# LPAB12 Taxation scaffolds

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# General Principles

1. Define taxable income (s 4-10(3)).
2. Classify receipt: ordinary income (s 6-5) or statutory (s 6-10).
3. Apply tests (money's worth, periodicity, fruit/tree, character in recipient's hands).
4. Consider residence, source, derivation.
5. Check for exemptions (Div 11, 50, 51; s 6-15).
6. Distinguish capital vs revenue.
7. Conclude: assessable income or not.

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**Step 1: What is Taxable Income**

- **Formula:** Taxable Income = Assessable Income – Deductions (s 4-10(3) ITAA 1997).
- **Assessable income:**
  - Ordinary income (s 6-5).
  - Statutory income (s 6-10; list in s 10-5).
  - s 6-25: prevents double counting (statutory overrides ordinary).
- **Deductions:**
  - General deductions (s 8-1).
  - Specific deductions (s 8-5; list in s 12-5).
  - s 8-10: prevents double deductions.
- **Tax loss:** arises if deductions > assessable income (Div 36).

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**Step 2: Concept of Income**

- **Ordinary income (s 6-5) – derived from judicial tests:**
  - Must be of money or money's worth (Tennant v Smith; Cooke & Sherden).
  - Fruit/tree analogy: income = fruit; capital = tree.
  - Nature determined by character in recipient's hands.
- **Categories:**
  1. Personal exertion (salary, wages, services).
  2. Property (rent, interest, royalties).
  3. Business.
- **Statutory income (s 6-10):** e.g. CGT, franking credits, certain compensation.

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**Step 3: Residence**



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- **Individuals (s 995-1 ITAA 1997; s 6(1) ITAA 1936)**
    - Ordinary meaning of "resides": *IRC v Lysaght*; *Gregory v FCT*.
    - Extended tests:
        - *Applegate* (domicile & permanent place of abode).
        - *Harding v FCT* (place of abode can be shifting).
        - 183-day rule.
        - Superannuation test (CSS/PSS members**).**
- **Companies:**
    - Incorporated in Aus, or CM&C in Aus (*Bywater Investments*; *Malayan Shipping*).

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**Step 4: Source of Income**

- **Goods:** source where sold (apportion if multiple activities).
- **Services:** where performed (*FCT v French*); exceptions (*FCT v Mitchum*).
- **Property:**
    - Rent = where property is.
    - Interest = where loan/credit provided.
    - Dividends = where profits made (*Esquire Nominees*).
    - Royalties = where IP located (*United Aircraft*; s 6C ITAA 1936 deems Aus source).

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**Step 5: Derivation (Timing)**

- **s 6-5: ordinary income included when "derived".**
- **Methods:**
    - Cash (e.g. small service providers; *Carden's Case*).
    - Accruals (large/complex; *Henderson*).
    - Constructive receipt (s 6-5(4); if taxpayer has done all necessary to access funds).
- **Special rules:**
    - Prepaid income not derived until earned (*Arthur Murray*).
    - Trading/business income often accrual (*J Rowe & Sons*).

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**Step 6: Exempt & Non-Assessable Income**

- **Exempt income (s 11-1, ss 11-5 & 11-15):** charities, councils, Defence allowances.
- **Non-assessable non-exempt income (s 6-23; s 11-55):** e.g. firearm compensation, FBT (s 23L ITAA 1936).
- **Cases:** *GAIR v FCT* (nature of receipt), *Countess Bective* (beneficial ownership), *La Rosa* (illegal income still taxable).

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**Step 7: Capital vs Revenue Distinction**

- **Revenue:** recurring, income stream, fruit of the tree.
- **Capital:** structural, enduring, lump sum, tree itself.
- **Cases:** *Myer Emporium* (profit-making scheme = income), *Greig v FCT* (share losses deductible as revenue).

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