## Computation of income

* 2(2)- **income** = **Income + additions – deductions** (permitted by Div C)
* S 3 – **income = (a) + (b) – (c) – (d), if negative = 0**
  + - = **income from source +capital gains – deduction – business loss**
  + A – all income of the year including: office, employment, business and property)
    - Excludes capital gain
    - Net income – incorporated allowable deductions
    - Income- periodical receipts Curran
      * Usually – has recurring character
      * Exception – non-recurring bonus / gratuity paid to employee
        + Also income Consolidated Textiles
    - Sources- compute each source separately then aggregate to get total
      * Office and employment – labour
      * Business – active income
      * Property – passive income
      * Could have income from unspecified source
        + Even if not specifically id in ITA Schwartz
  + B - all capital gains + net gains – capital loss
    - Capital loss – only deductible against taxable capital gains
      * Rather than other kinds of income
    - (i) – (ii), if negative then = 0
      * I – taxable capital gain from disposition of property +taxable net gain from disposition of listed personal property - ½ of the capital gain 38(a)
      * Ii – allowable capital loss –allowable business loss
        + ½ of capital loss – 38(b)
  + C - deductions
  + D – business loss can be deducted against all kinds of income
  + E – special statutory deductions
  + F – no negative income 🡪 income = zero and loss gets carried over

## Tax Avoidance

* **GAAR** s 245
* **Element**
  + 1. Tax benefit – has to be some tax benefit
    - Broadly defined – include deduction, credits, etc
  + 2. Tax purpose – apply to tax motivating transaction
    - Engaged in to primarily avoid tax
  + 3. Abuse concept
* **Approach** – provision of last resort
  + 1. Determine whether there’s an avoidance transaction
    - Test – comparative and objective
    - 245(3) – will receive some tax benefit – but for this section
      * Unless – **objectively reasonable**
        + Arranged for bona fide purpose rather than tax purpose
    - Tax benefit – factual determination so deference to judge
      * **Comparative –** compare what you would have done but for the tax purpose
        + Low threshold – any deduction is tax benefit
  + 2. Tax purpose- factual determination
    - Test – comparative and objective
  + 3. Abuse s 245(4)
    - Applies to transaction **only if reasonably considered** 
      * A – would result in misuse OR
      * B – would result in abuse

## General Characterization

* **1. Income from a source – taxable** 
  + Fully taxable
  + Periodic / replacement
* **2. Capital receipt - ½ taxable** 
  + If get amt that > cost of that asset
    - capital gain🡪 ½ is taxable
  + If invested it and get it back again – return of capital
    - No gain – get return of capital
* **3. Gift/windfall – not taxable** Goldman
  + no source
* **Approach** – likely to be consider income if
  + Periodic
  + Looks like replacement
    - Related to a source – ie employment
  + doesn’t look like – capitals/ gifts/ windfalls

# Income from Employment /Office

|  |  |
| --- | --- |
| Characterization | |
| **Employment / IC?** | **Test for Independent C / Employee** Weibe Door  **1. Control -**   * K of service – employee   + Master and servant – master has right to tell them what and how work is done * K for service – IC   + Principal n agent – has right to tell agent what to do only   **2. Ownership of tools –** include principal work place   * IC – own tools for own use   + If work from home – more likely to be IC * Employee – tools provided by employer   **3. Chance of Profit / Risk of Loss –** compensation for work   * + Degree of financial risk taken   + Degree of responsibility for investment and management * IC - Chance of profit – if do better / worse get more or less * Employee – only get paid salary   **4. Integration test –**   * Work is integral to business?   + Employee – work is integral to business   + IC – work is accessory to work * Approach   + From perspective of **employee not employer**     - reason       * when viewed from employer – won’t hire anyone unless need them   + look at whether its **exclusive relationship?**     - If work for one person – likely employee     - If work for diff ppl – more likely IC   **5. Other factors**   * Whether business is already established – * Specific result * Intention of the party Royal Winnipeg Ballet   + Agreement is not determinative of the relationship – irrelevant what they call it     - Must determine the legal substance over the form –   + Reason – may not have equal bargaining power |
| **Approach**   * Total relationship test   + Who’s business is it?   + Contextual and programmatic   + Look at all the tests |
| **Personal service Business or employee?** S 125(7), 18(1)(P) | 125(7) – **personal service business**  Requirement   * A - Individual – provides service thru corporation to a would be employer   + **But for the company** – would have employee status   + “incorporated employee” * B – any person related to “incorp emp” – is specified SH   + owns at least 10% of shares of the corp of the service company   + Related person – connected by blood relationship, marriage/ adoption   Exception   * C – employs more than 5 full-time employees thruout the yr Or * D – service are provided to associated corp   Implication 18(1)(p)   * Limits the expenses that can be claimed – as oppose to actual business * Deduction allowed   + Cost of wages and salaries paid   + Other employment provided * denied – low corporation tax rate |
| **Approach** Dynamic Industries   * **1. Within the requirement?**   + Working thru corp to a would be employer?   + Individual / related person owns the share? * **2. but for the corp, would be employee? Look at the business from before and after**   + Apply the Weibe Door test- employee?     - Ownership of tool     - chance of profit n risk of loss       * If assumed lots risk – regular business     - Integration       * If worked for other people – regular business       * If only work for one business –PSB 533702     - Control       * If no independence- personal service business 533702   + May consider business purpose test –     - 533702 – no business purpose –so its PSB |
| Inclusion | |
| **Remuneration -**5(1)-, 6(3) | **General Principles**  5(1)-**includes : salaries, wages, gratuities, other remuneration**   * + Received by tp – means get the cash   6(3) – **deemed an amount to be** **remuneration**  Requirement   * Either:   + A – pmt for employee during employment OR   + B – from obligation arising out of agreement b4/during/immediately after payee was employed by payer period     - collateral to employment     - On acct, in lieu of pmt or in satisfaction of obligation arising out of agreement     - Arise out of agreement – close to time of employment       * But its not employment K * And – one of C/D/E – **economic substance-**    + - regardless of form/ effect, reasonable to assume its econ substance is   + C – inducement     - consideration for accepting employment   + D –remuneration - payment for services     - if look at the pmt – regardless of form/ effect – reasonable to assume   + E – covenant     - with reference to what the employee is or is not to do b4 / after termination of employment |
| **Gratuitous Payment=remuneration if:** Goldman   * Connection with service   + Does not need direct connection   + If viewed from receiver – it’s a payment for service * Legal obligation   + Even if doesn’t exist – can still be for services/ remuneration |
| **Strike Pay**   * **Taxable if: During strike –**   + Received when employed by union during strike Loeb   + Originated from business by union during strike Ferris * **Non-taxable**   + If only strike pay |
| **Damages for Personal Injury**   * **Not taxable –**loss of earning capacity is of capital nature Cirella * Surrogatum principle **–** doesn’t apply to emp contextCirella |
| **Inducement payment**  6(3)(c)   * As long as essence of payment – is for service Curran   + Irrelevant whether paid directly by employer or others |
| **Payment on Termination** | **When terminated / ceased**   * If getting paid from discontinuation – taxable * Payment for terminating employment K b4 employment begins – Schwartz   + Not retiring allowance / income from employment * Lump sum pmt for loss of employment Schwartz   + That’s for “ embarrassment, anxiety and inconvenience”     - Allocation – unclear     - Whole lump sum not taxable as income |
|  | **Retiring allowance -** 56(1)(a)(ii)  Requirement – defined in 248(1) –   * 1. In respect of loss of employment   + In respect of – broadest possible scope Mendes-Roux     - Encompasses any pmt connected with tp’s loss of employment * 2. Must have loss of office/ employment   + If not yet under obligation to provide personal service Schwartz     - Pmt – is not retiring allowance |
| **General Benefits -** 6(1)(a) | 6(1)(a) – **value of benefits** include in income   * Include: value of board, lodging and other benefits * Received/ enjoyed by:   + Tp   + Person who doesn’t deal at arm’s length w/ tp * **Purpose of provision**   + Prevent ppl to avoid tax by paying non-cash incentives |
| **Characterization**  **1. Characterization of benefit**   * Limited class principle – “and others” refer to things that are similar to the ones mentioned   Requirement   * **1. Benefit – material advantage conferred measurable in $$ terms** Lowe   + Not focused on mental / psychic benefit   + If not making them better off – only restoring to original econ situation – not benefit Huffman * **2. if business related 🡪 not taxable**   + When personal benefit is incidental 🡪 irrelevant     - If personal benefit is beyond incidental 🡪 taxable   + Legal expenses – if it’s a consequence of their job – not taxable Pellizzari, Clemiss     - If unrelated to part of job – legal expense consider personal expense – taxable   + Even if required by employer - may still be considered taxable Cutmore, Deitch     - As long as there’s economic advantage     - Issue­ - decided b4 Lowe, may argue its required like in Lowe so not taxable     - After Lowe- even if it’s out of necessity – may be taxed McGoldirck       * McG – provided meals working at a remote casino         + Impossible to go off site to eat       * Tax rate – depend on how many times u take adv of the benefit         + If only take adv ½ of the time – tax on ½ * CRA Administrative exemption- if doesn’t amt to extra remuneration * 1. Employer-provided parties/ social events   + Dunlap – obtain benefit even tho unilaterally conferred – taxable   + CRA response – not taxable     - If – generally available to all employees       * Cost does not > $100/person * 2. Discounts on merchandise n commission on sale   + Doesn’t include – if extraordinary arraignment – where purchased at less than employer’s cost * 3. Transportation to job * 4. Recreational facilities   + Include – free to use the facilities and     - Pmt to become member of social/ athletic club       * If personal benefit is incidental – not taxable Rachfalowski         + Not golfer, only went to enhance company’s image * 5, transportation passes   + Airline passes- taxable if travels on space-confirmed basis, paying < 50% of fare available   + Bus n rail companies – no tax   + Retired emp of transportation companies – no tax * 6. Frequent flyer program   + If not convert to cash   + Not used as alternative form of remuneration / tax avoidance   **2. Connection to office/ employment**   * “in virtue of , connected to , in respect of” * **Test**- Whether was conferred on tp as an employee / simply as a person Savage   + In respect of – widest scope     - Look at whether the subject matter is related to the employment * Can be gift from employer – high threshold Mindszenthy   + Require fairly cogent evidence     - Intention of donor – important factor       * If deduct as expense 🡪 not gift * Even if not paid directly by employer – can still be consider benefit connected to office Waffle   + Waffle – received free holiday from Ford directly but employed at ford dealership * Even if required condition unrelated to employment to be – can still be emp benefit Giffen   + Giffen – frequent flyer pt – receive benefit cuz fly a lot for employment + member of frequent flyer   + NOTE – CRA – no emp benefit from frequent flyer pt   **3. Value –** how benefit should be valued in monetary terms   * General rule - Fair market value Schroter   + Reason – need to be fair to other tp who have not received the benefit     - Objective assessment * Other rules   + Cost of providing benefit –     - (Caribbean vacation) Waffle     - Caretaker – required to be on-call so require to stay in caretakers’ suite Jelles       * Not FMV of the rent – but the value of benefit received   + May discount the fair market value     - Ring had corporate logo- impact on fair mkt value Wisla   + Presumed annual rate of return on the cost     - When difficult to value – yacht that’s available anytime Taylor       * Doesn’t not consider rental –cuz available all the time       * Not whole value – cuz don’t own it |
| **Scholarship -** 56(1)(n) | 56(1)(n) – **scholarships, bursaries**   * **If received in respect of business/ employment – taxable as employment income** * benefits includes 6(1)(a)   + received / enjoyed by person who does not deal at arm’s length –   + 6(1)(vi)     - Program by tp’s employer – designed to assist individual to further their education       * If tp – deals w/ employer at arm’s length       * Reasonable to conclude – not substitute for salary/wage/remuneration   + if scholarship paid to children – may still be considered benefit     - amendment to 6(1)(a) – reversed DiMaria |
| 56(3) – **exemption**   * A – scholarship, fellowship/ bursary in connection w/ enrollment in   + I – educational prog   + Ii- elementary/ secondary prog * B – scholarship – for literary, dramatic, / artistic work * C – prize- taxable if > $500   56(3.1)- exemption only applies to ppl pursuing degree   * A – intend to support tp’s enrollment in program 🡪 leads to degree * B – limit exemption for part-time student   + Only educational cost |
| **Specific Benefits** | **Relocation Assistance**  6(23) –deemed employer-provided housing subsidies – as benefit included  Requirement   * In respect of employment * Received benefit- cost of, financing of, use of or right to use a residence   Taxable if employer gave lump sum to cover higher living expense cost Phillips  Exception   * Moving expense – not taxable benefit Pollesel   + Reason – can either be deducted from tax/ benefit is not taxable     - Occasioned by work relationship n compensates u for additional cost * Reimburse employee for expense in moving employee n family n household effect   + Either cuz:     - Emp transferred or     - Having accepted employment at a place other than where former home was located   + Not taxable * If employer pays for expense of moving employee n family n household effect out of remote place at termination of employment   + No benefit * If move employee back home – not taxable MacInnes   + Military covered cost for tp to move to original home   + Not taxable – no economic gain/ adv/ benefit |
| **Compensation on Housing loss**  **1. Housing loss –** full amt taxable   * 6(19) – amt paid in respect of housing loss in respect of employment – deemed taxable benefit   + Test – in respect of   + Exclude – eligible housing loss * 6(21) – amt of housing gloss   + Greater of (a) or (b) > c or d   + = cost base/ highest fair mkt value > proceed / fair market value of disposition     - A – adjusted cost base of residence     - B – highest fair mkt value – w/in 6 mth period     - C – if house disposed of       * Lesser of:         + I – proceed o disposition and         + Ii – fair market value     - D – other case- fair market value   **2. Eligible Housing loss**   * 6(20) – eligible housing loss – amt   + 1st $15k – free   + A - If exceed , tax ½ of the amt above 15k     - If get them in diff years – will be subtracted so 15k exemption will be used up     - =1/2 (compensation – 15k)   + exceeds   + B – total of all amt which is included for preceding taxation yr     - = ½ (previous yr amt + this yr – 15k) – amt deducted last yr     - Ex. 2012 – give 30k, 2013 – give 10k       * 2012 = ½ (30k-15k) = 7500       * 2013=1/2(30k+10k – 15k) – 7400 = 5000 * 6(22) – definition   + Eligible housing loss – eligible relocation     - Eligible relocation:       * Move to new work location – to work/ business       * Move 40km closer to this new work location     - Can only be for one residence   Test –   * 1**.** Has relocation enable him to carry on employment / business in Ca? Thomas   + Not eligible relocation – if no established employment at new location Thomas   + Can argue – provision only said did it enable you to carry on     - Did not say w/in how long need to find employment / work for same employment * 2. moved 40km closer to new work location |
| **Forgiveness of Debt**  6(15) –   * A- deemed benefit – if debt extinguished/ forgiven * B – value – amt forgiven * 6(15.1) –forgiven amt   + Lesser of –     - Amt outstanding OR principal amount   + Minus – amt you already paid   **Test –** 6(1)(a)   * Nexus test- in respect of employment * Even if forgiven on termination – can be considered taxable McArdle   + If forgiving the loan was integral part of arrangement which ended employment |
| **Low Interest/ Interest Free Loan**  6(9) – if deemed by 80.4(1)- to be benefit – need to include in income  80.4(1) – deemed to be benefit if received loan   * Requirement   + Because of / as consequence of:     - Narrower than in respect of Hoefele   + Previous, current or intended office/ employment * Calculation   + (a+ b ) – (c+d)   + A – prescribed rate \* amt     - Prescribed rate = avg quarterly yield of Govt of Ca treasury bills   + B – int paid /payable by employer   + C – int paid by employee   + D – reimbursed employer for the amt they pay * Implication   + If interest rate u borrowed increase – taxable amt decreases   + If borrow more money – amt decreases     - Encourages you to borrow more money   80.4(1.1) –reversed Hoefele   * Loan deemed to be received / incurred if   + Reasonable to conclude –     - But for the previous/current/intended office either       * A – terms of loan / debt would be diff OR       * B - would not have received the loan/ incurred the debt   **Home relocation loans –**  80.4(4), (6) – int on loans for home purchase/ relocation   * Rate of interested determined under 80.4(1)(a)   + May NOT go above prescribe rate of int – at beginning of 5 yr period   110(1)(j) – eligible for deduction in respect of **home relocation loan**   * Lesser of   + I – 80.4(1) deems benefit in respect of at least one loan that is not a home relocation loan     - Benefit – would have been deemed if 80.4(1) only applied to home relocation loan   + Ii – amt of int for yr – computed under 80.4(1)(a)     - If home relo loan – had principal balance of 25k     - And loan was issued – more than 5 yrs ago, / extinguished after 5 yrs     - \*\*exam- computation = prescribed rate at beginning of initial yr \*25K   + Iii – total benefit deemed under 80.4(1) * Provides   + In computing taxable income     - Deemed int benefit – of first 25k of home relocation loan       * - nil up to 1st 5 yrs of loan |
| **Insurance benefits**  6(1)(a)(i) – employer’s **contribution to** wage loss program – not taxable benefit  6(1)(f) – benefits received for the wage loss program is included in income if  Requirement   * **Amt payable** on periodic basis   + Payable – as long as had legal obligation to pay Tsiaprallis     - Even if paid in lump sum – still ok     - Only the part – that’s related to accumulated arrears       * Not – future pmt = of capital nature * **Pursuant to** wage loss replacement plan   + Pursuant to – consider surrogatum principle     - Can be indirectly pay for the plan Tsiaprallis * tp’s employer had **made a contribution** |
| **Allowance-** 6(1)(b) | 6(1)(b) – **allowances received for personal / living expense** / other purpose included –   * Lots exceptions   **Requirement** Macdonald   * 1. Arbitrary amount * 2. Paid for specific purpose   + Even if not used for improper purpose n reasonable estimation North Waterloo     - Can still be consider taxable allowance –     - Reason – treated as additional remuneration – not as reimbursement * 3. At discretion of recipient   Diff from   * Reimbursement – not an arbitrary amt n no discretionary use   + Reason – need receipt * Advance – give certain amt of money but need to acct for it   + Ex. give change bak / acct for expenditure |
| **Exceptions**  6(1)(b)(vii) **–** exclusion for reasonable allowance for travel  Requirement   * + In performance of duty     - Need to look at:       * Length of time Blackman         + Sojourning – away temp for lengthy period of time   not travelling – so taxable on allowance   * + - * + travel – going around for short time       * place stayed at   + Away from metropolitan area / municipality where emp ordinarily worked/ reported   + Non-motor vehicle expense   6(1)(b)(vii.1) – motor vehicle exception   * Requirement   + Reasonable allowance for travelling in performance of duty * 6(1)(b)(x) – if not based solely on km driven for work   + Not reasonable allowance |
| **Exemptions** | 81(3.1) – Reasonable allowance **– as paid travel allowance**   * requirement   + part-time work   + More than 80km   + Require u to work away from where u normally work |
|  | 6(6)(a)(i) – **special work site** – allowance for lodging /boarding/transportation exempt  Requirement   * I – temporary nature * Maintained residence elsewhere   + A – available for tp – not rented out by tp to others   + B – too far to commute     - CRA - around 80km     - Court – would also consider – type of work, hours of work, difficulty of commute       * Assess reasonable commute in light of tp’s work * Ii – location – too remote so cannot reasonably be expected to est n maintain residence   + Only need to be an unusual work place for employee Jaffar     - Ie – assigned to another premise temporarily       * Does not need to be remote – as in “northern bush” * Require to be away for no less than 36 hrs |
| Deduction | |
| S 8 | * contains specific and detailed deduction   + Cannot deduct – if not listed |
| **Travel Expense -** 8(1)(h), (h.1), 8(10) | 8(1)(h) – **travel expense deductible – exclude motor vehicle**  Requirement   * In course of office/ employment   + Narrower test – “in course of” Luks   + Can deduct if:     - If travel to diff places – can deduct ones that are not ordinarily report to       * Chrapko – teller for jockey club – required to travelled to 2 location in Toronto and 1 in Fort Erie - only FE one deductible     - Expense travelling from home to other location that’s not ordinarily report to       * Merten – Chrapko qualified the word by recog tp can deduct travel expense from home to place of work         + As long as work – is not place usually worked     - General approach – if required to have all documents while attending each diff place – need car 🡪 deductible       * Evans – school psychologist who needs to carry all paperwork n require to travel to diff school everyday   + Cannot deduct     - Not part of employment – ie carrying own tools Luks * I - Ordinarily required to carry duty away from employer’s place of business   + Place of business – where you ordinarily report to Nelson     - Not head office of business * Ii - Required under K of employment – to pay for travel   + Can be implied * Iii- Did not receive tax-free allowance |
| 8(1)(h.1) – **motor vehicle travel expense**  Requirement   * In course of office/ employment   + Narrower test – “in course of” * I - Ordinarily required to carry duty away from tp’s place * Ii - Required under K of employment – to pay for travel   + Can be implied * Iii- Did not receive tax-free allowance |
| 8(10) – in order to deduct – need prescribed form signed by employer   * Stating employee is required to travel for job and not reimbursed |
| **Meals -** 8(4) | 8(4) – **meal allowance**  Requirement   * Required to be away   + From municipality/ metropolitan area where tp ordinarily report for work     - Approach Healy       * 1. Find the municipality where emp usually reports for work       * 2. Find whether was away from that for more than 12 hours     - even if worked at diff locations – can still be deducted       * reason - section is to enable emp to deduct out of pocket exp when away from place of work * Not less than 12 hours   Subject to 67.1(1) –   * Expense for food – deemed to be 50% of lesser of   + A – amt act paid/ payable and   + B – amt that is reasonable in circumstances |
| **Moving Expense -** S 62 | S 62 – **moving expenses deductible if**  **1. eligible moving expense**   * 62(3) – definition includes * A- travel cost- “reasonable amt “   + in course of moving tp n member of household from old to new   + dogs are member of household Critchley     - can deduct cost for shots , tranquilizers paid as part of move   + excludes expense for house and job hunting travel Ball * b – cost to transport/ store household effects * c – meals/lodging for 15days – no restriction of reasonable amt   + near old/ new residence – for tp n family members * d – cost to cancel the lease – * e – tp’s selling cost in respect of sale of old residence   + Pollard - higher int rate paid instead of penalty – can be deductible     - To discharge mortgage – paid higher tae of int on new mortgage🡪 deduct additional int paid on new mortgage   + Collin- if direct n immediate object was to sell house – can deduct     - Paid lump sum to trust as inducement to sell house * f – cost of legal service wrt of purchase of new residence, tax and fees   + if sold old residence     - if renting old residence- cannot deduct * g – int, property tax, ins premiums, cost of heating n utilities of old residence – up to $5000   + I – old residence has to be empty   + Ii – reasonable effort made to sell   + Situation – can’t sell old residence, can deduct carrying cost * H – cost of revising legal doc to reflect new address n connecting/ disconnecting utilities |
| **2. eligible relocation** – s 248(1)  1. Distance Requirement – 40km closer to new work location   * test = shortest normal route used by public Giannakolpoulos   + Need to incorporate some rationality n realistic approach Nagy     - If route was too convoluted – even tho shortest distance       * May not be correct measurement     - Consider – shortest route +normal route to travelling public     - F- shortest route Cra calc - require to take tons of turns n travel in heavily congested areas – not realistic * Exclude   + Even if occasionally inconvenient – still consider shortest normal route Higgins     - Shortest – travelled by ferry, even tho long line up n occasionally freeze so no ferry – still not deductible   + Consideration of time Lund     - If both were considered normal –       * Proper measure was the shorter       * Even if one took way longer then other   2. Purpose of the Move-   * A – enable tp to carry on business/ to be employed at a location * **“**enable” - interpreted more broadly Abrahamsen   + don’t need to be already employed at the new location b4 move   + no time requirement required by act –     - can be employed for a while then moved closer Dierkens * new work location- conflicting case law   + disallow- only if there’s new work location     - Grill – moved cuz divorced but no change at job     - Moreland **–** assigned new employment duties but same location     - Howlett –promoted so need to spend more time at work   + Allowed – even if no new work location     - Gelinas – went from pt🡪 full-time so moved closer       * “sth must change at work”, only need to be a location in Canada – no requirement of new work location     - Dierkens – no new work location   + prof – doesn’t need new work location, just enable u to carry on work     - gelinas approach – cuz look to words of statute   3. Where ordinarily resided   * Can only ordinarily reside at one place – even if reside in diff places Rennie * Conflicting case law * Ordinarily 🡪 Way station🡪 new – ok to deduct Ringham   + Temp domestic arrangements - can still be regard as way stn Neville     - ie renting in btw – as long as subjective intention to return     - if no intention to return – renting may be ordinarily residence Calvano       * rented house       * 16mth later to sold old hse – cuz tenant insisted longer lease       * not deductible – rental =ordinarily residence   + could be a period where there’s no ordinary residence Pitchford     - Pitchford – Vic🡪 Mj🡪Saskatoon       * MJ – not ordinarily residence cuz most stuff remained in storage, did not take a residence ordinarily resided * Ok to deduct cost of selling former residence – even if sold yrs later Jaggers   + After acquired new residence – should not be unduly narrow by the technical approach * Temporary work   + Cannot deduct if worked at diff location only temp Turnbull     - Worked at various locations temp but retained a home n returned to it each yr –turnball     - Macdonald – not deductible cuz didn’t take belongings, didn’t change address, wife stayed at original location   + Can deduct if accepted temporary K     - Cavalier – even if wife stayed behind n no changes in address |
| **3. Limitation doesn’t apply** to the extent of   * Limit on deductible – up to income earned that the relocation enabled tp to carry on * A – paid on tp’s behalf – cuz of office/ employment   + Pollesel – if reimbursed / paid by employer for moving expense     - Non-taxable benefit – so not deductible * B – next yr can deduct the remaining – unlimited carry over * C – amt does not exceed   + I – total of new income at new work location / carrying on business at new location     - Reason – expense is to earn income at new location where moved to * D – can deduct if included reimbursement n allowances received in income |

# Income/Loss from Business/ Property

|  |  |
| --- | --- |
| Characterization | |
| **Definitions -** 248(1) | **Business -** Includes- profession, calling, trade, manufacturer/ undertaking of any kind whatever  **Ordinary definition of business**   * Objective factor – Morden   + Organized activity – diff btw how ppl actually in the business vs tp     - if hobby for profit – then income from business cuz org act MacEachern       * treasure-seeking – had agreements btw parties n intend to sell for profit         + also ok to deduct loss - if org act Tobias     - if not in original business – may not be taxable       * Cameron – fisher for salmon n herring         + Joined other fisher n caught killer whales twice         + not taxed – cuz not business in usual sense   Reason – two occasions were fortuitous  *“But if caught 3 times – may fall into diff category “*   * + - * + May argue – adventure of trade/ capital income     - Even if org activitiy – if no way to make money – not taxable       * LeBlanc – org way of buying lottery, hired ppl🡪 made profit         + No taxable – compulsive gambler   + Subjective factor – for livelihood/ profit     - fun/ hobby / leisure ? not business * Includes - **Adventure/ concern in nature of trade**  Taylor   + Consider   + manner of dealing-     - compare to traders in the industry       * even if done once – if do it the way trader does 🡪 trade   + nature and quantity of subject matter     - quantity – if lots🡪 likely trader     - nature – potential use of property       * if can’t use it 🡪 likely trade   + intention of tp in dealing w/ property     - includes secondary intention, but-for test Regal Heights       * but-for – would u have the property but for the resell of profit       * tp – bought large parcel of land, primary intention – build shopping centre         + secondary intention – sell it so adventure in nature of trade   + factors that are irrelevant     - singles/ isolation of transaction     - lack of organization     - total diff in nature – btw transaction n tp’s other acts     - lack of subjective intention   Reasonable Expectation of Profit (REOP**)** only use when there’s a personal element Stewart   * Consider commercial / personal   + 1. Commercial – no REOP test   + 2. Personal – REOP test to determine whether its business/ hobby * Approach –   + Not conclusive – only 1 factor assisting in determining whether tp is carrying on act in commercial manner   **Exclude office/ employment** |
| **Property –** any kind whatever   * Includes   + A - Right of any kind, share, chose in action   + B- Money – unless contrary intention   + C - Timber resources   + D - Work in progress of business that’s profession |
| Business vs property   * + Business – mixed capital n labour 🡪 active   + Property – passive – ex. rental, dividends, IP royalties |
| Inclusion | |
| Gains from Illegal Activities | Business income from illegal acts – taxable   * Reason – fairness to all taxpayers   + Issue – not means taken by tp to earn income     - But whether – its liable to taxation under ITA |
| Damages and Other Compensations | Applies **surrogatum principle** London Thames   * 1. Received pursuant to a legal right * 2. Amt in respect of which damages are received – would have been included as income |
|  | * Business income includes:   + Compensation for lost of profit Manley   + Compensation for tm infringement n passing off Donald Hart     - Loss of profit compensation – not capital * Capital if HA Roberts   + 1. Loss of separate business – loss the source of income   + 2. Loss of enduring K that are of capital nature     - So important to business – not js regular K     - If terminated K – business is gone Pe Ben       * If only one of several k – business not gone🡪 Profit CNR * Punitive damage = not taxable   + Even if received pursuant to legal right Bellingham * If compensation for diff ch – can be apportioned   + Compensation for – acct of capital n lost income MV Donna Rae |
| Voluntary Payments | **Not taxable if gift/windfall**   * + Characteristic Federal Farm     - Not pursuant to legal right     - Did not result directly / indirectly from any business operation     - no expectation of receiving it     - unlikely to occur again |
| problematic cases   * Cranswick – minority SH received money for $3.35/share to avoid litigation with them   + Court – not taxable cuz:     - No enforceable claim, no org effort, not expected by tp – unlikely to occur again   + Prof – argue – should be capital receipt * Frank Beban Logging- business was terminated cuz govt turning land into park   + Supposed to receive govt compensation – but was not on statutory compensation list   + Went to diff media n govt paid him the compensation   + Court – not compensation for termination of business     - Reason – not under statutory power   Ok cases   * Mohawk oil – received compensation in settlement for negligent construction against Phillips   + Court- taxable, cuz surrogatum principle     - It’s compensation for loss of profit n capital |
|  | **Service cases**   * Campbell – swimmer had k with newspaper to attempt to swim across lake   + If successful – received 5k, was paid even when she failed   + Court – taxable as income from business     - Reason – K – secured service o Campbell as professional swimmer       * Altho no legal obligation – but true nature of transaction was performance of service rendered |
|  | **non-competition payments – windfall**   * unexpected Fortino   + tp – sold part of grocery n agree not to compete * right to compete is not property Manrell |
| **Prize and Awards** | **approach**  **1. In Business/ employment?**   * Yes – fully taxable * No🡪 Q 2   **2. Achievement in field ordinarily carried on?**   * Yes – 56(1)(n)   + Prescribed?     - No – taxable above $500     - Yes – not taxable |
| 56(1)(n) – **Tax if:** For achievement in field of endeavour ordinarily carried on by tp   * Subject to $500 exemption 56(3) * Prize for achievement   + No requirement of competition – principle of associated words Savage * Field ordinarily carried on   + Interpreted in its ordinary meaning – specific field continuously engaged by that person     - Turcotte – not taxable       * Worked at cinema then unemployed – won $$ n game show cuz ans question related to cinema       * Not related to field ordinarily carried on – went too far * Excludes – prescribed prize Reg 7700   + Recognized by public     - If publicized / advertised – ok Foulds     - Consider – evaluation / appreciation LaBelle       * CRA – must explain why its not well recog   + Awarded for meritorious achievement in: art/sc/service to public     - OK - Even if it’s in field of endeavour carried on Foulds   + Excludes- amt that can reasonably be regarded as compensation for services |
| **Cases**   * **prizes from lucky draw – not taxable**   + if there’s element of chance Abraham     - ie. Not everyone can win it   + if not conferred on tp in his capacity as employee/ shareholder – ok Poirier     - even if need to meet certain conditions to participate in draw     - tp – met sales quota n participated n won lucky draw * **prizes in competition –** may be taxable as business income   + rother – not taxable when outside of business     - won prize in competition for design w/ National Gallery of Ca/ Govt of ca     - not taxable cuz – not working for them – sth outside his regular business   + Watts – taxable when had separate K relationship when entered into the competition |
| **Income From Property** | * 9(1) – rent * 12(1)(g) – royalties * 12(1)(j,k) – dividends |
| 12(1)(c) **interest income**  **Requirement**  1. Received / receivable   * Received – got the cash pmt * Receivable – legal right to receive it   2. On acct of , in lieu of pmt, in satisfaction of   * In lieu of –   + Hall – part of bond coupon sold – is in lieu of pmt of int   + Greenington – if owed int, so other party reduce it from purchase price     - Still in lieu of   3. Interest   * 1. Compensation for use / retention of principal sum * 2. Referable to principal sum - % of principal sum   + Can be calculated retroactively – so ok if sum does not exist yet Perini     - Miller – retroactive salary increase w/ int payable       * Court – taxable cuz were referrable to principal sum         + Even tho was not determined prior to commencement of time period   + Compensatory scheme     - If nth was owned – cannot retroactively calc int       * Huston – no right to the amt on which int is calculated       * Bellingham- punitive damage – amt on it not int       * Ahmad – no principal amt until judgement 🡪 no int     - If amt determined by k - int       * Coughlan – pmt for int on liquidated amt wrongfully w/held   + Jurisprudence – must develop alongside n take into acct innovative financing scheme for new business ventures     - If there’s obligation to pay – when there’s principal bal outstanding – ok Sherway * 3. Day to day accrual   + Entitlement to int grow over time   + Accrues day to day – if paid in compensation for use of money over stipulated period Sherway |
| 16(1)(a)- **deemed int where pmts of int and capital are combined**   * If reasonable to regard – as part int n part capital   + irrespective of k / arrangement – deemed int * Consider Groulx, Vanwest   + Course of negotiation   + Relationship btw price paid n fair market value     - If >fair market value, additional cost – presumed to be int   + Common practise   + Terms of agreement     - If given discount when pay earlier n int when pay late – that’s int * If no evidence existed proving these factors – not interest Vanwest |
| Deductions | |
| **Test** | **1. Authorization- ordinary business practise test – objective**   * 9(1)- concept of net profits   + Deduction consistent with “ordinary principles of commercial trading/ well accepted business practise”   **2. Limitations**   * 18(1)(a) – **income producing purpose test**    + Limitation on deduction     - Can only deduct – if its incurred for purpose of producing income   + 65302 – rejected avoidability and public policy test   + CIBC – rejected the egregious n repulsive from 65302     - Interpret to mean – its so serious as in it wont be part of the business       * Not public policy test – require parliament to legislate to use it * 18(1)(h) – **no deduction for personal / living expenses** except travel expenses * 67 – reasonable limit   + General reasonableness limitation on deduction of expenses   + If spend so much on expense while making so little on profit – may be unreasonable Cippolone   + If there’s objective evidence showing the expense is excessive – not deductible   + Ammar – disallowed deduction for rental     - Reason – could have negotiated for ½ the rate, more expensive then hotel |
| Illegal Expense | * Generally deductible - Espie Printing   + Concern with whether they were for purpose of gaining income   + Irrelevant whether pmt was illegal / not * 67.5(1)- prohibit deduction for bribes |
| Deductible if: Imperial Oil   * 1. an ordinary well accepted expense – * 2. Part of business- ordinary n normal so incidental to carrying on the business |
| Not deductible if:   * Too remote –   + Davis – pig farmer – driving to see pig from brother’s place     - Seek to deduct damages paid from car accident on the way     - Court – not part of business   + Libel cases     - Fairrier – sugar broker – paid damages for libel against another govt official       * Not deductible – remotely connected     - Herald – libel for newspaper publisher – deductible |
| Fines and Penalties - 67.6 | 67.6 – no deduction of fine / penalty   * Imposed under a law of a country / political subdivision * Reversed 65302 – which allowed deduction |
| Legal Defense Cost | **Allowed**   * if legal proceedings relate to manner which tp carries on business Rolland   + Consider whether incurred for purpose of gaining / producing income from business     - Not considering whether trade practise are legal / illegal       * Ie – defend cuz intend to carry on the business         + Defend business w/in context of business Neeb |
|  | **disallowed if –**   * personal to tp   + Neeb –drug dealer seek to deduct legal cost for defending against drug trafficking     - Court – defending yourself from going to jail, not to carry on the business * unrelated to manner in which business carried on   + tax evasion cases     - cormier – not normal business activity carried out in course of business operation     - Summers – not deductible cuz the decision to declare / not is personal one       * Not business one     - Thiele Drywall – if not ordinary / unavoidable then not deductible |
| **Personal Expense -** 18(1)(h) | 18(1)(h) – prohibited deduction of personal / living expense   * **Consider** –   + 1. Well accepted business practise? 9(1)   + 2. Income purpose? 18(1)(a) |
| **Recreation, Meal, and Entertainment Expenses** |
| 18(1)(l) **–**use of recreational facilities and club dues   * I – non-deductibility of cost for use / maintenance of   + Yacht/camp/lodge/golf course/ facility     - does not need to be exclusive Sie-Mac     - Incidental expense – also non-deductible Sie-Mac   + Except –     - made in ordinary course of tp’s business       * Ie – in business of golf course   + yacht     - must be considered – in its ordinary use     - Barnard – using yacht to take photos, not use of yacht w/ in provision       * deductible * Ii – non-deductibility of membership fees in club   Which main purpose was to – provide dining, recreation/ sporting facilities to its member |
| **Parties –** cost to entertain business guest @ personal property  not deductible   * adaskin – party after radio show   + not deductible – cuz radio show already done * roebuck – invite client for party – seek to deduct exp for entertainment for business client   + court – not incurred for producing income nor general business practise * Fingold – company pays for the party – fully taxable   unless – specifically identified as business guests   * Grunbaum – business guest invited by company, special invitation sent thru company n id company name   + Deductible |
| **67.1 – meals and entertainment**   * For – human consumption of food / beverage/ enjoyment of entertainment * Only get to deduct 50% - of lesser   + A – amt actually paid or payable and   + B – reasonable * Even if tp does not get to personally enjoy/ consume them Stapely   + Can still only deduct 50%     - Unless its contemplated in the exceptions * Exceptions - 67.1(2)   + A – actually in the business of providing food/ entertainment   + B – fundraising event 🡪 for registered charity   + C – expense for which tp is specifically compensated     - Ie. Paid for client’s lunch n bill them – identified in writing   + D – exempt under 6(6)(a) –     - Ex. require to include as employment benefit/ meal allowance   + F – allow to have 6 office parties –     - open to all employees     - at particular place of business   + can deduct if food =fuel     - Scott – tp bike courier, sought to deduct additional food n beverage he eats       * Court – ok – its necessary fuel |
| **Home Office - 18(12)** |
| * a – can deduct if   + I – principal place of business Or   + Ii – use exclusively for earning income     - And used regularly n continuously for meeting clients       * Includes phone contact – don’t need to physically see them Vanka * B - Cannot be use to generate loss   + Cannot deduct amt that > incomes * C – can carry fwd the disallowed exp to be deducted in later years   General rule   * If detached sufficiently – ok to deduct   + Logan –separate phone, frequently meet other drs, use office for purpose of report writing, separated from the house * Connected, share utilities – hard to deduct   + Mallouh – used portion of basement     - No separate phone, didn’t treat/ receive pt   + Ellis – garage for pottery business – was connected   + Maitland – B&B, lived there so not deductible     - Later distinguished – cuz only seasonal, so had house to themselves   + **Ok to deduct**   + Sudbrack – allow to deduct country inn even tho lived in there     - In a separate aparptment w/in inn – ok   + Broderick – B&B ok to deduct cuz not seasonal |
| **Clothing Expenses** |
| * Deductible only   + for specialized clothing / customs suitable only for work Giroux     - Not personal use * If can wear it regularly – personal not deductible No 360 |
| **Travel Expenses** |
| 18(1)(h) – if travelled in course of business – deductible   * **Has to travel from “base of operation”**   + Home can be base of operation Cumming   + If have a separate office +work location – home cannot be base of operation Henry   + Once you have base of operation – other things are travel Cork     - Tp – has right to operate wherever n whenever away from base of operation       * Element of choice – irrelevant to affect deducibility Forestell * Deductible when   + In course of single business     - Randall –if its one base of a single business carried out in various geographic location     - Wasserman – its considered travelling btw diff branches of same business   + Not when one business to another * If involve both business and pleasure – portion may be non-deductible   + A-1 Steel – if only part of trip was devoted to business – only that part deductible |
| **Interest Expense** | 20(1)(c) – **paid pursuant to a legal obligation to pay int on**   * I – income earning purpose test   + Have to use $$ to earn taxable income * Ii- amt payable for property acquired for purpose of gaining income   + Ex. bought sth n have int on unpaid balance – ok to deduct * OR reasonable amt |
| **Requirement**  Shell Canada  **1. Amt must be paid/ payable in the year**  **2. Paid pursuant to legal obligation for int**  **3. Used for purpose of earning non-exempt income**   * Purpose – can be ancillary, does not need to be bona fide Ludco   + Even if primary is to obtain capital gain/ avoid tax –     - If ancillary purpose is to earn income – enough   + Transactions in btw – such as exchanging to diff currency does not alter the basic ch of borrowed funds     - If used for purpose of producing income – ok Shell   + As long as it has ancillary purpose of earning income – deductible Ludco * Approach - look at the transaction, not the series but GAAR might come in   + Looks at the transaction independently – focus on direct use Singleton     - Don’t search for econ realities   + Prob – GAAR might apply   + Income – gross income / revenue     - Not net income / profit * Usage   + Direct use–ok Bronfman Trust   + Indirect use depends - where the borrowed fund is?     - personal use – not deductible Attaie     - bona fide purpose of earning income – indirect use may be ok       * Grenier – original fund loaned from house, even if refinanced ok       * Ca Helicopters- primary purpose enable parent comp to buy competitor n 2nd purpose - earn income from business – by charging management fees n amalgamation         + Ok – used for an eligible indirect use   **4. Amt must be reasonable** |
| 20(3)- **deem to be same purpose**   * Borrowed money used to repay a loan –   + Deemed to be used for same purpose as original borrowed funds * Ok to deduct   + Even if use house as mortgage / refinance Grenier     - As long as the fund is in the business –     - Concern with the use – not the source   + As long as directly n fully traceable to the loan 🡪 can deduct int Tennant |
| Timing | |
| **General Rules** | **Computation of profit** 9(1) |
| **Rule – true picture of income**   * Matching of revenue and expense – guideline, not rule of law   + Ikea- received lump sum inducement for rental     - Seek to deduct over period of lease – ie match to expense     - Court – no true pic is report it all right now       * Truer pic – cuz got money in ur hands n can use it * Accounting method **–** not require to use the same method West Kootenay   + Use the one that reveals the true pic   + Reason     - 1. Financial n tax acct – for diff purpose       * Financial – financial health of company to SH– conservative       * Tax – not conservatism     - 2. Diff company rely on diff acct method – may be unfair       * Ie – public trading will require auditing * Determination of profit – look at the express provision, judicial interpretation Candarel   + Then Interpretive aids – no more   + GAAP – non-legal tools so external to legal determination of profit     - May form the basis of determination – but depends on the facts       * Reason – “well-accepted business principles” – codified     - Subordinate position relative the legal rules – if diff law prevails |
| **Inclusion rule**  18(1)(b) **– amt receivable**   * Even if not due – include it –unless acct method doesn’t require it * Earlier of:   + I – day service rendered and   + Ii - day service would have been rendered – had there not been undue delay   Receivable –tp is legally entitled if sufficiently ascertainable- Irrelevant if its owed right now   * Sufficient ascertainable – estimates are ok West kootenay * Include only when have the legal right   + Colford – certain % of pmt is held back until work was certified     - Ont law – no legal right to the holdback until certification     - Court – if not certified 🡪 not receivable       * If certified – receivable even if tp had not received/ knew its certified |
| **Deduction Rules**   * 18(1)(a) – amt payable   + Payable when tp is legally obliged to make a payment Guay Ltee * 18(1)(e) – prohibits deduction for contingent liabilities   + No amt payable yet – cannot deduct     - Ex. obligation to reclaim mind when its finished –       * If not finished – no obligation to pay🡪 can’t deduct   **Require to defer deduction**   * 18(1)(b) – disallow deduction in respect of outlay, loss/ replacement of capital   + Pmt on acct of capital/allowance in respect of depreciation, obsolescence/ depletion     - Need to spread it over time * 18(9)- prepaid expense   + If can reasonably relate to amt you’ll get this yr – can deduct   + If not – has to deduct in yr where it can relate |
| **Inventory -** 10 | **Homogenous inventory**   * Deduct everything – add back cost of inventory that you haven’t sold |
| **Inventory valuation**   * 10(1) – lower of cost/ mkt   + Allows deduction for accrued loss in value of unsold inventory     - Allow it to be written down to its fair market value if lower than cost   + Excludes adventure in nature of trade * 10(1.01)- inventory valued at cost – for adventure in nature of trade   + lower of cost / mkt value – doesn’t apply   + Reverse Friesen – in adventure of trade     - Bought land expecting to sell at profit     - Value dropped n seek to deduct     - Relied on earlier 10(1)- deduct unrealized cost cuz property=inventory n dropped   Possible approaches   * FIFO, LIFO, average cost – for valuing cost of unsold inventory   + FIFO -1st in 1st out , dispose inventory in order it was acquired/produced   + LIFO – last in first out   + Average cost – avg all cost of inventory – so same cost for all inventory * Rejects LIFO – unless reflects actual physical flow of inventory Anaconda   + Tp – manufacturing metals, metal prices were increasing     - adopted LIFO – so able to deduct more cost n reduce its income     - Court – need true pic   10(2.1) **-** Valuation has to be the same   * Unless with concurrent of minister * Response to Cyprus Anvil – p changed inventory method after tax holiday expired   + Court – can’t change like that – need to reveal true pic |
| **Inventory cost –** not deductible until inventory sold Neonex   * Approach – true pic principle * Calculation   + Cost of inventory sold = value of inventory at beginning of yr+cost of inv acquired-value of inventory at end |
| **Definition**  248(1)   * Description of property the cost/ value – relevant in computing tp’s income from business * Either becus:   + Cost/ value – deduct in computing tp’s gross profit like in Neonex OR   + Cuz cost /value of homogenous inventory – added back in computing tp’s gross profit |
| **Running Expense** | **definition –** expense of running the business   * General business expense – can’t link it to anything * Ex. advertising – unknown if it will bring income |
| **Currently deductible**  If can’t be easily matched with subsequent revenues Oxford Shopping   * May be reversed by 18(9) – may be able to argue pmt is for tax if paid tax after   Produce benefits in current period and future periods   * Cummings-lease pickup pmt – induce ppl to move over by picking up their lease pmt * tenant inducement payments   + Canderel - – paid lump sum for tenants to sign lease here     - there’s whole bunch of benefits – hard to link just to length of lease     - not related to any income stream |
| **Prepaid Expense -** 18(9) | 18(9) – **disallows immediate deduction of** prepaid expenses for   * A – no deduction if reasonably be regarded as having been made/ incurred for   + I - Services to be rendered after the yr   + Ii – on acct of – int/tax/rent/royalties for period after end of yr   + Iii – consideration for insurance * B – deductible when it can reasonably be considered to relate * Requirement   + 1. One of the category of pmt   + 2. Relate to subsequent period * Doesn’t apply to tenant inducement payment – cuz parliament didn’t include it Toronto College |
| **Capital Expenditure** | 18(1)(b) – **no deduction for**   * 1. Capital outlay loss * 2. Outlay, loss, replacement of capital / pmt on acct of capital   + Property acquired can be:     - Depreciable capital property- generally tangible       * Includes – intangible ones like patent     - Non-depreciable capital property       * Ex. land, shares       * No deduction – capital gain /loss – only ½ deductible when disposed     - Eligible capital property – gd will of business     - Interest – 20(1)(c) * 3. Allowance in respect of depreciation, obsolescence/depletion   + Depreciable capital property🡪 capital expense     - 20(1)(a) – capital allowance rule   + Obsolescence – property is not working anymore     - When dispose worthless property – can get deduction       * 20(16)- terminal loss     - Depletion – resources |
| **Deduction approach**   * Generally deducted over period of time – to reflect the true pic |
| **Characterization - two tests** Johns-Manville |
| **1. Expense incurred once and for all**  British Insulated and Helsby Cables   * View – bringing into existence an asset / adv for enduring benefit of trade * Capital expense   + Expended to acquire means of production   + Not once and for all – AND     - With a view to bring into existence an asset for enduring benefit of trade * Currently deducible –   + Use the means of production   **2. expended on est the structure w/in which profits are earned / in process of earning income** B.P. Australia, Sun Newspapers, Hallstrom’s   * Capital expense – expended to acquire means of production   + Acquisition of means of production   + Spend on structure * Currently deductible – part of money earning process |
| Separate asset?  approach – Canada Steamship   * proportion of amt of the whole value   + if large amt of whole value – separate     - Thomson Construction – 6k/27k – large amt       * Separate asset🡪 capital exp     - Even if separate parts – if large proportion – capital       * Donohue Normick-separate parts but large portion relative to whole value, will last for 10 yrs n not intended to be used for resale * amt compare to ordinary repair   + if large – separate   + Van Tugboat – usual repair is 15k, this cost 42k – capital * consider   + assets that are part of larger assets – capital expense   + consider separate asset – ex. engine Canada Steamship |
| **Acquisition n maintenance / repair of tangible property**   * Repair – deductible   + Include     - Canaport - to prevent prob n extend life expectancy     - **Goldbar** – if only trying to repair the problem, use of current tech is ok       * Court – focus on the purpose of action         + If view to bring in enduring benefit – capital exp         + Repair – currently deductible expense   + Exclude –     - replacement that’s so diff in kind     - replacement – that’s of enduring nature Canadian Reynolds   + Consideration –     - If replacing w/ new technology – ok to deduct       * But if significant improvement – not deductible * Improvement/ upgrade – capital expense   + Capital expense - If replace a substantial part w/ sth essentially diff in kind Shabro |
| Capital Cost Allowance | |
| Diff ways of Depreciation | 1. Straight line- deduct same amt until goes to zero  2. Declining balance – deduct certain %   * Reason – many asset depreciate much quickly in the beginning |
| **Def’n** | **Capital cost of asset CCA–** 20(1)(a)   * The money deducted * Rates- Regulation 1100(1)   **Undepreciated capital cost UCC –** 13(21)   * UCC = A-E –F +B   + A – capital cost of asset   + E – capital cost allowance 20(1)(a)     - Total depreciation – as defined in 13(21)       * Include terminal loss 20(16)         + Occurs when no property remain in class –         + n deducted less than actual depreciation         + able to deduct when calculating UCC   + F – subtract lesser of     - proceed of disposition Or     - capital cost   + B – sum of all recaptured depreciation taken     - If UCC = negative       * Tp – claimed more deduction then its actual decrease in value     - Negative balance - recaptured by including in computation of income     - 13(1)- * Calculations   + 1 asset in class     - Year 1 – UCC = Cost – CCA     - Year 2 – if disposed       * UCC = last yr UCC – proceed         + If UCC = negative – taxed back the negative (recapture depreciation)         + If UCC = positive – terminal loss, can deduct         + Proceed > cost –   =last yr UCC –capital cost  Tax ½ on gain =Proceed-cost   * + Acquisition of depreciable property - + to UCC   + Recapture depreciation – inclusion in income 13(1)     - when UCC=(-)ve   + terminal loss- deduct from income 20(16)     - UCC = (+)ve   **Depreciable property –** 13(21)   * Requirement   + Income producing * Included in Regulation 1100   + Classes of property – Schedule II * Exclusion – 1102(1) – shall be deemed not to include   + B – if in inventory   + C – not acquired for purpose of gaining/ producing income   + F- can’t deduct one that’s in 18(1)(l)   + (2)- land   **Disposition –** 248(1)  **Proceed of disposition –** 13(21)   * A **–** sale of property * B – compensation for property unlawfully taken * C – compensation from ins |
| **Approach to CCA** | **1. Depreciable property?**   * Income producing?   + Look to purpose of acquiring property     - If acquired and demolished right away – other purpose Ben’s LTD       * Note – if the rental was longer – may be able to argue its income producing     - If originally plan to acquire property to produce income       * Plan failed so tear down – ok     - As long as purpose was to make income – no requirement that have to hold it for specific amt of time Hickman motors       * Tp – held property for 5 days then sold it         + Earned rental income during the time – ok to deduct * Not part of exclusion? |
|  | **Deduction**   * 20(1)(a)- allowed CCA deduction   + 1100(1), Schedule II * Prohibition   + Cannot use CCA to produce net loss for rental properties 1100(11)&(14)     - only deduct up to net income = 0 |
|  | **Class**   * Sometimes act create separate class for diff property   + 1101(a)(ac)- rental property – each in its own class     - With capital cost $50k or more   Diff between accounting n ITA   * 1. Method used   + ITA - usually decline balancing approach   + Acct – both, tend to use more straight line * 2. Pooled   + ITA – assets are pooled into diff class, deduct form pool of that class   + Acct – depreciate one by one * 3. Depreciation is optional in ITA |

# Taxable Capital Gains and Allowable Capital Loss

|  |  |
| --- | --- |
| Computation | |
| **1. General rules** – 38-40 | * 3(b) – **net taxable capital gains**=taxable capital gain – allowable capital loss   + Allowable capital loss generally deductible only against capital gains * 38   + A– **½ of capital gains taxable**   + B – **½ of capital loss deductible** * **39** – gains n loss defined as residual   + B – loss     - Excludes – disposition of depreciable property       * 🡪 terminal loss 20(16) * 40(1)   + A – **gain = proceed of disposition** – (adjusted cost base+selling cost)     - Proceed – sale price     - Adjusted cost base – generally cost     - Ii, iii – timing rules       * Designed to allow tp who have big gain in 1 yr but don’t receive all the gain at the same time to spread it out over time   + B – **loss = (ACB+selling cost) – proceed of disposition** |
| **2. Special rules** | 40(2)(g)(iii) – personal use property - no deduction   * Loss deemed to be nil * Def’n- includes   + Property used primarily for personal use/ enjoyment of tp / person related * Excludes – listed personal property   + Can only deduct against gains   **Deemed disposition -** trigger loss/ gain when haven’t dispose it   * 45(1)(a) – change in use- use for personal than gain/ produce income or vice versa   + Deemed tp to have     - Iii – dispose for proceeds = fair market value     - Iv – immediately reacquired at cost=fair market value * 13(7(a)(b)   **Non-recognition rule**   * 73(1) – transfer of capital property to spouse/ common law partners   + Won’t tax the transfer   + Deemed acquired at proceed     - I – depreciable       * If only 1 asset = UCC     - Ii – other case       * Adjusted cost base   + Can elect out |
| **Definitions** | * Disposition – 248(1)   + A – do sth that entitles u to proceed of disposition * Adjusted cost base – 54   + A- depreciable property – capital cost to tp as of that time   + B - Other case, cost to tp of property adjusted * Proceed of disposition – 54   + A - sale price of property that has been sold     - Includes various other things |
| Characterization | |
| **Different kinds of property** | **Capital property** – give rise to capital gain / losses 54   * Depreciable property * Includes personal-use property |
| **Inventory** – give rise to business income 248   * + If not capital property / eligible capital property – its inventory Friesen |
| **Approach** | **1. Is it capital property / inventory**   * Business income/ adventure of trade – inventory * Others – capital   + Includes personal property * Land – could be both   + Non-depreciable but can be any kinds of use   + Looks at the manner dealing w/ land |
|  | Taylor test - Whether its an adventure of trade? Yes 🡪 inventory   * Manner of dealing * Nature and quantity of subject matter * Circumstances responsible for disposition * Reasonable expectation of profit   + If speculative- * Secondary intention doctrine – but for   + Require possibility of resale at a profit – as motivating reason for purchase   + If intention to carry out business as long-term investment – inventory Racine   **Property held in adventure in nature of trade= inventory**   * Not capital property🡪 cannot be ch as personal use property – Burnet * Prob w/ case- seem to suggest its personal use |

|  |  |  |
| --- | --- | --- |
|  | Business Income – Inventory | Capital Property |
| Holding period | Short | Long |
| Circumstances of sale | Solicited offer w/out crisis | Unsolicited offer / crisis such as threat of expropriation |
| Other activities carried out by tp | Frequently buys n sells land/ in business as developer | rarely buys n sells land |
| Method of financing/ REOP | Primarily bought w/ borrowed funds 🡪 trading intent | More equity 🡪 investing intent |
| Use of property | Not for personal use | Tp’s personal use |
| Secondary intention to profit from resale (Regal Heights) | Yes | No |

# Rules Relating to Computation of Income

|  |  |
| --- | --- |
| Allocation of Proceeds | |
| 68 | 68 – if an amt can **reasonably be regarded** as being in part consideration for disposition of particular property   * + A- reasonable amt can be deemed proceeds of disposition   + Idea – if got some global purchase price     - Reasonable to deem a reasonable amt as proceed –     - Revenue authority – can allocate proceed in some global purchase |
| **Approach** | **General rule – defer to party allocation**  Golden   * Factors to consider   + Consider matter from perspective of purchaser n vendor   + Hard bargaining   + Reasonable allocation     - Doesn’t need to be fair market value – just reasonable requirement |
|  | Relocation likely if   * Agreed amt differs substantial from fair market value   + Peterson – allocated a lot to business gdwill     - But was non-existent cuz business has been suffering     - court – allocation unreasonable * no hard bargaining over allocation   + Leonard – tp bought farm n quota, for tax – used FMV rather than k agreement     - Argue – s 68 – allocation can be deemed     - Court – allowed – cuz could not have bargained       * There’s significant price btw FMV vs reasonable allocation |
|  | Land and buildings   * Possible to claim building value = zero if purchaser will demolish it Bens Ltd * But if building was used by vendor – Stanley   + Even if purchaser tear it down – should still have some value * If building demolished – then sold land, s 68 doesn’t apply Malloney’s * Govt response – 12.21.1 – if dispose land n building at same time   + Capital gain on land n terminal loss on building – automatically allocates proceed |
| Non-Arm’s Length Transfer | |
| **Def’n -** 251(1) | * A – related personal shall be deemed not to deal w/ each at arm’s length   + Include – blood related, common law, adopted 251(6)     - Includes in-laws * C – any other case- question of fact whether its NAL |
| **Application -** 69(1) | 69(1)- applies **except as expressly provided in this act** – can be overridden   * a- if acquired anything from person dealing at non-arm’s length (NAL) >FMV   + Deemed to acquire at FMV * B – disposed for no proceed / proceed <FMV to NAL   + Deemed to receive proceeds = FMV * Regular transfer- double taxation since no adjustment   + Court – favour adjustment on both sides of transaction * Gift – adjust both sides   + 69(1)(b)(Ii) – gift – tp deemed to have received =FMV   + 69(1)(c) – recipient deemed to acquire at cost = fmv |
|  | 73(1) – transfer of capital property to spouse/ common law partners- not taxable   * A – deemed to have dispose at cost * B – acquire at cost |
| Attribution Rules | |
|  | 74.1(1)- income/ loss from property transferred to spouse/ common-law partner   * + Attributed to transferor – not transferee   74.1(2) – income/ loss from property transferred to person under 18 / niece / nephew   * + Deemed to be transferor   74.2(1) - Capital gains n loss from property transferred   * + Attributed back to transferor   + I – net taxable gain of all transfer – if gain> loss- deemed to be capital gain of transferor   + B- if have loss – loss for transferor   74.5(1) – attribution rule does not apply if   * A – FMV property transferred does not > FMV of property as consideration And   + Ie paid fair market value * C – if property is transferred to / for benefit of spouse   + Transferor – elects out of rollover rule 73(1)   74.5(11) – attribution rule does not apply to transfer   * If reasonably conclude – one of main reason is to reduce amt   + But for this section |