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**NOTE**: discounts and premiums, interest accrual rules, and transfer of debt obligations are really interrelated, and this CAN doesn’t do a good job of laying out the workflow or how they relate. It was fixed by hand after doing some practice exams. Beware 12(9).

# Part 1 – Introduction

## Pay tax!

##### 2(1)-(3), 3, 4(1)(a), 117(2), 248(1) “person”, 249(1) *– must pay tax + structure*

Structural Elements of Income Tax:

* Tax unit: to whom the tax applies
* Tax base: amount to which tax applied = taxable income
* Account period = taxation year
* Tax Rates
* Inclusions, deduction, exemptions, tax credits

**Workflow:** 2(1)🡪2(2)🡪3

**S 2 Tax payable**

1. **Tax payable by persons resident in Canada:** An income tax shall be paid, as required by this Act, on the taxable income [tax base 🡪2(2)🡪(3)] for each taxation year of every person resident in Canada at any time in the year [tax unit 🡪 248(1)]
2. **Taxable Income:** The taxable income of a taxpayer for a taxation year is the taxpayer’s income for the year plus the additions and minus the deductions permitted by Division C.
3. **Tax payable by non-resident persons:** Where a person who is not taxable under 2(1) for a taxation year (a) was employed in Canada, (b) carried on a business in Canada, or (c) disposed of a taxable Canadian property, at any time in the year or a previous year, an income tax shall be paid, as required by this Act, on the person’s taxable income earned in Canada for the year determined in accordance with Division D.

**S 3 Income for taxation year**

Income of a taxpayer for a taxation year = taxpayer’s income for the year 🡪 FORMULA

1. = Σ(each of taxpayer’s income for the year from a source inside or outside Canada)
	* EXCLUDING: taxable capital gain (TCG) from the disposition of a property
	* INCLUDING: each office, employment, business and property + unspecified
2. = (TCG from dispositions of property other than listed personal property + taxable net gain for the year on dispositions of listed personal property) – (allowable capital losses for the year from disposition of property other than listed personal property (ACL) – allowable business investment losses (ABIL) IF >0) 🡪 IF >0
3. a + b – sub e deductions (no double counting w/ stuff in para a) >0
4. c – (OEBP losses + ABIL) >0
5. d = income for the year, (f) if no amount income deemed 0

**Elements of 2(1)-2(3), 3**

1. **Tax Unit** – every person resident in Canada at any time in the year
	* 248(1) “person” – includes corporations and tax-exempt entities [🡪 normal dictionary: individual human being]
	* 248(1) “individual” – a person other than a corporation
	* Residence: generally tax on worldwide income
		+ 250(3): used to call someone resident – “ordinarily resident”
		+ 250(1)(a): resident in Canada if sojourned for 183d or more (but more than daily visits to work)
		+ 250(4): corporation residency based on incorporation jurisdiction
2. **Tax Base** – taxable income
	* 3 simplified: income from all sources as well as net taxable capital gains from disposition of property
	* Income: ordinary meaning 🡪 regularity or recurring nature; periodical flow of receipts over a period of time
	* Source: excluded capital gains and gift, inheritances and windfalls: *Ryall v Hoare*, 1923
	* Inclusions, deductions, exemptions
3. **Accounting Period** – taxation year
	* 249(1) def’n of taxation year: fiscal period for corp or Canadian resident partnership
		+ Calendar year for individuals
4. **Tax Rates** – 117(2)
	* Pg vii in Thor – individual rates
5. **Credits**

## Statutory Interpretation

**Modern approach “Driedger”** - “Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” – *Stubart Investments Ltd v Canada*, 1984 SCC

* **Primary sources:** ITA, income tax application rules, income tax regulations, tax treaties, other statutes, private law, tax cases
* **Other sources:** admin positions (bulletins, folios, advanced tax rulings, opinion letters), scholarly and professional publications

**Elements of Interpretation**

* **Words:** do not operate in isolation, need to understand the context
* **Context:** internal context (words around), external context (broader)
	+ Grammatical sense, ordinary sense
	+ Associated words principle (noscitur a sociis)
	+ Limited class principle (ejusdem generis)
* **Scheme of the Act:** broad social/economic objective realized
	+ Presumption against repetition – “trader or dealer” implies they’re different
	+ Presumption of consistent expression
	+ Principle of implied exclusion – absence of specific mention
* **Objects of the Act:** can be express or inferred from elsewhere, can be multiple
* **Intentions of Parliament:** express statutory provisions, inferences from history, presumptions (eg not absurdity or injustice (*Bronfman*: treat rich better than less rich))
* **Consequences of alternative interpretations:** gravitate towards the fair or reasonable interpretation (IMPORTED THROUGH INTENT)

**Cases**

* *Stubart*, 1984 – reject strict 🡪 modern rule
* *Will-Kare Paving & Constructions Ltd v Canada*, 2000 SCC: wants to claim manuf and processing tax incentives against capital cost of new asphalt plant (75% own paving, sold 25%)
	+ Majority: commercial meaning (sale of goods term) in context of a commercial act
	+ Dissent: ordinary meaning + object/intention + bizarre consequences
	+ Both use Hansard
* *Canada TrustCo Mortgage Co v Canada*, 2005 SCC: modern rule
	+ But where words are precise and unequivocal 🡪 dominant
	+ More than on reasonable meaning 🡪 lesser role

**Historically – Strict Construction**

* Duff: leads to more tax avoidance
* Favour taxpayer in ambiguous taxing provisions: *In Re Finance Act*, 1894
* Against taxpayer in cases of ambiguous benefit provisions: *Tennant v Smith*, 1892
	+ Impossible to assume any intention, no right to assume governing object
* Letter of the law, not spirit of the law: *Partington v AG*, 1869
* *MNR v MacInnes*, 1954 Ex Ct: series of transactions, language of act only included “property substituted therefore” but not a series
	+ Must fall within the express terms

## Introduction to Tax Avoidance

* Tax avoidance: working within the act, but may be contrary to purpose
* 1. Judicial Anti-Avoidance Doctrines: legal substance > form, sham, ineffective transactions
* 2. Specific anti-avoidance rules- SAAR
* 3. General anti-avoidance rule - GAAR

**1. Judicial Anti-Avoidance Doctrines**

US Approach

* *Gregory v Helvering, Commissioner of Internal Revenue*, 1935
	+ Taxpayer entered into a series of tax-motivated txns to obtain benefit of a statutory provision governing corporate reorganizations
	+ Avoidance: legal right of a TP to decrease the amount of what otherwise would be his taxes cannot be doubted…but question is whether what was done, apart from tax motive, was the thing which the statute intended
	+ **Implications:** economic substance approach (economic substance > legal form), business purpose test, sham concept
* **Canada reject business purpose:** *Stubart*: b/c broad AA rule in s 245 AND tax reduction can be a biz purpose

Anglo-Canadian Approach

* **Form and substance**: *Commissioners of Inland Revenue v Duke of Westminster*, 1936 HL
	+ Paid gardener via deed instead of wages – better tax situation
	+ Entitled to order affairs to minimize tax: reject economic substance (like a salary)
	+ Taxable only by the plain words of a statute applicable to the facts and circumstances of the case
	+ Dissent: substance of txn was payment was remuneration
	+ 🡪 LEGAL SUBSTANCE: “substance…which results from the legal rights and obligations of the parties ascertained upon ordinary legal principles”
		- Legal substance > form (nomenclature or names for stuff)
* **Sham doctrine**: support the characterization of these txns on the basis of the legal rights and obligations actually created by parties rather than those that they purported to create
	+ “documents are not bona fide…used as a doke”: *Duke of Westminster*
	+ Give 3P or court appearance of creating legal rights and obligations different from actual legal rights and obligations: *MNR v Cameron*, 1972 SCC
	+ False impression in eyes of 3P: *Stubart*
* **Ineffective transactions doctrine**
	+ Scrutinize everything TP has done to ensure that everything which appears to have been done, in fact, has been done in accordance w/ applicable law: *Attinco Paper Products Ltd v MNR*, 1978 FCA

**2. Specific Anti-Avoidance Rules**

* Built-in

# Part 1B General Anti-Avoidance Rule - 245

**1) Definitions**

1. “tax benefit”: reduction, avoidance or deferral of tax
2. “tax consequences”: amount of income, taxable income
3. “transaction” includes an arrangement or event

**Step 1: 245(3) Avoidance transaction:** an avoidance txn means any txn

1. **Tax Benefit:** Must be a txn or part of a series of txn that, but for the GAAR, “would result, directly or indirectly, in a tax benefit”
	* 245(1) “tax benefit”: reduction, avoidance or deferral of tax
	* *Canada Trustco Mortgage Co v Canada*, 2005 SCC
		+ tax benefit is a factual determination
		+ Burden of proof on the TP to refuse underlying assumptions of fact on which assessment based
		+ In some circumstances, must compare with another arrangement
		+ Deduction always is a tax benefit; Duff doesn’t like this
2. **Non-Tax Purpose Test:** AND: cannot reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit – NON-TAX PURPOSE
	* Objective; must provide rational basis for the particular txn under consideration
	* *McNichol v Canada*, 1997: one method of txn as benchmark, TP had onus of proving that it was reasonable that doing it the other way was not undertaken primarily to obtain a tax benefit
	* *Canada Trustco*: factual determination
3. **Series of transactions** – 245(3)(b)
	* Any step can be avoidance txn, or the whole
	* 248(10) series of transactions: deemed to include any related txns or events completed in contemplation of the series
	* *Canada Trustco*: incl number of txns that are pre-ordained in order to produce a given result
	* *Copthorne Holdings Ltd v Canada*, 2011 SCC: not a strong nexus, but more than mere possibility
	* *Canada Trustco:* provision could apply to an event before or after an ordinary series of transactions

245(3) An avoidance transaction means any transaction

(a) that, but for this section, 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; or

(b) that is part of a series of transactions, which series, but for this section, 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.

**Step 2: Misuse or Abuse:** 245(4): 245(2) applies to a txn only if it may reasonably be considered that the txn

* Misuse of provisions, OR abuse having regard to those provisions, read as a whole
* *Canada Trustco*, 2005: two-stage analytical process + abusive nature of txn must be clear
	+ Stage 1) identifying the relevant policy of the provisions or the Act as a whole
	+ Stage 2) assessment of the factors to determine whether the avoidance txn constituted a misuse or abuse having regard to the identified policy
	+ Misuse = abuse; abusive nature of the txn must be clear (legal test)
	+ Use a textual, contextual and purposive interpretation of the specific provisions to determine abuse
* *Copthorne Holdings Ltd v Canada*, 2011 SCC
	+ abusive tax avoidance: 1) where the txn achieves an outcome that statutory provision was intended to prevent; 2) where the txn defeats the underlying rationale of the provision, or 3) where the txn circumvents the provision in a manner that frustrates or defeats its object, spirit or purpose
	+ abusive nature must be clear

**Step 3: Consequences 245(2), (5)**

* **245(2) General anti-avoidance provision**:
	+ where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction – **CONSEQUENCES**
* **245(5) determination of tax consequences**: w/o restricting generality of (2)
	+ any deduction, exemption or exclusion … may be allowed or disallowed in whole of in part;
	+ any such deduction, exemption or exclusion, [and] any income, loss or other amount… may be allocated to any person;
	+ the nature of any payment or other amount may be recharacterized; and
	+ the tax effects that would otherwise result from the application of other provisions of this Act may be ignored

# Part 2 Income or Loss from Office or Employment

## Employee v Contractor; Incorporated Employees

##### 248(1) “employment” “office”, 125(7) “personal services business”, 18(1)(p)

* Taxpayer’s income
	+ 3(a): include income from each office and each employment
	+ 3(d): permits deductions of their losses from each office and employment
* 248(1) “employment” means the position of an individual in the service of some other person (including Her Majesty or a foreign state or sovereign) and “servant” or “employee” means a person holding such a position
	+ “employee” includes officer
	+ In the service of - *Schwartz*
* 248(1) “office” means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and incl a judicial office, office of a minister of the Crown, office of member of the Senate or HC of Canada, a member of the leg assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and “officer” means a person holding such an office
	+ Includes corporate director!

**A. Employees vs Independent Contractors**

* Contract of service = employee; contract for services = independent contractors
* **STEP 1:** def’n of employment – individual in the service of some other person – s 248(1) – ABOVE
* **STEP2:**  WIEBE DOOR

*Wiebe Door Services Ltd v MNR*, 1986 FCA

* Company assessed on basis of employees
* **Step A. Four tests –** 0) examine the whole of the various elements which constitute the relationship between the parties
	1. Degree of absence of control, exercised by the alleged employer (what to do/how to do it)
		+ Here: mostly worked on their own, but boss assigned jobs 🡪 indecisive
	2. Ownership of tools
		+ Here: worker owned trucks and tools 🡪 IC
	3. Chance of profit and risk of loss
		+ Each worker had limited chance of profit; paid by job; fix at own expense 🡪 IC
	4. Integration of the alleged employees work into the alleged employers business – FROM PERSPECTIVE OF EMPLYEE: EXCLUSIVITY
		+ Here: work integral to business
* **Step B. Relevant considerations (1-6 from *Sagaz*, 7-10 other cases)**
	1. Control over worker’s activities
	2. Ownership of Tools
	3. Whether he hires his own helpers
	4. Degree of financial risk taken
	5. Degree of responsibility for investment and management
	6. Opportunity of profit (method of remuneration) from sound management of task
	7. Principal workplace: *Martinez v Canada*, 1995 after
	8. Specific results: *Alexander v MNR*, 1969 before
		+ Contract of service: either a period of time or indefinitely
		+ Contract for services: certain specified work will be done
	9. Exclusivity of employment (integration test viewed from worker’s perspective)
	10. Use of business stuff
		+ Commission, but used office, phones, marketing: *Vango v Canada*, 1995
	11. Whether business already established (history: *Dynamic Industries*)
* **Step C. Intent?** Specific understanding not itself determinative
	+ *Wolf, Royal Winnipeg Ballet*: intention of parties relevant since it is the essence of K relationship

**B. Incorporated Employees**

* 248(1) office and employment of an individual 🡪 individual = person other than a corporation (248(1))
* Unfavourable tax consequences of being characterized as employment rather than business
* **Workflow**: test from Dynamic Industries 🡪 125(7)

**1. Judicial Anti-Avoidance Doctrines**

*Engel v MNR*, 1982 TRB – Engel succeeds

* Worked for Global before, incorporated a company to contract w/ Global
* Purpose of corp: make more money (incl tax reduction), work for more people, charge mom for advice
	+ Substance: resignation was effective (no master/servant w/ global), employment is a relationship which is founded in contract
	+ Ineffective txn: all good, nothing more than a minor oversight
	+ Sham: relationship K purported to create was adhered to

**2. SAAR – Personal Services Business, 1981**

* Personal services business – excluded from low corporate tax rate by virtue of “active business carried on by a corporation”

**125(7) “personal services business”** carried on by a corporation in a taxation year means a business of provides services where

1. An individual who performs services on behalf of the corporation (in this def’n and paragraph 18(1)(p) referred to as an “incorporated employee”), or
2. Any person related to the incorporate employee

is a specified shareholder of the corp and the incorporated employee would **reasonably be regarded** as an officer or employee of the person or partnership to whom or to which the services were provided **but for the existence of the corp**, unless

1. The corp employes in the business throughout the year more than 5 full-time employees, or
2. The amount paid or payable to the corp in the year for the services is received or receivable by it from a corp w/ which it was associated in the year

**248(1) “specified shareholder”:** owns at least 10% of the issued shares of any class of the corporation

**252(1) “related persons”**: (a) blood, marriage or adoption, (b) a corp and a person who controls the corp, a person who I a member of a related group that controls the corp, or any person related to a person for the preceding 2, (c) any two corps in various circumstances

**18(1)(p) limitation re personal services business expenses**

* Generally, disallows the deductions of most expenses other than remuneration and benefits paid to incorporated employees in computing the income of a personal services business (ordinary business expenses)

**Test: *Dynamic Industries Ltd v Canada*, 2005 FCA**

* Martindale works for Dynamic which works for SIIL
* Test: Wiebe and Sagaz: : level of control the employer has over the worker’s activities, whether the worker provides his or her own equipment, whether the work hires this or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management undertaken by the worker, and the worker’s opportunity for profit in the performance of his or her tasks
	+ + integration – history: history of the business
* Here:
	+ Chance of profit/loss: not compensated unless got the contracts, not remunerated on regular or timely basis, costs of warranty work borne by him 🡪 contractor
	+ Integration/history: set up business years before for specific purpose
	+ Control: substantially independent, SIIL exercised no meaningful control
		- Capacity: only worked for SIIL, but that’s b/c super busy
* 18(1)(p) does not apply

Example: *533702 Ontario Ltd*, 1991 CC: wife performs showroom services for husband’s company through number corporation

* No commercial independence outside of husband’s company

## Inclusions

### Remuneration

#### BASIC - Salary, Wages, Fees

##### 5(1), 5(2), 6(1)(a) and 6(3)

* 5(1) plugs into 3(1)(a) – income from OE
	+ 6(1),(3) plugs into 5(1)
* 5(2) plugs into 3(1)(d) – losses from OE
* 6(3) = anti-avoidance section

**GAIN**

* **5(1) income from office or employment**:
	+ Subject to this Part, a taxpayer’s income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year
		- Salary = reward for services performed; more limited – fixed periodical compensation: *Black’s Law Dictionary*
		- Wages = compensation based on time worked or output of production: *Black’s*
		- Other remuneration = *ejusdem generis*
		- Gratuities 🡪 see gratuities
* **6(1) amounts to be included as income from the office or employment:**
	+ There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:
	+ **(a) value of benefits:** the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer, or by a person who does not deal at arm’s length with the taxpayer, in the year in respect of, in the course of, or by virtue of the taxpayer’s office or employment, except any benefit
		- – see 6(1)(a) section
		- INCLUDES PERSON NOT AT ARM’S LENGTH
	+ **(b) personal or living expenses:** “all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose” except various allowances specifically excluded
	+ **(c) director’s or other fees:** director’s or other fees received by the TP in the year in respect of, in the course of, or by virtue of an office or employment
		- Fees = a charge fixed by law for services of public officers; compensation for a particular act or service: *Black’s Law Dictionary*
* **6(3) INDUCEMENTS**

**LOSS**

* **5(2) loss from office or employment:**
	+ A taxpayer’s loss for a taxation year from an office or employment is the amount of the taxpayer’s loss, if any, for the taxation year from that source computed by applying, with such modifications as the circumstances require, the provisions of this Act respecting the computation of income from that source

#### Inducement Payments – taxable if received from payer – 6(3)

* Plugs into 5(1)
* **INDUCEMENTS 6(3) payments by employer to employee:** an amount received by one person from another
	+ a) during a period while the payee was an officer of, or in the employment of, the payer, or
	+ b) on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement made between the payer/payee immediately prior, during or immediately after the period in (a)
	+ 🡪 deemed for s 5 remuneration
	+ UNLESS cannot reasonably be regarded as having been received as
		- c) consideration for accepting the office or entering the K for employment,
		- d) as remuneration for services as an officer or under the K of employment, or
		- e) consideration for a covenant regarding what is or is not to do before or after termination of employment
	+ HOW: one of (A or B) AND one of (C, D or E)
* = amount to accept an office or enter into a K of employment
* 6(3) – strictly does not apply where inducement payment is made by someone other than the recipient’s current or future employer
* *Curran v MNR*, 1959 SCC: payment from company controlled by the payer
	+ Can’t look through the separate existence of the company; payment from someone else – not 6(3)
	+ Taxed under s 3 – income from unspecified source hinted
	+ Income – the word must receive its ordinary meaning bearing in mind the distinction between capital and income and the ordinary concepts and usages of mankind

#### Gratuitous Payments – taxable if compensation for services - 5(1)

* Within 5(1), but people argue not taxable b/c gift or windfall
* *Goldman v MNR*: appellant on negotiating committee – intended to be paid for services
	+ Payment may be taxable though voluntary on the part of persons who made it
	+ **Test** is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office; equally applicable in connection w/ an office or employment – “for services”
	+ **Not taxable if mere gift or present made on personal grounds**
	+ Taxable: taxation not prevented by services being completed when payment made, or no assurance of payment form the beginning
* *MNR v Gagnon*, 1965 Ex Ct: award for suggestion, work for gov’t, gave suggestion to gov’t – service of the kind than an employer may obtain from officers or servants

#### Strike Pay – not taxable

* Provided by union for non-performance of services by the employee
* Deduction of union dues 8(1)(i)(iv); exemption for unions 149(1)(k)
* *Loeb v Canada*, 1978 FCA: taxpayer under K of employment with her union during strike 🡪 taxable
* *Ferris v MNR*, 1977 TRB: TP = member of a union that published newspaper during strike and distributed profits as strike pay 🡪 income from a business venture (partnership) 🡪 taxable income
* CRA: *Income Tax Folio* S3-F9-C1: need not include strike pay in income, even if picketing duties
* *Canada v Fries*, 1989 FCA: payment equivalent to normal net take home pay
	+ Interpretation bulletin says not taxable – important but not determinative
	+ Characteristics of income: recurring, equal to former income – SMACK OF INCOME TEST
	+ Source = strike fund
	+ Taxable under 3(a) as income from an unspecified source
	+ SCC: not satisfied that it comes within “income…from a source” – benefit of doubt to taxpayer

#### Tort Damages for Personal Injury or Death – not taxable

* *Cirella v Canada*, 1978 FCTD: $14.5K for loss of income, minister wants to tax
	+ Not part of P’s income of the P’s business, or from employment
	+ No source – loss of earning capacity (which is capital value)
	+ Payment is really for impairment of earning capacity
	+ Not income
* Duff: tort compensation is non-taxable
* Work’s comp included under 56(1)(v), but offsetting deduction under 110(1)(f)

#### Payments On or After Termination of an Office or Employment 🡪 retiring allowances

* *Atkins*, 1976: reject 6(3), 5(1), 6(1)(a), 3(a) unspecified
	+ Meant if terminated but kept getting paid🡪taxable
	+ Wrongful dismissal 🡪 not taxable b/c damage payments
	+ Duff: terminated w/o notice, cannot be characterized as remuneration of employment

**Background:**

* *Quance v Canada*, 1974 FCTD: company viewed payments as salary in lieu of dismissal; engineer viewed as damages for wrongful dismissal
	+ Payment of salary for period coincident with the period of reasonable notice will prevent the dismissal from being wrongful
	+ Facts fall precisely within 6(3)🡪deemed into s 5
	+ Quality of income – damages for breach of K of employment have the quality of income
* *Canada v Atkins*, 1975 FCTD: settlement of all claims related to termination – non-taxable damage payment
	+ V Quance where payments scheduled
* *Jack Cewe Ltd v Jorgenson*, 1980 SCC: obiter expressed doubt about *Atkins*
* AMENDMENT: 56(1)(a)(ii) + 248(1) “retiring allowance”

#### Retiring Allowances - taxable

##### 56(1)(a)(ii), 248(1) “retiring allowance”

* “retiring allowance” 🡪 56(1)(a)(ii)🡪3
* **Workflow:** 248(1) [in respect of AND loss of an office or employment]
* **STEP 0:** *Atkins*: terminated w/o notice cannot be characterized as remuneration of employment
* **Step 2: 56(1) amounts to be included in income for the year**: W/o restricting the generality of s 3, there shall be included in computing the income of a TP for a taxation year.
	+ **(a) etc:** any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,
		- **(ii)** a retiring allowance, other than an amount received out of or under an employee benefit plan, a retirement compensation arrangement or a salary deferral arrangement.
* **Step 1: 248(1) “retiring allowance:** means an amount … received – pg 1719
	+ (a) on or after retirement of a taxpayer from an office or employment in recognition of the taxpayer’s long service, or
	+ (b) in respect of a loss of an office or employment of a taxpayer, whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment of a competent tribunal
		- See cases below
	+ By the taxpayer…

**Step 1A. In Respect of**

* **Test 1:** *Mendes-Roux v Canada*, 1997 TCC: wrongfully dismissed, negotiated settlement of $25k (incl mental)
	+ “in respect of” – broad view; relating to in any way shape or form
	+ Loss of wages, overtime, vacation, sick leave 🡪 taxable – WORK STUFF TAXABLE
	+ Mental distress and costs aren’t taxable b/c not within 248(1) “retirement allowance” – TORT STUFF NON-TAXABLE
		- At least here damages were for being terminated cruelly, not necessarily causally connected with employment
* *Merrins v MNR* 1994 FCTD: “in respect of” conveys a connection between the P’s loss of employment and his subsequent receipt of $60k
	+ “in respect of” are words of the widest possible scope
* *Fournier*, 1999 TCC: non-taxable harassment damages arising from an injury “against the person of the TP” – GOOD QUOTE
* **Test 2:** *Overin v Canada*, 1997 TCC: must pass a but for test, plus where the purpose of a payment is to compensate a loss of employment it may be considered as having been received “with respect to”
	+ 1) but for the loss of employment would the amount have been received?
	+ 2) was the purpose of the payment to compensate for a loss of employment?
	+ **Does not have to be received from the employer**
* **Interpretation Bulletin**: IT-337R4
	+ Tax both special damages and general damages for humiliation, etc.
	+ Personal injuries suffered (eg defamation after dismissal) 🡪 may be unrelated, must be separate from the loss of employment
	+ Human rights violations not taxable

**Step 1B. Loss of Office or Employment**

* **Must have started work:** *Schwartz v Canada*, 1996: retiring allowance 248(1)(b) or 3(a) unspecified?
	+ Cancellation of K of employment before employee had become under obligation
	+ Here: damages do not constitute a retiring allowance
	+ Not 56(1)(a)(ii) b/c didn’t lose office b/c never had it
		- “employment” requires “in the service of”
	+ Not 6(1)(a) b/c never had the employment
	+ Not 3(a) b/c source of income has been taken away or destroyed
		- for embarrassment, not in respect of office or employment
		- Parliament made specific provision in 56 to deal w/ this problem
	+ “Retiring allowance” was limited to termination of the employment relationship once the employee had come under the obligation to provide services to the employer
	+ NOT AMENDED – consider GAAR

**Deduction – not taught this year**

* Legal fees to collect or establish a right to this amount are deductible under para 60(o.1)
	+ Note: not deductible under 8(1)(b) which allows a deduction only for legal fees to collect or establish a right to salary or wages

### General Benefits

##### 6(1)(a)

* **Workflow**: characterize, connection, valuation
* **6(1) amounts to be included as income from the office or employment:**
	+ There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:
	+ **(a) value of benefits:** the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer, or by a person who does not deal at arm’s length with the taxpayer, in the year in respect of, in the course of, or by virtue of the taxpayer’s office or employment, **except** any benefit
		- Income arrangements addressed elsewhere in section 6 or section 56 (e.g., pension benefits)
		- Other benefits specifically included under section 6 (e.g., automobile benefits)
		- Exempt benefits (counseling services, educational benefits received or enjoyed by an individual other than the taxpayer)
* **251(1) Arm’s length**: (a) deemed not to deal at AL: related person (251(2)), (b) trust thing, and (c) otherwise question of fact

**Step 1: Characterization of the Benefit**

* **Test:** *Lowe v Canada*, 1996 FCA: work trip to New Orleans w/ his wife – TCJ taxed 20%
	+ General Test: material acquisition which confers an economic benefit on the taxpayer and does not constitute an exemption, eg loan or gift: *Savage*
	+ Travel test: (1) a material acquisition or something of value…in an economic sense AND (2) not “a mere incident of what was primarily a business trip” – merely incidental
* **Material advantage?**
	+ *Huffman v MNR*: reimbursed oversize clothing for undercover cop (gets dirty); simply restoring previous economic situation, no benefit, not taxable – RESTORING
	+ *Pollesel v Canada*, 1997 TCC: reimbursement of moving expenses not taxable b/c did not receive economic benefit
	+ *MacInnis v Canada*, 2003 TCC: similar – no economic gain, advantage or benefit
	+ *Gernhart v Canada*, 1996/8: tax equalization for American employee 🡪 5(1) and 6(1)(a) taxable
	+ *Guay v Canada*, 1997 FCA: reimbursement of tuition fees for children required to attend a specific institution 🡪 not taxable benefit
	+ Board and lodging cases (294):
	+ Also see allowances provision 6(1)(b)
* **Role of employer’s business purpose or requirement?** Mandatory term + no benefit
	+ *Cutmore v MNR*, 1986 TCC: tax returns by accountant motivated by employer, but not requirement of employment 🡪 taxable benefit
	+ *Deitch v MNR*, 1989 TCC: professional liability insurance paid by employer, not mandatory term from which received no benefit 🡪 substantial benefit
	+ *Dunlap v Canada*, 1998 TCC: xmas party benefits not trivial; benefit even when unilaterally conferred
	+ *McGoldrick v Canada*, 2003 FCA: one free meal per shift, still taxable despite not being allow to bring
	+ *Rachfalowsk v Canada*, 2009 TCC: employer-paid golf membership not taxable b/c primarily for benefit of the employer – hated golf
	+ *Pellizzari v MNR*, 1987 TCC: corp paid personal criminal fees for activities done while an employee 🡪 taxable – employer paid her personal expenses
	+ *Clemiss v MNR*, 1992 FCTD: company incurred expenses to defend TP 🡪 taxable – no close nexus between their outlay and the P’s position as an employee of the corp, in order to conclude that they were incurred by reason of that employment
* **Administrative exemptions** – non-taxable privileges – pg 295 Interpretation Bulletin IT-470R
	+ Transportation to job, education, subsidized meals, merchandise discounts (unless less than cost), travel passes, bus/rail, recreation facilities, air points

**Step 2: Relationship to Office or Employment**

* In respect of, in the course of, or by virtue of an office or employment
* **A. Nexus Test**: *R v Savage*, 1983 SCC: took courses related to work, $100/course for passing
	+ *Phaneuf* test: whether the benefit had been conferred on Phaneuf as an employee or simply as a person
	+ In respect of = widest possible scope
	+ Here: took course to improve work ability + promotion chances + no evidence of gift or consideration extraneous to employment 🡪 taxable in respect of employment
* **B. Benefits conferred by persons other than the TP’s employer** – doesn’t have to be
	+ *Waffle v MNR*, 1968 ExCt: met sales quota, got a holiday 🡪 in respect of despite from Ford not boss
	+ *Giffen v Canada*, 1995 TCC: flyer points taxed; now CRA doesn’t provided not converted to cash
* **C. Benefit from collateral agreements** – normally included
	+ *McNeill v Canada*, 1986: accommodation allowances under separate agreement relating to public relations 🡪 not in respect of 🡪 Duff thinks this is weird
	+ *Phillips v MNR*, 1994 FCA: relocation payment to cover higher housing costs in WPG 🡪 received in respect of employment – look at context 🡪 employment relationship?
	+ *Blanchard v Canada*, 1995 FCA: payment pursuant to cancellation of employer housing arrangement 🡪 not mere house deal, requires only some connection between payment and recipient’s employment
* **D. Relevance of donor’s intent**
	+ *Mindszenthy v Canada*, 1993 TCC: give Rolex watch; deducted by co; rejected as personal gift
* **E. Administrative exemptions** – Interpretation Bulletin IT-407R pg 299
	+ non-cash gifts up to $500/yr per employee, plus additional $500 for long service (every 5 years)

**Step 3: Valuation** – fair market value

* **Test:** *Spence v Canada*, 2011 FCA: discounted education by TP’s children at school where they teach
	+ value received by employees = fair market value minus amount paid
	+ *Schroter*: where no fair market value can be determined – no benefit added (equal treatment)
* Discounted fair market value: *Wisla v Canada*, 1999 TCC: stamped gold rings 🡪 scrap value
	+ *Jelles v Canada*, 1997 TCC: full value of oncall suite not taxable, discounted b/c people knock on your door to solve problems
* Rate of return: *Taylor v Canada*, 1995 TCC: exclusive use of personal yacht – taxable benefit = valuation based on presumed annual rate of return on the cost of the yacht, not only for summers month when in use

### Scholarships, Fellowships and Bursaries

##### 56(1)(n), 56(3), 56(3.1)

**STEP 1. IN RESPECT OF OFFICE OR EMPLOYMENT? SEE 6(1)(a)**

* If in respect of office or employment like *Savage*, then income under 6(1)(a)
* If not, then income from other sources under s 56

**STEP 2. INCOME FROM OTHER SOURCES**

* **56(1) amounts to be included in income for year:** W/o restricting the generality of s 3, there shall be included in computing the income of a TP for a taxation year:
* **56(1)(n) scholarships bursaries, etc.:** the amount, if any, by which
	+ (i) the total of all amounts (OTHER THAN) received by the taxpayer in the year, each of which is an amount received by the TP as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the TP, other than a prescribed prize,
		- OTHER THAN: amounts described in 56(1)(q) [education savings plan payments]
		- OTHER THAN: amounts received in respect of, in the course of or by virtue of an office or employment 🡪 6(1)(a)
		- OTHER THAN: amounts received in the course of business 🡪 9(1)
	+ Exceeds
	+ (ii) the TP’s scholarship exemption under 56(3)
* **56(3) exemption for scholarships, fellowships, bursaries and prices:** For purposes of 56(1)(n)(ii), a TP’s scholarship exemption for a taxation year is the total of
	+ (a) total of all amounts included under 56(1)(n)(i) in respect of scholarship fellowship or bursary received in connection with the TP’s enrolment – UNLIMITED
		- **56(3.1)(a):** extent that it is reasonable to conclude that the award is intended to support the TP’s enrolment in the program, having regard to all the circumstances, including the terms and conditions that apply in respect of the award, the duration of he program and the period for which support is intended to be provided
	+ (b) total of all amounts for scholarship, fellowship, bursary or prize that is to be used by the TP in the production of a literary, dramatic, musical or artistic work AND expenses to get that amount – DEDUCTIONS FOR PRODUCTION COSTS OF ARTISTIC WORKS
	+ And
	+ (c) in all other cases, max $500
		- Eg non-prescribed achievement in field normally carried on by taxpayer

**Consideration 2: Prize for Achievement in a Field of Endeavour Ordinarily Carried on by the TP**

* *Canada v Savage*, 1983 SCC: $100/course from work; act at the time did not have the E/B nexus
	+ **Nature of prize:** not limited to superiority contest; given colour by surrounding words
	+ **Comments**: not concerned w/ relationship between donor/donee; words imply educational attainments; must be achieved (carry out successfully)
	+ **Rules out:** prizes won in games of chance or at a costume party or for athletic achievement
* **Field cannot be too vast** *Turcotte*, 1997 TCC: field of endeavour does not include vast field of culture

**PRESCRIBED PRIZE**

* **Reg. 7700 prescribed prize**: For the purposes of subparagraph 56(1)(n)(i) of the Act, a prescribed prize is any prize that is recognized by the general public and that is 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

**Consideration 3: Prescribed Prize**

* **Reg. 7700 prescribed prize**: For the purposes of subparagraph 56(1)(n)(i) of the Act, a prescribed prize is any prize that is recognized by the general public and that is 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
	+ General public? CRA says nobel prize, Governor General Literary Award
* *Foulds v Canada*, 1997 TCC: two music prizes 🡪 not taxable
	+ Not business income b/c didn’t have ordinary characteristics: one time payment, not recurring, strings attached in regards to what money could be used for
	+ Competition was in no way regular business activity of the TP
	+ **Prescribed prize?** Yes. Meritorious achievement in the arts + well advertised in the press/radio
* **Low threshold?** *Labelle v Canada*, 1994 TCC: accounting prof received $5k prize for accounting case writing comp🡪non taxable
	+ Sets low threshold; MNR did not give sufficient reasons for saying why not recognized by general public
* **For services?** *Knapik-Sztamko*, TCC 2014: opera singer win prestigious prize, cash + stipends for training etc
	+ No quid pro quo; not compensation for services, no benefit to donor besides altruistic goal

**SCHOLARSHIP**

* **Test for scholarship** *Dimaria v Canada*, 2008 TCC: son received scholarship from dad’s employer Dow
	+ Employee must be the recipient of the award or must enjoy the benefit of the award
		- Did not negotiate for it in K, no responsibilities, not foregone another benefit, directly to son
		- **Not within 6(1)(a) 🡪 NOW 6(1)(a) includes person who does not deal at arm’s length**
		- **BUT: 6(1)(a)(vi) carve-out for these programs**
	+ Son: scholarship income to Andrew under 56(1)(n)
	+ **Scholarship:** sum of money or its equivalent offered to enable a student to pursue his studies at a school, college or university; academic, athletic or community
		- Factors: limited or max number of scholarships, assessment or selection process based on criteria, any objective criteria; based on some merit, whether highest to lowest or base point or combo
		- Could be related to: academics, age, sports, extracurriculars, cultural or artistic activities, ethnicity, advocacy skills or achievements, research abilities, community relations/involvement
		- Taxed in son’s hands
* *CRA Income Tax Folio S1-F2-C3*
	+ Bursary: almost any form of financial assistance paid to enable a student to pursue his education
	+ Fellowship: amount paid or benefit given for the purpose of advancing a person’s education – generally grad student



### Relocation Assistance

* Reimbursement of moving expenses is not a taxable benefit: *Pollesel, MacInnes*

#### Housing Assistance

##### 6(23)

* **6(23) employer-provided housing subsidies**: for greater certainty, an amount paid or the 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 b/c of the office or employment. 🡪 plugs into 6
* **History**
* *Splane v MNR*, 1990 FCA: employee compensated for higher mortgage interest payments on new residence
	+ No material benefit: simply restored to previous economic situation 🡪 overruled by 6(23) 1998
* *Pezzelato v Canada*, 1995 TCC: $13k reimbursement on interest expenses on loan to acquire home 🡪 taxable
* *Phillips v MNR*, 1994 TCC: $10k cash relocation payment 🡪 taxable b/c allowed getting a more valuable asset and increase net worth

#### Benefits in Respect of a Housing Loss

##### 6(19)-6(22), 248(1) “eligible relocation”

* Generally, housing loss compensated by employer is fully taxable, EXCEPT eligible housing loss
	+ Ports through 6(1)(a) – benefit/advantage
* **Workflow:** 6(21) housing loss? 🡪 6(22) eligible housing loss?
	+ 6(21) housing loss 🡪 6(19) benefit re housing loss 🡪 taxable
	+ 6(22) eligible housing loss 🡪 6(20) benefit re eligible housing loss 🡪 partial exemption

**Step 1: 6(21) housing loss:** means at any time, greater of (a or b) minus whichever applies (c or d) >0

* a) the adjusted cost base of the residence at that time to the TP or to another person who does not deal at arm’s length with the TP, and
* b) the highest fair market value of the residence within the 5m period that ends at that time
* exceeds
* c) if the residence is disposed of by the TP or the other person before the end of the first taxation year that begins after that time, the lesser of
	+ i) proceeds of disposition, and
	+ ii) fair market value at that time, and
* d) in any other case, the fair market value of the residence at that time

**Step 2: 6(22) eligible housing loss**: In this section, “eligible housing loss” in respect of a residence designated by a TP means a housing loss in respect of an eligible relocation of the TP or person who does not deal at arm’s length w/ the TP and, for these purposes, no more than one residence may be so designated in respect of an eligible relocation

* 248(1) “eligible relocation” relocation that enables a taxpayer to be employed at a new work location, provided that the taxpayer ordinarily resided at the old residence before the relocation and at the new residence after relocation, and that the new residence is not less than 40km closer to the new work location than the old residence
	+ SEE MOVING FOR ANALYSIS OF THIS PROVISION
* *Thomas v Canada*, 2007 FCA: terminated, employer bought his house off him, 🡪 OTT, not work for them again
	+ Amount received in respect of his employment (broad) – agreed to compensate b/c of employment
		- Not relevant not part of initial employment K
	+ Economic benefit b/c increased recipients net worth; indemnified for bad investment K 🡪 benefit
	+ Not eligible b/c did not enable appellant to do work in OTT; rather in relation to loss of employ

**Step 3a: 6(19) benefit re housing loss:** For the purpose of 6(1)(a), an amount paid at any time in respect of a housing loss (other than an eligible housing loss) to or on behalf of a taxpayer or a person who does not deal at arm’s length with the taxpayer in respect of, in the course of or because of, an office or employment is deemed to be a benefit received by the taxpayer at that time because of the office or employment.

**Step 3b: 6(20) benefit re eligible housing loss:** For the purpose of 6(1)(a), an amount paid at any time in the taxation year in respect of an eligible housing loss to or on behalf of a taxpayer in respect of an eligible housing loss to or on behalf of a taxpayer or a person who does not deal at arm’s length w/ the taxpayer in respect of, in the course of or because of, an office or employment is deemed to be a benefit received by the taxpayer at that time b/c of the office or employment to the extent of the amount, if any, by which

* A) one half of the amount, if any by which the total of all amounts each of which is so paid in the year or in a preceding taxation year exceeds $15k
* Exceeds
* B) the total of all amounts each of which is an amount included in computing the TP’s income because of this subsection for a preceding taxation year in respect of the loss

**Example**

* 50k in 1 yr: (50-15)/2 - 0 = 17.5k benefit
* 25k in 2 yrs
	+ Yr 1: (25-15)/2 – 0 = 5k benefit
	+ Yr 2: (25+25-15)/2 – 5 = 12.5k benefit
	+ Total = 17.5k benefit

### Forgiveness of Debt

##### 6(15), 6(15.1)

* 6(15): for the purpose of 6(1)(a) – extinguished obligation value deemed benefit
* 6(15.1): for purpose of 6(15) – “forgiven amount” has same meaning as 80(1) if (a)-(d)
* 80(1): amount left to be paid aka what the employer paid
* **Pre 6(15)/Test** *McArdle v MNR*, 1984 TCC: repayment of loan from employer waived
	+ Direct nexus between course of action in respect of loan and employment 🡪 6(1)(a)
	+ Forgave debt after firing

**Step 1: Forgiveness of employee debt**

(15) For the purpose of paragraph 6(1)(a),

* (a) a benefit shall be deemed to have been enjoyed by a taxpayer at any time an obligation issued by any debtor (including the taxpayer) is settled or extinguished; and
* (b) the value of that benefit shall be deemed to be the forgiven amount at that time in respect of the obligation.

**Step 2: Forgiven amount**

(15.1) For the purpose of subsection 6(15), the forgiven amount at any time in respect of an obligation issued by a debtor has the meaning that would be assigned by subsection 80(1) if

* (a)the obligation were a commercial obligation (within the meaning assigned by subsection 80(1)) issued by the debtor;
* (b) no amount included in computing income because of the obligation being settled or extinguished at that time were taken into account;
* (c) the definition forgiven amount in subsection 80(1) were read without reference to paragraphs (f) and (h) of the description of B in that definition; and
* (d) section 80 were read without reference to paragraphs (2)(b) and (q) of that section.

**Step 3:** 80(1) amount left to be paid aka what the employer paid

### Interest-Free and Low-Interest Loans

##### 6(9), 80.4, 110(1)(j) deduction

* **Workflow:** 80.4🡪6(9)

**Step 1: 80.4 - Calculation**

* **Step A. (1) loans:** Where a person receives a loan because of, or as a consequence of a previous, the current or an intended office or employment of an individual, or because of the services performed or to be performed by a corp carrying on a personal services business, the individual or corp, as the case may be, shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the total of
	+ a) interest at prescribed rate for the period in the year during which it was outstanding, and
		- Reg 4301
		- See 80.4(4)
	+ b) total of amounts paid or payable in respect of loan by employer (incl to non-arm’s length)
	+ exceeds total of
	+ c) interest paid on all loans not later than 30 days after end of the year, and
	+ d) any portion of (b) reimbursed in the year or within 30 days
	+ [a + b] - [c + d]
* Example: $100 loan, 5% prescribed, 2% loan, $1 reimbursed 🡪 benefit = $3 + $1 = $4
	+ [5 + 2] – [2 + 1] = $4
* **Step B. Because of (1.1) interpretation:** deemed received because of, or because of services performed by a corp that carries on a personal services business as the case may be, if it is reasonable to conclude that, but for an individual’s previous, current or intended office or employment, or the services performed or to be performed by the corp
	+ a) the terms of the loan the loan or debt would have been different; or
	+ b) the loan would have been received or the debt would have been incurred.
* **Step C. Inapplicable** 80.4(3): (1)/(2) does not apply where the rate of interest on the loan is equal to or greater than the commercial rates in effect at the time the loan was made: provided that the interest is paid by the debtor, OR where any part of the loan was included in a taxpayer’s income under Part I of the act

**Step 2: 6(9) Amount in respect of interest on employee debt**: Where an amount in respect of a loan or debt is deemed by 80.4(1) to be a benefit received in a taxation year by an individual, the amount of the benefit shall be included in computing the income of the individual for the year as income from an office or employment.

**Nexus test**: see 80.4(1.1)

* *Canada v Hoefele*, 1995 FCA
	+ Mandatory work relocation + relocation incentive
	+ “because of”, “as a consequence of” – close connection – strong causal relation
	+ Here: loan incurred b/c they needed houses, not b/c of employment
	+ AMENDMENT: added 80.4(1.1)

### Home Purchase Loan (inclusion) / Home Relocation Loan (inclusion/deduction)

* Brought into 80.1 by 80.4(4)
* **STEP 1: Interest on loans for home purchase or relocation (4):** For the purpose of computing the benefit under subsection 80.4(1) in a taxation year in respect of a home purchase loan or a home relocation loan and for the purpose of paragraph 110(1)(j) amount of interest determined under paragraph 1(a) shall not exceed the amount of interest that would have been determined if computed based on prescribed rate at the time the debt was incurred – INTEREST CAPPED TO WHEN LOAN MADE
* **Deemed new home purchase loans (6):** where a home purchase loan or a home relocation loan of an individual has a term for repayment exceeding 5y, the balance outstanding on the loan on the date that is 5y from the day the loan was received or was last deemed shall be deemed to be a new home purchase loan received by the individual on that date – RESETS THE INTEREST CALCS EVERY 5 YEARS
* **“home purchase loan” 80.4(7):** what you think, or used to repay a home purchase loan

**STEP 2A: Home purchase loan**

* 80.4(7) In this section, home purchase loan means that portion of any loan received or debt otherwise incurred by an individual in the circumstances described in subsection 80.4(1) that is used to acquire, or to repay a loan or debt that was received or incurred to acquire, a dwelling, or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the habitation of
	+ (a) the individual by virtue of whose office or employment the loan is received or the debt is incurred,
	+ (b) a specified shareholder of the corporation by virtue of whose services the loan is received or the debt is incurred, or
	+ (c) a person related to a person described in paragraph (a) or (b),
* or that is used to repay a home purchase loan

**STEP 2B: Home relocation loan**

* 248(1) “home relocation loan”: commenced at a location in Canada (new work location) + therefore moved from the residence in Canada ordinarily resided (old residence) to residence in Canada ordinarily resided (new residence) if
	+ A) (old res to new work) at least 40km greater than (new res to new work)
	+ B) loan used to acquire a dwelling for sole purpose of inhabitation by individual and is the individual’s new residence
	+ C) loan is received in circumstances of 80.4(1),(1.1), AND
	+ D) loan is designated by individual to be a home relocation loan – only 1 per move, and 1 at a time
* 110(1)(j): where taxpayer has included amount for home relocation loan by virtue of 80.4, least of
	+ I) amount of the benefit deemed to have been received if that section applied only in respect of the HRL
	+ Iii) amount of interest under 80.4(1)(a) if loan were for $25k and were extinguished on earlier of: A) day 5 yrs after loan was made, and B) day on which the HRL was extinguished, and
	+ Iii) the amount of benefit deemed to have been received by the TP under 80.4 in the year
	+ EFFECT: 25k exemption, but can’t go negative
	+ 110(1): deductions permitted as applicable:

home relocation loan means a loan received by an individual or the individual’s spouse or common-law partner in circumstances where the individual has commenced employment at a location in Canada (in this definition referred to as the “new work location”) and by reason thereof has moved from the residence in Canada at which, before the move, the individual ordinarily resided (in this definition referred to as the “old residence”) to a residence in Canada at which, after the move, the individual ordinarily resided (in this definition referred to as the “new residence”) if

(a) the distance between the old residence and the new work location is at least 40 kilometres greater than the distance between the new residence and the new work location,

(b) the loan is used to acquire a dwelling, or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the habitation of the individual and is the individual’s new residence,

(c) the loan is received in the circumstances described in subsection 80.4(1), or would have been so received if subsection 80.4(1.1) had applied to the loan at the time it was received, and

(d) the loan is designated by the individual to be a home relocation loan, but in no case shall more than one loan in respect of a particular move, or more than one loan at any particular time, be designated as a home relocation loan by the individual;

### Options to Acquire Securities

##### 7(1)(a)-(b), 7(1.1), 7(1.7), 7(3)(a), 7(4), 7(5), 7(7) - benefit

* Option price – what you pay to buy the option
* Exercise/strike price – amount you pay to exercise the option
* S 7 overrides general rule in 6(1)(a) for clarity
* **Workflow:** 7(1)(a) or 7(1)(b)

**Step 0**: s 7 overrides general rule in 6(1)(a)

**Step 1:** s 7(1) agreement to issue securities to employees

* Subject to 7(1.1) [CCPC], where a particular qualifying person has agreed to sell or issue securities of the particular qualifying person (or of a qualifying person with which the particular qualify person does not deal at arm’s length) to an employee of the particular qualifying person (or of a qualifying person with which the particular qualifying person does not deal at arm’s length),
* Subject to 7(1.1) + particular qualifying person agreed to sell/issue securities of themselves + to an employee of them
	+ 7(7) “qualifying person”: s 7(7): means a corporation or a mutual fund trust
	+ 7(7) “security” of a qualifying person means (a) if the person is a corp, a share of the capital stock of the corp, and (b) if the person is a mutual fund trust, a unit of the trust

**Step 1B:** **NEXUS** 7(5): this section does not apply if the benefit conferred by the agreement was not received in respect of, in the course of, or by virtue of, the employment

* The employment refers to 7(1)(a): *Taylor*
* broad nexus: *Taylor v MNR*, 1988 TCC
* Employment means employment or office: *Taylor v MNR*, 1988 TCC

**Step 2A: ACQUIRED**: 7(1)(a) if the employee has acquired securities under the agreement, a benefit equal to the amount, if any, by which

* i) value of the securities at the time the employee acquired them
* EXCEEDS
* ii) exercise price + iii) option price
* deemed to have been received in the taxation year in which the employee acquired the securities by employee b/c of the employee’s employment – BENEFIT IN YEAR OF ACQUISITION
* *Ball v MNR*, 1992 TCC: acquired only when consideration was fully paid
* **7(1.1) CCPC:** CCPC sell/issue share of the corporation to an employee of the corporation and at the time immediately after the agreement was made the employee was dealing at arm’s length with (a) the corporation, (b) the CCPC of which share is, and (c) the CCPC that that is the employer of the employee
	+ 🡪 in applying para (1)(a) 🡪 instead of “the taxation year in which the employee acquired the securities” shall be read as a reference to “the taxation year in which the employee disposed of or exchanged the securities”

**Step 2B: DISPOSED:** 7(1)(b) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the securities to a person with whom the employee was dealing at arm’s length, a benefit equal to the amount, if any, by which

* i) value of the consideration for the disposition EXCEEDS ii) amount, if any, paid by the employee to acquire those rights
* deemed to have been received in the taxation year in which the employee made the disposition by the employee b/c of the employee’s employment
* **CANCELLATION OF OPTION:** 7(1.7) deems the cancellation of an option to constitute a transfer or disposition and deems amount received on cancellation to be proceeds of disposition

**MODIFIERS**

**Quit/fired early? 7(4):** for person to whom 7(1) would otherwise apply has ceased to be an employee before all things have happened that would make that provision applicable, 7(1) shall continue to apply as though the person were still an employee and as though the employment were still in existence

##### 110(1)(d) – deduction for half of s 7 benefit

* **110(1)** deduction permitted – go to section
* **110(1)(d) employee option:** an amount equal to ½ of the amount of the benefit deemed by 7(1) to have been received by the TP in the year in respect of a security that a particular qualifying person has agreed to sell or issue under an agreement, or in respect of the transfer or other disposition of rights under the agreement, if
	+ i) security acquired under the agreement by the taxpayer,
	+ i.1) the security is a prescribed share [6204: common shares, not in the money, arm’s length company]…
	+ ii) where the rights under the agreement were not acquired by the TP as a result of a disposition of rights to which 7(1.4) [exchange of options] applied AND
	+ iii) where rights under agreement were acquired by the TP as a result of one or more dispositions to which 7(1.4) applied
	+ **REQUIREMENTS:** security acquired under the agreement by the TP, prescribed share [6204: common shares], stock option price greater or equal to FMV of the shares on date granted, arm’s length
* **110(1)(d.1):** where the taxpayer
	+ i) is deemed under 7(1)(a) by virtue of 7(1.1) to have received a benefit in the year in respect of a share acquired by the TP
	+ ii) has not disposed of the share (otherwise than as a consequence of the TP’s death) or exchange the share within two years after the date the TP acquired it, and – HELD FOR 2 YEARS
	+ iii) has not deducted an amount under 110(1)(d)
	+ an amount equal to ½ of the amount of the benefit
	+ NO OUT OF THE MONEY REQUIREMENT

Spare note: option exercise price (+ amount paid to acquire option) not less than FMV at time granted

**Act also adjusts cost base so that capital gains work properly**

Random stuff

248(1) + 125(7)

Canadian-controlled private corporation means a private corporation that is a Canadian corporation other than

(a) a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), by one or more corporations described in paragraph (c), or by any combination of them,

(b) a corporation that would, if each share of the capital stock of a corporation that is owned by a non-resident person, by a public corporation (other than a prescribed venture capital corporation), or by a corporation described in paragraph

(c) were owned by a particular person, be controlled by the particular person,

(c) a corporation a class of the shares of the capital stock of which is listed on a designated stock exchange, or

(d) in applying subsection (1), paragraphs 87(2)(vv) and (ww) (including, for greater certainty, in applying those paragraphs as provided under paragraph 88(1)(e.2)), the definitions excessive eligible dividend designation, general rate income pool and low rate income pool in subsection 89(1) and subsections 89(4) to (6), (8) to (10) and 249(3.1), a corporation that has made an election under subsection 89(11) and that has not revoked the election under subsection 89(12);

248(1) + 89(1)

Canadian corporation at any time means a corporation that is resident in Canada at that time and was

(a) incorporated in Canada, or

### Allowances (taxable)

* Reimbursement/accountable advance (flip reimbursement) generally not taxable; allowance taxable
* Reimbursement of moving expenses is not a taxable benefit: *Pollesel, MacInnes*

##### 6(1)(b)

* **Workflow:** exception? Characterize 🡪 6(1)(b) 🡪

**STEP 0: 6(1)(b) personal or living expenses:** all amounts received by the TP in the year as an allowance for personal or living expenses or as an allowance for any other purpose, EXCEPT (i)-(xi)

* + v) work travel expenses
	+ vii) reasonable allowance for travel expenses
	+ vii.1) motor vehicle received by employer; reasonable motor vehicle allowance for traveling

**Step 1: Characterization**

* *Oxford Dictionary*: allowance = money paid to cover special expenses
* ***Test*** *MacDonald v Canada (AG\*)*, 1994 FCA: transferred from Regina to TOR, paid $700/mo housing subsidy
	+ Allowance:
	+ 1) arbitrary amount in that it is predetermined sum set w/o specific reference to any actual expense or cost – but may be estimated
	+ 2) for a specific purpose
	+ 3) use at the discretion of the recipient w/o need to account for expenditure of the funds towards an actual expense or cost
	+ Here: subsidy = taxable allowance
* **Relocation allowances and isolation payments generally taxable under 6(1)(b) or (a)**
	+ *Lepine v MNR*, 1978 TRB: isolation bonus of $700/m 🡪 taxable nder 5(1), 6(1)(a), or 6(1)(b)
	+ *Canada v Demers*, 1980 FCTD: cost of living adjustment for Haiti, not allowance, but yes 5(1), 6(3)
* **De minimis exception?**
	+ *Huffman v Canada*, 1990 FCA: undercover cop received $500 allowance when provided $400 in receipts
		- Close enough 🡪 whole thing reimbursement not allowance
		- Duff: $100 above should have been allowance
* *North Waterloo Publishing Ltd v Canada*, 1998 FCA: meal allowance of $1,440 – taxable benefit b/c allowance b/c did not require detailed receipts being submitted for reimbursement
	+ Reimbursement might not have been taxable

### Allowance Exceptions (not taxable)

* Common features: allowances for travel expenses incurred by the employee on the employer’s behalf and/or travelling by the employee in performance of the duties of the employee’s office or employment

**Main exceptions:**

* (vii) reasonable allowances for travel expenses (other than allowances for the use of a motor vehicle) received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling away from
	+ (A) the municipality where the employer’s establishment at which the employee ordinarily worked or to which the employee ordinarily reported was located, and
	+ (B) the metropolitan area, if there is one, where that establishment was located,
	+ in the performance of the duties of the employee’s office or employment,
* (vii.1) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment,
* **Related** **rules – DEEMED NOT REASONABLE**
	+ For (vii) and (vii.1) – deemed not to be reasonable where:
		- (x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or
		- (xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);
* **Travel v Soujourn** *Blackman v MNR*, 1967 TAB: moved around for work, wants (vii) to cover out of pocket expenses and additional expenses while away from home (Mtl for lengthy periods of time) (clearly allowance)
	+ Travel – common parlance means to go on a journey, to move back and forth within a short period of time
	+ Sojourning: live temporarily for a length period of time in a place
	+ Before 6(6)
* **Whether travelling in performance of duties**
	+ *Campbell v Canada*, 2003 TCC: exempt under viii.1: TP were going from one place of business to another place of business when they attended board meetings – travel from home-based work to board meetings
	+ *Daniels v Canada*, 2004 FCA: $/km allowance for travel from home to council meetings – travel from homework base to his place of work…not from one place of work to the other and not in performance of his duties
* **“reasonable allowance”**
	+ *O’Connell v Canada*, 1998 TCC: how to calc reasonable allowance for use of a motor vehicle (actual costs + CCA) + assessed in light of other provisions like 13(7)(g) which limits CCA on automobiles

## Statutory Exclusions

### Employment at Special Work Site or Remote Location

##### 6(6)

* **Workflow:** Special work site? 🡪 6(6)
* **6(6)** shall not be included any amount received or enjoyed by the taxpayer in respect of, in the course of, or by virtue of the office or employment that is the value of or a reasonable allowance in respect of expenses incurred by the taxpayer for:
	+ a) the TP’s board and lodging for a period at a special work site or remote location, and
		- i) special work site, OR
		- ii) a location at which, by virtue of its remoteness from any established community, the taxpayer could not reasonably be expected to establish a maintain a SCDE [REMOTE WORK LOCATION]
	+ OR
	+ b) transportation between the TP’s principal place of residence and the special work site or remote work location in respect of a period during which the taxpayer received board or lodging or a reasonable allowance in respect of board and lodging
* **6(6)(a)(i) special work site:** a location at which the duties performed by the taxpayer were of a temporary nature, if the taxpayer maintained at another location a self contained domestic establishment as the taxpayer’s principal place of residence
	+ A) that was, throughout the period, available for the TP’s occupancy and noted rented out by the taxpayer to any other person, and
	+ B) to which, by reason of distance, the taxpayer could not reasonably be expected to return daily
	+ If period required away not less than 36 hours
* 248(1) “self-contained domestic establishment” = “dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats”
	+ See *Dionne*

**A(i). Special Work Site**

* *Guilbert v MNR,* 1991 TCC: free apartment in QC for duration of a temporary position that seemed permanent
	+ Work site – cannot refer to just nay place of work – newspaper’s premises are not one - INTENT
	+ Purpose: lumber, mining, etc – can be white collar now
	+ Factors: family members, where time spent, ownership, habitual abode, exclusivity of use
* *Jaffar v R*, 2002 TCC: apartment and travel expenses to Rochester not exempt under 6(6)(a) – DUFF: SEE MORE RECENT IN JAFFAR
	+ “special work site” – temporary work at sites remote from their homes or their places of business

**Element 1: Temporary Nature of duties**

* *Harle v MNR*, 1976 TRB: provincial legislature dues not sufficiently temporary
* *Rozumiak v Canada*, 2005 TCC: Vancouver Port Authority, 3 year term to open Chicago office 🡪 qualifies – DUFF LIKES THIS CASE
* *Interpretation Bulletin IT-91R4*: temporary nature refers to “expected duration” at the commencement of the duties and qualify if duties are reasonably expected to last no longer than 2 years

**Element 2: Principal place of residence available for occupation**

* *Barrett v Canada*, 1997 TCC: exclusion disallowed since residence was not available for taxpayer’s occupany b/c he was separated from his spouse and hadn’t established a different one
* *Spannier v Canada*, 2013 TCC: exemption allowed: 20 days in FMac, 8 days at friend’s home – maintained it as her principal place of residence

**Element 3: Distance between principal place of residence and special worksite**

* *Smith*: 60km highway not far enough
* *Charun*: 60km crappy – exempt
	+ Factors: hours of work, type of roadway, time of day, physical and mental health of TP
* *Interpretation Bulletin* I-91R4: generally, if more than 80km distance
	+ Consider: hours worked, time required to travel, time of day/night, means of transport, condition of route, length of rest period if employee returned home daily, general physical and mental health of the employee

**A(ii). Remote Work Location**

* *Dionne v Canada*, 1996 TCC: worked in Akulivik, enjoyed equalization payments for quality of life and cost of living incl isolation premiums – argues transport allowance
	+ Akulivik housing = SCDE 🡪
		- sufficient community (clinic, school, 400, coop)
		- maintain – stability not duration; does not have to live permanently in this location
		- moves into lodging where he eats and sleeps for many months 🡪 enough to establish and maintain a SCDE
* *Interpretation Bulletin IT-91R4*: established community
	+ A body of people who reside in the same locality and who are permanently settled in that location
	+ Cannot lack essential services w/o reasonable commuting distance (basic food, basic clothing w/ merchandise in stock, housing, access to certain medical assistance and education facilities)
	+ *Remoteness*: factors inc: availability of transportation, distance from an established community, and time required to travel that distance – generally exist if nearest established community w/ 1k or more is no closer than 80km by the most direct route normally travelled

### Part-Time Gig

Duff: reasonable allowance or reimbursement for travel expenses incurred in respect of part-time employment, provided part-time duties performed at location not less than 80km from individual’s ordinary place of residence and place of other employment or business

Amounts not included in income

81 (1) There shall not be included in computing the income of a taxpayer for a taxation year,

###### Travel expenses

**(3.1)** There shall not be included in computing an individual’s income for a taxation year an amount (not in excess of a reasonable amount) received by the individual from an employer with whom the individual was dealing at arm’s length as an allowance for, or reimbursement of, travel expenses incurred by the individual in the year in respect of the individual’s part-time employment in the year with the employer (other than expenses incurred in the performance of the duties of the individual’s part-time employment) if

* **(a)** throughout the period in which the expenses were incurred,
	+ **(i)** the individual had other employment or was carrying on a business, or
	+ **(ii)** where the employer is a designated educational institution (within the meaning assigned by subsection 118.6(1)), the duties of the individual’s part-time employment were the provision in Canada of a service to the employer in the individual’s capacity as a professor or teacher; and
* **(b)** the duties of the individual’s part-time employment were performed at a location not less than 80 kilometres from,
	+ **(i)** where subparagraph (a)(i) applies, both the individual’s ordinary place of residence and the place of the other employment or business referred to in that subparagraph, and
	+ **(ii)** where subparagraph (a)(ii) applies, the individual’s ordinary place of residence.

## Deductions

* 8(1) In computing a TP’s income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded applicable thereto:
	+ (b) legal expenses to establish right to income
	+ (h), (h.1) travel and motor vehicle expenses
	+ (i)(i), (iv) to (vii) – professional and union dues
	+ I(ii) and (iii) – other expenses (office rent, assistant’s salary, cost of supplies) required by K of employ
	+ (j) – interest on borrowed money used to acquire a vehicle and CCA in respect of the vehicle where motor vehicle expenses are deductible under para 8(1)(h.1) and the vehicle is used in the performance of the duties of the office or employment
	+ (m) pension plans

**LIMITATIONS**

* **8(2) General limitation:** Except as permitted by this section, no deductions shall be made in computing a TP’s income for a taxation year from an office or employment
	+ 8(4) limitation on deduction of meals
	+ 8(10) employer certificate required for deductions under 8(1)(h) and (h.1), 8(1)(i)(ii)-(iii)
	+ 8(13) limitation on deduction in respect of any part of SCDE in which individual resides (home office)
* **67 general limitation re expenses:** In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

**CERTIFICATE**

* **8(1) certificate of employer:** require prescribed form for deduction for 8(1)(c), (f), (h), (h.1), (i)(ii), (i)(iii)

### Travelling Expenses

##### 8(1)(h), 8(1)(h.1), 8(1)(j), 8(4), 8(1)(i)-(iii), 8(13), 8(1)

* **8(1)(h) travel expenses:** where the TP, in the year,
	+ i) was ordinarily required to carry on the duties of the office or employment away from the employer’s place of business or in different places AND
	+ ii) required by K of employ to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment,
	+ DEDUCT amounts expended in the year (other than motor vehicle expenses) for travelling in the course of the office or employment, EXCEPT where
		- iii) received an allowance for travel expenses b/c of 6(1)(b)(v), (vi) or (vii) not included in income
		- OR, iv) claims a deduction for the year under 8(1)(e), (f) or (g)
* **8(1)(h.1) motor vehicle travel expenses:** similar to 8(1)(h)
* **8(10**) require employer certificate for theses

**Element 1: Travel in the Course of an Office or Employment**

* *Luks v MNR*, 1958 Ex Ct: had to carry tools to and from work, so argued entitled to deduct travel and CCA
	+ *Ricketts*: necessarily obliged to incur…the expenses of traveling in the performance of the duties
	+ “in course of” narrower than in respect of – travel here is not covered
* *Chrapko v Canada*, 1988 FCA: TP worked at 3 racetracks
	+ Court gave him deductions from Toronto (where ordinarily worked) to other racetracks
* *Evans v Canada*, 1998 TCC: claimed expenses in excess of allowance provided by employer, carries materials
	+ Finds carrying stuff in car was implied term of K; necessary expense in performance of her duties
	+ All expenses are deductible
	+ EXPANDED v *Luks*

### Meals

* Same sections as above – 8(1)(h) generally include transport, accommodation, meals during period of travel
* 8(4) additional requirement
* **8(4) meals:** not included 8(1)(h) unless the meal was consumed during a period while the TP was required by the TP’s duties to be away, for a period of not less than 12 hours, from the municipality where the employer’s establishment to which the taxpayer ordinarily reported for work was located and away from the metropolitan area, if there is one, where it was located.
	+ **Ordinarily:** *Healy v Canada*, 1979 FCA: not unusual to work in 2/3 different places
		- Usually worked in TO; can have more than 1 place in the base municipality
		- Qualified for meal expense deduction; ordinarily worked in TO, but meals in Fort Erie
		- Duff: ordinarily = usually
	+ *Interpretation Bulletin IT-522R*
		- Where more than one, most frequent
		- Where more than one in same municipality or metro area, all viewed as single establishment
* Also subject to 67.1 limitation

**67.1 expenses for food etc**

* **67.1(1) 50% limitation:** …for purposes of this act other than s 62 [moving expenses], an amount paid or payable in respect of human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50% of the lesser of
	+ a) the amount actually paid or payable in respect thereof, and
	+ b) an amount in respect thereof that would be reasonable in the circumstances

+ lots of exceptions pg 38 ish

### Home Office Expenses

**STEP 1**

* **8(1)(i) duties and other expenses of performing duties:** an amount paid by the TP in the year, or on behalf of the TP in the year if the amount paid on behalf of the TP is required to be included in the TP’s income for the year, as
	+ **(ii)** office rent, or salary to an assistant, or substitute, the payment of which by the officer or employee was required by the K of employment, AND – DUFF: LIKELY NOT ALLOWED WHERE TP OWNS THE PROPERTY( *Felton, Thompson*)
	+ **(iii)** the cost of supplies that were consumed directly in the performance of the duties of the office or employment that the officer or employee was required by the K of employment ot supply and pay for,

**STEP 2**

* **8(13) work space in home: HOME OFFICE EXPENSE LIMITATION**
	+ (a) no amount deductible in respect of any part of a SCDE in which individual resides except to extent that the work space is either
		- i) the place where the individual principally performs the duties of the office or employment, OR
		- ii) used exclusively during the period in respect of which the amount relates for the purpose of earning income from the office or employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the office or employment
			* *Vanka*: 8(12) earning income (morning calls/medical files reviews)/meeting patients (7 calls per night)
	+ (b) where conditions set out in (a)(i) and (a)(ii) are met – amount deductible shall not exceed individual’s income for the year from the office or employment; AND
	+ (c) any amount solely not deductible b/c (b) for the immediately preceding taxation year shall be deemed to be an amount in respect of a work space that is otherwise deductible in computing the individual’s income for the year from that office or employment and that, subject to (b), may be deducted in computing the individual’s income for the year from the office or employment
		- UNLIMITED CARRY OVER
* See also cases on 8(12) roughly pg 39 ish
* *Prewer v MNR*, 1989 TCC: has home office, tries to deduct half of expenses (mortage/utilities)
	+ No written K, but implied requirement of acceptance of duties
	+ Compelling reasons for not using normal office after hours
	+ No need to issue rent cheques to yourself: **reasonable expenses of using space in one’s own home meets the requirements**
	+ Court said 10% more accurate – **COURT DOES PERCENTAGE**
* *Felton v MNR*, 1989 TCC: required by K, deducted 1/6
	+ Court: **office rent can only arise from landlord and tenant relationship**
	+ Duff says most cases do this
* *Haltrecht v Canada*, 2000 TCC: deduction of utilities as deductible supplies under 8(1)(i)(ii)
	+ 20 hours at home to prepare lectures was enough for 8(13)(a)(ii)
* *Interpretation Bulletin IT-352R*: regardless of whether individual owns or rents – expenses deductible as supplies
	+ fuel, electricity, light bulbs, cleaning suplies

248(1) “self-contained domestic establishment” = “dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats”

### Moving Expenses

##### 62(1), 62(3), 248(1) “eligible relocation”

* On top of 67 reasonable limitation, additional reasonableness limitation within the section
* 67.1 50% limitation does not apply to s 62
* **S 62(1) moving expenses:** There may be deducted in computing a TP’s income for a taxation year amounts paid by the TP as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that
	+ a) they were not paid on the TP’s behalf in respect, in the course of or because of, the TP’s office or employment
		- if employer pays it’s a non-taxable benefit. Hasn’t been included, can’t be deducted
	+ b) they were not deductible b/c of this section in computing the TP’s income for the preceding taxation year – UNLIMITED CARRYFORWARD
	+ c) the total of those amounts does not exceed
		- i) if moving for employment/biz reasons; the amount you are getting for the taxation year in the new work/biz location.
		- Ii) if moving for school reasons; the amount you are getting in scholarship, grants etc at the new school location: 56(1)(n) and 56(1)(o)
	+ AND d) all reimbursements and allowances received by the TP in respect of those expenses are included in computing the TP’s income

**Element 1: Moving Expenses**

* **62(3) def’n of “moving expenses”:** In 62(1), “moving expenses” includes any expense incurred as or on account of
	+ Includes 🡪 non-exhaustive
	+ **Travel costs (a)**: travel costs (including a reasonable amount expended for meals and lodging), **in the course of moving** the taxpayer and members of the taxpayer’s household from the old residence to the new residence, - REASONABLENESS LIMITATION
		- *Ball v Canada*, 1996 TCC: disallow expenses for house/job hunting trip preceding move – pre97
		- *Critchley v MNR*, 1983 TRB: vet charges in moving family dog, member of household – allowed
		- *Yaeger v MNR*, 1986 TCC: disallow horse/trailer/vet costs – not household effects
	+ **Transport/storage (b)** the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence
		- *Hasan v Canada*, 2005 FCA: storing stuff in aprt during summer does not count – “when a taxpayer physically moves or changes her residence”
		- *Rath v C*, 1982 FCA: denied cost to replace furniture lost in fire while in storage during move
	+ **Meals/lodging near old/new (c)** the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer’s household for a period not exceeding 15 days
		- *Trainor v C*, 1999 TCC: 23 days reimbursed by employer, 11 not; max 15 deductible, allowed 15
			* Duff: consistent with 62(1) limitations?
	+ **Cost of cancelling lease (d)** the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence
		- *Patry v MNR*, 1982 TRB: TP not allow deduct diff between rent paid and rent received on from sublet for remainder of lease after moving – strict construction at the time
	+ **Selling costs (e)** the taxpayer’s selling costs in respect of the sale of the old residence
		- *Pollard v MNR*, 1988 TCC: deductible: $6k interest penalty to discharge mortgage on old residence
		- *Canada v Collin*, 1990 FCTD: payment to trust company to make a low-interest loan to purchaser of old residence – selling cost deductible – direct and immediate object to effect sale – even though could have reduced selling price
		- *Faibish v C*, 2009 TCC: cost to remedy mould not deductible; expense does not generally denote capital expenditures for repairs or improvements
		- *Trigg v C*, 2009 TCC: asbestos removal; cost of selling to a long-awaited buyer in a slow market; not merely to bring about a sale or enhance the price
	+ **Legal services (f)** where the old residence is sold by the taxpayer or the taxpayer’s spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence
		- *Zant v C*, 2010 TCC: not deductible since TP rented old residence
		- *Renaud v C*, 2009 TCC: not deductible since TP retained old residence as investment property
	+ **Various costs (g)** interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of $5,000 and the total of such expenses of the taxpayer for the period
		- (i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and
		- (ii) in which reasonable efforts are made to sell the old residence, and
		- *Johnston v Canada*, 2003 FCA: disallowed interest expenses on borrowed funds used to purchase new home secured by mortgage on old residence until sold
		- *Lowe v Canada*, 2007 TCC: disallowed b/c not reasonable efforts; just telling famly/friends
		- *Cusson v Canada*, 2006 TCC: reasonable efforts; had 2 friends advertise, before hiring RE agent
	+ **Revising legal documents (h)** the cost of revising legal documents to reflect the address of the taxpayer’s new residence, of replacing drivers’ licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities
	+ **But for greater certainty**, does not include costs (other than (f)) incurred by the TP in respect of the acquisition of the new residence
* **Moving expenses** *Storrow v Canada*, 1978 FCTD: claimed various costs when moving OTT to VAN
	+ Moving expenses: ordinary out-of-pocket expenses incurred by a TP in the course of physically changing his residence
	+ Not: increase in cost of new accommodation over the old, cost of installing household items taken from the old residence to the new, or cost of replacing or refitting items from the old residence
	+ Not: outlays or costs incurred in connection w/ the acquisition of the new residence
	+ Include: physical transfer of TP, his household, and their belongings
	+ NOW A BROADER: 1997: in course of 🡪 in respect of

**Element 2: Amounts Incurred “In Respect of” Eligible Relocation**

* **s 248(1) “eligible relocation”** eligible relocation means a relocation of a taxpayer in respect of which the following apply:
	+ (a) the relocation occurs to **enable** the taxpayer
		- (i) to carry on a business or to be employed at a location (in section 62 and this definition referred to as “the new work location”) that is, except if the taxpayer is absent from but resident in Canada, in Canada, or
		- (ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and this definition referred to as “the new work location”),
	+ (b) the taxpayer ordinarily resided before the relocation at a residence (in section 62 and this definition referred to as “the old residence”) and ordinarily resided after the relocation at a residence (in section 62 and this definition referred to as “the new residence”),
	+ (c) except if the taxpayer is absent from but resident in Canada, both the old residence and the new residence are in Canada, and
	+ (d) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location;

A. Purpose of the Relocation

* Enable TP to carry on a business or to be employed at a location, or to be student
* *Dierckens v Canada*, 2011 TCC: no time limit on move following commencement of employment
* *Beyette v MNR*, 1989 TCC: 5 years allowed; TP alone left to determine the timing of the move
* *Howlett v C*, 1998 TCC: disallowed b/c no new location despite new responsibilities
* *Gelinas v C*, 2009 TCC: allowed deduction b/c “new work location” is just a label and really just requires a location in Canada – despite just changing from part-time to full-time [requisite change in work]
	+ *Moreland*: 2010 TCC rejected this, TP did not meet the ‘new work location’ requirement
* **LOOKING FOR WORK:** May deduct expenses while seeking work at a new location: *Abrahamsen v Canada, 2007 TCC*

B. The residences at which the taxpayer ordinarily resided before and after the relocation

* *Rennie v MNR*, 1989 TCC: moved from MTL to EDM, left stuff in MTL, rented in EDM; moved to VIC and rented there, liked MTL home, purchased VIC home – deducted expenses on MTL🡪EDM move, claimed MTL🡪VIC move - disallowed
	+ **“ordinarily resided”** – place where in the settled routine of his life he regularly, normally or customarily lives
	+ **One place:** Can only be ordinarily resident in one place – Victoria
* **Move to one location but maintain or retain former home:** allowed on basis that the TP continued to ordinarily reside at a former residence despite temporary accommodation at new location
	+ *Jaggers v C*, 1997 TCC: sensibly retains old home to make sure job will work out, rents old him in interim
	+ *Neville v MNR*, 1979 TRB: domestic arrangements prior to tendering his resignation were temp
	+ *Calvano v C*, 2003/4 TCC: moved, delayed selling house 16m after renting it to a tenant who insisted on lease until June 1996 – rejected, not temporarily in final spot // disallow TP ordinarily resided in new loc + RENTING THERE OK
* **Seasonal workers**: disallowed b/c ordinarily resident at their permanent home
	+ *Turnbull v C*, 1998 TCC: disallowed: tax returns, house remained Nfld
	+ *MacDonald v C*, 2007 TCC: NS driver’s license, NS health, did not take belongings, did not take wife, 3 houses in NS, did not purchase property in AB, did not relocate bank accounts, did not change mail
	+ *Cavalier v Canada*, 2002 TCC: ALLOWED: despite not moving wife, mail, bank account – to and from
	+ *Persaud v C*, 2007 TCC: ALLOW: no AB license, wife in NB, no AB health, AB bank account, children in AB
	+ Duff: change your DL, change mailing address, bring your family
* **Duration of a relocation:** may take a while, have may stages
	+ *Pitchford v C*, 1997 TCC: allowed b/c no settled routine – stages
	+ *Jaschinski*, 2002 TCC: allowed deduction of 2 moves as middle stop was interim stage

C. The distance of the relocation

* New residence must be least 40km closer to the new work location than the old residence
* *Giannakopoulous v MNR*, 1995 FCA: 44km odometer v 36km straight line
	+ **Test**: shortest route that one might travel to work should be coupled with the notion of normal route to the travelling public – shortest normal route
* *Higgins v Canada*, 1995 TCC: disallowed b/c ferry of 15-20km was shortest despite freezing problems
* *Nagy v C*, 2007 TCC: MNR route had 38 turns/centre of town; court accepted TP’s as more reasonable
* *Lund v C*, 2010 TCC: both gov’t and TP’s routes normal; went with shorter by distance
	+ **Distance test:** Rejected argument that shorter route was a longer commute

**Element 3: Subject to Limitations in 62(1)(a) to (d)**

* 62(1)(a)-(d) anti doubling dipping
* (c)(i) limitation to income from the taxpayer’s employment at a new work location or from carrying on the business at the new work location
	+ *James v Canada*, 2001 FCA: incorporated himself for new job in BC, paid sell through dividends
		- Not employee; shareholder 🡪 can’t claim moving expenses
* (c)(ii) limitation to scholarships, fellowships, bursaries and research grants at where relocation occurs to enable the TP to be a full-time student at a post-secondary educational institution – 56(1)(n)
* (b) unlimited carryforward
* (d) reimbursements and allowances in respect of those expenses must be included in income

# Part 3. Income or Loss from a Business or Property and Other Income

* 3(a) include B or P as sources of income to include
* 3(d) permits deduction of BP losses
* **9(1) income:** Subject to this Part, a taxpayer’s income for a taxation year from a business or property is the taxpayer’s profit from that business or property for the year.
* **9(2) loss:** Subject to s31, a TP’s loss for a taxation year from a B or P is the amount of the TP’s loss, if any, for the taxation year from that source computed by applying the provisions of this Act respecting computation of income from that source with such modifications as circumstances require.
* **9(3) [does not include capital]:** In this Act, “income from a property” does not include any capital gain from the disposition of that property and “loss from a property” does not include any capital loss from the disposition of that property

## Characterization

##### 248(1) “business”, “property”, ACNT

* Property v business depends on degree of activity
	+ Business = combination of capital and labour
	+ Property = capital alone

**Step 1: Ordinary Meaning of Business**

* + *Oxford Dictionary*: a person’s regular occupation or trade
	+ *Black’s Law*: commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for a livelihood or gain
	+ *Smith v Anderson*, 1880: anything which occupies the time and attention and labour of a man for the purpose of profit is business
* **Ordinary test:** *MNR v Morden*, 1961 Ex Ct: net gains from gambling? Hobby v business
	+ What is the man’s own dominant object – whether it was to conduct an enterprise of a commercial character or whether it was primarily to entertain himself
	+ Objective = organized activity; subject = purpose of profit
* **Gambling Cases**
	+ *Radonjic v C*, 2013 FC: court reluctant to recognize online poker as business; chance predominant factor
	+ *Lupypra v C*, 1997 TCC: TP pool shark; system with reasonable expectation of profit and managed risks
	+ *Leblanc v C*, 2006 TCC: big bets/big wins/employees even/system; expert says astronomical against
* **Treasure-seeking Cases**
	+ *MacEachern v MNR*, 1977 TRB: S&R of treasure from ship: yes – at all times intended to sell for profit recovered stuff, well-organized business endeavour, time + money + equipment
	+ *Tobias v C*, 1978 FCTD: unsuccessful treasure search, allowed costs to be deducted
* **Windfalls?** *Cameron v MNR*, 1971 TAB: fortuitously caught 2 whales, not business venture

**Step 2: Extended Meaning in ITA**

Extended ITA meaning 248(1) “ business” INCLUDES

* a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2, subsection 95(1) and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment;
	+ *Oxford*: profession: an occupation that involves training and a formal qualification
	+ *Courts*: profession: special skill or ability or experience possessed by persons carrying them on
	+ *Oxford*: calling: a business; occupation; profession; trade; vocation
	+ *Oxford*: trade: commercial activity of a particular kind
	+ *Black’s*: trade: the business of buying and selling or bartering goods or services – MORE COMMON
	+ *Oxford*: manufacture: process of making goods on a large scale using machinery
	+ *Dict of Canadian Law*: undertaking: an enterprise or activity, or a proposal, plan or program in respect of an enterprise or activity
	+ *Oxford*: adventure: unusual, exciting, and daring experience

**Step 2B: An Adventure or Concern in the Nature of Trade**

* *MNR v Taylor*, 1956 Ex Ct: bought some lead to sell back to his own company
	+ **Negative propositions** – things not helpful
		- 1) singleness or isolation of a transaction cannot be a test of whether it was an adventure in the nature of trade
		- 2) nor is it essential to a txn being an adventure in the nature of trade that an organization be set up to carry it into effect
		- 3) txn may be AAITNOT even although nothing was done to the subject matter of the transaction to make it saleable
		- 4) fact that a txn is totally different in nature form any of the other activities of the taxpayer and the he has never entered upon a transaction of that kind before or since does not, of itself, take it out of the category of being an adventure in the nature of trade
		- 5) no need for intention to profit – not required, but could be important factor
	+ **Positive propositions**
		- 1) If txn is of the same kind and carried on in the same way as a txn of an ordinary trader or dealer in property of the same kind as the subject matter of the txn – MANNER OF DEALING
		- 2) nature and quantity of subject matter
* **Manner of dealing:** *Taylor*, 1956 – FROM CAPITAL V INTENTORY SECTION OF CAN
	+ 1) period of time during which the property is held; 2) the circumstances responsible for sale; 3) whether the TP uses the property to earn income; 4) the manner in which the acquisition was financed (implied REOP test), and; 5) other activities carried on by the taxpayer
* **Nature and quantity of subject matter 🡪 trading nature**
	+ *Rutledge*, 1929: lots of toilet paper
	+ *Fraser*, 1949: whisky
	+ *Stringham Farms*, 1977: cattle futures
* **Nature and quantity of subject matter 🡪 not ACNT, but income-producing asset or personal use**
	+ *Regal Heights*, 1960 SCC: acquired then resold parcel of land: characterized as ACNT on basis that TP had a “**secondary intention**” to resell the property, notwithstanding primary purpose to develop mall
	+ **Secondary intention doctrine:** ACNT only where “the possibility of re-sale at a profit was one of the motivating considerations that entered into the decision to acquire the property” – BUT FOR

**Property**

* **248(1) “property” MEANS** property of any kind whatever whether real or personal, immovable or movable, tangible or intangible, or corporeal or incorporeal and, without restricting the generality of the foregoing, includes
	+ (a) a right of any kind whatever, a share or a chose in action,
	+ (b) unless a contrary intention is evident, money,
	+ (c) a timber resource property,
	+ (d) the work in progress of a business that is a profession; and
	+ (e) the goodwill of a business, as referred to in subsection 13(34)

## Inclusions

* 9(1) profit – net concept – business practices test

### Gains from Illegal Activities - taxable

* **Taxable** *No 275 v MNR*, 1955 TAB: prostitution, economic generating nature of the activity - taxable
* *Hammill*, FCA 2005: loss from fraud not deductible b/c no source
* *Ruff*, TCC 2012: loss from internet scam connected w/ law practice, but s 67 not reasonable
* *Johnson*, FCA 2012: gains from Ponzi scheme in which TP invested were income from property

### Damages and Other Compensation – taxable in lieu of profits, non-taxable capital receipts and punitive

* **Surrogatum principle:** *Canada v Manley*, 1985 FCA: TP awarded damages for breach of warranty of authority
	+ London & Thames Haven Oil Wharves: where, 1) pursuant to a legal right, 2) receives from another person compensation for trader’s failure to receive a sum of money that would have been profits
		- 🡪 taxable like profits
	+ Duff: compensation to rebuild wharf 🡪 return of capital
* **Business income** *Donald Hart Limited*, 1959 ExCt: purpose of award was filling a hole in the appellant’s profit - taxable
	+ Look to nature and quality of the award
* **Capital receipt** *HA Roberts LTd*, 1969 SCC: damage for cancellation of long-term Ks 🡪 capital receipt since business ceased to exist, and contracts were capital assets of an enduring nature 🡪 not taxable
* *CIR v Fleming and Co*, IT-365R2
	+ Business income: structure of the recipient’s business is so fashioned as to absorb the shock as one of the normal incidents to be looked for and where it appears that the compensation received is no more than a surrogatum for the future profits surrendered
	+ Capital receipt: when the right and advantages surrendered on cancellation are such as to destroy or materially to cripple the whole structure of the recipient’s profit-making apparatus
* **Non-taxable receipt, Punitive damages:** *Bellingham v Canada*, 1995 FCA: non-taxable windfall as a punitive damage award

### Voluntary Payments – non-taxable windfall

* No legal entitlement on the part of the recipient
* **GIFTS: *Rule*** *Federal Farms Ltd v MNR*, 1959 ExCt: hurricane wrecked farm, got money from relief fund
	+ No legal right; voluntary personal gift; not recurring; no expectation 🡪 gift/windfall
* **Windfall**
	+ *McMillan v MNR*, 1982 TRB: payments from 3P on request of client, no legal expectation 🡪 windfall
	+ *Cranswick*, 1982 FCA: co makes deal with minority SHs to avoid lawsuit 🡪 windfall
		- No enforceable claim, no organized effort, not expected, no recurrence
	+ *Frank Beban Logging Ltd*, 1998 TCC: business destroyed by creation of nat’l park 🡪 windfall
		- No legal/statutory right
* ***Compensation for Services:*** *Campbell v MNR*, 1958 Ex Ct: swimming prize, almost made it; true nature was payment for services

### Prizes and Awards

* Often received w/o legal entitlement

##### 56(1)(n), 56(3), 56(3.1), Reg 7700

**STEP 1: IN THE COURSE OF BUSINESS?**

**Consideration 1: Nexus for 56(1)(n)(i) to business – course of business**

* **Chance:** *Abraham v MNR*, 1960 TAB: chance to win car from draw through work, paid nothing for tickets
	+ Pure chance, **not remuneration for services rendered** / Duff: chance breaks connection
* **Character of Income** *Rumack*, 1992 FCA: $1k/m lottery winner 🡪 character and quality of income
	+ Periodic, regular, certain, foreseeable, expected and enforceable; source = K
	+ $135k non-taxable (bought annuity); annuity under 56(1)(d), capital under 60(a)
* **Competitions**: may be taxable (*Rother* not taxable*, Watts* yes taxable)
	+ MNR v Watts, 1966 Ex Ct: architect entered design competition, taxable b/c contractual relation between taxpayer and CMHC by virtue of entering into this competition by the respondent and the filing of drawings pursuant to it
* **Business income?** *Foulds*: NO – one time payment, not recurring, strings attached to money
* *Rother v MNR*, 1955 TAB: architect in design competition not taxable 🡪 AMENDED
	+ no services rendered
* IF YES🡪 FULLY TAXABLE UNDER 9(1)
* IF NO🡪 s 56 OTHER SOURCES OF INCOMES

**STEP 2: OTHER**

* **56(1) amounts to be included in income for year:** W/o restricting the generality of s 3, there shall be included in computing the income of a TP for a taxation year:
* **56(1)(n) scholarships bursaries, etc.:** the amount, if any, by which
	+ (i) the total of all amounts (OTHER THAN) received by the taxpayer in the year, each of which is an amount received by the TP as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the TP, other than a prescribed prize,
		- OTHER THAN: amounts described in 56(1)(q) [education savings plan payments]
		- OTHER THAN: amounts received in respect of, in the course of or by virtue of an office or employment 🡪 6(1)(a)
		- OTHER THAN: amounts received in the course of business 🡪 9(1)
	+ Exceeds
	+ (ii) the TP’s scholarship exemption under 56(3)
* **56(3) exemption for scholarships, fellowships, bursaries and prizes:** For purposes of 56(1)(n)(ii), a TP’s scholarship exemption for a taxation year is the total of
	+ (a) total of all amounts included under 56(1)(n)(i) in respect of scholarship fellowship or bursary received in connection with the TP’s enrolment – UNLIMITED
		- **56(3.1)(a):** extent that it is reasonable to conclude that the award is intended to support the TP’s enrolment in the program, having regard to all the circumstances, including the terms and conditions that apply in respect of the award, the duration of he program and the period for which support is intended to be provided
	+ (b) total of all amounts for scholarship, fellowship, bursary or prize that is to be used by the TP in the production of a literary, dramatic, musical or artistic work AND expenses to get that amount – DEDUCTIONS FOR PRODUCTION COSTS OF ARTISTIC WORKS
	+ And
	+ (c) in all other cases, max $500
		- Eg non-prescribed achievement in field normally carried on by taxpayer



**Consideration 2: Prize for Achievement in a Field of Endeavour Ordinarily Carried on by the TP**

* *Canada v Savage*, 1983 SCC: $100/course from work; act at the time did not have the E/B nexus
	+ **Nature of prize:** not limited to superiority contest; given colour by surrounding words
	+ **Comments**: not concerned w/ relationship between donor/donee; words imply educational attainments; must be achieved (carry out successfully)
	+ **Rules out:** prizes won in games of chance or at a costume party or for athletic achievement
* **Field cannot be too vast** *Turcotte*, 1997 TCC: field of endeavour does not include vast field of culture

**Consideration 3: Prescribed Prize**

* **Reg. 7700 prescribed prize**: For the purposes of subparagraph 56(1)(n)(i) of the Act, a prescribed prize is any prize that is recognized by the general public and that is 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
	+ General public? CRA says nobel prize, Governor General Literary Award
* *Foulds v Canada*, 1997 TCC: two music prizes 🡪 not taxable
	+ Not business income b/c didn’t have ordinary characteristics: one time payment, not recurring, strings attached in regards to what money could be used for
	+ Competition was in no way regular business activity of the TP
	+ **Prescribed prize?** Yes. Meritorious achievement in the arts + well advertised in the press/radio
* **Low threshold?** *Labelle v Canada*, 1994 TCC: accounting prof received $5k prize for accounting case writing comp🡪non taxable
	+ Sets low threshold; MNR did not give sufficient reasons for saying why not recognized by general public
* **For services?** *Knapik-Sztamko*, TCC 2014: opera singer win prestigious prize, cash + stipends for training etc
	+ No quid pro quo; not compensation for services, no benefit to donor besides altruistic goal

##### 40(2)(f) prizes – no capital gain/loss

(2) Notwithstanding 40(1), (f) a TP’s gain or loss from the disposition of

* i) a chance to win a prize or bet, or
* ii) a right to receive an amount as a prize or as winnings on a bet,
* in connection with a lottery scheme or a pool system of betting referred to in s 205 *CC* is nil.

### Non-Competition Payments

##### 6(3)(b), 56.4 (other)

* Former employee not competition, typically deemed remuneration from O/E under s 6(3)(b)
* If doesn’t fit within 6(3)(b), then 56.4 catches it
* Alongside sale of business? Exceptions allow TP to characterize payments as capital receipts relating to goodwill or as proceeds from the sale of shares of a corp
* Pg 1200-1202

### Interest Income

* Passive: interest 12(1)(c), rent 9(1), royalties 12(1)(g), dividends 12(1)(j) and (k)
* Interest timing rules: 12(3), 12(4), 12(11), 12(9), Reg. 7000

##### 12(1)(c)

* **12(1) income inclusions:** There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable
	+ **(c) interest:** subject to subsections (3) and (4.1), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer’s income) as, on account of, in lieu of payment of or in satisfaction of, **interest** to the extent that the interest was not included in computing the taxpayer’s income for a preceding taxation year;
		- Received (cash) or receivable (accrual)
		- Pure accrual: 12(3), 12(4), 12 (11), 12(9), Reg 7000

**Consideration 1: Legal Interest**

* 1) compensation for the use or retention of a principal sum
	+ Can have retroactive principal: *Perini Estate*
	+ Not interest if during period recipients were not legally entitled to a principal: *RG Huston* (*Perini*)
	+ Distinct payment comprising an element of compensation
		- *Huston*: war claims fund; simply grants b/c TP had no right of any kind in the amount
		- *Bellingham*: AB expropriation act, actually punitive damages not “interest”
* 2) referable to the principal sum (eg percentage of it)
* 3) day to day accrual
* All from *Perini Estate*
* **Substance > naming:** *Huston*
* **Pre-judgment interest**: not taxable b/c no principal until judgement: *Ahmad v Canada*, 2002 TCC
	+ CRA views this as interest
	+ *Coughlan v C*, 2001 TCC: taxable b/c interest on liquidated amounts wrongfully withheld
	+ *Greenwood v C*, 2011 TCC: taxable b/c interest on tax refund following litigation, not damages
* **Not interest**
	+ *Rozsko*: interest on Ponzi scheme was return of capital
	+ *Lebern Jewellery*: late payment charges characterized as part of purchase price
* **EXPANDED CONCEPT: Participatory payments**
	+ *Sherway Centre Ltd v Canada*, 1998 FCA: 9.75% interest, participatory interest equal to 15% of TP’s “operating surplus” – both interest
		- Ascertainable as daily basis; goal was combined 10.25% interest rate
		- Participating interest was payable so long as there was a principal outstanding (related)
		- Duff: stretched concept of interest

**Consideration 2: In Lieu of Interest**

* *The Queen v Greenington Group Ltd*, 1979 FCTD: reduction in purchase price of land to offset interest owned – in lieu – assessed as income
* *Hall v MNR*, 1970 Ex Ct: clipped and sold matured bearer coupons on bonds 🡪 in lieu
* *TransOcean Offshore LTd*, 2005
	+ A thing may take the place of another thing if it performs exactly the same function as that other thing, or if it performs a function that is not exactly the same but is a reasonable substitute

**Consideration 3: Received or Receivable Methods**

* Method requires consistency: *Elm Ridge Country Club*
* Received or receivable methods does not permit deferral to period to which prepaid interest relates: *Freeway Properties Ltd*

### Payments of Interest and Capital Combined

##### 16(1)(a) deemed interest

* **16 (1) income and capital combined:** Where, under a contract or other arrangement, an amount can reasonably be regarded as being in part interest or other amount of an income nature and in part an amount of a capital nature, the following rules apply:
	+ (a) the part of the amount that can reasonably be regarded as interest shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be deemed to be interest on a debt obligation held by the person to whom the amount is paid or payable; and
	+ (b) the part of the amount that can reasonably be regarded as an amount of an income nature, other than interest, shall, irrespective of when the contract or arrangement was made or the form or legal effect thereof, be included in the income of the taxpayer to whom the amount is paid or payable for the taxation year in which the amount was received or became due to the extent it has not otherwise been included in the taxpayer’s income.
* ***Example*** *Groulx v MNR*, 1967: deduction of farm sale price but waived interest
	+ Almost universal practice for purchase price to bear interest – ORDINARY BUSINESS PRACTICE
	+ Property sold in excess of FMV – REFERENCE TO FAIR MARKET VALUE
	+ No stranger to real estate transactions – KNOWLEDGE
	+ K mentioned interest under other clauses – AWARENESS OF INTEREST
	+ Sacrificed interest for higher capital price
	+ Factors: his idea, weakness of reasons motivating gesture, vague answers
* **Criteria** *Vanwest Logging Co ltd v MNR*, 1971 Ex Ct: sold timber for $7.5M partially in annuals w/o interest
	+ Four criteria to determine whether part of each instalment payment could reasonably be regarded as in part a payment of interest – here not taxable as interest
		- 1) the terms of the agreement reached between the parties – h: interest never discussed
		- 2) the course of the negotiations between them leading to it – h: nothing in K
		- 3) the relationship of price paid to the apparent market value of the property at the time – ok $
		- 4) the common practice with respect to payment of interest on the sale of timber limits - none
* **FMV prime factor:** *Rodman Construction Inc v Canada*, 1975 FCTD
	+ Prime factor to be considered is whether or not the fair market value has been paid
		- If excessive, excess is interest

### Discounts and Premiums

* Discount = acquire debt obligation for less than principal amount, either original issue or subsequent acquisition
* Premium = disposition of a debt obligation for an amount greater than the cost for which it is acquired – either on redemption or through a disposition on the secondary market
* Gains and losses result from: 1) accrued returns, 2) changes in perceived risks, and 3) changes in interest rates (interest rates down 🡪 bond prices up)
* **Rule for discounts:** *O’Neil v MNR*, 1991 TCC: acquired bill having maturity value of $200k for $189k
	+ Offered at discount instead of having interest rate: taxable 16(1)(a)🡪12(1)(c)
	+ *Lomax v Peter Dixon & Sons*, 1943:
	+ (i) Where a loan is made at or above such a reasonable commercial rate of interest as is applicable to a reasonably sound security, there is no presumption that a ‘discount’ at which the loan is made or a premium at which it is payable is in the nature of interest.
	+ (ii) The true nature of the ‘discount’ or the premium, as the case may be, is to be ascertained from all the circumstances of the case and, apart from any matter of law which may bear upon the question (such as the interpretation of the contract), will fall to be determined as a matter of fact by Commissioners.
	+ (iii) In deciding the true nature of the ‘discount’ or premium, in so far as it is not conclusively determined by the contract, the following matters together with any other relevant circumstances are important to be considered, viz., the term of the loan, the rate of interest expressly stipulated for, the nature of the capital risk, the extent to which, if at all, the parties expressly took or may reasonably be supposed to have taken the capital risk into account in fixing the terms of the contract.
	+ Where no interest is payable … a ‘discount’ [or premium] will normally, if not always, be … [interest].
* DUFF: judicial characterization turns on term of the loan, stipulated rate of interest, capital risk, extent to which risk taken into account in fixing terms of the contract (Peter Dixon)



* **Examples**
	+ *No 593*, 1959: $100 for 6m at 4% plus $13k bonus 🡪 taxable 12(1)(c) b/c in lieu of additional interest which TP might have received
	+ *West Coast Parts Co Ltd*: 10% plus premium of $56k over 2 yrs ($125k principal)
		- Not interest income, but inducement to lender to incur risk 🡪 adventure in nature of trade
	+ *Gestion Guy Menard*, 1993 TCC: sold treasury bills one day before maturity 🡪 in lieu of interest
* **Zero interest**
	+ *Goulet*, 2009 TCC: discount on debt obligations w/ zero interest characterized as interest under rules for “prescribed debt obligations” in Reg 7000 and subject to tax under 12(4) and (9)
* **Deemed accrual 12(9)**
* (9) For the purposes of subsections (3), (4) and (11) and 20(14) and (21), if a taxpayer acquires an interest in, or for civil law a right in, a prescribed debt obligation, an amount determined in prescribed manner is deemed to accrue to the taxpayer as interest on the obligation in each taxation year during which the taxpayer holds the interest or the right in the obligation.
	+ 7000(1) prescribed debt obligation = zero interest rate
	+ Prescribed manner: 7000(2) – pretend interest rate
* PRESCRIBED DEBT OBLIGATION

### Interest Accrual Rules

* 12(1)(c) says received or receivable, therefore can’t use accrual: *Freeway Properties Inc v Canada*, 1985 FCTD
	+ Court affirmed cash basis b/c TP had reported other interest income on a cash basis: *Elm Ridge Country Club Inc v MNR*, 1995 TCC
* CRA *Interpretation Bulletin* IT-396R, “Interest Income”
	+ CRA permit received basis, receivable basis, or accrual basis
	+ Can do: received 🡪receivable or accrued; receivable to accrued
	+ Can’t do: accrued or receivable 🡪 cash
* **Corps** 12(3): requires various business entities [corp, pship] to include interest income in computing their income for the earliest of the taxation years in which it has accrued, becomes receivable or is received
* **Individuals** 12(4): individuals: if in a taxation year a taxpayer holds an interest in an investment contract on any anniversary day of the contract, there shall be included in computing the TP’s income for the year the interest that accrued to the TP to the end of that day w/ respect to the investment contract, to the extent that the interest was not otherwise included in computing the taxpayer’s income for the year or any preceding taxation year
	+ 12(11) “investment contract”: “any debt obligation” other than salary deferral, retirement compensation arrangement, employee benefit plan, TFSA…
	+ 12(11) “anniversary date”: (a) day one year after date of issue, (b) every year after that, and (c) disposal date
	+ **Result**: including in computing their income for taxation year interest that has accrued on the debt obligations either over the course of a year ending in the TP’s taxation year, or up to the day when the debt obligation is disposed of during the taxation year
	+ **WATCH OUT**: REMEMBER TO CATCH THE AMOUNT FROM THE PREVIOUS PART YEAR NOT INCLUDE LAST YEAR

### Transfer of Debt Obligations

* HOW? 20(14) w/ 12(9)
* Purpose: prevent double taxation of interest (seller taxed on interest up to disposal, buyer taxed on income as receive or receivable under 12(1)(c))
* **20(14) accrued bond interest**: where by virtue of an assignment or other transfer of a debt obligation, the transferee has become entitled to an amount of interest that accrued on the debt obligation for a period commencing before the time of the transfer and ending at that time that is not payable until after that time, that amount
	+ (a) shall be included as interest in transferor’s income (except if previously included), and
	+ (b) may be deducted in computing transferees income (except to extent previously included)
	+ EG: sell $1000 10%/yr half way for $1050, then $50 is included as interest for transferor, and deducted from transferee on basis will receive $100 interest to include later

**ADJUSTED COST BASE**

* **52(1) cost of certain property the value of which is included in income:**
	+ In applying subdivision, shall be added in computing the cost at any time to a TP of a property if
	+ Add to transferor’s cost of the debt obligation the amount included as interest
	+ NET EFFECT: transferor sees no capital gain, just accrued interest income
* **53(2)(l) amounts to be deducted – accrued interest on transferred debt obligation**
	+ In calculated ACB to a TP of a property, deduct amount deductible by virtue of 20(14)
	+ NET EFFECT: transferee sees no capital loss, just correct interest income
* 20(21) debt obligation

**Consideration #1: Antosko**

* 20(14) requirements: 1) assignment or transfer; 2) transferee must become entitled, as a result of the transfer, to interest accruing before the date of the transfer but not payable until after that date – met here
* Plain meaning; 20(14)(b) is not dependent on actual usage of 20(14)(a)

###### Debt obligation

**(21)** If a taxpayer has in a particular taxation year disposed of a property that is an interest in, or for civil law a right in, a debt obligation for consideration equal to its fair market value at the time of disposition, there may be deducted in computing the taxpayer’s income for the particular year the amount, if any, by which

* + **(a)** the total of all amounts each of which is an amount that was included in computing the taxpayer’s income for the particular year or a preceding taxation year as interest in respect of that property

exceeds the total of all amounts each of which is

* + **(b)** the portion of an amount that was received or became receivable by the taxpayer in the particular year or a preceding taxation year that can reasonably be considered to be in respect of an amount described in paragraph 20(21)(a) and that was not repaid by the taxpayer to the issuer of the debt obligation because of an adjustment in respect of interest received before the time of disposition by the taxpayer, or
	+ **(c)** an amount in respect of that property that was deductible by the taxpayer by virtue of paragraph 20(14)(b) in computing the taxpayer’s income for the particular year or a preceding taxation year.

## Deductions

##### 9(1), 18(1)(a), 67

**Req 1: 9(1) income – business practices test**: TP’s income for a taxation year from a biz or property is the TP’s ‘profit’ from business or property

* Test: whether it was made or incurred by the TP in accordance with ordinary principles of commercial trading or well accepted principles of business practice: *Symes v Canada* + *Imperial Oil*
* Downplayed in *65302*

**Req 2: 18(1)(a) general limitation – income-producing purpose test**. In computing the income of a TP from a biz or property no deduction shall be made in respect of – an outlay or expense except to the extent that it was made or incurred by the TP of the purpose of gaining or producing income from the biz or property

* Test: “wholly, exclusively and necessarily incidental…for the purpose of earning income”: *Imperial Oil* (damages)
	+ Part of the operations, transactions or services by which the TP earned the income
	+ Look at expenditure in lights of its cxn with the operation, txn or service in respect of which it was made

**Req 3: 67 ‘reasonableness’ general limitation re expenses:** no deduction shall be made in respect of an outlay or expense…except to the extent that the outlay or expense was reasonable in the circumstances

* *Cipollone*, 1994 TCC: deduction of unreasonable expenses; expectation of profit was reasonable if she had chosen to claim reasonable expenses
* *Gabco*: not reasonable having only biz considerations in mind – eg excessive expenses w/ personal aspect
* *Mohammad*, 1997 FCA: rsbleness of expenses must be measured on its on and not against revenues
	+ Eg ref to market rate for interest // magnitude or quantum
	+ Obj component may be hard to isolate; common-sense will have to prevail
	+ Unreasonable = excessive or extravagant
* *Ammar*: objective: rented apartment costs more than double hotel or comparable apartments
* *Olympia Floor & Wall Tile*: necessary expense also a reasonable one (large donations required to maintain sales)
* *Hammill*, 2005 SCC: losses from fraud scheme: 1) no source of income, and 2) unreasonable
* *Ruff*, 2012 TCC: lawyer trying to deduct $400k lost to internet scam, in course of biz but not reasonable

### Illegal Payments – generally deductible, but 67.5 (bribes)/67.6 (fines/penalties)

* may deduct ordinary expenses in computing the income of an illegal business: *Angle v MNR*, 1969 TAB
	+ *Espie Printing*: do not see how illegality of the arrangements has any bearing on the question of whether these wages were laid out or expended for the purpose of earning income
* 67.5: various illegal payments (bribes and kickbacks) not deductible
* 67.6: fines and penalties not deductible

### Damage Payments – deductible if pass BP and IPP tests

* **Test:** Deductible if satisfy business practices and income-producing purpose test: *Imperial Oil v MNR*, 1947
	+ BP test: risk of collision between vessels is a normal and ordinary hazard

**Consideration #1: Remoteness**

* **Test:** Must be found part of the usual and ordinary conduct of such a business: *Davis v MNR*
	+ Damages from car accident not related to farm expense
* **Remote cxn too little:** libel was only remotely connected with TP’s trade: *Fairrie v Hall*
	+ newspaper published allowed to deduct libel: *Herald and Weekly Times*
* *Poulin v Canada*: damages for fraud misrep disallowed; risk of damages for wrongful professional activities, but risk was not necessary in order to carry on his business
* *McNeill v Canada*, breaches term of restrictive covenant, purpose of keeping his clients and business- deductible
* *65302*: rejected avoidability and public policy tests, questioned remoteness test: *McNeill*
	+ With egregious caveat – rejected in *CIBC v Canada*, 2013 FCA

### Fine/Penalties – 67.6 not deductible

* *65302*: rejects avoidability and public policy tests; allow deduction of fines and penalties
	+ Conceivable that breach could be so egregious or repulsive that could not be justified for purpose of producing income – rejected in *CIBC v Canada*, 2013 FCA
* 67.6 in response. Prohibited

### Recreation Expenses + Personal Expenses – not deductible

##### 18(1)(h), 18(1)(l)

* **18(1) general limitations:** In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
* **(h) personal and living expenses**: personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer’s business;
* **(l) use of recreational facilities and club dues**: an outlay or expense made or incurred by the taxpayer after 1971
	+ **Rec facility** (i) for the use or maintenance of property that is a yacht, a camp, a lodge or a golf course or facility, unless the taxpayer made or incurred the outlay or expense in the ordinary course of the taxpayer’s business of providing the property for hire or reward, or
	+ **Membership fees** (ii) as membership fees or dues (whether initiation fees or otherwise) in any club the main purpose of which is to provide dining, recreational or sporting facilities for its members;

**Consideration #1 – BP test and IPP test**

* Business practices 9(1) and income-producing purpose test 18(1)(a) – still apply: *The Royal Trust Company*
* But limited by 18(1)(l)(ii) – effectively reversed

**Consideration #2 – 18(1)(l)(i) Scope**

* Includes not only rooms but food, transport, drinks, fishing, etc: BROAD: *Sie-Mac Pipeline Contractor v Canada*
	+ Even though used for income-producing purpose
	+ No need for property to be owned or rented or exclusively controlled in order for it to be used
* Reg 1102(1)(f) prohibits the deduction of CCA in respect of any property for which the costs of use or maintenance are non-deductible by virtue of 18(1)(l)(i)

### Meals and Entertainment Expenses – deductible w/ 50% and reasonableness limitations

* *Adaskin v MNR*: sought to deduct $500 to host parties after performance finished: disallowed b/c not IPP as required by 18(1)(a) b/c show finished
* *Roebuck v MNR*: bat mitzvah and invited clients; disallowed deduction of percentage of event based on in total guests – neither BP test nor IPP test
* *Fingold v MNR*: disallowed bar mitzvah b/c no evidence business guests were aware they were business guests
* *Grunbaum v Canada*: sought to deduct portion of wedding, correspondence through business, deductible expense for company and not a taxable benefit to the taxpayer (knew they were there for biz reasons) 🡪 deductible and not taxable benefit to TP

**67.1 expenses for food etc**

* **67.1(1) 50% limitation:** …for purposes of this act other than s 62 [moving expenses], an amount paid or payable in respect of human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50% of the lesser of
	+ a) the amount actually paid or payable in respect thereof, and
	+ b) an amount in respect thereof that would be reasonable in the circumstances
* **67.1(2) exceptions** amount
	+ (a) paid or payable for food, beverages or entertainment provided for, in expectation of, compensation in the ordinary course of a business carried on by that person of providing the food, beverages or entertainment for compensation
		- See Pink Elephant
	+ (b) relates to a fund-raising 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 compe
	+ MORE SECTIONS

**Consideration #1 – 67.1(1) human consumption**

* *Stapley*: gave away vouchers for food for marketing purposes
	+ Grammatical/ordinary: no req TP consume; in respect of = widest possible scope *Noewegijick*
	+ Scheme: highly specific exemptions: if Parliament intended to exclude marketing, would have
	+ Mischief: blending personal and business expenses and deducting as a business expense
	+ Therefore: 50% limitation applies
	+ Comment: unfair; flowers or book would have deducted 100%
* *Scott*: bike courier sought to deduct cost of additional food and water as fuel, not prohibited by 18(1)(h)
	+ Does 67.1 apply?

**Consideration #2 – 67.1(2) Exceptions**

* *Pink Elephant Inc v Canada*, 2011 TCC: TP carried on a course held in hotels which included meals – applied
	+ Limitation does not apply if the food and beverages are provided for compensation in the ordinary course of business of the providing the food and beverages for compensation
	+ Can be a minor part of business
* *Interpretation Bulletin* IT-518R “Food, Beverages and Entertainment Expenses” pg 1326
	+ 67.1(2)(e.1): to be fully deductible, the meal expenses must relate to meals provided to employees who are lodged at the times and who are engaged in providing constructions services nearby
	+ “food and beverages” include “any related expenses such as taxes and tips”
		- “the cost of a restaurant certificate is considered to be an expense for food or beverages and is subject to this limitation”
	+ “entertainment”: tickets to stuff, private boxes at sports facilities, cost of room rentals to provide entertainment (such as hospitality suite), cost of a cruise, cost of admission to a fashion show; cost of entertaining guests at variation clubs and on vacation and other similar trips
	+ 67.1(2)(a): intended to exempt “for example, restaurants, hotels and airlines from the 50% limitation if the expenses are incurred to provide food, beverages or entertainment to paying customers”
		- As well as promotion samples where “a TP’s product or service is food, beverages or entertainment”
	+ 67.1(2)(b): events designed to raise funds for a registered charity, not events carried on by registered charity – eg tickets to play run by theatre group that is a registered charity not exempt from 50% limit
	+ 67.1(2)(c): 50% limit will not apply if the amount otherwise subject to the limitation is 1) an amount for which the person is compensated, 2) reasonable, and 3) specifically identified in writing to the person paying the compensation – eg self employed person can furnish bills to clients
	+ 67.1(2)(d): referring to 6(6)(a)(ii): amounts are not restricted if paid for food or beverages for employees at a location where, due to its remoteness from any established community, the employee could not reasonably be expected to establish and maintain a SCDE
		- Not subject to 50% limitation for allowances or reimbursements for meal or entertainment expenses that have to be included in an employee’s income
	+ 67.1(2)(f): exempts costs incurred for a Christmas party or similar event to which all employees at a particular place of business have access (particular place of business: context see pg 1327)
		- To apply: may be held at other location not place of business; party must be for everyone (though could go division by division)
		- Includes: food/bevs/entertainment for spouses and children, if offered to all
* 67.1 limitation – 50% + (2) exceptions
	+ (a) ordinary business – eg restaurant
	+ (b) charity fundraising event
	+ (c) compensated expenses
		- Eg lawyer billing over a lunch exempted, but client will be subject to 50%
	+ (d)-(e.1): taxable or exempt employment benefits or allowances
	+ (f) one of six or fewer social events where food, beverages, or entertainment is generally available to all individuals employed as a particular place of business
	+ 62 – doesn’t apply for moving expense deductions (eg meals during moves)

### Home Office Expenses

##### 18(12)

* **18(12) work space in home:** (a) no amount shall be deducted in respect of an otherwise deductible amount for any part (“work space”) of a SCDE in which the individual resides, except to the extent that the work space is either
	+ i) the individual’s principal place of business, OR – eg mixed family/business use
	+ ii) 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
		- *Vanka*: earning income (morning calls/medical files reviews)/meeting patients (7 calls per night)
* **Limited to income from that biz:** (b) if meet i) or ii), then deduction shall not exceed individual’s income for the year from the business computed w/o reference to the amount deductible for the work space and
	+ **Carryforward indefinitely:** (c) allows an amount not deducitble b/c of para (b) to be deducted in the following year for the work space in respect of the biz
* **Self-contained domestic establishment**: 248(1): “ a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats”
	+ *Ellis*, 1994 TCC: sought to deduct expenses from biz over garage against all sources; disallowed b/c still part of Ellis’ residence despite fairly well separated
	+ *Dufour*, 1998 TCC: office constructed in TP’s garage part of SCDE: physically attached to, shared utility connections with, and was accessible from the interior of the TP’s home
	+ *Sudbrack*¸ 2000 TCC: allowed deduction of losses from country inn b/c separate living quarters in inn
	+ *Vanka*, 2001 TCC: allowed deduction for home office
	+ *Maitland*, 2000 TCC: operated B&B, resided in part, disallowed deductions b/c within SCDE
	+ *Broderick*, 2001 TCC: lived in basement apt and operated B&B; distinguished from *Sudbrack* by saying rest of residence available to TP for 7m of the year
	+ *Lott*, 1997 TCC: part includes whole, includes land subjacent and adjacent

**Considerations** – *Interpretation Bulletin*, IT-514

* i) principal place of business: chief, main; eg contractor does work at client locations, principal place of business would be room at home where does all the admin stuff
* ii) exclusively…: depends on nature of the business activity and is determined on the facts of each situation
* apportionment: expenses should be apportioned between uses on a reasonable basis, eg floor space, but consider any personal use of the work space if 18(12(a)(i)

### Travel Expenses

* **18(1) general limitations:** In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
* **(h) personal and living expenses**: personal or living expenses of the taxpayer, other than **travel expenses** incurred by the taxpayer while away from home in the course of carrying on the taxpayer’s business;
	+ Implicitly allowed
* **Test for business v living expenses:** what is the base from which the trade, profession, or occupation is carried on: *Cumming*, 1967
	+ Living far away is cost of living there for purposes of living there, not for purposes of profession
	+ Here: provide services in various rooms of hospital w/ no office; base = home b/c called from there ot server patients, records kept, studied cases, necessary that he have some location off premises

**Consideration #1: Commuting Cases – the course of carrying on TP’s biz**

* **Personal** *Henry*: person just leaves in the morning and returns in afternoon as matter of course – not deduct
* **Home office to work site deductible** *Cork*, FCA: home office, expenses incurred travelling to construction sites to do work using own tools (drafting) – deductible
	+ **IPP test**: travel expense incurred by him while away from home in the course of carrying on his biz
* **Choice in selecting base of ops** *Forestell*, TCC: managed to convince court his base of ops was far from Toronto so got to deduct travel expenses

**Consideration #2: Deductible within a single business, but not travel between two businesses**

* *Randall*: convinced court that Portland operation was only one base of a single biz carried on in various places
* *Wasserman*: furrier had shop in Pembroke but lived near Ottawa shop – biz considered a whole like bank w/ branches – ok to choose to live in Ottawa for biz reasons – deductible
* *Ozvegy*: cost of meals and rent for furnished apartment in far away place, hotel would be more – deductible

**Consideration #3: Mixed Business and Pleasure**

* *A-1 Steel and Iron Foundry Ltd*: mixed biz/pleasure trip to Europe with wife to visit foundries, court only allowed deduction of 35% of half on basis remainder were personal

### Interest Expenses

##### 20(1)(c), 20(3)

**20(1) deductions permitted in computing income from business or property:** notwithstanding 18(1)(a), (b), (h), in computing the TP’s income for a taxation year from a biz or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable there to:

**20(1)(c) interest:** an amount paid in the year or payable in respect of the year (depending on the method regularly followed by the TP in computing the taxpayer’s income), pursuant to a legal obligation to pay interest on

* i) borrowed money used for the purpose of earning income from a biz or property (other than borrowed money used to acquire property the income form which would be exempt or to acquire a life insurance policy),
	+ **20(3)** borrowed money: for greater certainty, borrowed money that is used to repay money that was previously borrowed is deemed to be used for the same purpose
	+ **Purpose**: *Bronfman*: encourage the accumulatio of capital which would produce taxable income
	+ **Income:** = not net income, but income subject to tax: *Ludco* – Duff: revenue
* …
* OR a **reasonable amount** in respect thereof, whichever is the lesser
	+ If satisfy this, also satisfy s 67: *Shell Canada*
	+ Arm’s length interest rate generally reasonable: *Shell Canada*

**Requirements – *Shell Canada ltd v Canada*, 1999 SCC**

1. The amount must be paid in the year or payable in the year in which it is sought to be deducted: TIMING LATER
2. The amount must be paid pursuant to a legal obligation to pay interest on borrowed money: LEGAL INTEREST ^
3. The borrowed money must be used for the purpose of earning non-exempt income from a biz or property: litigation, see cases below
4. The amount must be reasonable, as assessed by reference to first three requirements: little litigation

**Requirement #3: Borrowed money used for the purpose of earning non-exempt income from a biz or property**

*Bronfman Trust*, 1987 SCC: whether deductible b/c loan preserved income-producing assets otherwise liquidate

* TP: *Trans-Prairie Pipelines Ltd*, 1970: borrowed $700k, used $400k to redeem preferred shares, $300k on business expansion 🡪 deduct interest on all, borrowed funds filled hole left by redemption
	+ FCA: money previously subscribed by preferred SHs had be used by the company for purpose of earning income from the biz; here: money paid to beneficiary had not already been used by the trust for purp
* Crown: *Sternthal v The Queen*, 1974: argued as long as assets used to make loans were used to produce income, then deductible; court: TP used borrowed funds to make loans to children not for purpose of producing income
* **Tracing**: onus of TP to trace borrowed funds to an identifiable source under 20(1)(c)(i)
* **Current use** or original use: current use of the borrowed money;
	+ Limitation: borrowed funds must still be in the hands of the TP, as traced through the proceeds of disposition of the preceding ineligible use, if the taxpayer is to claim the deduction on the basis of a current eligible use
* **Direct** or indirect use: both ok, if indirect then TP must satisfy court that BF purpose in using funds was to earn income
	+ INDIRECT USE: since killed off through cases
* Hypothetical alternative txn: assess what you did, even if hypothetical done then maybe a sham
* Statutory interpretation: high point of purposive

**Consideration #1: Direct Use and Tracing**

* **Tracing***Bronfman*:TP must trace borrowed funds to an [income producing use] under 20(1)(c)(i) + current use
* **Direct** *Bfman*: cannot ignore direct use – or deductions would be permitted for borrowings for anyone w/ assets
* **Indirect** *Bfman*: ok where borrowed money used indirectly for BF purpose of earning income (Trans Prairie)
	+ *Grenier*, 1992 FCTD: allowed deduction on basis that loan replaced another loan 🡪 now 20(3)
	+ *Attaie*, 1990 FCA: borrow funds put to non-eligible use, personal funds used to produce income, reject
	+ Singleton/Ludco: here in timeline
	+ *Canadian Helicopters*, 2001/2002: allowed indirect use, bona fide purpose down the road earn income
* Current use of borrowed funds: Bronfman
* Direct link: Shell Canada

**Consideration #2: Purpose**

Economic substance? No, killed by Shell Canada, 1999 SCC

* *Mark Resources*, 1993 TCC: real purpose: to get a tax shelter in Canada, import losses 🡪 no deduction
	+ Overriding ultimate economic purpose for which the borrowed funds were used
	+ Gains not from producing income but from a reduction of taxes otherwise payable in Canada
* *Robitaille*, 1997 TCC: analysis of true commercial and practical nature 🡪 ultimate purpose

Now

* *Shell Canada*, 1999 SCC: killed economic substance
* *Singleton*, 2001 SCC: txns must be viewed independently; simply apply 20(1)(c)(i) not search for econ realities
	+ Eg from Duff practice Q: txn used to purchase debentures (wife), funds use for cancer (hsbd) // seperate
	+ Singleton: out of order transactions, not ok
* *Lipson*, 2009 SCC: GAAR applied for a misuse/abuse w/ respect to attribution, but not abuse on interest basis b/c used borrowed funds to buy shares; repaid loan and 20(3) applies – GAAR not used to bring back *Bronfman*
* *Ludco*, 2001 SCC: TP’s ancillary purpose to earn income is sufficient
	+ Duff: ancillary purpose to earn revenue sufficient, even if the primary purpose is to obtain a capital gain or avoid tax, but beware GAAR
	+ INCOME = GROSS INCOME – just make a dollar
	+ TEST: whether, considering the circumstances, TP had a reasonable expectation of income
* *Swirsky*, 2014 FCA: distinguished Ludco, no reasonable expectation of income since dividends had not been paid on the shares and were not during the time they were held by the TP

## Timing Issues

* Generally, prefer tax recognition later; and want losses now
* **9(1) income – business practices test**: TP’s income for a **taxation year** from a biz or property is the TP’s ‘profit’ from business or property
* **Received:** taxable receipts to which the recipient’s right is “absolute and under no restriction, contractual or otherwise, as to its disposition, use or enjoyment”: *RS Robertson Ltd*, 1944
* **Receivable:** must have a clearly legal, though not necessarily immediate right to receive it: *John Colford Contracting Co*, 1960

**Inclusions**

* 12(1)(a): amounts received that have not been earned
	+ Deduction of reasonable reserve under 20(1)(m)
	+ Inclusion in subsequent year under 12(1)(e)(i)
* 12(1)(b): amounts receivable in respect of property sold or services rendered, even if not due…unless method adopted by TP and accepted for purpose of income tax doesn’t require receivables to be included until received
	+ Deduction of reasonable reserve for doubtful debts under 20(1)(l)
		- Included in subsequent year under 12(1)(d)
	+ Deduction for bad debts under 20(1)(p)
		- Included if recovered under 12(1)(i) or (i.1)
* 12(2): 12(1)(a) and 12(1)(b) enacted for greater certainty
* 12(1)(c): interest paid or payable depending on method of computing income, subject to interest accrual rules in 12(3), (4), (9) and (11)
* 12(1)(g), (j), (k) – royalties and dividends received

**Deductions**

* 18(1)(a): disallows deduction of outlay or expense except to the extent paid or payable
* 18(1)(e): disallows deduction of amounts as or on account of a reserve, a contingent liability or a sinking fund, except as expressly permitted by the ITA – EG AMOUNT NOT YET PAID OR PAYABLE
* 18(1)(b): disallows deduction in respect of 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 in Part I of the ITA
	+ 20(1)(a) CCA, terminal loss 20(16), or resource allowance under s 66
* 18(2), (3): capitalizes carrying costs on vacant land
* 18(3.1) to (3.3): capitalizes construction period “soft costs”
* 18(9): allocates deduction of prepaid expenses to taxation year to which outlay or expense can reasonably be considered to relate

### True Picture Principle (incl Running Expenses)

**Consideration #1 – “True Picture Principle”**

* For which matching principle is a guideline
* *Publishers Guild of Canada*, 1956: subscription sales: installment basis: income when received, expenses when income received 🡪 more accurately reflects income position
* *West Kootenay Power & Light Co*, 1991 FCA: 1) do not require conformity between tax accounting and financial reporting, 2) true picture (estimating amounts prior to year end on 2m billing cycles 🡪 truer picture)
* *Oxford Shopping Centre*, 1980 FCTD: matching principle will apply to expenses related to particular items of income – cost to build road access to mall all deducted in one year instead of arbitrary 15y
	+ Does not apply to running expenses (not referable or related to any particular time of revenue)
* *Canderel*, 1998 SCC: matching principle is not a rule of law
	+ Tenant inducements payment deducted all in year expended, not included in 18(9)
	+ Running expenses: payments not causally linked to any single or specific stream of revenue, and matching principle did not apply in the circumstances
	+ TIE BREAKER: where no one method emerges as clearly superior, TP should retain option of ordering its affairs in accordance w/ any method which is in accordance with well-accepted business principles and which is acceptable in light of the reality of its business // minister must prove method inappropriate
	+ Payments related at least partially to benefits realized entirely in the year incurred
* *IKEA Ltd*, 1998 SCC: $2.65M inducement payment/fully taxable in 1986 because of “realization principle”
	+ Realization principle: IKEA free to dispose of entire sum whenever it chose and however it saw fit
* *Friedberg*, 1993 SCC: TP timed buying/selling of futures contracts; MNR argued marked to market basis (recognizing accrued losses and gains)
	+ Realization: TP report his losses when incurred, and gains when realized; realized income for tax purps
	+ CRA said they’d GAAR people for pulling this trick
* *Kruger*, 2016 FCA: 142.2-142.5 = exceptions to realization principle
	+ Realization principle can give way to other methods if these provide a more accurate picture

### Prepaid Expenses

##### 18(9)

**18(9) limitation respecting prepaid expenses:** in computing…no deduction shall be made in respect of an outlay or expense to the extent that it can reasonably be regarded as having been made or incurred

1. As consideration for services to be rendered after the end of the year
2. Payment on account of, in lieu of payment of or in satisfaction of interest, taxes…, rent or royalties in respect of a period that is after the end of the year, or
3. Consideration for insurance in respect of a period after the end of the year

### Inventory

##### 10

* TP wants inventory b/c then can deduct cost // MNR wants capital b/c no deduction under 18(1)(b)
* **248(1) “inventory”:** a description of property the cost or value of which is relevant in computing a TP’s income from a business for a taxation year
* **Inventory costs not deductible until inventory sold**
	+ *NeoNex International Inc*, 1978 FC: neon signs work in progress
* **10(5)(a) profession**: advertising, packing materials, parts, supplies, WIP of a biz that is a profession is inventory the TP
* **34** **elect:** TP have been able to elect to exclude WIP inventory from a biz that is a professional practice of an accountant, dentist, lawyer, doctor, veterinarian, or chiropractor (now only allowed pre Mar 22, 2017)

**Consideration #1: Inventory Tracking**

* **Unique:** defer costs until sold or disposed of
* **Homogenous:** FIFO/average cost/LIFO: Gross profit = proceeds – cost of inventory at year start – cost of inventory acquired/produced during the year + cost of inventory remaining at the end of the year
	+ Average cost rule: cost of all inventory available for sale in a TY is averaged
* *MNR v Anaconda American Brass Ltd*, 1995 PC
	+ Accounting convention should match in some way the actual flow of the stock
* *Interpretation Bulletin*, IT-473R
	+ Specific time, average cost, FIFO ok; LIFO or base stock method not ok (unless prove thru specific item)

**Consideration #2: Lower of Cost or Market (LCM) Rule**

* **10(1) valuation of inventory:** inventory shall be valued at the end of the year at the cost at which the TP acquired the property or its fair market value at the end of the year, whichever is lower, or in a prescribed manner
	+ Reg 1801: allows TP to value all inventory at FMV
* **10(4) FMV:** FMV of property other than property that is obsolete/damaged/defective/or held for sale/or converted into property for sale, for 10(1), to be the amount that (a) can be reasonably be expected to become receivable after the end of the year if the property is WIP of a profession, and (b) replacement cost of advertising, packing materials, parts, supplies or other property
* **10(2) continuation of valuation:** requires inventory at the start of a taxation year to be valued at the same amount as which it was valued at the end of the preceding taxation year
* **Adventure or concern in the nature of trade** – response to Friesen
	+ 10(1) + Reg 1801: excludes a business that is a ACNT from valuing inventory at LCM or FMV
	+ 10(1.01): for the purpose of computing a TP’s income from a business that is an ACNT, property described in an inventory shall be valued at the cost at which the TP acquired the property
* **10(2.1) methods of valuation to be the same** – response to *Cyprus Anvil Mining Corp*
	+ ITA requires consistency in your methods, unless Minister okays it

### Capital Expenses (Characterization)

* **18(1)** no deduction **18(1)(b) capital outlay or loss:** 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 by this part;

**Consideration #1: Characterization**

*Canada v Johns-Manville Corp*, 1985 SCC

* **BP Australia TEST:** sums expended on the structure within which the profits were to be earned or were they part of the money-earning process: structure
	+ Revenue account: where they are expended as part of the money-earning process
* **British Insulated TEST:** not only once and for all, but w/ a view to bringing into existence an asset or advantage for the enduring benefit of the trade
* Factors here: removal of a current obstacle, incurred year in and year out, easily discernible element of annual production, 40 years of incurrence, no asset to sell off at the end (it’s a hole)
* Common-sense approach

British Insulated test: enduring benefit

* *Montreal, Light, Heat & Power Consolidated*: issued new bonds to discharge old bonds; refinancing costs were capital expenditures “made with a view to securing an enduring benefit, the reduction of the cost of borrowed capital over a period of at least 15y” – not ordinary annual expenditures – CAPITAL
* **Enduring Benefit:**
* *Haddon Hall Realty*: owned and operated rental properties; disallowed deductions for replacing stoves b/c expenditures made once and for all, not ordinary annual expenditures - CAPITAL
* *Damon*, 1988 TCC: replace outmoded hotel equipment: items in question had a shorter useful life in the hotel business than in apartments, not capital, expenditure for hotel occur regularly at relatively short intervals and are therefore made to meet a continuous demand for expenditures – drapes/TVs/washer-dryer-machinery NOT
* **Too speculative** *Algoma Central Railway*: anticipated benefit of increased traffic from geological survey was too remote and too speculative to constitute an advantage of enduring benefit: NOT CAPITAL
	+ Advertising deductible in year incurred, although designed to benefit the business in an enduring way
* *Oxford Shopping Centres Ltd*: paid money to Calgary for interchange; money not paid for changes in or additions to buildings or structure of biz; paid to induce city to make changes that could be beneficial – NOT CAPITAL
* **Recurring expenditure, temporary advantage** *Central Amusement Co*: video game circuit boards; expenditure required on a recurring and regular basis, advantage from new circuit boards temporary in nature – NOT CAP
* *Canada Starch Co Ltd*: deducted amount paid to get competitor to withdraw opposite to registration of taxpayer’s trademark; trademark did not have value yet; trademark is result of current operations (distinctive) and not of registration; mere registration is an empty right if it is not based on a trademark that has business or commercial reality as an incidental consequence of the current operations of the business – TM not acquired
	+ Duff: only protects things result of carrying on of your business

BP Australia: structure within which profits are made

* *BP*: inducement payment w/ sevice station to operate exclusive agency agreement to distribute TP’s products: NOT CAPITAL – party of money-earning process, continuous and recurrent struggle to get orders
* *Suns Newspapers*, 1938 Aus: business entity, structure or organization set up or established for earning of profit v the process by which such an org operates to obtain regular returns by means of regular outlay
	+ H: lump sum non-competition payment; large, non-recurrent-enduring benefit 🡪 CAPITAL
* *Hallstroms*: acquisition of the means or production v the use of them // establishing/extending the biz org v carrying on the biz // implements employed in work v the regular performance of the work // enterprise v effort
	+ H: TP legal expenses to fight patent extension application; NOT CAPITAL
* *Bancroft v Canada*, 1989 TCC: capital even though biz never got off the ground b/c was in the process of creating a business structure
* *Bowater Power*: gen/sold electricity; engineering studies (whether to bring into existence capital asset) cost were incurred while the biz was operating and were part of the cost of this biz
	+ Means used to determine whether it should be created may still result from current operations

**Consideration #2: Repair and Renovation Expenses**

* Repairs (currently deductible) | upgrades (capital) 🡪 18(1)(b) cannot deduct
	+ Current: repairs, part of larger asset
	+ Capital: upgrades, substantial cost relative to other years/asset
	+ Grey: distinct asset/integral part of a larger asset (cost may be considered)
* ***Canada Steamship Lines Limited*, 1966 Ex Ct**
	+ Replacing floors and walls 🡪 deductible, ship repairs, part and parcel of the ship
	+ Replace boiler 🡪 capital expense, severable component
	+ Change in character/upgrade 🡪 capital instead of mere repair
* **Essentially create new asset** *Thompson Construction v MNR*, 1957 Ex Ct: replace power shovel engine
	+ Replaced engine still had value // new engine extend life 🡪 brought into existence an advantage for the enduring benefit of the trade 🡪 capital asset
	+ Influenced by magnitude of outlay relative to value of shovel; exceeded written down value
* **Size of expenditure** *MNR v Vancouver Tugboat Co*, 1957 Ex Ct: tugboat engine replacement 🡪 capital
	+ Cover accumulations of past wear and tear // influenced by size of expenditure relative to other years
* **Capital parts** *Donogue Normick*, 1995 FCA: spare parts for paper machine 🡪 capital
	+ Factors: >$1M aggregate cost, expected to last for 10 years, not intended for resale
	+ 1) parts durable (to be repaired not tossed); 2) parts were a significant asset for respondent; 3) purchase cost of the parts was not a regular, repeated expense; 4) parts had an intrinsic, permanent value; 5) parts were to alternate with identical parts in the machine (alternative not spare); 6) made to order
* *Canaport Ltd*, 1993 TCC: fibreglass liner to prevent pipeline leakage and extend life 🡪 not capital, like cargo holds in *Canada Steamships*
* *Canadian Reynolds Metal Co*, 1996 FCA: new liners in steel pots extend useful life substantially 🡪 capital assets of an enduring nature
* ***Shabro Investments Ltd*, 1979 FCA:** repairs or upgrades
	+ **Test:** did the TP get something different in kind due to the expense or was this just a repair on what you have?
	+ H: new floor w/ new supports 🡪 improvements 🡪 capital
	+ waters lines damages from floor failure 🡪 repairs 🡪 deductible
	+ Repairs do not have to be just regular wear and tear (accident or vandalism)
	+ Repairs w/ tech upgrades or new considerations ok
* **Gold Bar Developments Ltd v MNR, 1987 FCTD**: sought to deduct repair to unsound exterior brick w/ metal cladding 🡪 deductible
	+ **Purpose:** what was in the mind of the TP in formulating the decision to spend this money at this time?
	+ Expenditure in nature of repair will not be deducted if it becomes so substantial to replace asset
	+ H: not satisfied improvement of appearance/structure, nothing more than required
	+ Not capital – replacement in light of new tech // minimal cost vs value of asset
* **Marklib Investments II-A Ltd v Canada, 1999 TCC:** gold bar test; $3.4M to comply w/ municipal work orders
	+ **Purpose:** whether or not the expenditure brings into existence an asset of enduring value, rather than on the determination of the frequency or recurrence of the expenditure
	+ here: no intent to improve or make substantial repairs // just compliance 🡪 not capital
* *Speek*, 1994 TCC: burned house essentially rebuilt 🡪 capital

### Statutory Capitalization Rules (Vacant Land + Soft Costs)

##### 18(2), 18(3.1)-18(3.3)

* 18(2) limits the extent to which TPs may deduct interest expenses and property taxes (“carrying charges”)

**Vacant Land** – linked to 10(1.1) include in inventory

* **18(2):** Notwithstanding para 20(1)(c) [interest], in computing TP’s income for a particular taxation year from a biz or property, no amount shall be deductible in respect of any expense incurred by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,
	+ a) interest on debt relating to the acquisition of land, or
	+ b) property taxes
	+ unless, having regard to all the circumstances…land can rsnbly be considered to have been, in the year,
	+ c) used in the course of a biz carried on in the particular year by the TP, other than a biz in the ordinary course of which land is held primarily for the purpose of resale or development, OR
	+ d) held primarily for the purpose of gaining or producing income of the TP from the land for the particular year
	+ except to extent: (e) TP’s gross revenue from the land exceeds the total of all amounts of income from the land
	+ RESULT: where not subject to (c) or (d), amount TP may deduct cannot exceed the net income from the land otherwise determined
	+ OTHER BIZ: can deduct all interest and property taxes
	+ RESALE/DEVELOPMENT: cannot deduct, must capitalize [into capital cost or inventory cost]
* **18(3) definitions: “land”** does not include (a) any property that is a building or other structure affixed to land; (b) land subjacent to (a); OR (c) such land immediately contiguous to (b) land that is a parking area, driveway, yard, garden or similar land as is necessary for the use of any property described in (a)
* **Disallowed amounts:** added to the cost of inventory under 10(1.1) or ACB of capital property under 53(1)(h)

**Construction Period Soft Costs**

* **18(3.1):** no deduction shall be made in respect of any outlay or expense made or incurred by the TP (other than amount under 20(1)(a)…) than can reasonably be regarded as a cost attributable to the period of the construction, renovation or alteration of a building by or on behalf of the TP…and relating to the construction, renovation or alteration, or a cost attributable to that period and relating to the ownership during that period of land
	+ i) that is subjacent ot the building, or
	+ ii) that (A) is immediately contiguous to the land subjacent to the building, (B) is used, or is intended to be used, for a parking area, driveway, yard, garden or any other similar use, and (C) is necessary for the use or intended use of the building
* **18(3.1)(b)**: amount disallowed is to be including the computing the cost [inventory]s or capital cost, as the case may be, of the building to the taxpayer
* **18(3.2)**: interest in respect of construction of a building or ownership of land

### Capital Cost Allowance

* 20(1)(a): permit deduction for capital cost allowances and eligible capital expenditures
* 1100(1): CCA = CCA rate \* UCC at the end of the year
* Computing for classes // generally declining balance method // 20(1)(a) deduction optional (can claim later)
* Classes: Reg 1100(1)

**13(21): Undepreciated Capital Cost**

* UCC = (A + B) – (E + F) = A – E – F + B
	+ A = total of capital costs of depreciable property of the class
	+ E = “total depreciation” allowed to the TP for the property of the class before that time [20(1)(a)]
	+ F = lesser of the proceeds of disposition of the property (less disposition costs) and the capital cost of the property
	+ B = amounts included under s 13 [as recaptured depreciation under 13(1)] for a TY ending before that time, to the extent that those amounts relate to depreciable property of the class

**Consideration #1: Depreciable Property**

* **13(21) “depreciable property”:** property acquired by the TP in respect of which the TP has been allowed to deduct CCA in the year or a preceding year, or would be if the TP owned the property at the end of the year and the *ITA* were read w/o reference to the available for use rule in 13(26)
	+ Lease arrangements constitute acquisition: *MNR v Wardean Drilling Ltd* – purchaser has all incidents of title
	+ TEST: AKA PROPERTY FOR WHICH CCA DEDUCTION ALLOWED
* **Classes: Reg 1100(1):** types of property
	+ Subject to exclusions:
	+ **NOT** 1102(1) property not included:
		- 1b) inventory;
		- 1c) not acquired for purpose of gaining or producing income; 🡪 CONSIDERATION #1(1)
		- 1f) property which an outlay or expense for the use of or maintenance of which is not deductible by virtue of 18(1)(l) [recreational facilities, yacht, camp, etc]
	+ **NOT** 1102(2) land

**Consideration #1(1): Depreciable property does not include property not acquired for IPP**

* Reg 1102(1)(c): not included is property not acquired for purpose of gaining or producing income
* *Ben’s Limited v MNR*, 1955 Ex Ct
	+ 1) IPP, 2) secondary intention
	+ Here: buildings not acquired for IPP, just land, no secondary purpose here
* *Hickman Motors Ltd v Canada*, 1998 SCC
	+ 1102(1)(c) does not require any particular period of time // only small revenue so IPP
	+ Intention irrelevant // pre-GAAR

**Consideration #2: Acquisition of Depreciable Property**

* A = total cost of all depreciable properties acquired in the class
* *Wardean Drilling Ltd*: purchaser has acquired assets of a class in Schedule II when purchaser has al lthe incients of title, such as possession, use and risk, although legal title may remain in the vendor as security for the purchase price as is the commercial practice under conditional sales agreements

Capital Cost

* Cost = actual cost: *Cockshutt Farm Equipment of Canada*, 1966
* 13(7)(g): limit capital cost of a passenger vehicle to $30k plus fed/prov sales taxes + reg 7307(1)

Specific Limits

* 13(26): prohibits addition of property before available for use by taxpayer
* 1100(2): special limit – half year rule: where amounts added to A [capital cost] in a taxation year as a result of acquisitions of property > aggregate amounts deducted from the UCC as a result of dispositions under part F:
	+ The CCA that a TP may deduct in respect of property of that class is based on the UCC of the class otherwise determined less half of the net addition to the UCC during the year
	+ EFFECT: generally is to permit TPs who acquire depreciable property to claim only half the normal CCA in respect of that property during the taxation year in which the property is acquired
	+ Discourages acquiring new depreciable property near the end of a taxation year

**Consideration #3: Deductions in Respect of Depreciable Property**

* Reg 1100(1)(a) + 20(1)(a) 🡪 CCA
* **Prohibition against use of CCA to produce net losses for rental properties:** 1100(11): prevents TPs from using CCA deductions to create or increase rental losses in order to shelter income from other sources
	+ 1100(14): def’n of rental property: …property used by the TP principally for the purpose of gaining or producing gross revenue that is rent
* DUFF: all rental properties pooled for purposes of 1100(11), despite separate classes for $50k thing
* Can take it to zero

**Consideration #4: Disposition of Depreciable Property**

* **248(1) “disposition”:** (a) any txn or event entitled TP to proceeds of disposition
	+ Use *Warden* in reverse: *Olympia & York*, 1980 FCTD – divest of duties, responsibilities charges, profits, benefits and incidents of ownership, even though retain legal title
* **13(21) “proceeds of disposition”:** includes a) sale price of a property that has been sold, b) compensation for property unlawfully taken, c) insurance compensation for property destroyed, d) taken under statutory authority, etc
	+ 13(4): 13(21) (b)-(d) [property taken]: reduces amount of proceeds that must be subtracted in computing the UCC of the class by the lesser of the proceeds otherwise determined and the amount used to acquire the replacement property – eliminates tax consequences
	+ 13(4.1): property is a replacement property where (a) reasonable to conclude that, and (a.1) acquired and used for a use that is the same or similar

### Recapture and Terminal Loss

* **UCC (-) Recaptured Depreciation:** 13(1) includes recaptured depreciation in taxpayer’s income + added to UCC through 13(21) term B (NIL)
	+ Disposition proceeds greater than UCC: depreciation excessive, recaptured depreciation
		- Proceeds greater than original capital cost 🡪 capital gain
* **UCC (+) Terminal Loss:** 20(16): A to D.1 > E to K, AND TP no longer owns any property of that class, shall deduct amount of the excess under 20(16)(a) AND no amount shall be deducted under 20(1)(a) for that class
	+ Disposition proceeds less than UCC: depreciation insufficient, suffered terminal loss
	+ 13(21) reduces UCC account to NIL

### Separate Class Issues (each rental >$50k, each biz, electronics)

* 1101(1ac): separate class for each rental property w/ capital cost of $50k or more
* 1101(1): separate class for each business
* 1101(5p) and 1101(5q): allow TP acquired rapidly depreciating electronic equipment as specified to elect to treat each such depreciable property as a separate class, making TP eligible for a terminal loss on its disposition
	+ Where held for 5 years: 1103(2g): requires the property to be transferred back to the class in which it would have been included but for the election

# Part 4: Taxable Capital Gains, Allowable Capital Losses, Non-Arm’s Length Transactions and Attribution Rules

**S 3 Income for taxation year**

Income of a taxpayer for a taxation year = taxpayer’s income for the year 🡪 FORMULA

1. = Σ(each of taxpayer’s income for the year from a source inside or outside Canada)
	* EXCLUDING: taxable capital gain (TCG) from the disposition of a property
	* INCLUDING: each office, employment, business and property + unspecified
2. **= (TCG from dispositions of property other than listed personal property + taxable net gain for the year on dispositions of listed personal property) – (allowable capital losses for the year from disposition of property other than listed personal property (ACL) – allowable business investment losses (ABIL) IF >0) 🡪 IF >0**
3. a + b – sub e deductions (no double counting w/ stuff in para a) >0
4. c – (OEBP losses + ABIL) >0
5. d = income for the year, (f) if no amount income deemed 0

## Capital Gains

### Characterization

**Characterization: Not disposed of in the course of biz OR pursuant to ACNT**

**Consideration #1: Real or Immovable Property**

* *Black’s Law Dictionary*: real property or real estate refers to “land and anything growing on, attached to, or erected on it, excluding anything that may be severed w/o injury to the land”
* **Secondary intention doctrine:** *Regal Heights Ltd v MNR*, 1960 SCC
	+ TP would not have acquired it but for the prospect of resale at a profit: *Racine* – look at circumstances
	+ Courts have generally required this doctrine to require the possibility of resale at a profit as a “motivating” reason or consideration for the TP’s decision to acquire: *Morev Investments*
* **Manner of dealing:** *Taylor*, 1956
	+ 1) period of time during which the property is held; 2) the circumstances responsible for sale; 3) whether the TP uses the property to earn income; 4) the manner in which the acquisition was financed (implied REOP test), and; 5) other activities carried on by the taxpayer

Vacant Land v Developed Land

* Vacant land stamps itself as a trading venture: *Rheinhold* in *Taylor*
* Where nature of the property in question is such that it cannot produce income but must be sold to produce profit, the inference that the txn is an adventure in the nature of trade (vacant land): *Happy Valley Farms*, 1986
* Developed land: where active profit producing property 🡪 more likely an investment (capital): *Hiwako Inv Ltd*

Vacant Land for Personal Use

* Invested in real property as a secure store of wealth 🡪 capital: *Lawee*, 1972
* Land acquired to build cottage, sold, acquired for personal use, not resale and sold in response to unsolicited offer: *Montfort Lakes Estates Inc v Canada*, 1979 🡪 capital

Time of Holding

* Capital gain: TP had acquired the property for purpsoes of eventual business expansion and held for 10 years: *H Fine and Sons Ltd*, 1984 FCTD
* ACNT: property flipped quickly: *Gratl v Canada*, 1994 FCA

Similar Transactions Carried Out

* History of txns 🡪 presumption arises that there has been a dealing in respect of the property: *Happy Valley Farms*, 1986 FCTD

Method of Financing and REOP; circumstances responsible for disposition; other activities carried on by TP

### Canadian Securities

* **Election** 39(4): allows TP to make an election where every “Canadian security” owned by the TP in that year or a subsequent year is deemed to be a capital property in those years and every disposition of such a security by the TP is deemed to be disposition of a capital property
	+ 39(6): “Canadian security” = security (other than a prescribed security) that is a share of the capital stock of a corp resident in Canada
	+ 6200 prescribed securities: lots of private stuff
* **But not** 39(5): election does not apply to a bunch, traders, dealers, financial institutions, corp whose principal business is lending of money and/or purchasing of debt obligations, non-residents, any combo
* **Purpose:** Allow TP to characterize all gains on the disposition of all “Canadian securities” as capital gains – provided that characterize all loses as loses

**Consideration #1: Traders, dealers**

* *Vancouver Art Metal Works Ltd v Canada*, 1993 FCA
	+ Noscitur a sociis: strange group, includes non-resident
	+ Trader/dealer = TP who makes it a profession or a business of buying and selling securities
		- Need not be registered
	+ Adventure (can elect) and a trader (can’t elect) – question of fact
	+ **Factors**: frequency of txns; duration of holdings (quick profit or long term); intention to acquire for resale at a profit; nature and quantity of the securities held or made the subject matter of the txn; and the time spent on the activity + Duff: intention affects whether adventurer
* **Trading v dealing:** *Robertson*, 1996 TCC
	+ Dealer is more professional, requires special knowledge of the market
	+ Trader is engaged in a business activity that’s a bit more than an adventure in the nature of trade
* **# of txns:** *Woods*: over 100 txns in 1986/87 characterized as trader or dealer
* **Particular or special knowledge of market:** *Kane* 🡪 trader or dealer
* **No special knowledge, few txns:** *Leng*, not trader (17 from 2000-2002)
* **No special knowledge, lots of trades, short holding period, blue chip div paying**: *Zsebok* 🡪 adventure, 20-50/y
* **Election does not apply to discounts on debt obligations that are characterized as interest**: *Satinder*

### Computation

* 38(a): taxable capital gain = half of capital gain; (b) allowable capital loss = half of capital loss
	+ 39(a)+(b): capital gains and losses are gains/losses that would not otherwise be included or deductible in s 3(a) for computing a taxpayer’s income for the year - RESIDUAL
	+ If yes = “capital property” under s 54
* 248(1) “property” means property of any kind whatever whether real or personal, immovable or movable, tangible or intangible, or corporeal or incorporeal and, without restricting the generality of the foregoing, includes a) a right, b) money unless contrary intention, c) timber resource, d) work in progress of biz that is a profession, e) goodwill
* 40(1)(a)(i), 40(1)(b):
	+ TP’s gain for a TY from the disposition of prpty = proceeds of disposition – (ACB + disposition costs)
	+ Loss = (adjusted cost base + disposition costs) – proceeds
* 54 “proceeds of disposition”: includes a) sale price of property that has been sold, b) compensation for property unlawfully taken, c) insurance compensation for property destroyed, d) taken under statutory authority, etc
	+ Broadest possible meaning: *Canada v CIE*
* 248(1) “disposition”: (a) any txn or event entitled TP to proceeds of disposition
	+ Use *Warden* in reverse: *Olympia & York*, 1980 FCTD – divest of duties, responsibilities charges, profits, benefits and incidents of ownership, even though retain legal title

Adjusted Cost Base

* 54 “adjusted cost base”
	+ adjusted cost base to a taxpayer of any property at any time means, except as otherwise provided,
	+ (a) where the property is depreciable property of the taxpayer, the capital cost to the taxpayer of the property as of that time, and
		- Actual cost: *Cockshutt Farm*
	+ (b) in any other case, the cost to the taxpayer of the property adjusted, as of that time, in accordance with section 53, - NON-DEPRECIABLE PROPERTY
	+ Except that
	+ (c) some stuff
	+ (d) can’t be negative

5. Reserves

* Where TP disposes where all or some of proceeds are payable after the end of the taxation year, 40(1)(a)(iii) allows the TP to deduct a reserve in computing the amount of the gain
	+ Cannot exceed lesser of
	+ Reasonable amount, and
		- Generally, portion of the gain [40(1)(a)(i) amount]
	+ Amount = 1/5 of amount under (i) is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the TP ending after the disposition of the property
* 40(1)(a)(ii) includes it for the following year
* Effect: defer recognition of a reasonable portion of the gain otherwise determined, provided that no less than 1/5 of this gain is recognized in the year in which the property is disposed of and in each of the following 4 taxation years
* 40(2)(a): prohibits where TP either exempt from tax or nonresident in Canada at the end of the year or at any time in the immediately following taxation year, and where the property is sold to a corporation in which the TP is connected

## Special Rules

### Personal Use Property

* 54 “personal-use property” of a TP includes (a) property owned by the TP that is used primarily for the personal use or enjoyment of the TP or for the personal use or enjoyment of one or more individuals each of whom is
	+ i) the TP, ii) a person related to the TP, or iii) where the TP is a trust, a beneficiary under the trust or any person related to the beneficiary
* 40(2)(g)(ii): loss, if any, disposition of PUP is nil [loss attributable to use and enjoyment]
* 46(1): where a TP has disposed of a PUP of the TP, for the purposes of this subdivision
	+ a) the ACB to the TP of the property immediately before the disposition shall be deemed to be the greater of $1k and the amount otherwise determined to be its ACB to the TP at that time; and
	+ b) the TP’s proceeds of disposition of the property shall be deemed to be the greater of $1k and the TP’s proceeds of disposition of the property otherwise determined
	+ AVOIDANCE 46(2): if disposed of in parts, proportional to options in 46(1)
	+ EFFECT: don’t have to track PUP acquired below $1k
	+ 46(5): acquires PUP as a gift from person not at arm’s length, and eligible for charitable deduction: 🡪 excluded property, $1K does not apply

**Consideration #1: Must be capital property, not inventory**

* *Burnet v C*, 1995 TCC
	+ TP seeks to deduct loss on house as adventure in the nature of trade
	+ Most people expect to sell their principal residence at some time, and hope to realize a tax-free CG
	+ Evidence more consistent with trading intent
	+ MUST BE: principal residence + capital property
	+ Deductible business loss b/c ACNT
* *Down*, 1993 TCC: bought and sold 80-100 properties in previous years 🡪 deductible business loss
* *Jason*, 1995 TCC: heavily debt financed, though TP living in house for 8m, secondary intent to profit 🡪 ACNT
* *Boudreau*, 1999 TCC: loss on property rented to parents at below market rates and sold to sister at a loss characterized as PUP; court: property not acquired for purposes of gaining income; not once did rent at FMV; primarily for enjoyment of TP’s parents

### Listed Personal Property

* 3(b)(i)(B)
* 54 “listed personal property” PUP that is all or any portion of, or any interest in or right to any (a) print, etching, drawing, painting, sculpture, or other similar work of art, (b) jewellery, (c) rate folio, rare manuscript, or rare book, (d) stamp, or (e) coin
* 41(2)(a) TP’s net gain for a TY from dispositions of LPP is gains from dispositions minus losses from dispositions
	+ 41(1) taxable net gain for the year from dispositions of LPP as ½
	+ 41(3) “listed-personal-property-loss” when losses for year > gains for the year
	+ 41(2)(b): when computing a TP’s net gain for the year from dispositions of LPP, TPs may deduct from the amount otherwise determined under 41(2)(a) “such portion as the TP may claim of the TPP’s LPP losses for the 7 taxation years immediately preceding and the 3 taxation years immediately following the TY”
	+ EFFECT: 3 year carry back and 7 year carry forward
* Subject to 46 $1k rule
* *Schafer*: original manuscripts sold to National Library of Canada 🡪 LPP not inventory

### Principal Residence

* 54 “principal residence” of a TP for a TY as: a particular property that is a housing unit, or a share of the capital stock of a co-operative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corp and that is owned, whether jointly with another person or otherwise, in the year by the TP, if
	+ (a) if TP is an individual, the housing unit was ordinarily inhabited by TP, spouse, or current/former Cl partner, child, OR
	+ (b) the TP elected under ss 45(2) and 45(3) [on the change of use of property to or from an income-producing use]
	+ Except that
	+ (c) must designate house – one PR per “family”
	+ and
	+ (e) deeming rule: land subjacent to the housing unit and such portion of any immediately contiguous land as can reasonably be regarding as contributing to the use and enjoyment of the housing unit as a residence, except where the total area of the subjacent land and of that portion exceeds ½ hectare
		- The excess shall be deemed not to have contributed to the use and enjoyment of the housing unit as a residence unless the TP establishes that it was necessary to such use and enjoyment
* 40(2)(b): TP’s gain for a TY from disposition of a property that was PR: A – (A\*B/C)
	+ C = years owned
	+ B = designated years + 1
	+ A = gain
	+ S 257: negative = NIL

**Consideration #1: Characterization as Capital Property**

* Not available to inventory or ACNT
* *Cayer v Canada*, 2007 TCC
	+ **Test:** *Happy Valley Farms v MNR*, 1986 FCTD: distinguish between capital gains and income in the context of a “principal residence” claim
		- the nature of the property sold – newly developed, quick turnover, buys lots/houses and renovates, marketable feature for quick resale
		- length of time the property was owned – here, not long usually
		- the frequency or number of other similar transactions
		- the amount of work or effect expended on the property – sole source of income, lots of work
		- the reason why the property was sold, and – had crappy excuses
		- the TP’s intentions at the time the property was acquired – objective factors intention is not to live in the house: financed through line of credit instead of mortgage
	+ here: inventory
* *Isaaks*, 2001 TCC: speed w/ which the A acquired land, built 3 hourses and resold the same, coupled with flimsy excuses 🡪 related to carpentry businesses
* *Giusti*, 2011 TCC: inhabited condo for 4m between purchase and sale; business b/c held for short duration, engaged in similar txns, made improvements to make it marketable, actively promoting from time of move-in
* *Falk*, 1991 TCC: TP bought and sold 3 residences prior, gains where characterized as capital gains eligible for PRE b/c neither had experience in real estate industry, family needs were primary motivation, and normal financing

**Consideration #2: Eligible Property**

* 54 “PR”: principal residence + housing unit…ordinarily inhabit the property in the year
* *Flanagan v MNR*, 1989 TCC
	+ *Oxford*: housing unit: shelter of a house, or such that of a house; house accommodation; lodging; a house or building – here: includes suitably equipped van or trailer// shelter // need not be building
	+ Ordinarily resident: a person may ordinarily inhabit more than one housing unit in a year if he does so in the course of the customary mode of his life; question of fact – here: spent all free time at the property
	+ When mobile home/van/trailer, land subjacent to such housing unit is part of the housing unit
	+ Interpretation Bulletin IT-120R3: housing unit includes a house, apartment in a duplex, or apartment building or condominium, cottage, mobile home, trailer or houseboat
	+ 2nd property not contiguous b/c separated by roadway
* Income Tax Folio, S1-F3-C2: house, an apartment…, a cottage, a mobile home, a trailer, or a houseboat; leasehold interest in a housing unit; or coop stock + land it sits on w/ restrictions
	+ Ordinarily reside: not if main purpose is to gain or produce income
* **Amenities for normal living** *Rebus*, 2002 TCC: garden shed not housing unit: no water/elec/stove/dishes/cupboard/not equipped for normal living
* **One night not enough** *Ennist*, 1985 TCC: bought condo, moved before built, stayed 1N, sold 🡪 not ordinarily inhabited
* **Shared houses:**
	+ *Mitosinka*, 1978 FCTD: house divided in middle, portion of house inhabited by tenants = separate housing unit not ordinarily inhabited by TP 🡪 disallowed PRE on the whole [did part]
	+ *Saccomanno*, 1986 TCC: single house, but informal divisions: portion rented out does not detract from its character as a PR; built as single residence, TP acquired to return to it single dwelling

**Consideration #3: Surrounding Land**

* 54 “PR” (e) deeming rule: land subjacent to the housing unit and such portion of any immediately contiguous land as can reasonably be regarding as contributing to the use and enjoyment of the housing unit as a residence, except where the total area of the subjacent land and of that portion exceeds ½ hectare
	+ The excess shall be deemed not to have contributed to the use and enjoyment of the housing unit as a residence unless the TP establishes that it was necessary to such use and enjoyment
* 54(e): ½ hectare limit for reasonably regarded as contributing to use and enjoyment
	+ Beyond ½ hectare? TP must establish necessary to such use and enjoyment
* **Min lot size** *Yates*, 1986 FCA: sold 9.3/10 acres; bought 10 b/c zoning laws 🡪 legally required 🡪 necessary
* **Assessment yearly** *Cassidy*, 2010 FCA: whether surrounding land necessary should be assessed on a yearly basis
	+ B term in PR calculation covers this
* **Not subj** *Rode*, 1985 TCC: reject subjective factors for exceeding statutory threshold – does not make necessary
* **Subdiv rules** *Augart*, 1993 FCA: bought 8.99 acres when required to buy; sold all; got exemption for all 8.99 since local regulations made it impossible to subdivide
* **Subdiv rules** *Carlile*, 1995 FCA: 33, 3 personal and 25 rented to farmer, sold the 33; considered necessary when zoning required min 25 acres for agriculture purposes 🡪 eligible PRE, dissent: able to apply for rezone/subdiv
* **Able to rezone** *Stuart Estate*, 2004 FCA: 3.255 acres; laws allowed rezoning/subdivision, but TP could not have afforded it; test of necessity linked to legal and physical characteristics of the property 🡪 45% necessary

## Recognition and Non-Recognition Rules

### Deemed Dispositions (Change in Use of Property)

* **45(1)(a)**: for the purpose of subdiv c, where a TP,
	+ i) other purpose [personal] 🡪 purpose of gaining or producing income [inventory or capital], or
	+ ii) purpose of gaining or producing income 🡪 some other purpose
	+ the TP shall be deemed to have
	+ iii) disposed of it at that later time for proceeds equal to its FMV at that later time, and
	+ iv) immediately thereafter reacquired it at a cost equal to that FMV NOTE 🡪ACB
* **13(7)(a),(b)** for purposes of 8(1)(j) and 8(1)(p), s 20 + regs for purpose of 20(1)(a), - CAPITAL COST ADJUSTMENT RULES
	+ (a) purpose of gaining or produce income 🡪 other purpose
		- disposed for proceeds equal to FMV and reacquired the property at a cost equal to FMV
	+ (b) other purpose 🡪 gaining or producing income
		- Deemed acquired at a cost equal to the lesser of (i) its FMV at that time, and (ii) the total of its cost otherwise determined and ½ of the amount by which its FMV exceeds this cost

**Election**

* 45(2): 45(1)(a)(i) + 13(7)(b): deemed not where TP so elects
	+ Overrides deemed disposition
	+ Prohibits CCA deductions and other business expenses
	+ S 54 “PR”: residence subject to election may be designated as a PR for each of the four years after the election notwithstanding that it is not ordinarily inhabited by the TP or a related person
	+ Rescinds election in ‘subsequent year’: 45(2) being to use for purpose of gaining or producing income on the first day of that ‘subsequent year’ and the residence can no longer quality as PR
* 45(3): 45(1)(a)(ii) + 13(7)(a): deemed not where TP so elects
	+ ONLY: where property that was acquired by a TP for the purpose of gaining or producing income ceases to be used for that purpose and becomes the TP’s principal residence
	+ 45(4): deems election under 45(3) not to have been made if has deducted CCA on the property after ‘84
	+ Property may be designated as PR for each of the 4 taxation years preceding the election, notwithstanding TP has not ordinarily inhabited the residence

**Change case**

* *Duthie Estate v Canada*, 1995 FCTD: personal 🡪 income-producing
	+ **Test:** clear and unequivocal positive acts which transformed the land from capital asset to inventory
		- Business meetings, minutes, consultants, full-time, $43k expended, accounting advice regarding the biz org, project managers, logic network
* *Dawd*, 1981 TRB: engineering study, draft plan 🡪 indistinguishable from biz of land developer
* *Jones*, 1990 TCC: actions/conduct in advance of reg of subdiv plan may be sufficient for change in use
* *Interpretation Bulletin*, IT-218R: clear steps must be taken to signal change of use from capital 🡪 inventory
	+ Above case law suggest clear steps short of formal application are sufficient
	+ Real estate from inventory to capital property:
		- Vacant land: remains inventory
		- Developed land: (a) establish that abandoned original intention to sell; (b) capitalize cost of building and cost of lot in financial records, and (c) make use in manner more indicative of investing than trading (rental w/ long term lease w/o purchase option)
	+ Pg 961: sale of real property income v capital factors

## Deemed Proceeds on Disposition of Property

* S 68: applies “where an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer or as being in part consideration for the provision of particular services by a taxpayer”
	+ Irrespective of form or legal effect of a contract or agreement
* Anti-avoidance rules that specify the amount at which certain transfers of property are deemed to have occurred for tax purposes – allows revenue authorities to allocate amounts
* **Strategy**
	+ Vendors, who have likely claimed CCA, will prefer to allocate as much of the proceeds as possible to non-depreciable capital property (land) and depreciable property on which little CCA claimed
		- 🡪minimize any recapture, maximize capital gain, maximize terminal losses
	+ Purchasers, allocate to inventory or services provided, since there are fully deductible in computing the purchaser’s income, or to depreciable property, especially property with a high rate of CCA
		- 🡪 benefit from high CCAs and/or terminal losses

**General Approach**

* *Golden v Canada*, 1983 FCA
	+ **Approach:** consider the matter from the viewpoint of both the vendor and the purchaser and to consider all of the relevant circumstances surrounding the txn
	+ **Deference:** txn at arm’s length + not a mere sham 🡪 apportionment by parties given considerable weight
* *Transalta*, 2012 FCA: **still reasonableness, even if both parties agreed**
	+ An amount can reasonably be regarded as being the consideration for the disposition of a particular property if a reasonable business person, w/ business considerations in mind, would have allocated that amount to that particular property; long-standing regulatory/industry practices, auditing/valuation practices relevant
* *Peterson*, 1988 TCC: unreasonable to allocate to such to good will b/c crap daycare and non-existent goodwill

**Taxpayer’s trying to use s 68**

* *H Baur Investments*, 1987 TCC: court unsympathetic to TPs relying on s 68 to undo agreement
	+ Must consider both party’s views, can’t just reject one
* *Leonard v Canada*, 1990 TCC+FCTD: TP’s reliance on s 68 ok: sought to deduct expenses to live-stock and milk quota based on their appraised values rather than the proceeds allocated to these assets in the deed of sale
	+ True market value may be on factor in reasonableness // reflects that original apportionment unrsnble
	+ Arm’s length + not hard bargaining + allocation provided last minute 🡪 not reasonable

# General Use

Interpretation bulletin - Not determinative, important factor in case of doubt: Nowegijick v The Queen, 1983 SCC

**Arm’s length**

251 (1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm’s length;

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition trust in subsection 108(1)) are deemed not to deal with each other at arm’s length if the taxpayer, or any person not dealing at arm’s length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm’s length.

**Definition of related persons**

(2) For the purpose of this Act, related persons, or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

(b) a corporation and

(i) a person who controls the corporation, if it is controlled by one person, + MORE

248(1) self-contained domestic establishment means a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats;

6(1)(a) exceptions

(i) derived from the contributions of the taxpayer’s employer to or under a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a pooled registered pension plan, a private health services plan, a registered pension plan or a supplementary unemployment benefit plan,

(ii) under a retirement compensation arrangement, an employee benefit plan or an employee trust,

(iii) that was a benefit in respect of the use of an automobile,

(iv) derived from counselling services in respect of

(A) the mental or physical health of the taxpayer or an individual related to the taxpayer, other than a benefit attributable to an outlay or expense to which paragraph 18(1)(l) applies, or

(B) the re-employment or retirement of the taxpayer,

(v) under a salary deferral arrangement, except to the extent that the benefit is included under this paragraph because of subsection (11), or

(vi) that is received or enjoyed by an individual other than the taxpayer under a program provided by the taxpayer’s employer that is designed to assist individuals to further their education, if the taxpayer deals with the employer at arm’s length and it is reasonable to conclude that the benefit is not a substitute for salary, wages or other remuneration of the taxpayer;

Intrepretation bulletin important but not determinative: Fries

In respect of = broad (Mendes Roux), widest possible scope (Savage)

248(1) “self-contained domestic establishment” = “dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats”

Shell Canada: arm’s length interest rate generally reasonable

Specific > general: Savage

**Consideration #3: Deductions in Respect of Depreciable Property**

* Reg 1100(1)(a) + 20(1)(a) 🡪 CCA
* **Prohibition against use of CCA to produce net losses for rental properties:** 1100(11): prevents TPs from using CCA deductions to create or increase rental losses in order to shelter income from other sources
	+ 1100(14): def’n of rental property: …property used by the TP principally for the purpose of gaining or producing gross revenue that is rent
* DUFF: all rental properties pooled for purposes of 1100(11), despite separate classes for $50k thing