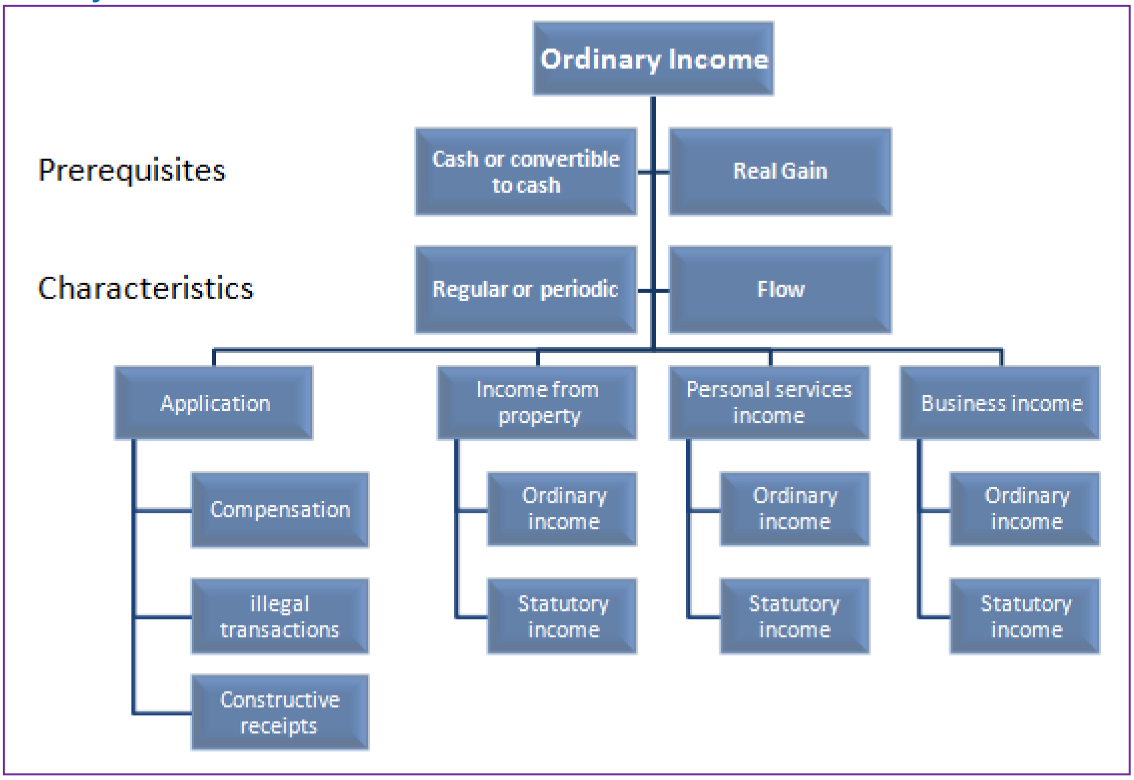
Ordinary income: Overview



12 Propositions as to whether something constitutes Ordinary Income:

Negative propositions: items that are not income by ordinary concepts

1. Amounts not convertible into money are not ordinary income.

2. Capital amounts do not have the character of income.

3. Gifts unrelated to employment, services or business do not have the character of income.

4. The proceeds of gambling and windfall gains are not income.

5. Mutual receipts are not income.

Positive propositions: characteristics of income by ordinary concepts

6. To be income, an amount must be beneficially derived.

7. Income is to be judged from the character it has in the hands of the recipient.

8. Income generally exhibits recurrence, regularity and periodicity.

9. Amounts derived from employment or the provision of services are income.

10. Amounts derived from carrying on a business are income.

11. Amounts derived from property are income.

12. Amounts received as substitutes for or compensation for lost income are themselves income.

* Consider all 12 in exam after prerequisites fulfilled...

Negative propositions

Propositions that assist in identifying 'ordinary income'

1. Receipts that are not cash or convertible to cash are not ordinary income (remember this is a prerequisite)

- The ordinary meaning of income contains a notion of gain that is money or convertible to money. The implication is that <u>if some goods or services are received that cannot be converted to cash then there is no benefit to the taxpayer and therefore no ordinary income.</u>
- This principle is discussed in FCT v Cooke and Sherden ((1980) 10 ATR 696; 80 ATC 4140) where it was held that amounts that cannot be converted to cash are not income in ordinary concepts, and s 21 of the Act could not give a money value where the non-monetary consideration could not be converted into cash or the right transferred to a third party.
- FCT v Cooke and Sherden (1980)
- Tennant v Smith [1892] AC 150

2. Capital receipts are not ordinary income

- As a general principal capital receipts do not constitute ordinary income. (May have CGT consequences however – statutory tax). Income arises from the use of capital but does not include gains made on the realisation of capital items.
- Generally capital gains (that is profits on the disposal of capital assets) are not ordinary income. See too proposition 12.

- Sun Newspapers v FCT (1938)
    - Capital expenses
    - We cover this in some more detail later
    - TP was newspaper publisher
    - Principle competitor was World which was published by Sydney Newspapers. Syd News then proposed to publish another new rival paper at cheaper cost.
    - An agreement made between Sun and Sydney that Sun could use plant and equipment of Syd News and Syd News could not publish new rival paper. TP made payment to Syd New on entering agreement
        - In effect, TP shut down World and stopped new publication being made
        - Was the payment capital or income?
    - TP tried to claim a deduction for the payment.
    - Held by majority of HC that was capital expense...
        - TP acquired a non-wasting and enduring benefit
        - Income producing <u>process</u> (OI) v income producing <u>structure</u> (cap)
        - Payment preserved business structure so capital in nature
    - Sun Newspapers Ltd v FC of T per Dixon J – This case sets out the test for distinguishing outgoings on revenue as opposed to capital account:
    - There are, I think, three matters to be considered,
        - (a) the **character** of the advantage sought, and in this its **lasting qualities** may play a part,