CONTENTS

LAW 407 – TAXATION – CAN

As per **2(1)**, an income tax shall be paid, when required by this act, on taxable income, defined by **2(2)** as income plus additions and minus deductions permitted by division C, for each taxation year of every person, including a corporation, (**248(1)**) who has been resident in Canada at any time in the year. All amounts from a source inside or outside Canada must be included in a taxpayer's income (**3**).

- **S2(1)** – An income tax shall be paid, as required by this Act, on the **taxable income** for each **taxation year of every person resident in Canada at any time** in the year.
- **2(2)** – **tax base:** taxable income: T's income plus additions and minus deductions permitted by Div C
- **3** – rules for computation:
  - **(a)** all amounts from a source inside or outside Canada, including, not restricted to, office or employment, business and property
  - **(b)** the amount by which total of taxable gains on disposition of property other than listed personal property and taxable net gain on disposition of listed personal property **exceeds** the amount by which T's allowable capital losses from disposition of property other than listed personal property exceeds T's allowable business investment losses
  - **(c)** the amount by which (a) + (b) exceeds the total permitted deductions under subdivision e
  - **(d)** the amount by which (c) exceeds total of all amounts each of which is T's loss for the year from office or employment, business or property or allowable business investment loss
  - **(e)** if (d) has an amount, T's income is that amount
  - **(f)** in any other case, T **is deemed** to have zero income for the year
- "income" has its ordinary meaning, generally periodic: ***Curran***
- **117(2)** – **tax rates**!
- **248(1)** – "person": **tax unit:** every person resident in Canada includes a corporation
  - **Residence**: chiefly a manner of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living – a question of fact: ***Thomson v MNR***
  - A person is deemed to have been a resident in Canada if person sojourned in Canada in the year for a period or periods total of 183 days or more: **S250(1)(a)**
    - Sojourn: make temporary stay in a place, to remain or reside for a time: ***Thomson***
    - Entering Canada to work for a day then going home isn't sojourning: ***R&L Food Distributors Ltd***
- **249(1)** – "taxation year": **accounting period:**
  - (a) corporation: fiscal period
  - (b) individual: calendar year
- **Tax Credits:** subtracted from tax payable or given as a refund
- Functions of income tax:
  - Allocation: address market failures, efficient resource allocation, collective values/paternalistic considerations (health, pensions, education, etc)
  - Distribution: tax the rich more and the poor less – deals with uneven distribution of resources
  - Stabilizing: use tax policy to stabilize and balance what is happening in the market

STATUTORY INTERPRETATION

- Traditional Approach: Strict Construction – construe statutory language literally and resolve ambiguities for T
  - ***MNR v MacInnes*** – wife substitutes property twice – words are taken over the spirit of Act, must be within the express terms of the Act
  - ***Corporation Notre Dame de Bon-Secours, Johns-Mansville Canada*** – rejects resolving ambiguities against T (still good law)
- Modern Approach: Driedger's "Modern Rule"
  - ***Stubart Investments Ltd v Canada*** – **words** of an Act are to be read in their entire **context** and in their grammatical and ordinary sense harmoniously with the **scheme** and **object** of the Act and the **intention** of Parliament – don't use general provisions where there are specific provisions
  - ***Bronfman Trust*** – promotes a purposive approach
  - ***WilKare Paving & Contracting Ltd v Canada*** – asphalt factory, 75% for own use, 25% sold commercially – tax benefit if primary purpose is manufacturing goods for sale.
    - Majority: not primarily for sale, not legal definition of sale because it is sold as part of a contract for services, not just a contract for sale of goods. Parliament referenced private law concepts of sale – you can't interpret *ITA* in a vacuum
    - Dissent: purpose of the provision is to encourage manufacturing and used everyday business words – the *ITA* must be accessible to Ts.
  - ***Tennant v Smith*** – INCLUSIONS: presumption in favour of T, DEDUCTIONS: presumption against T

TAX AVOIDANCE – S245

As contrasted with tax evasion, where you deliberately lie, conceal information, don't report income, etc, tax avoidance are legal efforts to arrange affairs in a way to minimize taxes owed.

US APPROACH

- ***Gregory v Helvering*** – critical approach to tax avoidance – G was the sole shareholder in A and A had shares in X. G made a new company, B, and transferred X to B, then dissolved B to get tax benefits of a reorganization.
  - The court looks at the true nature (**business purpose test**) – was this done for a *bona fide* business purpose or to avoid tax? – and looks at the economic substance over legal form – what did the transaction/scheme actually do vs what it looked like it was doing?
  - Considered the sham doctrine: a mere device putting on the form of something as a disguise for concealing its real character

CANADIAN APPROACH

- ***Commissioners of Inland Revenue v Duke of Westminster*** – T pays his gardener in a weird way to avoid paying a legal salary for tax benefits – "every man is entitled, if he can, to order his affairs so as that the tax attaching under the appropriate acts is less than it otherwise would be"
  - The subject is not taxable by inference or analogy, but only by the plain words of a statute applicable to the facts
  - Legal form over substance, which rejects the US substance over form approach
  - Legal form over nomenclature – what the parties call it is not determinative
- ***Stubart Investments*** rejects the business purpose test for Canada (but the GAAR was later enacted to somewhat create one)

SHAM DOCTRINE

- ***MNR v Cameron*** – references *Snook v London & West Riding Investments*: "acts done or documents executed by parties to the "sham" which are intended by them to give 3rd parties or the Court the appearance of creating between the parties legal rights and obligations DIFFERENT from the actual legal rights and obligations which the parties intended to create"
- If the documents aren't *bona fide* or intended to be the real one, you assess by the transaction they're masking with the sham documents
- ***Antosko*** gives sham doctrine a narrow construction

INEFFECTIVE TRANSACTIONS DOCTRINE

- T must fill all requirements and complete all transactions fully to effectively establish legal relationships or else courts can assess on the basis of the actual existing relationships
- ***Antinco Paper Products v MNR*** – court must make sure documents are legally correct/complete

SPECIFIC ANTI-AVOIDANCE RULES

- Four general categories:
  - Rules mandating the inclusion of specific amounts (ex: 6(1)(a) benefits, 56(1)(a)(ii) retirement allowances)
  - Rules disallowing or limiting deductions (ex: 67 general reasonableness requirement, personal expenses)
  - Rules governing the timing of inclusions or deductions
  - Deeming provisions (substance over form, ex: 69(1) NAL transactions)

GENERAL ANTI-AVOIDANCE RULE

- Introduces a business purpose test in the Act, as well as a step transaction doctrine (even if the overall series is legit, if one step isn't, you can apply the GAAR – S248(1)) – a series includes all related steps, including before and after
- **S245(2)**: tax will be assessed in a way to deny the benefit that would have resulted, directly or indirectly, from the avoidance transaction(s), if not for this rule
- **S245(3)**: an avoidance transaction is a transaction that would result, directly or indirectly, in a tax benefit, **unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit** (business purpose test)

- **S245(4)**: (2) will only apply where the transaction(s) would "result directly or indirectly in a misuse of the provisions of the Act, Regulations, Application Rules, or a tax treaty, or any other relevant enactment

REQUIREMENTS FOR THE GAAR:

- There is a tax benefit – S245(1): reduction, deduction, avoidance or deferral (burden on T to disprove)
- Primarily tax-motivated – no *bona fide* purpose, can be any part of the series of transactions (objective – burden on T to disprove)
- Misuse or abuse of the provisions
  - ***Canada Trustco Mortgage Co v Canada***: these are joined, there is only one inquiry
  - ***Lipson v Canada***: burden on Minister to prove on BoP, it's a misuse/abuse
- Remedy: Do what is "reasonable in the circumstances" in order to deny the tax benefit: **S245(2)**

IS THE INCOME FROM EMPLOYMENT OR BUSINESS?

INDIVIDUAL? IS T AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR?

- EMPLOYEE: contract OF services vs INDEPENDENT CONTRACTOR: contract FOR services
- S248(1) – "employment" and "office"
  - **Office:** (1) A position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration which includes judicial office, MP, Senator and Minister OR (2) the position of a corporate director
  - **Employment:** position of an individual "in the service of" another person (person includes a corporation)
- Deductions from employment are much more limited and employers withhold income and payroll taxes from employees
- **TEST**: consider the total relationship between the parties (***Wiebe Door***) – ***Baxter***: collective agreement, hourly rate, reimbursed for expenses, T4 slips, CPP/EI/tax deductions – none of these are determinative, but considered as a whole, they suggest employee
  - Control: can the worker choose which equipment to use? Can the employer do more than terminate the relationship (ex: discipline)?
  - Ownership of tools or equipment: worker owning their tools is indicia they're an independent contractor
  - Chance of profit/risk of loss: can the worker profit by doing the job faster or more effectively, or are they paid the same regardless? Does the worker risk suffering economic loss as a result of performance, or does the employer bear the risk?
  - Integration: is the worker integrated into the business of the employer? Are they carrying on their own business, or are they involved in the broader business?
  - SPECIFIC RESULT TEST: ***Alexander v MNR*** – hired for specific limited task or undefined service period?
  - ***Market Investigations Ltd*** – Is the person performing the task as a person in business on his own account?
  - Look at the issue from the **perspective** of the employee NOT the employer
- **SINCE WIEBE – Intention has been given emphasis:** labels (nomenclature) used by the parties are not determinative (***Wiebe Door***), but are relevant – but no one gives a shit what you call it if it is something else. Still consider freedom of contract, where interpretation hinges on the intention of the parties – the commonly expressed intention should be given weight (***Royal Winnipeg Ballet*** – contractor despite extensive control via a collective agreement, ***Wolf v Canada*** – contractor despite hourly wage because risk was his own)
- **Other relevant factors:** 1) ability to subcontract/hire helpers (UK case: *Market Investigations*), 2) engagement to perform a specific task vs ongoing services, 3) whether worker works for multiple employers or just one, 4) where does the employee principally work (working at own home indicates contractor: ***Martinez, Cumming, Henry***), 5) nature of pay – flat rate per time unit vs pay per service/production/job (***Wiebe Door, Dangaas***)

INDEPENDENT CONTRACTOR CASES	EMPLOYEE CASES
***Martinez* (1995 TCC)** & ***Tedco Apparel Management Services Inc* (1991):** principal workplace is a consideration – working out of your own home indicates IC.	***Norgaard* (1964 Tax ABC):** Commission but signed contract as employee, only worked here, activities confined to sales and promotions of employer's products.
***Cumming* (1967 ExCt), *Henry* (1969 ExCt)**: Doctors ICs even they rely upon hospital's facilities.	***Vango* (1995 TCC):** commission but worked in employer's office, used their phones/facilities/materials
***Dangaas* (1964 Tax ABC):** Method of remuneration important. IC - set own hours, found own clients, commission.	***Donald McDonald* (1974 TRB)** & ***Boardman* (1979 FCTD):** legal substance over nomenclature.
	***Baxter* (1996 TCC):** collective agreement, hourly rate, reimbursed for expenses, T-4 slips, CPP/EI/tax reductions – none of these are determinative but considered as a whole they suggest employee.

CORPORATION/INCORPORATE EMPLOYEE? IS T CARRYING ON A PERSONAL SERVICES BUSINESS? – SAAR

Some people incorporate because: Advantages: 1) more deductions, 2) no withholding income or payroll taxes by the employer, 3) choice of fiscal period, 4) allows for tax planning – choose when to take income (dividends). A third person can be made a shareholder, which means they can be paid dividends to reduce the tax burden of T – income splitting – government enacted SAARs for personal service businesses in 1981:

- **125(7)** – "personal services business"
  - A business providing services where:
    - **EITHER** (a) An individual who performs services on behalf of the corporation (incorporated employee), **OR**
    - (b) Any person **related** (blood, marriage/partnership, adoption: +: **251(6)**) to the incorporated employee

    Is a **specified shareholder** of the corporation (owns 10% or more: **248(1)**) **AND** the incorporated employee would reasonably be regarded as an officer or employee (***Wiebe Door*** total relationship test applies: ***Dynamic Industries*** – control can be a determining factor) of the person or partnership to whom or to which the services were provided but for the existence of the corporation, **UNLESS**
    - The corporation employs in the business throughout the year more than five full-time employees, **OR**
    - The amount paid or payable to the corporation in the year for the services is received or receivable by it from a corporation with which it was associated (parent, sub, common ownership (**256(1)**) in the year
- **Limitations**: 1) no small business deductions for personal services business, 2) personal service business may only deduct for salary paid to the employee, amounts for negotiating contracts, legal expenses for collecting amounts owed to it for services (**18(1)(p)** – considered in *Dynamic Industries*)
- ***Engels v MNR***: example of legitimate imposing of a corporation (pre-GAAR)
  - T was a news anchor – at the end of his contract, created a corporation and continued doing the news
  - Held not to be a tax motivated move – allowed him to freelance, charge his mother for advice, and reduce the tax burden
- ***Dynamic Industries Ltd v Canada***: benefits were allowed under 125(7)
  - T makes a corporation to get non-union contracts, then does all work for SIIL for 5 years – DIL is only paid when successful in getting contracts for SIIL, fixed the errors at own cost, paid cost and then some. SIIL employee, but for DIL? No.
  - T didn't own shares, but wife had shares in DIL – had an office at SIIL, parking spot, used their facilities/services
  - Court looks at ***Wiebe Door*** – not compensated on a regular basis, had risk, must look at whole history of Dynamic and not just time SIIL monopolized him – DIL is a legit corp and T can't be reasonably regarded as an employee
- ***533702 Ontario Ltd v MNR***: benefits disallowed because business wasn't independent
  - T worked for corporation that provided services to showroom for a company owned by T's husband. The corporation had no purpose outside of T's husband's company – but for the corporation, T would work for husband – held: personal services business

INCLUSIONS - REMUNERATION

Office and Employment Income:

- **S5(1)** – Salary, wages, and other remuneration, including gratuities
- **6(1)(a)** – Remuneration includes boarding, lodging, and other benefits, **(b)** allowances for personal or living expense, **(c)** director's and other fees
- **6(3)** – an amount received by one person from another:
  - **(a)** during period while payee was an officer or in employment of payer **OR**
  - **(b)** on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement

  is deemed to be (REVERSE ONUS ON T) remuneration for T's services rendered as an officer/employee, unless established otherwise or **it can't be reasonably be regarded as being received** as
  - **(c)** as consideration or partial for accepting the office/employment – **inducement payments OR**
  - **(d)** as remuneration or partial for services as an officer/employee – broad definition **OR**
  - **(e)** in consideration or partial for covenant re what to do or not to do before termination of employment
    - MUST BE (A) **OR** (B) **PLUS** (C), (D) **OR** (E)
  - SAAR – expands office and employment – includes amounts connected to employment, but not otherwise characterized as remuneration

- Some specific exclusions – ex: disability benefits (**6(16)**) and special work site/remote location (**6(6)**)

INDUCEMENT PAYMENTS ARE TAXABLE

- ***Curran v MNR*** – inducement payment to enter work contract, not by company, but by man who controls company, where **S6(3)** implies the payment must come from future or current employer
  - The argument for it being taxable was that it was paid to him solely due to his becoming employed – clearly a contract for personal service
  - HELD: not taxable – though it would reasonably fit into S6(3)(c), it could not fit into S6(3)(a) or (b) (probably could've been taxable as income from a source in S3, which wasn't argued)
- ***Grenier*** – T was fired when the company was taken over by another, gets $200k and starts working for the merged company. Court rejects the argument that it was for disposition of rights from the old job and finds it taxable under 6(3)(b)&(c)
- ***Volpe*** – V moves for a new job and gets $27k from an agreement with the new employer as compensation for housing loss. It wasn't simply compensation for capital loss, but also consideration or partial consideration for accepting the job so taxable under 6(3)(b)&(c)

TORT DAMAGES FOR INJURY ARE NOT TAXABLE INCOME

- ***Cirella v Canada*** – T gets in an accident and gets $14.5K in lost damages as he has to do lighter work than before
  - Not taxable as the payment was for capital loss of income earning capacity (human capital), not wages – it arose from the injury, not from employment – the surrogatum principle (***London and Thames Haven***) doesn't apply
  - Damages replace income **if** 1) received pursuant to a legal right or 2) as a substitution for income
- ***Kant*** – Damage award for permanent disability was found not to be a wage replacement
- **IT-365 R2** – special and general damages for personal injury/death excluded from income, unless it's income replacement

GRATUITOUS PAYMENTS MUST BE INCLUDED

- ***Goldman v MNR*** – T chair of a committee with no remuneration, but he seeks pay and gets $14K. Held to be taxable – the payment was made in connection with office, even if it was voluntary and indirect
  - **3(4)**: any payment made to any person **in connection** with any duty, office, or employment … shall be salary and taxable of income
  - **TEST:** a gratuitous payment to an individual, despite being voluntary from the perspective of the person making it, is taxable income if, from the standpoint of the person receiving it, it **represents payment for services**
- Must be distinguished from a gift or windfall – these are non-taxable
- ***Seary v MNR*** – T denied tenure and was paid $1K/month after threatening to sue, and is given a lump sum payment when tenure is given – the lump sum is taxable as a gratuity within S5(1), but monthly payments non-taxable since T had no office or employment when paid
- ***Mr C*** – honorarium after serving on commission of inquiry was a gratuity
- ***Heggie*** – H was fired and paid 5 month's salary when his company was bought out. HELD: not taxable because payment was made by purchaser and not as remuneration for services by employer under S5(1). Not under S6(1)(a) because it was for unanticipated unemployment, not prior employment, that was "real and proximate cause of the benefit"
- ***Yaholnitsky-Smith*** – Y was employed by a charity that paid for her school, though she was not employed when in school and had no obligation to return – this was taxable under S6(3) because it was paid in consideration for her to return to school made during employment

STRIKE PAY – NOT INCOME (***FRIES***, ADOPTED IN **IT-334R2**)

SUMMARY: Payment in a contract with union is not strike pay (***Loeb***), payment as a result of a union enterprise is not strike pay (***Ferris***), profits from union activities distributed to non-participants is strike pay, and therefore not taxable (***O'Brien***)

- ***Canada v Fries*** – REVERSED BY THE SCC – strike pay is not income from a source as the benefit of the doubt goes to T
  - Held: payment is taxable as periodic payments based on actual income – T is performing services for the union, apply the surrogatum principle

- ***Loeb v Canada*** – T makes a contract employment with teacher's federation in anticipation of strike so she can keep paying towards the pension fund. She argues sham without substance, but the court says it's a *bona fide* legal relation and therefore, taxable
- ***Ferris v MNR*** – union members publish newspaper during strike and distribute profits as strike pay – HELD: not strike pay but income from a business venture so it is still taxable, the form cannot change the substance
- ***Canada v O'Brien*** – union repping striking people makes a newspaper and distributes profits as strike pay – HELD: not taxable because the body producing the paper was merely an agent for individual union members (unlike ***Ferris***)
- **IT-334R2** – adopts SCC ruling of ***Fries*** that strike pay need not be included unless for services performed for the union

INCLUSIONS – PAYMENTS ON TERMINATION

RETIRING ALLOWANCES MUST BE INCLUDED

- **S56(1)(a)(ii)** – any amount received by T as, on account or in lieu of payment of, or in satisfaction of…a retiring allowance
- **248(1) – "retiring allowance"** – an amount (not a pension benefit) received (a) on or after retirement of a T from an office or employment in recognition of T's long service, (b) in respect of a loss of office or employment of a T, whether or not received as, on account of or in lieu of payment of, damages, or pursuant to an order or judgement of a competent tribunal, received by T or a representative after death
  - "in respect of" is interpreted very broadly – ***Mendes-Roux*** – could encompass any payment connected with T's loss of employment
  - Reverses ***Canada v Atkins*** where courts said amounts in lieu of notice weren't income from office or employment

IS THERE A LOSS OF EMPLOYMENT OR OFFICE?

- ***Schwartz v Canada***: T got $360K for a cancelled employment contract before he started – CRA argued it was a retiring allowance (56(1)(a)(ii)), board, lodging benefit (6(1)(a)), income from a source (3(a))
  - Not taxable – not under 3(a) as you shouldn't use a general provision when a specific on exists for the situation, not a retiring allowance as the definition includes "in the service of" which excludes prospective employment, which doesn't necessarily begin with the creation of the contract
  - Other provisions use the words *intended office or employment* and *services to be performed* – read 56(1)(a)(ii) in this light, so Parliament did not intend for it to cover prospective employment
- ***Moss v MNR***: T paid to release his right of first refusal on a collateral contract after resigning as sales manager – found to be taxable under 6(3) as either (d) remuneration for partial services, or (e) a covenant re: termination

IS THE PAYMENT IN RESPECT OF A LOSS OF OFFICE OR EMPLOYMENT?

- ***Mendes-Roux v Canada***: wrongful dismissal, damages were 50% lost wages (taxable), 50% distress (non-taxable)
- ***Merrins***: T was fired, filed a grievance, and was paid $60K to drop the lawsuit – the amount is taxable as it is in relation to loss of income, not a capital gain from a disposition of a right to having a hearing
- ***Stolte***: T gets amount based on 2 months paid of which some is for pain/suffering/stress from loss of a job – not taxable – even though some of the amount is based on income, it isn't in relation to loss of income and so doesn't fall within the meaning of the Act
- ***Niles***: T settled a discrimination claim for $5k with no actual judgement – it's a taxable retiring allowance as it is in respect of office/employment
- ***Fourier***: A lump sum payment in settlement of a grievance was said to be damages for injury "against the person of T" – compared to *Niles*: the outcome/taxability depends on the characterization of damages
- **CRA**: damages from loss of employment, including general mental, should be taxed, injuries unrelated to employment and human rights tribunal awards shouldn't be taxed

PAYMENTS ON OR AFTER TERMINATION

- ***Quance v Canada***: T was fired and given 9.5 months' pay in lieu of notice, which was paid in the same intervals as when he still worked there – found to be taxable: payment because of no notice is within 6(3) regardless of whether you had to sue for it or not

- ***Canada v Atkins***: Lump sum payment for job loss is non-taxable because it's not from a contract – REVERSED in 1981 by **56(1)(a)(ii)**

INCLUSIONS – GENERAL BENEFITS

- **S6(1)(a):** subject to exceptions, where a benefit (board, lodging, or other benefit of any kind) is received or enjoyed by T in respect of, in the course of, or by virtue of an office or employment, the amount must be included in computing T's income
  - **2011 amendment:** includes benefits received or enjoyed by a person who does not deal at arm's length with T
  - Three steps: 1) characterization of the benefit, 2) determination of the nexus between the benefit and the office or employment, 3) valuation of the benefit to be included in computing T's income

CHARACTERIZATION – IS THERE A BENEFIT?

1) was there a material advantage to T 2) the primary purpose of which is not to benefit the employer and 3) T's enjoyment is more than incident? (***Lowe***)

- ***Lowe v Canada***: T goes on a business trip with his wife, and both are engaged in business activities most of the time – it is not a taxable benefit as both were primarily engaged in business activities on behalf of the employer
  - **TEST**: was there a material acquisition that conferred an economic benefit on T?
  - From *Philip v MNR* – something of value in economic sense apart from the business purpose conferred
  - THRESHOLD QUESTION: was the principle purpose of the trip business or pleasure?
    - If there is only incidental pleasure/personal benefit, it shouldn't be taxable
  - Purpose of 6(1) is to equalize tax of those paid normally against those who received compensation via benefits and not salary/wages

TAXABLE (material advantage + non-business primary purpose + more than incidental enjoyment)	**NON-TAXABLE (no material advantage)**
Gernhart v Canada: US T gets tax equalization payment when he moves to Canada to put him in original position, which was found to be taxable under 6(1)(a) – gave him an advantage over other in the same situation (they should have just paid him more)	***Guay***: A reimbursement to send the kid to a special school that the kid would have to attend when T was posted abroad in the future was found to be non-taxable because it didn't increase T's net worth, just restored T to the position he would otherwise be in
Pellizzari v MNR: Legal fees were paid for by the corporation for T's fraud charges were found to be a taxable benefit as the charges were personal	***Huffman v MNR***: cop gets reimbursed for job clothes, which was not a taxable benefit as it was just a reimbursement
Cutmore v MNR – pre-*Lowe*: T forced to use tax services by employer which was found to be a taxable benefit, even though it was obligatory and not fun	**NON-TAXABLE (material advantage, BUT primary benefit to employer, or incidental enjoyment)**
Faubert v Canada: Employer pays for T to take courses to upgrade and get certifications needed for positions and this was found to be a taxable benefit as it was primarily for T's benefit and wasn't mandatory to take them. Personal interest training is taxable but specific employer-related training is not.	***Rachfalowski v Queen***: Employer paid for a golf membership for T who didn't golf and didn't want the membership; T only took it not to be rebellious – not taxable as it is primarily for the benefit of the employer – INCONSISTENT WITH *CUTMORE* since it's post-*Lowe*
Deitch v MNR: T was a legal aid lawyer for the Law Society, which paid professional liability insurance on T's behalf. Even though, this is a mandatory policy of the employer, it is taxable benefit to T.	
R v Poynton: T embezzles from a corporation and this is found to be a taxable benefit under 6(1)(a)	

- ***Dunlap v Canada*** – a Christmas party was found to be a taxable benefit, even if it was unilaterally conferred – NOTE: $300 was found not to be trivial, but maybe under $100 is?
- ***DiMaria v Canada***: T's employer paid his son $3000 to attend university and recognize his academic achievement – money paid to son provided no material advantage to T because T was under no obligation to send son to school, and tax system taxes individual legal entities, not families – also not taxable under **6(1)(a) – REVERSED BY 2011 AMENDMENT OF 6(1)(a) –** but scholarships are still exempt (**6(1)(a)(vi)**)
- ***Williams v MNR***: Food on a BC ferry is found a benefit as it is more than incidental, but isn't taxable if T has to pay a reasonable charge

- ***Paton***: The husband is the primary beneficiary of his wife's attendance, even though the employer asked her to come
- **CRA**: non-taxable things include employee discounts, transport to job, recreational facilities, transit passes
- **IT-470R**: no taxable benefit for uniforms, reasonable social events (<$100), training taken for the employer's benefit

DOES THE BENEFIT RELATE TO T'S OFFICE OR EMPLOYMENT?

- ***R v Savage***: T gets $300 from employer for passing life insurance tests and this was found to be taxable because "benefit of whatever kind" and "in respect of" are words with broad scope (***Nowegijick v Queen***: "in respect of" = widest possible connection between two related subjects)
  - Unnecessary for something to be received in exchange for services to be considered job income – T took courses to improve courses to improve knowledge in the company business
  - NOT A GIFT – ***Phaneuf***: gifts are a disinterested act of kindness
- ***Mindszenthy v Canada***: a Rolex give to T by the employer was found to be taxable as there was no evidence of a non-employment intent
- ***Waffle v MNR***: T gets a holiday from Ford for meeting sales quota – he was a car salesman, but not employment by Ford – this was found to be taxable: the benefit doesn't have to come directly from the employer to be a benefit
- ***Giffen v Canada***: Frequent flyer miles are taxable since only employees who flew a lot got them, even if you did have to join the program
- ***Phillips***: $10K was given to T to compensate for higher housing cost and this was found to be taxable as it was dependent on continued employment
- **CRA**: exempt from 6(1)(a) are wedding, Christmas gifts, etc (**IT-470R**), if the employer doesn't claim, aggregate under $500 in 2 years, 2 non-cash awards per year if under $500, generally safe if under $100

VALUATION OF THE BENEFIT TO BE INCLUDED

- Must be able to place a value on the benefit for it to be taxable – general **rule**: value is fair market value: ***Spence v Canada*** – value of benefit was the full amount of the discount on children's tuition
- ***Detchon v Canada***: T is a teacher at a private school and his kids go there for free, but he would be in trouble if he didn't send his kids there – is the value of the benefit the full tuition or the cost to the school of having the child there? It is the average cost to the employer – REVERSED BY *SPENSE* AND *SCHROTER*
- ***Waffle***: the trip is taxed of its cost to Ford, not its subjective value – benefit need not come directly from employer
- ***Giffen***: cost to the employer is not always the correct valuation, ex: frequent flyer mile value = cost of the same ticket
- ***Richmond***: year round parking is only used once/week, but must be taxed on full benefit of potential use.
- ***Wilsa***: Ring with a stamp of the corporation's logo is valued at metal scrap cost – where there is no market for it, not necessary to include the value

INCLUSIONS – ALLOWANCES AND OTHER BENEFITS

Some things are deemed to be a benefit – housing losses, relocation assistance, debt forgiveness

WAS THERE RELOCATION ASSISTANCE OR A HOUSING SUBSIDY? MUST BE INCLUDED

- **6(23):** An amount paid or value of assistance provided by any person in respect of, in the course of, or because of an individual's office or employment in respect of the cost of, the financing of, the use of or the right to use a residence **is**, for the purposes of this section, **a benefit** received by the individual because of office or employment.
- ***Splane v MNR*** **(1990 – overturned by 6(23)):** TP transferred, compensated for higher mortgage payments
  - Non-taxable: TP restored to original position, no benefit of any significant value conferred
- ***Phillips v MNR*** **(1994)**: lump payment for moving was held to be taxable – enabled TP to acquire more valuable asset, increased net worth.
- ***Pezolato v Canada*** **(1995)**: Reimbursed for interest on T's old residence which TP unable to sell – taxable because it's like giving him extra pay.

WAS THERE COMPENSATION FOR A HOUSING LOSS? MUST BE INCLUDED

Ransom v MNR **(1967)**: T was forced to move, lost money on his house, compensated by employer – NOT TAXABLE **–** effects of this case have been limited by the rules starting in 1998:

- **6(19):** An amount paid in respect of a housing loss (other than an eligible housing loss) to T or someone not at arm's length in respect of, in the course of, or because of an office or employment is deemed to be a benefit to T – **nexus test**
- **6(20): (a)** The first $15,000 of an eligible housing loss is non-taxable, **(b)** but ½ taxable above that
- **6(21) – "housing loss":** amount by which the greater of the cost of the residence and its highest fair market value during the previous 6 months **exceeds** its fair market value and the proceeds of its disposition, if disposed of
- **6(22) – "eligible housing loss":** refers to eligible relocation
- **248(1) – eligible relocation:** means a relocation of T where
  - **(a)** the relocation occurs to enable T
    - **(i)** to carry on a business or be employed in Canada ("the new work location"), OR
    - **(ii)** to be a student in full time attendance at a post-secondary level
  - **(b)** both the before residence and the after residence are in Canada
  - **(c)** the distance between the before residence and the new work location is not less than 40km greater than the distance between the new residence and the new work location
- ***Volpe* (1990 TCC)**: V moves for a new job and gets $27k from an agreement with the new employer as compensation for housing loss. It wasn't simply compensation for capital loss, but also consideration or partial consideration for accepting the job so taxable under 6(3)(b)&(c)

DID SOMEONE FORGIVE T'S DEBT? FORGIVEN AMOUNT MUST BE INCLUDED

- **6(15):** (a) a benefit shall be deemed to have been enjoyed by T any time an obligation issued by a debtor is settlor or extinguished and (b) the value of that benefit shall be deemed to be the forgiven debt amount at that time
- **6(15.1) – "forgiven amount":** has the meaning that would be assigned by 80(1) if **(a)** it was a commercial obligation, **(b)** no amount included in computing income because of the obligation being settled/extinguished at that time were taken into account **– 80(1):** "forgiven amount" at any time in respect of a commercial obligation issued by a debtor is the amount determined by the formula A-B, where A=amount issued, B=amount paid back or already included in T's income
- ***McArdle v MNR* (1984):** Forgiveness of debt was part of the mutual agreement to end employment – TAXABLE, forgiveness came about because of employment contract
- ***Norris* (1994 TCC):** *Waffle* applies – the benefit need not come directly from the employer
  - TP provided consulting services to Co: Sunys (through management Co: PMC [his employer]), TP received interest free loan from Sunys, which was subsequently forgiven
- ***Cousins* (1972 TRB); *McLlarghey* (1991 FCTD):** TAXABLE: Rejection of the argument that discharge of debt is compensation for decrease in net worth due to fall in housing or stock prices.
  - Mortgage for house, and loans for stock, if forgiven is income, not compensation for loss of value
- ***Greisinger* (1986 TCC):** follows *Ransom* – partial debt forgiveness when debt is incurred from a move where TP is unable to sell old house, then sells the new location and moves back to old house – this is pre-6(15), would now be overruled.

DID T GET AN INTEREST-FREE OR LOW INTEREST LOAN FROM OFFICE/EMPLOYMENT? DIFFERENCE BETWEEN PRESCRIBED INTEREST RATE AND WHAT WAS PAID MUST BE INCLUDED

- **6(9):** include "an amount in respect of a loan or debt" that is "deemed by 80.4(1) to be a benefit" – **80.4: (1)** where T receives a loan or otherwise incurs a debt of or as a consequence of a previous, current, or intended office or employment, the individual is deemed to have received a benefit equal to the difference between the interest at a prescribed rate (Reg 4301(c)) and the interest that is actually paid or payable
  - **80.4(3):** (a) (1) doesn't apply if the interest rate is equal to or higher than the commercial rate or (b) if the loan was included in T's income
  - **80.4(4):** the interest can't exceed what it would have been if calculated with the prescribed rate at the time the loan was incurred
  - **80.4(6):** if repayment terms are greater than 5 years, the loan is "renewed" every 5 years, so is deemed a new loan at the 5 year point
- **110(1)(j):** The deemed interest on the first $25K of a home purchase/relocation loan related to office or employment is non-taxable
- **248(10) – "home relocation loan":** loan received by T or T's spouse where T has commenced employment at a location and by reason thereof has moved from the residence in Canada at which, before the move, the individual ordinarily resided to a residence in Canada at which, after the move, the individual ordinarily resided if
  - **(a)** new residence is at least 40km closer to work location than old residence
  - **(b)** the loan is used to get a dwelling or buy into a co-op, with the purpose of living there

- **(c)** the loan is received in the way described in 80.4(1)
- **(d)** the loan designated by T as a home relocation loan, but you can only have 1 of these at a time!

Is the loan related to office and employment?

- **80.4(1.1):** a loan or debt is deemed to have been received or incurred because of an individual's office or employment … personal services business… if it is reasonable to conclude that, ***but for*** an individual's previous, current or intended office or employment, or services...
  - **(a)** the terms of the loan or debt would have been different **OR**
  - **(b)** the loan would not have been received or the debt would not have been incurred.
- ***Canada v Hoefele* (1995 FCA):** relation to (says because of, or consequence of) office or employment required by 80.4(1) is stricter than the "in relation to" of 6(1)
- ***Krull v Canada* (1996 FCA):** TP relocated and the employer paid for difference in mortgage amounts directly to the bank.
  - **80.4(1):** Language "as a consequence of" requires a strong causal connection between the debt or loan and employment, a connection closer than required by the language of 'in respect of' found in **6(1)(a)**."
  - Non-taxable because TP got financing and qualified for the loan independently (reversed by 80.4(1.1))
- ***Siwik* (1996 TCC):** there is no difference between the interest-free loan and the employer paying the interest to you (or bank for you).

WAS THERE A SCHOLARSHIP, FELLOWSHIP OR BURSARY GIVEN OUT?

- **56(1)(n):** all amounts received by T as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour **ordinarily** carried on by T, other than a prescribed prize, that exceeds T's scholarship exemption for the year calculated under subsection (3) must be included
  - Prizes received in respect of, in the course of, or by virtue of office or employment are taxable as income from an office or employment under **6(1)(a)** and not under **56(1)(n)**
- **56(3)(a):** any scholarship, bursary or fellowship for education (post-secondary or secondary) is fully exempt
- **56(3)(c):** the general exemption for all other scholarships of $500
  - **56(3.1):** can't claim the exemption if the scholarship is not connected to enrolment (fully taxable if in respect of office or employment 6(1)(a), or in the course of business 9(1))
- **6(1)(a):** benefits to persons who do not deal at arm's length with TP are deemed to be benefits to the employee (2011 amendment, which reverses *Dimaria*), **but**
  - **6(1)(a)(vi)** excludes benefits provided to individuals who do not deal at arm's length with TP, provided the employee deals at arm's length with the employer and it is reasonable to conclude that scholarship was not a substitute for remuneration
- ***DiMaria v Canada***: T's employer paid his son $3000 to attend university and recognize his academic achievement – money paid to son provided no material advantage to T because T was under no obligation to send son to school, and tax system taxes individual legal entities, not families – also not taxable under **6(1)(a) – REVERSED BY 2011 AMENDMENT OF 6(1)(a) –** but scholarships are still exempt (**6(1)(a)(vi)**)
  - Scholarships can be given on all sorts of grounds, not necessarily just academic achievement
  - **Scholarship:** a sum of money or its equivalent offered (as by an educational institution, a public agency, or a private organisation or foundation) to enable a student to pursue his studies at a school, college, or university
  - **Guiding principles to determine whether it is a scholarship:**
    - Limited number?
    - Assessment or selection process?
    - Objective criteria used in assessment?
    - Awarded based on some merit (sports, mature student, community involvement, etc)?
    - *A positive response would lead one to believe that it is indeed a scholarship
  - "Scholarship should be taxed in the hands of the true beneficiary, which is the student"

WAS THERE AN OPTION TO ACQUIRE SECURITIES? MUST INCLUDE

- **7:** warrants, *employee* stock options, and generally, rights issued to employees to buy shares in an employer-corporation are a taxable benefit
  - **7(3)**: where either an employer-corporation A or any other corporation B, which does not deal with A at arm's length, issues to an employee, T, of A the right to buy stock in either A or B, that right falls to be taxed under **7** or not at all
  - **7(4):** if your employment ends before you exercise or dispose of the options, you are deemed to remain an employee until you exercise or dispose of the options – no loophole

- **7(5)**: **7** doesn't apply if the employee did not received the rights "in respect of, in the course of, or by virtue of, the employment"
  - **7 refers to employment and so does not appear to include directors, who hold an office and are not "in service" of anyone (*Taylor* – actually, should be given an inclusive definition and should not be restricted to definition of employment in 248(1))**
- **7(1)(b)**: if the employee disposes of rights, he is deemed to have received the benefit in the year he disposed of the right – **7(1.7)** deems the cancellation of an option to constitute a transfer or disposition and deems amounts received on cancellation to be proceeds of disposition
  - Value = (price you sell the rights for) **–** (price you paid to acquire to option)
- **7(1)(a)**: if the employee exercises the rights, T is deemed to have received the benefit in the year he exercised the rights
  - Value = (FMV) **–** (what you paid to acquire option) **+** (what you paid for the shares upon exercising)

- **110(1)(d)**: allows employees to deduct ½ of the amount included under **7**, where the securities are non-convertible common shares or widely held trust units, the exercise price is not less than fair market value of the security when the option is granted, and the employee deals at arm's length with the employer
  - As long as they're not "in the money" shares

DID T GET AN ALLOWANCE? MUST INCLUDE THAT AMOUNT

- **S6(1)(b):** Any amount received by T as an allowance for personal or living expenses or as an allowance for *any other purpose* must be included in T's income from office or employment
- Allowance is not defined in the Act – CRA distinguishes between allowances and:
  - **Accountable advances:** where money is given ahead of time, but employee must show receipts and give back unspent money
  - **Reimbursements:** where the employee pays for something upfront and gets paid back after showing receipts
    - NOTE: reimbursements and accountable advances are generally not taxable BUT COULD fall under **6(1)(a)** as a benefit
- ***MacDonald v Canada* (1994 FCA):** RCMP member relocated and was paid housing subsidy as a result.
  - Taxable as income and an allowance was defined as the following:
    - Arbitrary: **predetermined** sum set without specific reference to any actual expense or cost. May be set through process of projected of average expenses or costs.
    - For a purpose: usually for a specific purpose
    - Discretionary: no need to account for spending (no receipts needed)
- ***North Waterloo Publishing Ltd v Canada* (1998)**: Taxable: TP given meal allowance
- ***Lepine* (1978 TRB)**: Monthly isolation bonus is income.
- ***Huffman* (1990 FCA)**: $500 allowance for clothes, but had to show $400 of receipts – non-taxable reimbursement as there was low discretion with how to spend the money

EXCEPTIONS TO ALLOWANCES

DID T GET TRAVEL EXPENSE ALLOWANCES? THESE ARE EXCLUDED FROM INCOME

- **6(1)(b)(v)** – reasonable allowances for travel expenses for the period where TP's job was selling property or negotiating contracts are excluded
- **6(1)(b)(vii)** – reasonable allowances for travel expenses (other than for use of a motor vehicle) received by an employee (other than an employee under **6(1)(b)(v)**) from the employer for travelling away from
  - **(a)** municipality where employer's establishment at which TP ordinarily worked or ordinarily reported was located, AND
  - **(b)** metropolitan area, if there is one, where the establishment was located, in performance of duties of employee's office or employment
- **6(1)(b)(vii.1)** – reasonable allowances for the use of a motor vehicle, received by an employee, (other than a **6(1)(b)(v)** employee) from the employer for travelling in the performance of the duties of the office or employment are exempt from inclusion in T's income
- **6(1)(b)(x) & (xi)** – amount for motor vehicle will be in excess of "a reasonable allowance" when it is based on something other than solely kilometres for employment purposes OR where TP receives both an allowance and reimbursement for the vehicle
- ***Blackman v MNR* (1967)**: TP was forced to live in Montreal 240 days a year for three years when he had home in H and was given a per diem

- Taxable: allowance was not for travel expenses, but was for increased cost of living in Montreal and for out of pocket expenses
- TRAVELLING VS SOJOURNING: Travelling: moving back/forth, Sojourning: to live temporarily (may depend on accommodation type)

- ***Bouchard v MNR* (1980)**: TP had a full-time job in Montreal, but taught part-time in Sherbrooke where that employer gave him allowance he claimed for travelling
  - Taxable: travel expenses were not because of employment, they were voluntarily incurred by TP
- **81(3.1)**: reverses ***Bouchard***, exempts a reasonable allowance or reimbursement for travel expenses incurred in respect of part-time employment; … if… throughout the period in which the expenses were incurred… the individual had other employment or was carrying on a business… provided the duties of the part-time employment were performed at a location not less than **80km** away from both the individual's ordinary place of residence and the place of other employment.
- ***O'Connell* (1998 TCC)**: "Reasonable" can be determined with reference to rest of Act, including limits on luxury vehicles.

BENEFITS/ALLOWANCES IN RELATION TO A SPECIAL WORK SITE?

- **6(6)(a)(i)** defines special work site as a location at which the duties performed by the TP were of a temporary nature, if the TP maintained at another location a self-contained domestic establishment as the TP's principal place of residence.
  - That was throughout the period, available for the TP's occupancy and not rented by the TP to any other person, AND
  - **(ii)** To which by reason of distance, TP could not reasonably be expected to have returned daily from the work site.
- **6(6)** Must be away for no less than 36 hours from principle place of residence and the allowance/benefit must be reasonable.
- **6(6)(a)(i)&(b)(i)** exempts inclusion of benefits or allowance for board, lodging, and transportation, between a special work site or (remote location) and the TP's place of residence
- **248(1) – "self-contained domestic establishment"**: a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats.
- ***Guibert v MNR* (1991 TCC)**: Guy keeps house in M when working in Q, thinks he works on temp basis but ends up staying a while. Employer gives him allowance for apartment in Q, which he uses 50% of time, kids live in it too.
  - Taxable: not a special work site, doesn't think it's an "unusual" place – Duff disagrees, hates on this decision.
- ***Jaffar v R* (2002)**: says that special work sites don't have to be in the bush, they can be in a big city
- ***Rozumiak v Queen* (2005)**: TP paid to set up office in Chicago for 3 year term, determined to be a special work site.
- **IT-91R4**: Duties considered temp if won't continue after 2 years, principle place = where you eat and sleep.

Reasonableness of daily return:

- ***Smith v Canada* –** TP lived 60km away- Taxable – not unreasonable to commute 60km
- ***Charun v MNR* –** 60km away but it was a shit road and included a ferry ride, plus he worked 12hr shifts
  - Non-taxable: you should consider length of trip, hours of work, type of road, type of day, health of TP
- **IT-91R4**: Generally 80km but consider the things above in *Charun* as well.

EMPLOYMENT DEDUCTIONS

- **8(2)**: Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.
- **8(10)**: An amount otherwise deductible… under **(1)(c), (f), (h) or (h.1) or (1)(i)(ii) or (iii)** shall not be deducted unless a prescribed form, signed by TP's employer certifying conditions set out in applicable provision were met …is filed.
- **67**: To be deductible, expenses must be **reasonable** in the circumstances.

DEDUCTIBLE TRAVELLING EXPENSE

- **8(1)(h)** allows the TP to deduct "amounts expended by the TP in the year (other than motor vehicle expenses) for travelling in the course of the office or employment," provided that the TP in the year,
  - **(a) was ordinarily required to carry on duties of O/E away from employer's place of business or in different places, and**
  - **(b)** was required under contract of employment to pay travel expenses incurred by TP in performance of duties of the office or employment, **except** where the TP,

    - **(c)** received allowances for travel expenses that was, because of **6(1)(b)(v), (vi) or (vii)**, not included in TP's income, **OR**
    - **(d)** claims a deduction for the year under **8(1)(e), (f) or (g)**. (for specific types of jobs)
- **8(4)**: meals not include in 8(1)(h) unless eaten when TP required to be away from municipality or metropolitan area for 12 or more hours.
- **8(1)(h.1)** allows TPs to deduct amounts expended in respect of motor vehicle expenses incurred for travelling in the course of an office or employment, also provided that the TP, in the year,
    - **(a)** was ordinarily required to carry on duties of office or employment away from employer's place of business or in different places, **and**
    - **(b)** was required under K of employment to pay travel expenses incurred by TP in performance of duties of office or employment, and also except where the TP,
    - **(c)** received allowance for travel expenses that was, because of **6(1)(b)**, not included in computing TP's, or
    - **(d)** claims a deduction for the year under **8(1)(f)**.
- **8(10)** applies – TP must submit form signed by employer to qualify for these deductions (only applies to 8(1)(h)).
- **8(1)(j)** allows deduction of interest payments and capital cost allowances related to the acquisition of a motor vehicle used to perform duties of the office or employment or an aircraft.

Travel in the Course of an Office or Employment

- ***Luks v MNR* (1958 ExCt) –** TP tries to deduct home/work commute because he had to bring tools he couldn't leave at work.
    - Denied: Travel done *before* and *after* his duty. Taking his tools may have been practical, but not part of his duty.
- ***Chrapko* (1988 FCA)** – TP worked at 3 tracks. Denied for 2 tracks in TO that he worked at 75% of time, allowed 3rd deduction because **8(1)(h)** encompasses travel to a place of work away from the places which the TP *usually* works.
- ***Merten* (1990 FCTD)** TP tries to deduct for travel from home to non-office work sites. **Held that the *Luks* rationale can no longer be applied following *Chrapko*** – can deduct travel from home to a work site which is not *usual* place of work.
- ***Evans* (1999 TCC)** – follows *Merten* **-** usual place of business was office but often went direct to schools from home. Allowed on secondary basis that TP had to carry files in car on a permanent basis, had no choice but to do so (against *Luks*).

MEAL DEDUCTION WHEN AWAY FROM ORDINARY WORK LOCATION

- **8(1)(h)** allows the TP to deduct "amounts expended by the TP in the year (other than motor vehicle expenses) for travelling in the course of the office or employment," provided that the TP in the year,
    - **(a) was ordinarily required to carry on duties of O/E away from employer's place of business or in different places, and**
    - **(b)** was required under contract of employment to pay travel expenses incurred by TP in performance of duties of the office or employment, **except** where the TP,
    - **(c)** received allowances for travel expenses that was, because of **6(1)(b)(v), (vi) or (vii)**, not included in TP's income, **OR**
    - **(d)** claims a deduction for the year under **8(1)(e), (f) or (g)**. (for specific types of jobs)
- **8(4)**: meals not include in 8(1)(h) unless eaten when TP required to be away from municipality or metropolitan area for > 12 hours
- **67.1**: meals and entertainment deduction is limited to 50% of otherwise deductible amount when incurred for the purpose of earning income
- ***Healy v. The Queen*** (1979 FCA) – TP lived in TO, worked at 2 places there and 1 in Fort Eerie. Deducted meals in Fort Eerie.
    - Deductible: **first**, find municipality where employee usually works, and **then** find whether he has to be away from there for more than 12 hrs in the course of work. Find the base – ignore outside locations (like Fort Eerie).
- ***IT-522R***: where TP ordinarily reports or reports most frequently, but if more than one establishment in a municipality all such places of business **shall be viewed as a single establishment.**

LEGAL EXPENSE DEDUCTION

- **8(1)(b):** T may deduct legal expenses paid to establish a right to salary or wages owed by employer/former
- **60(o.1):** T may deduct legal expenses incurred in the year, or the preceding 7 years, to establish a right to a "retiring allowance".

- ***Werle v The Queen:*** "establishing a right" language indicates that fees can be deducted even if litigation is not successful
    - Only able to deduct fees for seeking to establish right to wages, not entitled to deduct fees for wrongful dismissal claim, and damages arising from that
- ***Loo***: Deduction allowed in a case where employee sued because they were paid less than similarly classified employees in Toronto DoJ – allowed where there is a dispute in terms or conditions of employment

HOME OFFICE EXPENSE DEDUCTIONS

- **8(1)(i)(ii):** deduction for office rent (likely not allowed where taxpayer owns the property: ***Felton***, ***Thompson***, and other cases, but it was allowed in ***Prewer***)
- **8(13):** where otherwise deductible, deductible only to the extent that the workspace is either the place where the individual principally performs the duties of the office or employment **OR** used exclusively for the purpose of earning income from the office and employment and used on a regular and continuous basis for meeting customers (meeting can be phone contact: ***Vanka***) or other persons in the ordinary course of performing the duties of the office or employment
    - **8(13)(b)** deduction cannot exceed income from that workplace
    - **8(13)(c)** can carry deduction forward if it brings income to zero

MOVING EXPENSES DEDUCTIONS

- **62(1)** allows deductions for amounts paid by the TP as or on account of moving expenses incurred in respect of an eligible relocation subject to a number of limitations.
- **248(1) – eligible relocation:** means a relocation of T where
    - **(a)** the relocation occurs to enable T
        - **(i)** to carry on a business or be employed in Canada ("the new work location"), OR
        - **(ii)** to be a student in full time attendance at a post-secondary level
    - **(b)** both the before residence and the after residence are in Canada
    - **(c)** the distance between the before residence and the new work location is not less than 40km greater than the distance between the new residence and the new work location

62(3) – "moving expenses" include "any expense incurred as or on account of" and for limits to the below: (**** Does Not specify reasonable amount BUT- 67**: To be deductible, expenses must be reasonable in the circumstances.**)**	
(a) Travel costs for TP and "**members of household**' (including reasonable amount expended for meals and lodging), in moving from old to new house.	***Critchley* (1983 TRB)** –Cost of moving a dog deductible because the dog was characterized as a member of the household.
(b) Cost to TP of transporting or storing **household effects** in course of moving from old to new.	***Yaeger* (1986 TCC)** – Cost of moving/storing family horse not deductible because a horse was not a household effect.
(c) Cost to TP of meals and lodging near old or new residence for TP and "**members of household**" for period <15 days.	***Critchley* (1983 TRB)** –Cost of moving a dog deductible because the dog was characterized as a member of the household. NOTE: lack of reasonableness limit, unlike **(a)**
(d) Cost to TP of **cancelling the lease** on old residence.	Has been interpreted strictly.
(e) TP's **selling cost** in respect of old residence.	Has usually been interpreted generously – ***Pollard v MNR, Canada v Collin, Trigg v Canada***
(f) ** Where old residence is sold as a result of the move, cost of legal services in respect of the purchase of the new residence and any tax, fee or duty (except GST and VAT) imposed on the transfer or registration of title to the new.	Land title office fees are now included, so this overrules a tiny part of the ***Storrow*** result.
(g) Carrying costs: Interest, property taxes, insurance premiums and cost of heating and utilities in respect of the old residence, **up to $5000**, when not occupied nor rented and **reasonable efforts** are made to sell it.	You can't claim under this paragraph if you are renting. Cable television has been recognized as a utility under **(h)**. ***Lowe* (2007 TCC):** 'Reasonable efforts' – only told family + friends; was waiting out probationary period on new job to sell – deduction for amountsts incurred to maintain old resident were disallowed, **BUT** ***Cusson* (2006 TCC):** first TP told friends to advertise; then hired agent and sold. Carrying costs for whole time allowed.
(h) Cost of revising legal documents to reflect the change in address, replacing drivers' license and non-commercial vehicle permits (excluding any cost for vehicle insurance) and utility disconnect/connection ○ Does not include costs for acquiring new residence, but for (f)	Although cable television is a "utility", equipment and installation charges do not count as connection or disconnection costs, and hence are not deductible: ***Cusson* (2006 TCC)**

Distance to Relocation Requirement to be an Eligible Relocation:

- ***Giannakopolous v MNR* (1995 FCA):** New work location 36km by straight-line, 44km by odometer.
  - Deductible – shortest normal route is the preferred test.
- ***Lund* (1995 TCC)** – Although the ferry may have been inconvenient, it was still the shortest normal route.
- ***Nagy* (2007 TCC)** – CRA suggested a crazy route. Adopts ***Giannakopolous*** – a realistic, normal route

Purpose of Relocation:

- Issues when a delayed move or new responsibilities with same employer
- ***Dierckens* (2011 TCC)**: After 10 years of driving a school bus near Winnipeg, TP moves closer to work
  - Deduction allowed: court gives broad interpretation to the wording of the provision – seems to import no time limit
- ***Beyette v MNR* (1990 TCC)**: TP changes jobs, delays moving for 5 years because of health and market sucking.
  - Deductible: TP had good reasons to delay. There is no time limit in the Act so it's up to the TP to decide.
  - Duff thinks new language "enable TP to be employed" might frustrate this as TP already employed when he moves.
- ***Abrahamsen v Canada* (2007 TCJ):** confirmed that amended language of 'eligible relocation' ("to enable TP… to be employed") allows for the deduction of expense that were formerly disallowed on the basis that the TP had not already obtained employment before moving.

New Work Location:

- ***Gelinas* (2009 TCC)**: Move deductible because she got promoted to FT from PT and could no longer commute.
  - No new work location but work had materially changed, the move enabled her to work.
- ***Grill v Queen* (2009 TCC)**: TP commutes for 10 years then moves closer to work when divorces wife.
  - Denied: No new work location here, move did not enable him to work
- ***Moreland v Queen* (2010 TCC)**: TP tries to deduct moving expenses after getting new duties at same job.
  - Cites ***Grill***, denies deduction. No new work location. Rejects interpretative approach in ***Gelinas***.
- NOTE**:** TCC inconsistent w/ Moreland and Gelinas, make sure to mention this

Residences Before and After Relocation – where T was "ordinarily resident"

To determine if there is an eligible relocation, must determine where TP ordinarily resided before and after the move.

- ***Rennie v MNR* (1990 TCC)**: Moves from M to E, keeps M home, then moves E to V, claims M to E and E to V.
  - Denied because his ordinary residence was in V, **you can only have 1 ordinary residence at a time** (should have argued 1 big move from M-E-V)
- ***Jaggers* (1997 TCC)**: TP allowed to deduct cost of sale of house 2 years after move as he kept the old house since the new job was uncertain
- ***Neville* (1979 TRB)**: TP lives in temporary house for 2 years then moves from old house. Held: the old house was the ordinary residence the whole time.
- ***Pitchford* (1997 TCC)**: Moved from V to MJ then MJ to S. Left most furniture in storage until S, then tried to deduct the V-S transport. TP had no settled routine of life where they normally or customarily lived until S – no ordinary residence until S.
- ***Dalisay v Canada* (2004 TCC)**: Moved to St Johns to Regina, then to Edmonton seven weeks later. Both moves deductible, as there was never ordinary residence in Regina.
- ***Ringham* (2000 TCC)** – TP got work in H, sold home in Kanata and rented in K while travelling weekly to Thornhill where he stayed at an inn. TP then moved to T to work at employer's office. TP sought to deduct sales cost on the house in K. Held that there was realistically only one move as the rental premises was temporary and not an ordinary residence.
- ***Calvano v Canada* (2003 TCC)**: TP moved from B to live in rental in C, delayed selling house in B for 16 months after renting to a tenant who insisted on long lease. Court rejects argument that residence in C was temporary until B house sold and disallowed selling cost for B house on basis that TP ordinarily resided in C at the time of sale.
- ***Turnbull* (1999 TCC)**: TP kept home in NF, worked in BC & various other places. Returned to N yearly, listed it as home for taxes, built house there. Held TP was at all times ordinarily resident in NF, disallowed expenses for moves to/from BC.
- ***Macdonald* (1998 TCJ)**: TP moved from CB to AB for 6 weeks to work. No deduction because still ordinarily resided in CB.
- ***Cavalier* (2002 TCC)**: TP forced to move from D to F for 4 month teaching contract. Wife stayed in D, didn't change bank account or mailing address. Court said purpose of deduction is to encourage mobility in work force, allowed deduction. Ordinarily resided in F for 4 months – slept, worked and socialized at new work location.
  - NOTE: TP's stay was longer, this decision is also more recent, court wants to promote mobility of labour
- ***Klein v Canada* (1997)**: TP had 2 homes in M, tried to deduct selling cost of both when moved to V. Only 1 allowed.

Limitations on Deductibility

- **62(1)(a)** – moving expenses not deductible to extent they were paid on the TP's behalf in respect of… office or employment.
- **62(1)(d)** – No deductions to the extent reimbursements/allowances received by TP for expenses are not included in TP's income.
- **62(1)(c)** – limits amount that may be deducted to income from business or employment at new location, or **56(1)(n)(o)** to the aggregate of scholarships, bursaries, grants etc.
- **62(1)(b)** – permits expenses to be deducted in next year (if you don't make enough in 1st year → unlimited carry-forward)
- ***Hippola v The Queen* (2002 TCC)**: TP maintained res in N, worked in W and rented there while family stayed in N. TP then moved back to N intending to start own business but soon after started working for company M.
    - No deduction: TP's income from business that he moved back to start was zero.
    - Duff doesn't like this: purpose is that income must be linked to location; but why care about this?

TWO MOVE CASES	
Calvano v MNR	***Neville v MNR***
TAXED	**NOT TAXED**
Brampton to Coquitlam	Peterborough to Winnipeg
March 1995: Moves from Brampton into a rented house in Coquitlam. At the time of the move, rents his Brampton house to a tenant who insists on a 16-month lease. **June 1996**: Sells the Brampton house and tries to deduct selling costs of the house as moving expense in the 1996 tax year. He argues that he lived in Coquitlam only temporarily (no ordinary residence) until selling his Brampton house. **Held:** May not deduct 1996 selling costs because he was ordinarily resident in Coquitlam at the time.	**August 1973:** Accepts a government appointment in Winnipeg during a sabbatical from his strenuous job as a professor at Trent University, Peterborough. He does not sell the Peterborough home, anticipating returning at the end of the sabbatical. He moves into a rented house in Winnipeg. **Spring 1975:** Resigns position at Trent, buys a Winnipeg house seeking to deduct cost of moving household effect from Peterborough to Winnipeg as moving expenses. **Held:** His old residence was in Peterborough until spring 1975 because until that time, his domestic arrangements in Winnipeg were of a temporary nature.

THREE MOVE CASES			
Rennie v MNR	***Pitchford v Canada***	***Dalisay v Canada***	***Ringham v Canada***
TAXED	**NOT TAXED**	**NOT TAXED**	**NOT TAXED**
Montreal to Edmonton to Vic	Vic to Moose Jaw to S'toon	St John's to Regina to Edmo	Kanata to Kanata to Richmo
August 1981: T moves to E, begins working for U of A. Doesn't sell the M house. T claims moving expenses from M to E for 1981 tax year. **August 1983**: T moves to V, begins working for UVic. Rents in V. T claims moving expenses for moving from E to V for 1983 tax year. **1984:** T sells M house, buys V house. T claims cost of selling M house and moving remaining personal effects from M to V. **Held:** 1984 deductions disallowed because T was ordinarily resident in V at the time.	**1993:** T moves from V to MJ. T leaves much of his furniture in storage at the time. T had no "settled ordinary routine of life" until moving to S. **1994:** T moves from MJ to S. T claims moving expenses for moving furniture from storage to S. **Held:** T moved from V and didn't take up residence in which he ordinarily resided until he got all of his furniture out of storage and established himself in S.	T moves from SJ to R and 7 weeks later, T moves from R to E. T seeks to deduct the cost of moving from SJ to R against employment income earned in E. **Held:** T was never ordinarily resident in R. She moved from SJ to E, so all moving expenses incurred along the way are deductible.	**1995:** T accepts job offer in Hungary. Expecting to move at any time, T sells K house and moves to a rented condo in K. T does not unpack many boxes at condo and never sees it as ordinary residence (although he does change his mailing address to this address). Move to Hungary is delayed. **1996:** Delays in Hungary job became indefinite, so T moves from K to Richmond in order to work at same employer's Thornhill, Ontario office. **Held:** There was realistically only one move (from the original Kanata home to Richmond) and all moving expenses along the way are deductible.

DEDUCTING CHILDCARE EXPENSE

s.63 should be allowed under carefully controlled terms – nothing allowed outside of this extremely exhaustive provision (***Symes***)

- **63(1)** there may be deducted "annual child care expenses **(63)(3)**" in respect of an "eligible child **(63)(3)**"
  - **63(3)** limits deductions to $7,000/child under 7, $4,000 until 16, and $10,000 if disabled
  - **(e)** limits amounts to lesser of
    - **i)** 2/3 of earned income, and
    - **ii)** total amounts in respect of eligible children
- **63(2)** deduction must generally be taken by lower earning spouse or common law partner
  - **63(2)(b)(i):** EXCEPT where spouse is
    - **(a)** a student, **(b)** medically incapable of care, **(c)** in prison, **(d)** living separately because of marital or common law breakdown (must be apart for 90 days by end of year)
- **63(3) – "child care expenses"**
  - **(a)** to enable TP, or supporting person to
    - **i)** perform duties of office or employment, **ii)** carry on business, **iii)** carry on research, **iv)** attend designated educational institution, where TP enrolled in a program not less than 3 weeks in duration **AND**
      - **A)** at least 10 hours per week on courses or work **OR**
      - **B)** 12 hours per month on courses in program, **AND**
  - **(b)** by a resident of Canada other than a person
    - **i)** who is father or mother of child, **ii)** who is a supporting person of the child, or is under 18 and related to TP **OR iii)** whom TP claims as a dependant under s.118

  EXCEPT
  - **(c)** limits amounts deductible in respect of camp and boarding school fees to a weekly dollar amount (1/40 of annual amount x the number of weeks there [definition in 63(3) "childcare expense" (c)]
  - **(d)** prohibits deduction for amounts paid for "medical or hospital care, clothing…"
- **63(3) – "eligible child"**
  - **(a)** child of TP or TP's spouse or common law partner, **OR**
  - **(b)** child dependent on the TP or TP's spouse or common law partner for support and whose income does not exceed basic personal credit
  - provided that the child **(c)** is under 16, **OR (d)** is dependent on TP or on TP's spouse or common law partner and has a mental or physical infirmity

Eligible Expenses

- ***Levine:*** expenses for recreational activities are not childcare expenses because they are not incurred for the purpose of watching over children and enabling parents to earn income
  - Factors: duration, would they have been incurred if parents were working or not, what is the main purpose of the program (teach arts, etc.)
  - Finders fee paid for finding nanny deductible, on the basis that it was for the purpose of providing childcare
- ***Acharya:*** Even if some education, musical or other, was involved that is not sufficient to disqualify an expense as a childcare expense
- ***Bailey*:** fees for private academy were deductible ($4,000, daycare was $5,000), on the basis that child was 10 days too young for school; expenses were incurred for reasonably priced childcare; the education was an incidental benefit
- ***Jones:*** fees paid for gymnastics classes after school, and during summer and spring breaks, were deductible because the main purpose for enrolment was for TP to perform duties of employment
- ***Lessard:*** The Act does not require that the form of childcare be chosen on the basis of the parent's work needs; choice of childcare is an exercise of parental discretion. Deduction was allowed for residence fees for ballet school

Income Earning Purpose of Childcare Expenses

- ***D'Amours*:** Hiring the nanny while on mat leave did not enable employment at that moment, but it did enable her to return to work, and to maintain the employment, therefore expense was deductible
- ***McKluskie*:** Amount paid for nanny while mom still of work was not-deductible because it was classified as a "standby fee"
- ***McLlean*:** Fee for nanny while mom was still off of work was deductible because market conditions were such that she had to hire a nanny as soon as possible in order to have a nanny which would enable her to return to work
- ***Sawicki*:** TP depressed, hires nephew for care on Weekends and holidays, disallowed because the services were not sufficiently connected to "enabling" performance of employment duties
- ***Lebreque*:** expenses for Saturday program for disabled child was allowed because otherwise domestic tasks would not get done – this enables TP to hold full time employment from M-F (***but for*** childcare services, TP would have to give up employment, or move to part time employment)

Eligible Providers

- ***Clogg***: TP's spouse carried on daycare service as sole proprietor, husband paid her to look after child, expense was disallowed

NOTE: ***Symes***: childcare expenses not allowed as a business deduction under **S9** because **S63** is exhaustive re: childcare expenses. To allow as a business deduction would be inequitable because it would give those carrying on a business a huge tax-break in comparison to those who are employees.

INCOME OR LOSS FROM A BUSINESS OR PROPERTY AND OTHER INCOME

Income that is "business" or "property" income is fully taxable under **3(a)** and **9(1)**, and losses from the same are fully deductible from **3(d)**.

- **3(a)** – business or property are identified as a source of income, **3(d)** – permits Ts to deduct losses from business or property
- **9(1)** – income from business or property is **PROFIT** from that business, implying the allowance of deduction of reasonable expenses incurred
- **9(2)** – "loss": T's loss, if any … from that source is computing by applying the provisions respecting computation of income from that source, with such modification as the circumstances require
- **9(3)** – income from property and loss from property **do not** include capital gains or losses from disposition of that property

CHARACTERIZATION

- **Property:**
  - Ordinary Meaning: right to possession, use or disposal of anything. Everything which is subject to ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal
  - Extended Meaning: **248(1):** property of any kind whatever whether real or personal or corporeal or incorporeal
- **Business:**
  - Ordinary Meaning: habitual occupation, profession or trade. Activities or enterprises which have as their object gain through the utilization of labour and capital in varying combinations. Investments of time and capital on a future outcome.
  - Extended Meaning: **248(1):** profession, calling, trade, manufacture, or undertaking of any kind whatever or adventure or concern in the nature of trade – does not include an office or employment – this is income from a combination of labour and capital

Ordinary Meaning (objective and subjective factor)

- ***Smith v Anderson*** **(1880)** – Business = anything which occupies the time and attention and labour of a man for the purpose of profit. (1) organized activity (objective) (2) for purpose of making a profit (subjective)
- ****Morden*** **(1961 Exch. Ct.) –** M bets on horses systemically in past, then casually. MNR wants to tax casual profits as business.
  - **TEST (subjective): Was dominant objective entertainment or enterprise of commercial character?**
  - Held: gambling was for purpose of entertainment, therefore not taxable
- ***Leblanc:*** Brothers who systematically gambled and won playing sports lotteries not taxed (even if player has REOP, not taxable, the flipside is that gambling losses are not deductible)
- ***Graham v. Green*** **(1925 KB)** – organized effort is 'taxable vocation', simple betting of gambler as habit or addiction is not.
  - If you're just betting, you can't really expect to win over the long run →hint of the REOP test
  - **Note***:* gambling gain might be taxable under extended definition of business in **248(1)** or as income from an specified source under **3(a).** Most cases hold gambling gains as not taxable. No decisions consider if it might be income from a source 3(a).
- ***MacEachern*** **(1977 TRB)** – treasure hunting – held to be income from a business as partners intended to sell anything they found for profit, it was a well-organized endeavour and there was potential for substantial profit.
- ***Tobias*** **(1978 FCTD)** - Failed treasure hunt. Allowed - uncertainty of profit doesn't stop expenses from being B expenses.
- ***Cameron*** **(1971 TAB)** – C, salmon + herring fisherman, engages with others to catch and sell two killer whales. TP said he wasn't a whaler. Held that the captures were fortuitous (windfall) and not business income.
  - NOTE: that this might be covered under AINT as an organized activity with view to profit.

Extended Meaning – Adventure in the Nature of Trade

- **IT-459** (approved by SCC in ***Friesen***):
  - **Must consider all circumstances of the transaction** – there is no single criterion, just a series of main tests:

        - Did TP acquire and deal with the property in the same way as would an ordinary dealer in that property?
            - Short holding period, looks for buyers, improve marketability, commercial bkgd in sim products
        - Does the nature and quantity of the property exclude the possibility that it was purchased as an investment or capital item, or that it could have been disposed of other than in a transaction of a trading nature?
            - Can't produce income, no personal use, requires operation to produce income but TP doesn't know how to operate, only usable for resale
        - Is TP's intention, consistent with other evidence pointing to a trading motivation?
            - Intention for profit not determinative, intention to sell at first available opportunity suggests AINT, counts if resell for profit was 2nd intention if 1st intention didn't work out
- ***MNR v Taylor* (1956 ExCt)**: TP buys load of metal (lead), sells to his own company, makes profits. Held: Taxable AINT.
    - POSITIVE SIGNS IT IS AN AINT
        1. **'Manner of dealing' test:** was the transaction carried out the way a professional trader would do it? (Seek out purchasers?, improve property?, hold it for a short time then flip it?)
        2. **Nature and quantity of subject matter:** too much for personal use? Is it capable of having personal use?
        3. **Intention:** Profit? REOP? (Though here, wasn't a factor – this isn't an essential factor)
        4. **Risk or danger:** Presence suggests an AINT (not present/important in this case)
    - NEGATIVE SIGNS THAT IT AIN'T AN AINT
        1. Singleness or isolation of transaction has no bearing, though might be an indicator (has he done it before?)
        2. No organization necessary (i.e. threshold lower than for a business)
        3. Nothing needs to be done to the subject matter to make it saleable
- Secondary Intention doctrine:
    - ***Regal Heights Limited* (1960 SCC)**: AINT - TP had "secondary intention" to resell property, notwithstanding that "primary intention" was to build a shopping center [income from an asset]. Subsequent cases have established that a transaction may be an AINT where ***but for*** possibility of re-sale at profit, wouldn't have acquired the property.
    - Same with ***Racine***

Reasonable Expectation of Profit Test (***Stewart***)

- Is it purely commercial?
    - **Yes**→ BUSINESS
    - **NO**→ Is it done with REOP?
        - FACTORS to consider re: REOP
            - Capability of venture to make profit
            - TP's training
            - TP's intentions or business plan
            - History of venture (profit or losses)
        - **YES**→BUSINESS
        - **NO**→ FUCKED (hobby, no deduction)
- ***Stewart v Queen* (2002 SCC)**: TP buys 4 condos, gets rent but suffers losses. No personal element – used as tax shelter.
    - Held: Commercial activity, TP entitled to deduct losses, despite fact there was no REOP.
    - Profitability of an activity doesn't necessarily effect the deductibility of expenses – REOP just one factor.
    - Rejects REOP test to determine a source of income – determining whether there is a source must be rooted in Act.
    - To apply **9(1)** a TP must first determine whether he has a source of either business or property income:
        - **Step 1:** Activity undertaken in pursuit of profit? Or personal endeavour? REOP can help answer if it's of a commercial nature BUT only necessary if there is a ***personal element*** – don't use to 2nd guess biz decision.
            - Consider past years' profit/loss, TP's training, intended course of action, capability for profit
        - **Step 2:** Determine whether it is business or property.
- ***Walls* (2002 SCC)**: investment in LLP to get tax loss. Deductions allowed as it was an ongoing commercial practice.
- **18(1)(h)** disallows deduction of "personal or living expenses" from business or property income

- Disallows losses for property rented to a related person (***Maloney***) or if part of property inhabited by TP (***Saleem***)

INCLUSIONS – INCOME FROM BUSINESS AND OTHER INCOME

GAINS FROM ILLEGAL ACTIVITIES MUST BE INCLUDED

- ***No 275 v MNR* (1955 Tax ABC):** TP was a hooker. Operation in nature of trade and therefore taxable. Once it is established that they are earnings from a business, doesn't matter if the business is legal or illegal.
- ***Smith* (1927 PC):** Bootlegging profits. No valid reason for finding Parliament would exclude illegal activities. To do so would increase the burden on lawful businesses.

DAMAGES AND OTHER COMPENSATION MIGHT BE A WINDFALL

Surrogatum principle applies, where pursuant to a legal right, compensation is paid that replaces otherwise taxable business income

- ***Canada v Manley* (1985):** TP gets damages for breach of authority (finders' fee K that didn't get fulfilled).
  - Taxable: surrogatum says that if damages are replacing profit (for AINT here), the damages are taxable
- ***London & Thames Haven Oil Wharves v Attwooll* (1967):** include in income where (1) received pursuant to legal right; (2) characterization for tax purposes follows characterization of received amount in lieu of which damages paid **(deemed business income)**
- ***Donna Rae Ltd* (1980 TRB)**: TP's fishing gear destroyed. Compensation: 70% capital [gear], 30% income [lost profits].
- ***BC Fir & Cedar Co* (1929 ExCt):** Manufacturer/dealer of lumber products gets insurance $ after fire destroys plant.
  - Payment for lost profit and fixed charges – both counted as income.
- ***HA Roberts Ltd* (1969 SCC):** TP gets payment from client when long-term contract ended – results in mortgage department closing.
  - Department was separate business, the contract was a capital asset of enduring nature → capital receipt.
- ***Pe Ben Industries v MNR* (1988 FCTD):** long term K to transport to oil sands distinguished from TP's ordinary business – long term contracts more likely to be capital. More likely to be capital **for a smaller company** (bigger effect on business).
- ***Canadian National Railway v MNR* (1988):** One of many contracts cancelled – loss of income, just compensation for future profits.
- ***Bellingham* (1996 FCA)**: TP gets extra payment for expropriation. Non-taxable windfall because it is punitive damages.
- ***Cartwright & Sons* (1961):** Punitive damages for copyright infringement non-taxable – don't comp for profits/capital.

VOLUNTARY PAYMENTS ARE WINDFALLS

Voluntary payments to businesses have repeatedly been held to be windfalls. The *surrogatum* principle is typically only applied where T had a legal right to the payment in lieu of which he receives compensation (so not applicable here). ***Goldman*** emphasized compensation for services rendered from the point of view of the recipient.

- ***Federal Farms v MNR* (1959 ExCt):** TP got voluntary payment from relief fund to comp for lost crops and supplies.
  - Non-taxable: Not the same as insurance because no legal right to payment, no contract, not set up in advance, no expectation, unlikely to recur, did not result directly or indirectly from any business operation
  - Just because payment related to/kind of measured by amount of loss doesn't affect nature or quality as a gift
- ***Campbell* (1958 Tax ABC):** TP had a contract to swim across lake, doesn't make it but gets paid for doing it anyways.
  - Voluntary payments arising out of services rendered are not gifts – they are taxable
- ***Cranswick* (1982 FCA):** TP has shares in X, X sold part of company for low $ so gave shareholders $ to avoid litigation.
  - Windfall: not income from shares (not dividend), not something TP could have expected, no obligation.
  - Factors:
    - Enforceable claim to payment? Organized effort to recover payment? Payment sought after or solicited? Payment expected? Element of foreseeable recurrence? Customary source of income?

Consideration for or in recognition of property, services or anything else provided by TP? Was it earned?

- ***Frank Beban Logging* (1998 TCC):** Province makes park, pays logging company with rights even though company didn't qualify for statutory compensation
  - Windfall: voluntary gift to which the company had no legal right.
- ***Mohawk Oil* (1992 FCA):** Payment in consideration for suing, therefore taxable because of surrogatum.

PRIZES AND AWARDS ARE KIND OF TAXABLE

- **56(1)(n):** include all amounts (other than ... amounts received in the course of business, and amounts received in respect of, in the course of, or by virtue of an office or employment) received by the TP in a year…as or on account of... A prize for achievement in a field of endeavour ordinarily carried on by the TP, other than a prescribed prize
  - Non-taxable for first $500 (scholarship exemption **56(3)**), taxable after that

Like voluntary payments, prizes and awards are often received without legal entitlement. However, there may be valuable consideration by recipient to grantor for prize or award, or opportunity to receive a prize or award. **Just because it is a prize does not point to anything in particular**→ALWAYS DO THIS FUCKING ANALYSIS!!!:

1. **6(1)(a)** and **9(1)**: see if it falls into office and employment or business income (prizes in competitions) →Yes? →TAXABLE
2. **56(1)(n):** prizes that are not received in the course of a business may be **taxable** if they are "for achievement in a field of endeavour ordinarily carried on by the taxpayer"
   - If so, then taxable, but subject to a $500 exemption in **56(3)(a)** UNLESS it falls in next category
3. **56(3)** list of exempt prizes because they are "**Prescribed Prizes**" and are completely exempt:
   - **"Prescribed Prizes"** defined in **Regulation 7700:** recognized by general public **AND** for meritorious achievements in arts, sciences, or service to the public
     - NOT TAXABLE (***Foulds, Labelle***)
     - Not for amounts reasonably regarded as compensation for services rendered or to be rendered, nor student scholarships or bursaries

- Awards received in course of business or from office or employment are fully taxable

Prizes from lucky draws not taxable:

- ***Abraham v MNR* (1960)**: TP owned store, got draw entries for ordering stock, won a car in a draw.
  - Non-taxable: Won by pure chance (though from selected pool) – severs business connection (less chance, less tax)
- ***Poirier* (1968 Tax ABC):** Car dealer meets quota, entered into draw, wins vacation paid by car company.
  - Non-taxable: No characteristics of income, not taxable benefit as employee either.

Prizes in Competitions may be taxable as business income:

- ***Rother* (1955 Tax ABC):** Architect gets $2K in design competition
  - Non-taxable: not received as employee, for services nor as purchase fee – prize or gratuitous award nature.
- ***Watts* (1966 ExCt):** Taxable, Architect wins design competition. Though not from course of business, court construes contract between TP and competition by virtue of 'entering into this competition by the respondent and the filing of drawings pursuant to it' – semi-finalist situation
  - **NOTE: 56(1)(n)** would make both of the above taxable on the basis that they are prizes in a field of endeavour ordinarily carried out by the taxpayer
- Annuity payments:
  - ***Rumack v MNR* (1992 FCA):** TP wins cash for life, payments financed by annuity not owned by TP.
    - Not taxed on capital but taxable for income – regular, certain, foreseeable, expected, enforceable.

Prizes for Achievement in a Field of Endeavour (taxable, subject to $500 exemption in **56(1)(n)**):

- ***Canada v Savage* (1983):** pre-56(1)(n) including "other than in course of business or employment" - $300 from employer for doing 3 courses
  - "Prize" is for something accomplished, not just competition with others
  - Must be achieved in field ordinary carried on by TP; rules out prizes won in games of chance, at party, for athletics
- ***Turcotte v Canada* (1997):** cinema manager goes on game show, wins after answering questions about movies
  - Not taxable: area of culture not a field of endeavour - "defined, specific field… continuously engaged in by TP"

Prescribed Prize (tax exempt): **56(1)(n), *Foulds, Labelle***

- **Regulation 7700 – "prescribed prize":** any prize "recognized by the general public" and "awarded for meritorious achievement in the arts, the sciences or service to the public" but does not include any amount that can reasonably be regarded as having been received as compensation for services rendered or to be rendered
- ***Foulds v Canada* (1997 TCC):** Music prize awarded to TP for managing a band

- Non-taxable: meritorious achievement in arts and recognized by general public (advertised in press/ radio)
- ***Labelle v Queen* (1994 TCC):** Accounting professor wins a case competition for accountants – recognized by general public?
  - Non-taxable: Minister must prove it isn't recognized by general public, can't just say it isn't

INCLUSIONS – INCOME FROM PROPERTY

RECEIPT OF INTEREST IS TAXABLE

- **12(1)(c)** - Income includes any amount received or receivable by the TP in the year (depending on the method regularly followed by the TP in computing the TP's profit) as, on account or in lieu of payment of, or in satisfaction of, **interest** to the extent that the interest was not included in computing the TP's income for a preceding taxation year
- **20(1)(c)** provides for a deduction for the payer of interest

CHARACTERIZATION – IS IT INTEREST?

- TEST (***Perrini***): Interest is not defined in the act, the 3 elements for the legal definition of interest are:
  1. Compensation for use of money lent to another person
  2. Interest relates to a principal sum
  3. Accrues from day to day, even if payable at intervals
- Just because a contract says a sum is "interest" doesn't necessarily mean it will be characterized that way by the courts. Similarly, just because a contract claims an amount is not "interest" does not mean the courts will not say it is – nobody gives a shit what it is called, just what it actually is
  - Evidently, this means the Minister will contest a TP's characterization where it is in his interest to do so
  - But a TP may also challenge his own characterization of an amount (ex: what he named it in a contract)

Interest payment referable to principal sum determined retroactively:

- ***Perini Estate v Queen* (1982 FCA):** TP sells company for lump sum payment and payments for 3 years based on net profits. Interest payments on 3yr payments were computed from closing day until payment. Couldn't be calculated until profits known.
  - Interest (thus, taxable): Parties to a contract can give a contingent liability retroactive effect such that it could qualify as a principal sum to which interest could be said to be referable. Even though the payments were contingent, they became retroactive when the conditions were satisfied; thus the payments could be deemed interest on a principal.
- ***Miller (1985)*** – TP received retroactive salary increase with "interest" payable from time of initial salary payment; court followed *Perini* in finding principal amount doesn't need to be absolutely fixed in order for there to be interest
- ***IT-369R*** – Interest Income – where interest is retroactively awarded pursuant to an award for damages it is taxable as income. Interest pursuant to payment made after the closing date is taxable.

Payments Comprising Compensation **–** can be distinguished

- NOTE: Occasionally, a TP may succeed in characterizing an amount called "interest" as something else
- ***Bellingham* (1996 FCA)** – substance over nomenclature – where something is classified as simple interest payment but is actually punitive damages will not be taxable – expropriation payment had additional interest payment on court-ordered increased amount
- ***RG Huston et al.* (1962 ExCT)** – payments from war claims fund called/calculated as interest but were grants as TP had no property or legal or equitable right to amount on which interest was computed. (distinguished in *Perini*)
- Interest on settlement payments (so probably also pre-judgment interest?) is legally interest
- ***IT-369R*** – Interest Income – where interest is retroactively awarded pursuant to an award for damages it is taxable as income. Interest pursuant to payment made after the closing date is taxable.

Deduction of Interest Expenses **– 20(1)(c)**

Characterization of a payment as interest or not interest does sometimes come up in the deductions context. Obviously, the incentives of the Minister and TP are reversed.

- ***Yonge-Eglinton Building* (1974 FCA)** – TP borrowed money for building; paid "ordinary" interest, and "additional interest" of 1% of annual gross rental income; this amount not interest under 20(1)(c) (therefore not deductible).
- *Expanded concept of interest* ***Sherway Centre* (1998 FCA)** -- TP financed mall with bonds paying fixed interest and "participatory interest" equal to 15% of TP's "operating surplus". Held: law must consider new and innovative financing schemes, allowed deduction [20(1)(c)]. Interest must only be ascertainable on daily basis, not necessary it be expressed on a daily basis. Court also questions requirement of principal in the traditional sense—All that is required is that the payment's purpose be compensatory for loaning money and getting back money at a later time.

- ***Sherway* TEST** - Are payments a percentage of, *or in any way related to*, the principal sum? → broadened concept of interest (which Duff thinks is a bit distorted – as long as there's principal, it's interest)

Combined Interest and Capital:

16(1)(a): Deemed interest where payment of interest and capital are combined: where, under a contract or an arrangement, an amount can reasonably be regarded as being in part interest and in part of a capital nature, the amount that can reasonably be regarded as interest is deemed to be interest

- **Test: *Groulx***: Farmer sold property for a price far above FMV in exchange for waiving interest on the purchase price
  - Was the property sold at a price above FMV, indicating that there was an attempt to make the payment a capital receipt, not interest?
  - Negotiations between the parties: does it seem like interest has been contemplated, and was the price increased to reduce the interest?
  - Terms of the agreement (discounts for early payments → indicates this is "interest" like)
  - Business practices re: interest in similar transactions
  - ***Vanwest*:** None of the factors in Groulx were present, interest was only contemplated on late payments (as was standard business practice re: timber).
  - The relationship between FMV and purchase price is the most important
- ***Rodmon Construction* (1975 FCTD)**: No interest doesn't automatically mean it's an avoidance transaction.
  - FMV is the most important factor – what is the highest price in open, unrestricted market between informed, arm's length parties?
  - Price in excess of FMV is deemed interest
  - But how to get FMV? How to determine who would actually pay it? Duff thinks it's too hard to discern.

ROYALTIES MUST BE INCLUDED AS BUSINESS OR PROPERTY INCOME

12(1)(g) – "royalty": amount received by TP that is dependent on the use or production from that property in the year (could technically include rent as well)

- ***Morrison*:** TP agreed to let contractor remove rock from land for a per tonne price, upon conclusion of removing the rock, the amount of rock was not computed, and a lump sum payment was made in satisfaction of any outstanding amounts due for rocks
  - The lump sum paid was not dependent on the use, there is no language of "in lieu of" in the provision, therefore the amount is not taxable as a royalty payment
- ***Huffman***: Sold mining leases for $25,000 to be paid in installments of 25% of the value of gold extracted every year. When the language changed to include "amount …*in the year*" the payments became royalties, because the value of the installments (amounts) were dependent upon the value of the gold extracted "*in the year*"
- ***Lackie & Mouat*:** Conferral of exclusive right to enter land for a period of time and remove rock was classed as "use of property" based on statutory interpretation of "property" as "a right of any kind whatsoever"

Minimum Payment might be Royalties

- ***IT-462*: 5(d)** In cases where there is a minimum payment, any amount that is dependent upon use is a royalty payment. However any top-up payment necessary to reach the minimum payment is a capital receipt.

Downward Adjustments in Price

- ***Pacific Pine*:** Property may be sold for a fixed price, with a proviso that the price will be adjusted downward if certain production or revenue expectations are not met.
  - The amounts received in this case will not be deemed to be dependent upon use of property so long as there was reasonable expectation that the conditions will be met (a question of fact)(***IT-462* para 9**)

DEDUCTIONS - MIXED PERSONAL AND BUSINESS EXPENSES

Must pass 6 different tests to be an allowable deduction:

1. Be of an income nature (and not a capital expenditure)
   - Profit under **9(1)** is a net concept – (revenue **minus** expenditure) – capital not included
   - **9(1) Business Practices Test** - whether the outlay or expense was made or incurred by the TP in accordance with ordinary principles of commercial trading or well accepted principles of business practice.
2. Be reasonable in amount as per **67**
3. **18(1)(a) – Income Producing Purpose Test** - no deduction shall be made ... except to extent made ... for purpose of gaining or producing income from business or property
4. Not a personal expenditure **- 18(1)(h):** disallows personal/living expenses, except travel, incurred for T's business.
   - **248(1)** because personal expenses are not incurred in connection with a business carried on for profit, or with a reasonable expectation of profit

5. Not be expressly prohibited by the act (ex: **67.1** lets you only get 50% for meals/entertainment, **18(12)** limits home office)
6. Not constitute abusive tax avoidance – *GAAR* **s.245**

- ***65302 B.C. Ltd***: downplayed business practices test in 9(1), emphasizing only income-producing purpose test in 18(1)(a), rejected avoidability and public policy tests for 18(1)(a); held fines and penalties might be non-deductible where breach so "egregious or repulsive" that subsequent fine cannot be justified as being incurred for the purpose of producing income
  - Not clear if it rejects incidental/remoteness test from *Imperial Oil*
- ***Symes v Canada* (1993 SCC)**: TP wanted to deduct childcare expenses as a business expense –non-deductible under s. 63.
  - **9(1)** test from ***Royal Trust Co***: business practice test – consistent with ordinary principles, etc?
  - **18(1)(a)** income producing test: question of fact. Look at whether it's accepted by accountants, a normal business expense, would it have been occurred but-for the business, does the need exist apart from the business, is it a lifestyle or consumption choice (courts don't like talking about this)

RECREATION, MEALS AND ENTERTAINMENT EXPENSE DEDUCTIONS

- ***Royal Trust Co v MNR* (1957)** – TP paid memberships in social clubs for employees to help biz development
  - Approach to analysis of deductions:
    1. **9(1)** - Deductions are generally allowable under 9(1) if they are in accordance with the ordinary principals of commercial trading, or well accepted principles of business practice (for that specific business).
    2. Apply "business purpose" or "income producing" test of **18(1)(a)** – Was expense incurred for purpose of earning income? Don't have to actually earn income, but must have intention to earn income off expense. Here, there was.
  - **18(1)(l)(ii)** – Overrules specific result in *Royal Trust Co*, but analysis is still important.
    - No deducting membership fees/dues in any club main purpose of which is to provide dining, recreational or sporting facilities for members. To determine "main purpose" of club, look at club's by-laws, organization, and particularly, whether > 50% of its assets are used in providing dining, recreational or sporting facilities.
    - If employer pays fees for employee normally a taxable benefit, except for a social or athletic club. The membership in the facility must be shown to primarily be for the employer's benefit or else it will be taxable in the employee's hands.
- ***Damon Developments* (1988 TCC)** – deduction disallowed under 18(1)(l)(ii) for membership fees to the Saskatchewan Roughrider Football Club because it was a club, [might've been different if just buying game tickets]
- ***Scott (1998 FCA)*** – bike courier may deduct *extra* food/water he consumes as 'fuel'. Limited by 67.1(l) or no b/c it's fuel?
- **18(1)(l)(i)** – No deduction for the use or maintenance of property that is a yacht, a camp, a lodge or a golf course or facility, unless it was made in the ordinary course of his business of providing the property for hire or reward.
  - ***Sie-Mac Pipeline* (1992 FCA)** – TP sent clients/employees to fishing lodge for appreciation and inform them of new products. No deduction allowed – "use" in 18(1)(l)(i) doesn't only mean own/rent, need not be exclusive. Related incidental expenses also not deductible (food, transportation to lodge, etc.) [Taking customers to restaurant is deductible]
  - Under **Reg 1101(2)(f)** no deduction for capital cost allowance in relation to such property.

What is a yacht?

- ***John Barnard Photographers* (1979 TRB)** –deduction allowed because "use" was for research purposes
- ***C.I.P. Inc.* (1988 FCtD)** – Tugboat, not a yacht, is deductible for renting expenses for biz + pleasure.

What is a camp or lodge?

- ***Fehrenbach* (1995 TCC)** – doesn't include condo used by lawyer to entertain clients; (But disallowed under 67 (unreasonable) and not for purpose of gaining or producing income (18(1)(a)), but personal (18(1)(h)).)

What is a golf course or facility**?**

- ***Groupe Y Bourassa*** – Green fees related to "direct use of golf course/facility" so meals/drinks are also DISALLOWED because they're incidental

Parties

- ***Adaskin* (1953 Tax ABC)** – Deduction for cast party disallowed because it was not incurred to gain/produce income under 18(1)(a).
- ***Roebuck* (1961 Tax ABC)** – Cost of clients at bat mitzvah disallowed, not accepted business practice (9(1)) or in 18(1)(a) test
- Must be clear that they're a guest of the company (also according to accepted business practices (9(1), and income producing purpose 18(1)(a))

- ***Fingold* (1992 TCC)** – Clients at wedding denied because they didn't know they were company guests.
- ***Grunbaum* (1994 TCC)** – Invites from the company, correspondence through company, so deductible (clear were biz guests)

Limits on Meals and Entertainment Deductions:

1. **67.1(1)** limits amount TP may deduct in respect of human consumption of food or beverages or enjoyment of entertainment to 50% of the lesser of amount actually paid/payable and amount that is reasonable in circumstances when incurred for the purpose of earning income [except: moving expense (62)]
2. **67.1(4)(b) – "entertainment"** – defined to include amusement and recreation
3. **67.1(4)(a)** – excludes airplane meals, in-flight movies, etc
4. **67.1(3)** – deems costs for seminars, conferences, etc, to be $50 per day
5. **67.1(2)** – lists exceptions (non-deductible) where an amount paid/payable by a person in respect of food, beverage, entertainment is:
    a. paid or payable.. in ordinary course of business (ie exempts hotels, restaurants for producing food, promo samples)
    b. Relates to a charity fundraising event the primary purpose of which is to benefit a registered charity.
    c. Is an amount for which the person is compensated and the amount of the compensation is reasonable and specifically identified in writing. (the person compensating is then subject to 50% rule)
    d. Food and beverages that would be exempt under 6(6)(a) [special work site]
    e. 6 or fewer special events held in year at which food, beverage, entertainment is available to all employees at a particular place of business.
    - **NOTE:** employers not subject to 50% rule on allowance/reimbursement for food, beverage, and entertainment costs included in employee income.

- ***Stapley v Canada* (2006 FCA)** – TP bought food, tickets, etc, for clients. Deducted fully, Minister said 50% - held 50%.
    - The wording of 67.1 is *very* broad. 'in respect of human consumption' means section contemplates consumption by individuals other than the TP.

CLOTHING EXPENSE DEDUCTIBILITY

Deductibility will depend on the degree of personal benefit that the TP receives from clothing; where there is no personal benefit you can deduct the expense

- ***No. 360 v MNR* (1956) Tax ABC** – Actress deducts clothes, denied as there was a personal benefit – she could wear them in everyday life.
- ***Huffman*:** IS THERE A PERSONAL BENEFIT? exemption for uniform (Cop), reimbursement that places you back in position as you were before expense was incurred is not a personal benefit
- ***Giroux* (1957 Tax ABC)** - Allowed to deduct for clothes/accessories required to wear, but could only suitably wear on stage/tv.

HOME OFFICE EXPENSE DEDUCITBILITY

- **18(12)(a):** No deduction for any part of a self-contained domestic establishment except if:
    - work space is either principal place of business, **OR**
    - used exclusively for the purpose of earning income from business **AND** used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business
        - meeting clients includes phone contact – ***Vanka*** (possible it could include e-contact)
- **18(12)(b):** cannot generate a loss in a year (i.e. home office expenses can't exceed income from that business)
- **18(12)(c):** if exceeds under (b), can be carried forward indefinitely
- Still must satisfy 9(1) (ordinary/accepted), 18(1)(a) (income-producing), 18(1)(h) (personal expenses) first though
- ***Locke v MNR* (1965) –** pre-18(12) – Lawyer at worked home nights. 2 clients/week, no sign outside/phone listing.
    - TP not within 18(1)(a) exception – office mainly used for convenience and was personal
    - Factors: was office a separate space? Appreciable amount of business conducted in office? Municipally assessed for business purposes? Was there a sign? Special entrance? Would clients ever see your family?
- ***Logan* (1967 Tax ABC)** – Doc allowed to deduct. Hospital unacceptable for night work, deliberately bought home with room for office; income increased because of office; room separated from rest of house; other docs came to office; no tv or radio.

Part of a self contained domestic establishment**?**

- ***Ellis* (1994 TCC)** – TP sold pottery out of studio/store above garage. No deduction. Studio part of self-contained domestic establishment per **18(12)(a)**—utilities bill was the same for the home and studio. Separate utilities!
    - Perceptual distinction (sign, separate entrance) not enough if it's still part of domestic establishment.
- ***Dufour* (1998 TCC)** - Office in garage. No deduction. Part of self-contained... physically connected to home.

- ***Maitland* (2000 TCC)**: B&B, owner on top floor. No deduction. Whole house is self-contained domestic establishment.
- ***Sudbrack* (2000 TCC)** – Inn with separate quarters for family. Deduction. Business separate from self-contained...
- ***Broderick* (2001 TCC)** – No Deduction; distinguished ***Sudbrack*** on basis residence was seasonal, fully available during off-season.
- ***Lott:*** can't evade the rule that the business area must be separate by saying the business takes up the whole house (daycare)
- ***Vanka (2001 TCC)*** –Used regularly/continuously for meetings (7/night over phone).18(12)(a)(ii) includes phone meetings.

TRAVEL EXPENSES DEDUCITIBILTY

18(1)(h) - travel expenses incurred by TP while away from home in the course of carrying on the TP's business" are deductible, in contrast with other "personal and living expenses", which are disallowed

- **ASK**: what is the base of operations (***Cumming***), is TP carrying on 1 business in two locations, or two different business (***Randall*** not allowed), and is the TP travelling, or sojourning (***Blackman***)
- ***Cumming* (1967 ExchCt)** – Anaesthetist has no office in hospital so he does admin work at his house nearby.
    - Governing test: where is the "base of operations"? Here, home office. Journeys to/from hospital not commutes but were journeys made in course of practice → deductible.
        - Court seems to put some weight on fact TP lived very close to hospital; that he lived close for biz reasons.
- ***Henry* (1972 SCC)** – Not deductible: travel expenses disallowed for TP who travelled b/w home and hospital where he also had an office.
- ***Cork* (1990 FCA)** – Deductible: TP had home office, deducted expenses to construction sites to which he brought tools.
- ***Forestell* (1991 TCC)** – Deductible: TP lived in C, commuted to T weekly. Base was C, though only small part of total business conducted there. TP had apartment in T, claimed it as a "home office"→ Element of choice in home office.
    - Duff thinks it's wrong, shouldn't be able to have "home office" in T but base in C where he lives as well.
- ***Randall* (1967 SCC)** – TP managed racetrack in BC, took contract with a track in Portland. Travel expenses deductible in course of a single business but not when from one biz to another. Here, single business, therefore travel expenses deductible.
- ***Waserman* (1969 Tax ABC)** – Furrier shops in Toronto and Ottawa a single business and deductible.
- ***A1 Steel & Iron Foundry* (1963 ABC)** – When trip involves biz & pleasure, partial deduction allowed for business part.

DEDUCTIONS – INTEREST EXPENSES

20(1)(c)(i) – Interest on borrowed money used for the purpose of earning income can be deducted
18(1)(b) – borrowed money is capital and not deductible
20(3) – money borrowed and used to repay previously borrowed money will be deemed to have been used for the purpose for which the initial loan was used
18(9)(a)(ii) – there is no deduction for pre-paid interest
4 CONDITIONS

1. amount is paid/payable in the year in which the deduction is sought
2. amount paid under a legal obligation to pay interest
3. borrowed money is used for the purpose of earning non-exempt income from business or property; and
4. amount is reasonable in the circumstances [built-in reasonableness test] - refers to rate of interest (***Shell***)

"Used for the purpose of earning income"

- ***Bronfman***: "used" – courts must look at the current and direct use of the money
- ***Singleton***: "direct use" – only look at the effect of each transaction independently
- ***Ludco***: "income" – does not mean net profit – simply gross income or revenue
    - Earning income need not be the primary purpose and no income actually needs to be earned – there only needs to be a reasonable prospect of earning income – you can make the argument that in those cases, the deduction should be pro-rated
- GAAR: you should, however, consider the possible application of the GAAR to transactions whose primary purpose is to obtain a capital gain or to avoid tax!!
- NOTE: cannot use loan for non-eligible purpose, then your own money for an eligible purpose, and turn around and deduct interest on the loan, as if it were for something eligible (***Attaie***)
- If you can identify even a part of the old loan, you can continue to deduct the interest on the whole loan (***Tennant***)

Pre-***Bronfman***:

- ***Trans-Prairie Pipeline* (1970 ExCt)** – T borrowed $1M for shares, then sold them at FMV for shares of the company he'd sold shares to. Borrowed more $. Allowed to deduct interest on full original loan (implicit in ***Bronfman*** you can change from 1 eligible use to another). Amount of deductible interest relates to amount of loan, not to value of replacement property, as long as replacement can be traced to entire amount of loan. If only portion of the replacement is traceable to portion of original loan, then proportionate amount may be deducted.
- ***Emerson* (1985 FCA)** – TP borrowed $ to invest in 3 companies which were later sold at loss, so TP borrowed more $ to discharge initial loan. Held TP failed to establish source of income to which interest expenses could continue to relate. This led to harsh result where TP borrows to put $ into a business that has no expectation of profit or ceases to exist.
    - **20.1** amended to change this (allows continuing deduction after loss of a source of income)

Post-***Bronfman***:

- ***Attaie* (1990 FCA)** – TP buys house at 10% interest – interest rates go up to 14-16% so decided to invest $ instead of putting it into mortgage. Tries to deduct because the purpose of the borrowed funds changed to income earning. Deduction denied because of direct use approach in *Bronfman Trust*.
- ***Grenier (1992 FCTD)* –** TP mortgages house to start a business, which was deductible. Pays off then borrows for new house, tries to deduct interest on that. Court disallows deduction under direct use test, but allows deduction under **20(3)** which deems money borrowed to pay off a loan to be borrowed for same purpose as loan was originally for → accepts post ***Bronfman Trust*** 'indirect use' argument
- ***Mark Resources Inc* (1993 TCC)** – TP merges successful Canadian compnay with unsuccessful US subsidiary. Borrowed $, then loaned it to US company which paid it back as dividends. US company then bought securities at 6% and didn't pay taxes on them because of losses. Held: overriding economic & primary purpose was to import tax losses into Canada, not receive dividends. Even if the direct use was to earn income, if *bona fide* purpose not to earn income, you don't get deduction. **This is inconsistent with *Ludco*.**
- ***Robitaille* (1997 TCC)** – TP withdraws equity in firm to buy a house, then borrows $ to replace equity. Held: focus must not be on direct/immediate result of use of funds, but on ultimate economic objectives sought by transaction (here, to buy house).

Undermining ***Bronfman***

- ***Singleton* (2002 SCC)** – TP had invested 300K of capital in partnership, borrowed another 300k and invested it in partnership then withdrew 300K to buy house.
    - Court must simply apply **20(1)(c)(i)** and view transaction independently by applying only the direct use test.
    - Commercial & Economic reality test rejected. TP doesn't have to show *bona fide* purpose (undermining *Bronfman*).
    - Emphasis on ***Duke of Westminster*** – Allowed to arrange affairs so as to take advantage of tax advantages
    - MNR didn't try it here but Singleton might have been GAAR'd
- ***Ludco Enterprises* (2002 SCC) –** TP borrowed in Canada to invest in offshore company. Company's policy was not to pay dividends & reinvest capital. Eventually, large capital gain was realized. (Note: Facts occurred pre-GAAR)
    - SCC held that "income" in **20(1)(c)** means gross income, not net (not mentioning **9(1)**). Your primary purpose in borrowing can be a cap gain, so long as earning income is an *ancillary* purpose.
    - Disregards *bona fide* test, and exclusive, primary or dominant purpose tests. Even ancillary purpose is *bona fide*.
    - Duff hates. It's only useful as a tax shelter. 9(1) says that income from B&P is net profit, not gross revenue.

TIMING ISSUES

INCLUSIONS

Computation of profit for a taxation year under **9(1)** based on "true picture" principle (for which matching of revenues and expenses is a guideline, but not a rule of law) – ***West Kootenay, Candarel***

- T will want to defer inclusions and accelerate deductions – CRA will want the opposite

Accounting Methods

- Cash basis – money actually received/paid
- Accrual – receivable/payable
- Pure accrual – interest income

Determining the Tax Year

- Interest/rental income is generally computed on an accrual basis, while statutory rules provide for royalties/dividends to be taxable when received (on a cash basis). Allocation of T's business or property income depends partly on accepted business practices, partly on judicial principles, and partly on statutory rules.

9(1) – a net concept for "profit in the year"
9(2) – the loss for the year is the loss for the taxation year

12(1)(a) – include amounts received for services not yet rendered or goods not yet delivered

- **20(1)(m)** – where amounts are included in **12(1)(a)**, a **reasonable** amount may be deducted – CRA wants to know

12(1)(b) – include amounts receivable for property sold or services rendered, even if not due this year, unless true picture doesn't require this (ex: if working on a cash basis is more accurate)

- Imposes accrual accounting – T must be legally entitled to the amount and the amount must be ascertainable

12(1)(c) – include interest income and amounts in lieu, received or receivable, depending on the method T usually uses for interest income

- T doesn't need to use the same method of accounting for accounting and tax purposes – ***West Kootenay***
- Payment is "realized" when it had the "quality of income" OR when T's entitlement is absolute, even if this results in a distortion of income for the year – ***Ikea***
- ***Symes*** – although ***Royal Trust Co*** says the TEST for deductions from income from business or property is whether it is consistent with the "ordinary principles of ordinary commercial trading" or "well accepted principles of business practice", determination of "profit" under **9(1)** remains a question of law subject to legal principles and not generally accepted accounting principles – might look at those first, but subject to judicial and statutory rules

"Amounts to be Received"

- ***West Kootenay Power & Light Co v The Queen* (1992 FCA)** – TP switched from billed to accrual method for accounting and taxes, then later switched tax method back to billed but kept accounting as accrual.
  - NO absolute requirement that there be "conformity" between financial & tax accounting methods. As a rule, proper method is that which presents the *'truer picture'* of a TP's revenue, which more fairly and accurately portrays income, and which ***'matches'*** revenue and expenditure is to be used for tax purposes. Here that happens to be the "accrual" method.
    - NOTE: that while the narrow conception of conformity is rejected, the broader conception that, unless otherwise indicated, GAAP should be used to calculate income for tax has not been overruled.
- ***Canderel Ltd* (1998 SCC)** –Tenant inducement fee is paid in exchange for future rent. Should this be amortized over lease or use matching for the year?
  - *"Matching principle" just an "interpretive aid"*, not "established rule of law". The goal of the legal test for profit should be to produce the truer picture of profit.
- ***Ikea* (1998 SCC)** – Flip side of *Canderel*. SCC reaffirmed "realization principle". Inducement payment received by Ikea to enter into long-term lease had to be included into income year it was received/realized to spread recognition of payment over life of lease, as it would've distorted Ikea's tax picture to ignore fact entire amount freely available to it.
- ***Colford Contracting Co.* (1960 SCC)** – TP installed equipment based on K's where payment held back until work certified by architect. Uncertified holdbacks not receivable in taxation year as no legal right to $ til certification. Realization principle.
- ***Wilchar Construction Ltd. (1981 FCA)*** – TP had consistently included uncertified holdbacks in its income. Held that once a TP elects to include holdbacks, being under no obligation to do so, they are properly included.
- ***Publisher's Guild of Canada v MNR* (1956)**: door-to-door sales not counted (nor expenses deducted) until actually received
  - Allowed: if not prohibited and if accepted by accountants as appropriate to the biz, + reflects income accurately, it's ok

Interest Accrual Rules (Transfer of Debt Obligations)

- For Vendor of Debt Obligation:
  - **12(3)** and **(4)** provides that accrued interest (received or receivable) (on purchased debt obligation) must be included in ***vendor's*** income for the taxation year
  - **52(1):** accrued, but unpaid interest that is included in the vendor's income may be added to the cost of debt obligation, thereby reducing the amount of any gain, or increasing the loss on subsequent disposition
  - **20(21)**: when the debt obligation is disposed of at FMV, a deduction from T's income is permitted in respect of accrued, but unpaid, interest which is otherwise included if it cannot **reasonably** be considered to have been received, or become receivable
- For Purchaser of Debt Obligation:
  - **12(1)(c)** for the purchaser of the debt obligation on which interest has accrued, the full amount of interest must be included in year it is received or receivable, even if this amount was included in purchase price

        - **20(14)** allows for deduction of an amount of unpaid but accrued interest (before the transfer) to the extent that this amount is included under **12(1)(c)** and included in the transferor's income per **12(3)&(4)**
    - **53(2)(l)** reduces cost base (which affects gain or loss on disposition) of debt obligation by any amount that is deductible under **20(14)**
- ***Canada v Antosko* [1994] SCC -** Investors bought a debt obligation ($5M) from NB gov't for $10 and deducted accrued, but unpaid interest on the debt obligation. They had a contract where they ran company for two years, and the interest on the debt obligation was suspended during this time.
    - To come within opening words of **20(14)**, 2 conditions are required:
        1. Must be transfer of debt obligation
        2. Transferee must become entitled to interest accruing before transfer date, but not payable until after the date
    - Absence of consideration for the interest is not relevant, transaction comes within ambit of section
    - **20(14)** does not work to ensure that entire amount of interest is taxable, as had board not disposed of debt obligation, none of the interest would be taxed
    - This would lead to absurd consequences, as debt obligations sold by tax-exempt agents (like BoC) would be worth less, as they would not permit deductions
    - Agreement to suspend repayment of accruing interest that would otherwise have been payable was legally enforceable, therefore accrued interest was not payable before transfer
    - **Amounts DEDUCTIBLE under 20(14)**

DEDUCTIONS

Expense must've been incurred and there must be a legal liability to pay.

1. Where TPs compute their income on an accrual basis, expenses are generally deductible in the taxation year in which they are payable, even if they are not actually paid until a subsequent taxation year.
2. Where TPs are permitted to compute their income from a business or property on a cash basis, expenditures are not deductible until the taxation year in which they are actually paid.
3. **18(1)(a)**: contains income producing purpose test, but is also relevant to timing
    - **18(1)(e)** – no deduction for a contingent liability → flipside of cases like *West Kootenay*

Amounts Payable

Where income from business or property is generally computed on an accrual basis with amounts included in the year "receivable", "truer picture" principle suggests deductions should be allowed in the year expenses incurred or payable.

- ***JL Guay Ltd v MNR* (1971 FCTD, affirmed FCA/SCC)** – TP held back $ pending certification
    - An amount does not become payable until TP is legally obliged to make a payment.
    - Holdback=contingent amount. No legal obligation to pay (until certification) – not yet outlay or incurred as expense.
- ***Wawang Forest Products Ltd.* (2001 FCA)** – TP held back share of a contract price until they received word WCB premiums were paid.
    - Held: amounts deductible in year work completed. Holdbacks not contingent liabilities – there was still a legal obligation to pay even though there was some risk that the actual payment may be set off against possible counterclaims. Different result because holdback here was a condition subsequent to legal entitlement.
- ***Buck Consultants Ltd.* (1996 TCC, aff'd 2000)** – TP entered 15 year lease with 1st 14 months free. Tried to deduct during rent free period by amortizing rent over duration of lease. Held that no outlay or expense had been made or incurred for the period.
- ***Samuel F. Investments* (1988 TCC)**: TP to pay bonus to shareholder at unknown future date, tried to deduct unpaid bonus in 78, but not paid in 78 or 79, cancelled in 80. Amounts must be ascertainable to be payable. Payment contingent if uncertainty in 1 of 3 things: 1) if payment will be made 2) amount payable 3) time it will be made. Here, too uncertain, so it is a contingent liability.

Running Expenses

Currently deductible in full where the expense cannot be easily matched with subsequent revenues.

- Even if the expense is large and would distort the income for the year – ***Oxford*** – T paid large up-front cost to city for improved road access to shopping mall
- Running expense can produce benefits in current and future periods, yet still be currently deductible in full – ***Canderel*** – T made a series of tenant inducement payments that were amortized for accounting purposes, but not tax purposes – court said it was fine because the expense couldn't be causally linked to specific item of revenue
    - Four benefits: 1) prevented "hole" in their income, 2) met financing requirements, 3) maintained competitive position and reputation, and 4) generated revenues via rental and management fees
- EXAMPLE: advertising costs (***Tower Investment***)

Prepaid Expenses

18(9)(a) – T may not deduct prepaid expenses for **i)** amounts reasonably regarded as consideration for services rendered after the year, **ii)** amounts reasonably regarded as interest, taxes, rent, or royalties, or **iii)** consideration for insurance for a period after the year

18(9)(b) – the deduction is delayed until the year in which the expenses can reasonably be considered to relate

Inventory Costs

248(1) – "inventory": description of property, the cost of which is relevant in computing a T's income from a business for the taxation year

- Gross profits = Proceeds **–** (Cost of inventory at beginning of the year) **–** (cost of stuff created in the year) **+** (stuff left over at the end of the year)
- Inventory costs are not deductible until the inventory is sold – ***Neonex***, applies the matching principle
- If homogenous inventory: T can work around the above rule by deducting inventory costs incurred in the year, but then adding back the cost of unsold inventory remaining at the end of the year

Inventory Accounting:

- **FIFO**: older costs are held to be the first sold – higher costs included in the add-back (during inflation) and generates a higher profit
- **LIFO**: last produced is the first sold – reduces profits and is preferred during inflation
  - If GP is reduced, so is the tax owed – The court will reject LIFO, unless it reflects the actual physical flow of inventory (***Anaconda***)
- **Average**: averages inventory production costs
- **LCM**: takes the lower of costs or market value
- **10(1)** – inventory will be valued at the lower of the cost at which T got the property OR its FMV at the end of the year – **NOTE**: essentially allows a deduction for accrued losses in the value of the unsold inventory by allowed it to be written down to its FMV, if it is lower than its cost.
- **10(1.01)** – LCM doesn't apply to inventory held in an AINT – inventory is valued at the cost at which the T got it
- **10(2.1)** – accounting methods to value "regular" inventory should be kept consistent, unless T has a good reason to switch and the Minister approves

Contingent Liabilities

18(1)(e) – contingent liabilities do not come into existent until the happening of an event which is uncertain to occur. There is no deduction until a liability exists absolutely.

CAPITAL EXPENDITURES

Capital expenditures are expenses which bring into existence enduring assets.

NOTE: expenses incurred to set up the business structure (including research) are capital expenses, but there must be something that comes out of it or you get no deduction at all.

18(1)(b) – there is no deduction for an outlay, loss, or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion, except as expressly permitted

- Where T makes a capital expenditure, the amount is added to the cost of the property on account of which expenditure was incurred and **EITHER**:
  - Subtracted from the proceeds of disposition when that property is disposed of, **OR**
  - Amortized and deducted over time from T's income from a business
- The consequences depend on the category in which it falls and if it is tangible property, that it is not land as depreciable property is not deductible under **18(1)(b)**
- Until 1972, goodwill (name and reputation of the company) was a non-deductible capital expense and now it is an eligible capital expenditure – add ¾ and deduct 7% over time.
- Non-depreciable capital property is offset against proceeds of the sale (1/2 deductible or taxable)

THERE IS NO REAL TEST!

Capital Expense	**Currently Deductible Expense**
Enduring Benefit Test: ***British Insulated,*** approved in Canada by ***Johns Manville***: • Expense incurred once and for all • WITH a view to bringing into existence an asset or advantage for the enduring benefit of the trade • Which could be negative as there is a right not to run the business – ***BC Electric***	***Johns Manville*** – T ran an open-pit asbestos mine and needed to purchase the surrounding land to expand the pit – currently deductible expense. • Occurred regularly and historically, part of the cost of production, land was "consumed", didn't add to productive capacity of mine, relatively small expense vs overall cost of operation, only transitional benefit
Expended on structure which the profits are to be earned	Part of the money-earning process (***Sun Newspapers***)
Expended to acquire the means of production (incl. goodwill, copyrights)	To use the means of production (***Hallstroms***)

- Smaller businesses get better tax results on compensation for losing long-term contracts – because more likely the contract represented a "separate business"
- Bigger businesses get better results with expenses capital-like assets – because it's less likely to look as though they are setting up a structure to earn profits
- ***Johns-Manville Canada v Queen* (1985 SCC)** – Asbestos mine eats land and TP wants to treat it as income deduction.
    - TP allowed to treat land as income expenditure deductible against business and property income. Rule of statutory interpretation: where statute unclear and one reasonable interpretation leads to a favourable outcome for TP and the other doesn't, and the expenditures were *bona fide* in the course of business activities, then go with the one that favours relief.
    - Court focuses on surface, says it's consumed each year; no enduring benefit.
    - Generally, one of two tests will apply:
        - ***British Insulated and Helsby Cables v. Atherton* (1926)**, "once and for all" test – capital expenditure is going to be spent once and for all but with a view to bringing into existence an asset or advantage for the *enduring benefit* of trade, an income expenditure will recur every year. However, this is not a decisive test in every case.
        - Structure VS Process:
            - ***BP Australia Ltd.* (1966, P.C.)** (1) no rigid test – use common sense, and (2) were sums expended on structure within which profits were to be earned or if they were part of the money earning process?
            - ***Halstroms Pty Ltd* (1946)** described difference between capital expenditures & expenses as difference "between acquisition of means of production and use of them; between establishing or extending a business organization and carrying on the business; between implements employed in work and regular performance of the work … ; between an enterprise itself and the sustained effort of those engaged in it."
            - ***Sun Newspapers Ltd.* (1938)** 3 factors: (a) character of advantage sought, including lasting qualities; (b) manner in which it is to be used; and (c) means adopted to obtain it (i.e., periodic or lump-sum payments).
- Cases that use ***Helsby*** test (once/for all, enduring benefit):
    - ***Montreal Light, Heat & Power Consolidated* (1942, SCC)**: refinance cost to reduce interest is a capital expenditure as it is an enduring benefit.
    - ***British Columbia Electric Railway Co.* (1958, SCC)**: Termination of unprofitable business is a capital expenditure as it is an enduring benefit.
    - ***Haddon Hall Realty Inc.* (1961, SCC)**: Cost to landlord to replace appliances in rental units was a capital expenditure due to the fact that the expenditure was made once and for all to create a benefit of an enduring nature.
    - ***H.J. Levin* (1971, Ex. Ct.)*; Daley v. MNR* (1950):** A dentist's tuition fees to become a specialist, lawyer's LSUC admission fee were capital expenditures because they were not recurring, and had enduring benefit.
- Cases where the court said no capital expenditure because it didn't create an advantage of enduring benefit:
    - ***Johns-Manville*** (above)
    - ***Algoma Central Railway* (1967, SCC)**: Railway did major survey of its lands to spark resource & development interest and increase traffic; chance of benefit resulting too remote to be capital nature. Analogized to advertising expense.
    - ***Oxford Shopping Centres Ltd.* (1980, FCA)**: Income expenditure – not enough connection between the road work and a benefit to the business; analogous to the geological survey in *Algoma*.
    - ***Canada Starch Co. Ltd.* (1968, Ex. Ct.)**: TP made payment to trademark holder to be allowed to partially infringe their trademark. Court said this was income expenditure; value in TM is in its relation to the business, not in mere registration / permission to use it; hence there is no advantage of enduring benefit created by the payment.
    - ***Damon Developments Ltd* (1988, TCC):** TP owned hotel, was allowed to treat costs to replace furniture and appliances as income expenditures. Distinguished form ***Haddon Hall*** (landlord case) because in a hotel such items have a much shorter life and thus less of an 'enduring benefit', expenditures to replace them are very regular.
    - ***Algoma Central Railway*** and ***Canada Starch*** suggest where TP incurs expenses in course of business to expand market share & develop goodwill, these will be income expenditures. BUT where TP purchases existing goodwill it will be a capital ex.
- Cases that use ***BP Australia, Sun Newspapers, Hallstrom's*** tests:
    - ***Cormack* (1965)**: Travel expenditures incurred to research similar businesses and thereby improve one's own business constitute a capital expenditure because it's meant to improve one's business.

- ***D.M. Firestone v. The Queen* (1987, FCA)**: TP bought troubled companies & tried to fix them. Expenses incurred in researching potential acquires held to be capital expenditure in course of putting together new business structure.
- ***J.S. Bancroft* (1989, TCC)**: TP was going to build a resort; held property for a few years before abandoning project. Tried to deduct against income; but held as capital expenditures because TP was in process of creating business structure.
- ***Park Royal Shopping Center* (1995)**: extensive renovation costs on account of capital
- ***Neonex International* (1978)**: legal expenses for failed takeover bid characterized as capital expense.
- ***Young v MNR* (1989)**: cost of subscriptions to investment publications characterized as capital. T not a trader or dealer in securities, used the info to manage investments and expand portfolio of capital assets.

- Expenditure incurred in process of gaining or producing business income:
  - ***Bowater Power Co* (1971, FCTD)**: Engineering studies to determine if business could be expanded by addition of capital asset held to be part of cost of business because business already up and running & studies part of course of business.
  - ***Kruger Pulp and Paper* (1975 TRB)**: consulting services and legal fees incurred by TP with view towards acquiring timber rights and investigation a plant site were deductible expenses incurred in operation of a business
- Other cases in which expense incurred to protect/preserve intangible property have been held to be capital expenditures:
- ***British Columbia Power Corp. (1967, SCC)***: Legal fees incurred opposing government expropriation of subsidiary held to be capital expenditures b/c it was protecting capital (also applied to mineral rights, protecting business, etc.)

Repairs (usually deductible) VS Improvements (usually not)	
Capital Expense	Currently Deductible Expense
Replacing a ship boiler is a distinct capital asset – it can function without the ship (***Canada Steamships***)	Repairs to a ship's cargo hold, the exterior "fabric" of the boat (***Canada Steamship***)
Replacing the engine in a power shovel (***Thompson***) – it had a high cost in relation to the value of the shovel as a whole and the old engine still had substantial commercial value on its own	Cost of inserting fiberglass liner into pipeline to prevent leakage and extend its life expectancy analogous to repairing cargo hold (***Canaport***)
Replacing the carbon lining in pots (***Reynolds***) – it had an enduring nature as these had a useful life of 9ish years	Replacement of the exterior brick cladding on the building with metal cladding was a repair to the "fabric" of the building (***Goldbar***) • The cost of the repair is small in relation to the value of the building and there was no choice but to repair as it was an extreme safety hazard • T was within their rights to place with newer, safer, technology
Repairs were made to a building on top of a landfill (removed old floor, installed new steel foundation, new floors installed) and all were found to be improvements as the old part was replaced with something essentially different in kind. (***Shabro***) If repairs substantially improve capital asset, it is deemed to be a capital expenditure. NOTE: wire and plumbing replacements were currently deductible	

CAPITAL COST ALLOWANCE

1. Is it depreciable property or non-depreciable capital property?
2. On disposition of the property:
   a. Does T have a deductible terminal loss?
   b. Does T have to pay recaptured depreciation?
   c. Does T have to pay for a taxable capital gain?

20(1)(a) – each year, T may deduct part of the capital cost of property against income from business/property – declining balance method – every year an undepreciated balance remains in the purchase price

- Deductions reflect depreciation in the cost of property that is used over time and declines in value as it is used, consumed, or wears out
- The deduction is optional, but you can't carry forward your unused CCA – the UCC however, stays high
- Amount of depreciated permitted for specific classes are found in Reg 1100 and Schedule II
- **Reg 1101(1)** – different businesses require different classes for property that would otherwise be in the same class

UCC: for every class of property, T has a total "pool" from which they can claim deductions
Recaptured Depreciation: negative UCC balances indicate the system gave T more deductions that actually suffered in depreciation so the CRA wants that back and is required to include the entire amount into taxable income (**13(1)**).
Terminal Loss: when the last (or only) asset in class is disposed of, and the T still has a positive UCC, this indicates that T suffered more depreciation over the life of the asset than he was permitted to deduct. T is then permitted to deduct this terminal loss against business income (**20(16)**).

UCC = A – E – F + B

- **A**: sum of capital costs of all assets in the class – includes the purchase price and capital expenses to improve/upgrade
- **E:** total depreciation as defined in **13(21)** which is taken up to that point in time and any terminal loss deducted under **20(16)**
- **F:** total of proceeds of distribution but only up to the capital cost (can't depreciate what you sold for an increase in value as that's a capital gain)
- **B**: recaptured depreciation

13(21) – "depreciable property": property for which a T can claim CCA – wtf the law is so dumb

- Oh, also, CCA is only available for depreciable property, which, as per above, is property that can get CCA
- **Reg 1102(1)(c)** – income producing purpose test – T must use the asset to produce REVENUE, not PROFIT
- ***Ben's Ltd*** – T, runs bakery, purchased land with a few tenanted wood-frame buildings, collected a small amount of rent on one occasion, and then tore those fuckers down as he had always planned. Allocated most of the acquisition cost to the buildings, but they were not depreciable as they were never intended to produce income and so there was no CCA deduction allowed.
- ***Hickman Motors*** – the test is SOME INCOME, not net profit (similar to ***Ludco***) – the fact that the assets produced revenue establishes that they continued to be used for the purpose of producing income
  - Distinguish ***Ben's*** from ***Hickman***: one residential property rented for a short time versus equipment continuously used for the same purpose before, during, and after it was held by T.
- ***Ben's Ltd*** – the income producing test must be applied separately to each piece of property in each class
- **Reg 1102(1)(b)** – inventory is not depreciable, **Reg 1102(2)** – nor is land as it normally appreciates in value
  - Important where there is an allocation of cost to buy both land and property together

Reg 1101(1ac) – each rental property with a capital cost over $50K constitutes its own distinct class

- **Reg 1101(14) – "rental properties"**: a building owned by T or a partnership, whether jointly or otherwise, if in the relevant taxation year the property was used principally for the purpose of gaining or producing gross revenue that is **rent**
  - NOTE: doesn't apply to a scenario where T rents the property to someone under an agreement where they then carry on the business of promoting or selling T's goods or services in the property
- **Reg 1101(11)** – CCA on a rental property is restricted to the amount rental income – can't use to generate loss

248(1) – "disposed of" – any transaction or event that entitles a T to proceeds of disposition

- **13(21) – "proceeds of disposition"** – sale price of property sold, compensation for property lost, taken, destroyed
- Four possible scenarios at disposition:
  - **Proceeds = UCC** → reduced to zero, CCA was calculated perfectly
  - **Proceeds < UCC** → terminal loss: difference is deducted from business/property income that year (**20(16)**) BUT ONLY WHEN THERE IS NO MORE DEPRECIABLE PROPERTY LEFT IN THE CLASS
  - **Proceeds > UCC** → recapture: difference is included in business/property income that year (**13(1)**)
  - **Proceeds > UCC & capital cost** → recapture and capital gain
    - **54:** Capital gain inclusion – defines the adjusted cost base of the depreciable property to be the capital cost
- NOTE: **13(21)** does not include demolition, but the SCC has held that "disposition" ought to be given the widest possible meaning, including demolition, in which case, proceeds would be zero (***Copmangie Immoblliere BCN Ltee***)

TAXABLE CAPITAL GAINS, ALLOWABLE CAPITAL LOSSES

CAPITAL GAINS AND LOSSES: CHARACTERIZATION AND COMPUTATION

- **3(1)(b)** – allowable capital losses are only deductible against taxable gains
- **38(a)** – capital gains are taxed at ½ the gain
- **38(b)** – surprise, capital losses are deductible at ½ the loss
- **39 – "capital gain"** – residual, a gain, or loss from disposition of property that would not be taken into account in computing income from business or property
  - **39(1)(b)(ii)** – losses from disposition of depreciable property are excluded (terminal losses: **20(16)(b)**)

- **40(1)(a) – computing gains:** (Proceeds of disposition) – (adjusted cost base + outlays incurred to make the disposition)
- **40(1)(b) – computing losses:** (adjusted cost base + outlays made to dispose) – (proceeds of disposition)
- **248(1) – "disposition"** – any transaction or event entitling T to proceeds of disposition of property (no shit?!)
- **54 – "proceeds of disposition"** – money for **(a)** sale, **(b)** property unlawfully taken, **(c)** property destroyed including insurance payouts, **(d)** statutory expropriation, **(e)** property injuriously affected, **(f)** compensation for property damaged
- **54 – "adjusted cost base"** – **(a)** where the property is depreciable property of T, the capital cost to T of the property as of that time and **costs properly regarded as capital costs are added to the capital cost of the building**, **(b)** in any other case, the cost to T of the property adjusted, as of that time, in accordance with **53**

IS IT CAPITAL PROPERTY/ASSET?

Any depreciable property of T and any property, other than depreciable property, any gain or loss from the disposition of which would, if property is disposed of, be a capital gain or loss

- **Capital property/asset:**
  - Personal use property – **40(2)(G)(iii)**: losses deemed to be nil, no deduction
    - **54 – "personal use property"**: property owned by T used primarily for the personal use and enjoyment of T or someone related to T (duh).
  - Income producing property – subject to **40** computation rules
- **Inventory:**
  - Fully included and losses are fully deductible
- If it's not capital property, it's inventory and is subject to business income computation: ***Friesen***
- If the property is AINT, it's inventory and therefore, not personal use property (which is capital property): ***Burnet***
  - Is it AINT?
    1. What is the nature or quantity of the subject matter?
    2. What is the manner of dealing?
    3. What is the intention to speculate (including secondary intention)? This is the motivating factor in purchasing (ex: but for the resale value, T would not have purchased: ***Regal Heights, Racine***)
- **CRA**: Real property acquired for investment is converted into inventory when T (1) begins improving it with a view of selling it, (2) applies to subdivide the land into lots for sale, or (3) applies to subdivide into strata lots. The CRA will calculate the value at the date of the hypothetical disposition.
- Vacant land may be a factor that indicates T is holding land as inventory, but if T improves the land (ex: puts a building on it), it is more likely to get the capital characterization.

Capital Property/Assets	**Inventory**
Factors: • Long holding period • Unsolicited offer or sale due to crisis • T rarely buys and sells land • Large amount of equity • Land used for personal use • No intention to profit	Factors: • Short holding period • Solicited offers • T frequently buys and sells/in the business as a developer • Bought with borrowed money • Not for personal use • Intention to profit
Burnet – T built a new house and then there was a financial disaster as interest rates jumped – costs jump way up so T moves into the house and then sells it at a massive loss. T argues this is AINT and deducts losses against business income – court agrees • The family lived in the home, had rooms named after their kids, and was on the land for years • BUT the court found T had an intention to build the home and then sell it, hopefully for a profit	

REAL PROPERTY

- Real property: land and whatever is erected or growing upon or affixed to the land – also includes rights of land, but not including a mortgage secured by real property
- Personal property: everything that is the subject of ownership not coming under denomination of real estate
- ***Regal Heights Ltd v MNR*** – "secondary intention doctrine"
  - T bought land to develop a shopping center and did some related activities but it became clear that this wouldn't work as the anchor tenant decided to go somewhere else, so T sold the land at a profit and claimed a capital gain.
  - Was the sale of real property AINT and therefore profit from a business within the meaning of **3, 9, 248(1)**?

- This was AINT as there was a speculative venture in vacant land – there was no guarantee of landing the anchor tenant – if the primary intention failed, the secondary intention was to sell the land for profit/capital gain.
- ***Taylor*** – relied on similar considerations in dealing with an AINT. Look at the nature and quantity of subject matter, same kind, same way test – did the person deal with the property the same with a trade would?
- ***Racine*** – Ts each had real estate business experience and borrowed money to purchase land and machinery of a bankrupt corporation which they turned over only 4-6 weeks later at a gain of $20k each.
  - In order to characterize the transaction as AINT would require that the purchaser had in mind at the exact moment of purchase the possibility of resale as operating motivation. Secondary intention must be motivating in that BUT FOR the possibility of resale, you wouldn't have bought it.

DISPOSITION ALLOCATION – SAAR 68

When T receives a payment, a portion of which can **reasonably** be regarded as consideration for the disposition of specific property, that portion is deemed to be proceeds of the disposition of that property.

- **68(a)** – Again, no one gives a shit what it was called (form) or what the legal effect of the contract was under which the payment was made. If T purports to sell property under a contract that includes an unreasonable allocation of value, the purported price is overridden.
- Because the relationship is reciprocal, both the perspective of the vendor and purchaser must be considered in determining the amount that can be reasonably regarded as consideration for the disposition of property (***Golden***)
  - There was a sale of buildings, land, and vehicles – the initial offer was $2.6m for the land, $2.4m for the building, and $600k for the vehicles. The vendor had claimed a lot of CCA and so didn't like the allocation and so agreed that $5.1m was for the land, and $750k was for the rest.
  - A consideration of reasonableness of the price must take into account the perspective of both the purchaser and the vendor – if the transaction is arm's length and not a sham, then consideration deference must be given to the agreement reached by the parties. The test is not one of FMV, but of reasonable consideration.
    - **Vendors will prefer to allocate as much of the proceeds as possible to non-depreciable capital property and depreciable property on which little or no CCA has been claimed in order to minimize recapture on previously claimed CCA, maximize any amount of capital gain or terminal loss.**
    - **Purchasers will prefer to allocate as much of the proceeds as possible to inventory or services provided since they are fully deductible, or to depreciable property with a high rate of CCA.**
- Courts will tend to defer to the stated allocation where:
  - An arm's length relationship exists between the vendor and purchaser
  - There has been genuine bargaining by the parties over the allocation
- Although the amount agreed upon between arm's length parties is an important factor to consider, an agreed allocation which does not meet the test of reasonableness may still be challenged under **68** – ***Transalta Corp***
- T can rely on **68** where there was a deal made that included a last minute change in allocation and it was agreed upon, with no negotiations, in order to complete the deal. T is then allowed to claim deductions based on the appraised value of the assets: ***Leonard***
  - Differentiates ***Golden*** on the fact that the sum there was reasonable
- FMV is not determinative, but a clearly unreasonable departure from FMV will make the court likely to find the allocation unreasonable – ***Peterson*** – T sold a money-losing daycare (no profit in 5 years) to a party at arm's length as a result of bargaining. The Court still found the 28% of the price allocated to "goodwill" had no foundation.