Concepts of Income

Types of Incomes ITAA 1997

1) Ordinary income s6-5

- Includes income according to ordinary concepts 包括按照一般商业和日常理解属于“收入”的金额
- Starting point: Scott v Commissioner of Taxation (NSW)
  - The word ‘income’ is not a term of art, and what forms of receipts are comprehended in it, and what principles are to be applied to ascertain how much of those receipts ought to be treated as income, must be **determined in accordance with the ordinary concepts and usages of mankind**, except in so far as the statute states or indicated an intention that receipts which are not income in ordinary parlance are to be treated as income, or that special rules are to be applied for arriving at the taxable amount of such receipts.”
- Whether an amount is characterised as an ‘income’, can make reference to Parson’s Propositions – see below
- 5 categories of generally accepted **ordinary income**:
  - Income from services (e.g., wages, fringe benefits)
  - Income from business (e.g., proceeds on sale of inventory, fees paid by customers for services)
  - Income from property (e.g., rents, interest, royalties, dividends)
  - Compensation receipts (e.g., income replacement insurance)
  - Periodic receipt (e.g., pensions and annuities)

2) Statutory income s6-10

- Amounts that are not ordinary income, but included as assessable income by provisions about assessable income
- E.g., CGT

3) Not assessable income s6-15

- Amount that is not ordinary income & not statutory income
- Amounts that is exempt income
- Amounts that is NANE
- These receipts are generally not ordinary income:
    - Gifts and inheritances received
    - Windfalls and prizes
    - Gambling winnings
    - Proceeds or profits from a capital assets
    - A discound on a purchase (getting a good deal)
    - Receipts in kind that are not convertible to cash
    - Repaying a debt for less than its face value

4) Exempt income s6-20

- It is an ordinary income or statutory income, but it is made exempt from income tax by a provision of ITAA or other Cth laws
- Exempt entities Div 50 (e.g., charities, govt)
- Exempt amounts Div 51 (e.g., spousal maintenance) & Div 52 (welfare benefits)

5) Non-assessable non-exempt income (NANE) s6-23

- Amounts that are non-assessable & non-exempt (e.g., fringe benefits s23L 雇主提供给员工的非现金福利）

4 Elements of Ordinary Income

1 – Realisation: Income as a flow – Pasrsons' Propositions

由于法条对于 ordinary income 的定义不明确，Parsons 根据许多判例总结出来的 ordinary income 的特征，分为三大部分

WHEN income is derived

- Proposition 1: An item of an income character is derived when it has "come home" to the taxpayer. The presence of illegality, immorality or ultra vires does not preclude derivation.
  - 具有收入性质的项目，在 taxpayer 控制或获得是产生，即使该收入来源是非法，不道德或者越权的。
  - So, drug dealing profit, fraud proceeds are all incomes
  - Abbott v Philbin: 'A bird in the bush is not taxable, even if you have the right to get it in the future, if it is still there. You must have it in your hand before you can be taxed for it'
  - Thus:
    - A receipt that is a realisation of income FROM property (e.g., dividends received) is a taxable income
    - A receipt that is a realisation OF the property itself (e.g., proceeds on sale of shares) is NOT a taxable income
    - 必须首先是 income 才需要交税。这个 income 可以是金钱或者其他 property 的形式持有。但如果这个 property 不是依靠 income 的形式持有的，而是比如别人赠与的或者你自己买房而持有的房，则不需要交税
- Proposition 2: An item of an income character that has been derived will be income in the amount of its realizable value.
  - 已取得的 income，应该以他的 realisable value 可实现价值来计收入价格
- Proposition 3: The character of an item as income must be judged in the circumstances of its derivation by the taxpayer, and without regard to the character it would have had if it had been derived by another person.
  - 站在 property/money 接收者的角度考虑这个项目是不是 income，不要站在给予人的角度看

WHO derives income

- Proposition 4: To have the character of income an item must be a gain by the taxpayer who derived it.
  - 要构成收入，该项目必须是 Taxpayer 能获得收益的项目
  - E.g., Hochstrasser v Mayes: employer reimbursement of loss on sale of house incurred due to job transfer 雇主因为员工的工作调动而售出房屋而补偿员工出售房屋的损失
  - 对于补偿，只有补偿收入才需要交税，补偿资产不需要交税
    - E.g., 如果是补偿收入，比如补偿工资损失或者租金，这些本身是 income，所以这个补偿要交税
    - E.g., 如果是补偿资产，比如房子降值保险补偿或者政府征地，商誉损失补偿，只是在补偿这个资产，只不过把资产的一部分换成钱而已，并没有 gain，所以不交税
    - E.g., 如果像 Mayes 这种情况，虽然是因为房屋降值而补偿的，但法院会认为雇主之所以会赔偿是因为雇员和雇主有 employment relationship，所以算作 income，需要交税
- Proposition 5: There is no gain unless an item is derived by the taxpayer beneficially.
  - 若 Taxpayer 不是以 beneficiary 的身份获得该项目，就不存在收益
  - E.g., The Countess of Bective (1932): Taxpayer received a trust distribution to be used for maintenance and education of child. She received the money and must use it for the maintenance and advancement of her child. It would be a misapplication if she applied the funds for her own personal benefit. So, there is no gain to the beneficiary, not income.
- Proposition 6: There is no gain if an item is derived by the taxpayer from himself: the principle of mutuality.
  - 不能自己赚自己钱，如果 income 是来自 taxpayer 自己，就不算有收益

What counts as income

- Proposition 7: There is no gain if an item is derived by the taxpayer as a contribution to capital.
  - 如果款项属于投资，不算 income
- Proposition 8: A gain which is a mere gift does not have the character of income.
  - 赠与不算 gain
- Proposition 9: A mere windfall gain does not have the character of income.
  - 单纯的偶然所得不算 income
  - 例如 lottery, found money, prize
- Proposition 10: A capital gain does not have the character of income.
  - 资产升值或出售产生的收益不算 income
  - 比如如果三年前卖房能得 50w，现在卖能得 70w，这 20w 的收益不算 income
- Proposition 11: A gain which is one of a number derived periodically has the character of income.
  - 如果收益属于定期取得的一系列收入之一，算 income
  - E.g., Monthly rent, weekly salary
- Proposition 12: A gain derived from property has the character of income.
  - 来源于财产的收益算 income
  - E.g., property yield rent, interest, and dividends
- Proposition 13: A gain which is a reward for services rendered or to be rendered has the character of income.
  - 作为已提供/将要提供的服务的报酬，算 income
  - E.g., salary, fees, commissions
- Proposition 14: A gain which arises from an act done in carrying on a business, or from the carrying out of an isolated business venture, has the character of income.
  - 在经营业务过程中的盈利，或通过一次性商业活动取得的收益，算 income
- Proposition 15: A gain which is compensation for an item that would have had the character of income, or for an item that has the character of a cost of deriving income, has itself the character of income.

Step 3 – Calculate the FBT Liability

1) Separate FB into 2 types:
   a. Type 1 – GST creditable benefits
   b. Type 2 – Not GST creditable benefits → In exam, assume Type 2 unless the Q says
2) Calculate gross-up taxable value = Amount x Gross-up rate
   a. Type 1 = Amount x 2.0802
   b. Type 2 = Amount x 1.8868
3) Calculate the sum of taxable value
   a. Type 1 + Type 2
4) Calculate FBT
   a. FBT payable = Sum x 47%

FBT Interaction with Income Tax

1) Check whether it is FB under s136 FBTAA
   a. Yes, 优先适用 FBT [Then, employer – FBT; employee – NANE benefit not taxable]
   b. No, income tax s15-2

Why provide FB?

Especially relevant if employee's marginal tax rate < 45%

- Some benefits are exempt from FBT (and exempt income to the employee)
  - Minor benefit (< $300), work related items, taxi travel, in-house childcare, remote area concessions
- Sometimes the taxable value for FBT purposes < what the employee would need to pay to get the benefit (concessional valuation)
  - In-house property benefit: 75% of retail

    - Where distinct and severable parts of the expenditure relate to income-producing and non-income-producing uses, the expense may be divided according to actual use. Ronpibon Tin
    - Where a single outlay serves both objects indifferently, a fair and reasonable assessment must be made of the extent to which the outgoing relates to assessable income. Ronpibon Tin
    - However, only actual outgoings are deductible; notional expenses are not deductible. 想象出来的费用、并没有真正发生的费用不能抵消 Ronpibon Tin
- First limb – 为了取得 Assessable income 而产生的支出 [为了赚钱/过程中而花钱]
    - **Relevance test**: 'In…' = the incurred expense must be incidental and relevant to that end (i.e., gaining assessable income) Ronpibon Tin 一笔支出想要扣除，必须和赚钱这件事有"真实关联"，而不是顺便发生或太远的联系。
    - 法院会问，这笔支出的起因 (occasion)，是不是来自一个"会产生应税收入的活动"?

      It is both sufficient and necessary that the occasion of the loss or outgoing should be found in whatever is/expected to be productive of the assessable income Ronpibon Tin
        - The nexus required between the loss or outgoing and assessable income
        - We don't need income produced in the period, expenses to produce future income are acceptable.
- Second limb – 为了经营一项 business 并以获取 assessable income 为目的而产生的**必要**支出
    - Issue of 'enterprise expenditure' e.g. filing fees, maintaining business, administration of the business etc. hence this limb was included.
        - Much more 'generous' than the first limb.
    - 'Necessarily' incurred – doesn't mean "necessary" as long as there is a business justification. i.e. can be an expenditure by choice. Magna

  - Initial repairment
    - W Thomas: Extensive repairs to building before it could be put to income producing purposes. The court held these expenses are capital as the expenditure was not incurred for income-producing activity, rather, it was incurred to put the asset into an income-producing condition. Thus, it is the cost of acquisition, not cost of maintenance.

Balancing adjustments

当 asset 被卖掉或结束时，ATO 会对比 asset 的账面价值和卖价

什么时候做结算 – **Balancing adjustment event**: when TP stop holding/using the asset/never used it (e.g., disposal) s40-295

Adjustable value < Termination value → Taxable income s40-285(1)

Adjustable value > Termination value → Deduction s40-285(2)

- How does termination value calculate? s40-300 & s40-305

Scaffold for Depreciation Rule

For capital expense that cannot be immediately deducted, the amount can be recovered/deducted as a depreciation expense after purchased. After the sale of the asset (asset end), ATO would do a balancing adjustments.

1. Identify a depreciating asset
   a. Income producing purpose
   b. Limited effective life
2. Determine start time
   a. When first use/installed ready for use [还没开始用就不能扣]
3. Detemine base cost of the price
   a. purchase price
   b. installation costs
   c. improvements

	公司不交税，不管钱有没有交给 owner，owner 交税 → Commonly in partnerships and in some circ. trusts For partnerships & foreign hybrids
3. Partial integration ('imputation')	Income calculated and taxed at entity level & on distribution; investor gets credit for tax paid by entity; losses trapped 公司先交税，owner 收到再交税，但可以用公司已经交的税抵扣 → Commonly used in AU 如果公司赚 100, 公司交了 30 的税；给你剩余 70. ATO 会认为你收了 100，然后按照个人的 taxable income 的税率计算，然后公司交的 30 的税可以 deduct 在你的 taxable income 中 For companies
4. Proxy	Income calculated at entity level and entity/someone with the legal interest pays tax on behalf of investor at stipulated rate 钱在公司里，有个人（比如 trustee）帮你交税，beneficiaries 之后拿钱不用交税
5. Non-entity look-through	Entity disregarded – calculate tax liability of each investor individually based on share of income and outgoings 就算没有公司，赚多少直接 owner 交税 For non-entity joint ventures & mutual association

Taxation of Partnerships

Outline

1. When do we have a partnership for tax purposes?
   a. Basic approach to the taxation of partnerships
   b. Existence of partnership
2. How is the income of the partnership calculated and then assessed/allocated to the partners?
   a. Overview of partnership rules
   b. Relevant definitions
   c. Basic calculations

Basic approach to the taxation of partnerships

Partnership don't pay tax, but they are required to file returns that show net income/loss (which is allocated to partners according to % interests) → Full integration Partnership 作为公司的一种形式不交税，但要报税，最后钱分给合伙人，合伙人自己交税

Difference between partnership & JV:

- Partnership: 钱 → 进 partnership → 扣成本 → 算出"利润" → 再分给 A & B → A & B 自己各自交税
- JV： A 自己有收入、自己扣成本, B 自己也一样,再统一将利润放入公司

What is a partnership for tax purpose?

Existence of partnership is a question of fact & law, TR94/8 provides relevant factors include:

- Intention of the parties/persons to be in partnership – objective evidence of mutual assent
- Conduct of parties/persons towards one another and towards 3rd parties in carrying on business
  - Joint ownership of business name
  - Registration of business name

- Distributions not taxed where such has been previously taxed or assessed to the beneficiary or trustee 如果这笔钱之前已经被课过税，就不会再交一次

Rules for taxation of trust income

Div6 of ITAA 1936 → Tax approach: integration or proxy

- Except as provided by the Act, the trustee is NOT liable as trustee to pay income tax upon the income of the trust estate. S96 Trustee 一般不交税除非后文说要要交
- Where a beneficiary is presently entitled to a share of the income of the trust estate and **NOT under a legal disability**, the assessable income of the beneficiary includes THAT SHARE of the net income of the trust estate → **integration approach** s97
  现在有权拿钱的 beneficiaries + 不是未成年人/无行为能力人 → Beneficiaries 交税
  - Net income defined in s95
- Where a beneficiary is presently entitled to a share of the income of the trust estate but **is UNDER a legal disability**, the trustee is subject to tax on THAT SHARE of the net income at individual rate → **Proxy approach** s98
  现在有权拿钱的 beneficiaries + 是未成年人/无行为能力人 →Trustee 替代 Beneficiaries 交税 (按个人税率)
  - Credit is available if beneficiary has other income s100
    如果 beneficiaries 还有其他 taxable income, 这个 trust 的经济收益还是会先算进 beneficiaries 的 taxable income 里，但因为这个 trust 的税 trustee 已经代缴过，所以会变成一个 credit 再从 taxable income 里减掉
- Where NO beneficiary is presently entitled to some or all of the net income (occurs where trust is a discretionary trust, but trustee doesn't designate any beneficiaries, where the trustee does not allocate some of the income, or deceased estate post 3 years):
  - Trustee is assessed at TOP marginal individual rates (i.e., 45%) regardless whether the trustee is an individual or a company s99A → **Effectively proxy approach**