## 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 PhillipsException* 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 income80.4(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 travelRequirement* + 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 exemptRequirement* 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 costTax 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
 |