tried to argue that they should not pay tax in London.
- *Esquire case*: Directors located in other country, they only followed the decisions of the accountants in Australia. The directors were found innocent and did not need to pay taxation.

Definition of a resident

(s6(1) ITAA 36)

Individual tests

- Resides test
- Domestic and permanent place of abode test
- 183 day test (been here for 6 months)
- Commonwealth superannuation test (member of a super fund here)

Company's tests

- Incorporation test (where was it incorporated?)
- Central management and control test (where their board of directors make their decisions.)
- Control of voting power test (Where do the majority shareholders reside).