|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Dispute Reso, Stat Interp, Tax Avoid  |  |  | | --- | --- | | **Return Process** | | | 248(1) | Balance Day: Apr 30 | | 249(1)(b) | Period: tax = calendar yr | | 150(1)(d) | Return must be filed | | 150(1)(d)(ii) | June 15: income from busin: still taxed | | 150(2) | Mnstr may demand return anytime | | 151 | Self Assessment: Estimate tax payable | | 152(1) | Min must assess (all due dispatch) | | 152(3.1)(b) | Normal Reass Period: 3 yr (from init ass [*Jarvis*]) | | 152(4) | Extended Reass circ: misrep, fraud, waiver | | 152(7) | Arbitrary or net worth assess (rebut presump) [Eldridge] | | 152(8) | A is valid and binding | | 220 | Duty to Enforce ITA [CIBC] | | 153, 227 | Withholding | | 156(1) | Quarterly installments | | 161 | Interest: proscribed by quarterly reg (late A30 @5%)(refund A30+45d @3%) | | 165(1) | Objection to A - 90d | | 169(1) | Can appeal after min reply or 90 d | | Fin Adm Act 23(2) | Remission Odr i)unrsb ii) unjust iii)not in pub int | | **Civ penalties** (self assessment is a myth) | | | 162(1) | Fail to file return | | 163(1) | Repeat fail +10% | | 163(2) | False statement +50% or $100 | | 163.1 | Late or deficient installments | | 163.2 | Third party liab for misrep | | 18(1)(t) | Civ Penal not tax deductable | | **Crim Penalties** | | | 238-239 | Crim penalties: Tax Evasion | | **Audit and Investig** | | | 231.1-231.7 | Inspections (1), produc of docs (2), warrant (3), Inquiry (4), rev foreign doc, complianc order | | 232 | Solicitor, client privilege | | 160, 222-225.1, 227.1 | **Collection remedies** (considerable and trend raising – no limitation, issue own debt judge); third party demand(224), seiz& sale prop (225), liens on real prop (223) |  * No appeal from nil [*The Queen v Garry Bowl Lim*] * Cannot accept compromises, duty to enforce [*CIBC W*] * Genui disp of fact or law: nonbinding comp [*Consoltex*] * Right to minimize tax liability [*Copthorne Holdings*] * Tax avoidance is open, tax evasion is has crim MR * Predom purp of audit shift to crim 🡪 notify [*R v Jarvis*]  1. Rsb grounds to lay charges 2. Conduct consist w/ crim invest 3. Auditor xfered files and materials to invest 4. Aud acting as agent for invest 5. Inves intend to use auditor as agent 6. Evidence collected relevant to MR or tax liab 7. Other circ or factors lead trial judge to conc  * Onus of factuall dispute on taxpayer [*Johnson*] * Interp text with regard to purp of parl [*Jarvis*] | Case LawCIBC World Markets v Q – duty to enforce on facts and law  * Seeking costs after CRA did not accept settlement  R v Jarvis – CRA cannot bypass the charter; payer cannot use to avoid legitimate investigation  * Not notified and misled: Could not prove MR  Processes  * Return -> Assessment -> Reassessment -> Objection -> Appeal (CRA A Br -> Tax Crt Cnd -> FCA -> SCC (w leave)) * **Informal Procedure**: <12,000 fed & < 24,000 loss in disp * Onus of fact on payer [*Johnson*], onus of law on crown * No rules of evidence, no counsel, no costs; can appeal * **Fairness Package**: discretion relief from minister 1991  1. Refunds back >3yr but < 10 yr 2. Candel/waive interest or penalty charges 3. Tax may make elections after time limits  * Can seek jud rev of decision if denied * **Remission Order**: appeal to treasury board * Remedy: relief from fed tax (prov have too) * Grounds: extreme hardship, incorrect action, financial setback, extenuating circ, inequitable effect * Departure from RoL * Voluntary Disclosures Program ***IC 00 1R*** * Before CRA suspects, still owe but no prosecution * **Tax Reduction** * Tax Planning: uses rules to avoid * Tax avoidance: uses rules not in way intended by parl * Tax evasion: deliberate, willful violation  Intro StuffRoyal Commission on Taxation – equity, neutrality, simplicity  * Get rid of source idea   Source of Tax Law   * Legislation: text in context with regard to purpose of parliament (***R v Jarvis***) * Common law cases * CRA Publications (non-binding) –ex: adv binding IT rulings (***IC 70-6R5***), technical interpretation (not b, complete) * Information Circulars (non-binding) * Interpretation Bulletins – ex ***IT221R3***: resi per ***Thompson*** |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Source Concept  |  |  | | --- | --- | | CA s53 | No Tx w/o rep | | **Source** | | | 2(1) | Tax payable each tax year on taxable income | | 3(a) | Income determined from a source & unenumerated ‘without restricting generality’ | | 12 | Statuary inclusions: no source | | 81 | Statutory exclusions | | **Non Capital Losses** | | | 3(d) | Netting out losses O/E, B, P | | 111(1)(a); 111(8) | Carry -3 or +20 yrs | | 111(5-5.4), 249(4) | Ends at sale unless rsb expt of profit | | 111(8) | **Farm losses**: deduc from any source | | 31 | **Restricted Farm Loss:** for profit on side <8750 | | **Capital Losses** | | | 3(b) | Capital losses | | 39(1)(b) | No loss on depreciable prop (get cap loss allow) | | 39(1)(c) | Allowable business investment loss: ½ but net | | 111(1)(b); 111(8) | Carry -3 to year of death (111(2)) | | 111(1.1) | Deduct only from cap gain | | **Nexus** | | | 248(1) | ‘in the serv of’ present; ‘any person’ nex, ‘indiv’ | | 248(24) | Accounting, corporate groups | | **Splitting** | | | 120(4) | Kiddie tax: dividend, share, trust (highest, 2000) | | 67 | All transactions must be **rsb amount** | | 56(2) | Indirect pmt attribution rule [*Neuman*] | | 56(4) | Xfer right to income attrib rule [*Boutillier*] | | 56(4.1) | Interest free loan attrib rule (earnings attrib) | | 74.1(1)(2) | Attrib **income / loss** from prop spo (1), child (2) | | 74.2, 3, 4 | At Cap gains (unless pay fair market 74.5(1), at time of fin sale) / trust (income to settlor) / corp | | 74.1(1)(2):.2-.5 | Attrib to spouse, minor: prop, loans, market | | 8(1)(i)(ii) | Fam may be **assistant** w k (74.5 not emp, kid ok) |  Bellingham v The Queen – Court’s role: discover source  * Expropriation of land, delays meant punitive award * Up prop value – business venture so fair market (not cap gain/investment) **But** Puni interest – not taxable  Schwartz v The Queen – sources have start and end date  * Employer fired before start date: Formerly considered a loss of capital asset so not taxable [old law]  Field v the Queen – nexus: receive and benefit  * Wife embezzled by wthd RRSP: Not t, not bene entitl * She is as a business income, joint account was funnel  Buckman v MNR – behaved as if entitled to it  * Embezzling from clients trust account * But had all the earmarks of a business; tax d on loss  Neuman v The Queen – 56(2) does not apply to dividend  * Incorp company w/ diff classes of shares * **56(2) test**: i) pmt not to tp ii) at direct of tp iii) for bene of tp or another want to bene iv) otherwise income * divd is return on invest, no other contrib needed  Boutillier – Defects of form  * Commission to keep cust in fund * **56(4) test**: i) xfer right to income ii) non-arms length iii) xferer had beneficial entitle iv) unless prp also xfer * did not have evid or k to show company did anything | Source Concept  * ‘every person’ means beneficially entitled [*Buckman*] * Court’s role [*Bellingham*] * Not to add sources in 3(a) – Parl only per min * To **draw line** btw taxable and non taxable – source * ‘w/o restrict genera’ not if parl legi in area [*Schwartz*] * Funda diff btw capital and income [*Eisner v Macomber*] * **Illegal business** is increase in revenue [*Buckman*] * Expenses of crim activity deductible [*Eldridge*] * **Interest** – takes chara from underly claim [*Bellingham*] * **Legal Costs** – not deduct if underlying is free [*Schwartz*] * **Surrogatum Principle** allows court allo, rejects Accretion Model [*Bellingham*] * Sources have start and end dates [*Schwartz*]   **Source Concept** [*Schwartz*]   * Office and Employment: Labour & Wages * Property: rent/royalties on land * Business: includes capital   **Not income:**   * Gifts and Inheritances [*Bellingham*] * Capital gains and losses before 1972 * Strike Pay * Windfalls not from taxable source [*Bellingham*]  1. No enforceable claim to pmt 2. No organized effort to receive pmt 3. Payment not sought or solicited 4. Pmt not expected: specifically or customarily 5. No foreseeable reocurrence 6. Payor not a customary source of income 7. Not consideration or earned as a result of any activity  * Hobby – not for purpose of Profit [*Bellingham*] * Dam: pers inj &wro death (excpt Sal Cont) [*Boucher* Ass] * Punitive/Exemplary Dam [*Bellingham*]; mental [*Boucher*] * Loss of capital asset [*Schwartz*]  Losses  * O/E, B, P * Reasonable expec of profit * **Allowable Business Investment Loss**: incentive for small business – losses at ½ but can net * Capital: ½ CL deductible and ½ CG taxable * Calculated on realization (so can control) * TCG-ACL = net CL carryover  Nexus  * Individual: natural person, corporation, trust (must file but not personally resp to pay), estate, Each company * **Nexus**: receive + beneficial entitlement [*Field*]  IncomeSplitting & Attrib  * Kiddy tax – highest marginal rate since 2000, <18 * Active Involvement: employ assist 8(1)(i)(ii), indp k/self emp, partner – need paper trail [*Boutiller*] * No Involv: Fam **trust**: benefic income to fam [*Boutillier*] * Incorporate fam **company** w/ dividends [*Newman*] |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Who is Subject  |  |  | | --- | --- | | 2(1) | ‘any person resident at any time in year’ | | 248(1) | ‘indv’, ‘non-resident’ ‘person’ ‘business’ | | 250(1)(a) | **Deemed** resident: sojourning >183d | | 250(3) | ‘resident’ is ‘**ordinarily** resident’ | | 114 | **Part time resi**: split income if fact or ord | | **Corporation** | | | 250(4)(a) | **Corp Deemed** – incorp after apr 26 1965 | | 250(4)(c) | Pre 1965: deemed if resi (per cl) or carried busi | | **Non-Residents** | | | 115(1)(a)(i)-(iii) ->  2(3) **[Part I]** | Non-resi per s2 (i) enters and performs (rsb pror) (ii) carrying on business (rep) (iii) cap gains | | 253 | Extend ‘carrying on business” (a) prod, mine… in can (b) place of k not conclu, through ‘agent’ or ‘servant’ w/ autho to make binding k ‘order’ | | 115(1)(b)🡪2(3)(c) | Cap gains for prop dispositions | | 115(1)(b) & 116 | Purc w/h can prop cap g if vend nonres, **rsb inq** | | 212(1)(a)-(d)  **[Part XIII]** | Tax at 25% for (a) Mng fee, (b) interest, (c) estate or trust, (d) rent and royalties | | 212(1)(b) : (3)(b) | **Interest fully exempt**: arms length on prop out | | 212(2) | Dividends: cdn corp w/h pmts to non resi | | 214(1) | No deductions of expenses | | 215(1), (6) | Must w/h or liab to pay on behalf | | 216(1) | Rent: can opt for Part I |  Residents  * 47.9% gov rev is from PIT; Exch of info via treaties (not cl) * Proced: get determ of resi status for free, if leaving need * **Factual Resident** –? of degree in mind and fact [*Thomson*] * ‘every p has a resi at every time’ [*Thomson*] * can get CRA ruling for free * May split income if come or go [*Thomson*] * Interp Bull IT-221R3: CRA app: one sig is sig * ‘**sig resi ties’**: 1) dwelling 2) spouse 3) depend * **‘sec resi ties’**: 1) personal prop 2) social ties (orgs) 3) econ ties (bank, emp) 4) landed imm/work permit 5) medi cov 6) licence 7) vehicle regi 8) seasonal dwelling 9) passport 10) member union prof org. * **Ordinary Resident *–*** absent but not given up residency * Factors: a) past&present habits of life b) reg&length of visits c) ties within that jurisd d) ties elsewhere e) perm or otherwise of purp of stay abroad [*Reeder*] * **Deemed Resident -** irrebuttable presumption * Presence for temp purpose [*Thomson]* * Liable on worldwide income (IT-221R3) * **Business** * Incorp in Cnd after 1965: Deemed Resident * CL: Incorp elsewhere, pre 1965 * ‘where central mng and cont actually abides [*DeBeers*] * **Trust** * Formerly: residence where trustee (legal title, decisions), it is relationship not an indiv [*Thibodeau*] * Now: resid where **centr mng and control** resides [*Fundy*] | Case LawThomson v MNR: need sev all sig and most sec  * Ini severed all ties (Berm, US), then got a home in NB  Lee v MNR: gives list of many secondary  * UK pp, visitor stamp, work non resi out of cnd, wife bought home, end w/split @ marriage date  The Q v Reeder: ordinary resident  * Working in Fr (ON lic, pd in cdn, live amt in fr, fam in Fr), wanted to split, idea was to come back from start  R&L Food Distb Lmt v MNR  * Control share soj in Cnd, want small busi exemption, but home and social in US -> not resi  De Beers v Howe – Corp resi test – question of fact  * Diamond, regi, meetings and some direct in SA, but decisions for business in London  Fundy Settlement v Canada – Trust resi Test  * Barbados trustees, but desc made by cdn benef  Grainger v Gough – Location of Source Test  * Wine sales rep, doing business **with** UK, not **in** UK * Still would not be caught by 253, no autho to bind k  FL Smidth v Greenwood – expand test: operations -> profit  * Reasonable allocation of profit btw countries  GLS Leasco v McKinlay Transport – substance in canada  * Truck comp w losses, rental under XIII or business I? * Has office, purchase, meeting, cdn bank - business  Sudden Valley Inc v Canada  * Office to sell in Canada, offers of sale in US-conxn too remote between businesses * Should have w/h 25% of interest under Part XIII (now exempt)  Non Residents  * **Part I -** E, B and cap gains in country; net; withheld * ‘Carrying out business’: Location of source: * Was ‘in’ [*Grainger*] now exten 253 * Where do ops from which profits arise [*Greenwood*] * Adopt Gwd: **substance in Canada** [*GLS Leasco*] * Where a) intend to carry out b) bank account c) purchas and profit d) official agent e) not @arm leng * **Sale of Cdn property**: agreement of purch and sale, w/h if non resi or get compliance certif * **Part XIII** – Passive Investment Income, gross amt, 25% * Cdn Resident paying to non-canadian – wth as final * May be reduced by treaty * Can opt for Part I if rental income * **Interest** now exempt arms length (212(3)(b)) and US non arms length in treaty (5th protocol) |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Income from Office and Employ 1  |  |  | | --- | --- | | 248(1) | ‘office’ ‘employed’ ‘employee’ ‘employer’ ‘employment’ ‘business’ ‘eligible relocation’ ‘personal or living expenses’ | | **Who is Employee** | | | 248(1) | ‘employee’ - invokes the cl: “individual [so not an incorp comp] in the service of [k of, *Swartz*] | | 153(1)(a) | Wth required from wage, salary, remu | | 125(7) | ‘personal services business’-  1) no sm busi rate (25% not 13.5% 500k) | | 18(1)(p) | 2) dedu expenses same as empl exp | | 248(1) | ‘specified shareholder’ has >10% | | 6(3) | **Rebut presump** that pmt before, during and after is s5 renum; irrebut presump for c) induce d) remuner e) non-comp | | 56(1)(a)(ii) | ‘**Retiring allowance’** (respect of loss of OorE 248(1)) is taxable as employment income | | 60(j.1) | Tax Deferral [*Higginson*]: $3500 < 1989; $2000<1996; $all -> goes to RRSP plan | | 60(o.1)(i)(B) | Deductible legal fees for retiring allow | | 153(1)(c) | Wth retiring allow | | **Amounts included in O & E** | | | 5 | E income “salary, wage, other reum, gratuities’ | | 248(1) | No ‘fees received for service’ | | 6(1)(a) | **Benefits** of any kind: ‘in respect of, in the course of, of by virtue of’ empl | | 56(1)(n) | Scholarship and bursaries taxable | | 56(3) | Exemption for scholarships & prize ($500) | | 6(1)(b) | **Allowances** are taxable | | 6(1)(b)(i-xi) | Rsb emp related reimb tax free | | 6(19)-(23) | Housing loss is tax bene (19), taxable: ½ x (reimb loss -15,000) | | 62 | Deductions for moving exp where not reimb, purpose for work/study, 40k closer, 2yr | | 248(1) | ‘Eligible relocation’ ‘eligible housing loss’ | | 6(23) | Emp provided **cost of living**: taxable | | **Deductions in O & E** | | | 8(1), (2) | Limited to (2) Deductions allowed (1) | | 8(1)(g),(h),(j), (4),(10) | g) transport emp h) travel expenses j) motor vehic and aircraft 4) meals 10) certif needed | | 8(1)(b) | Legal fees to get wages | | 8(1)(i)(i),(iv),(v),(5) | Professional and union dues, (i)(i) professional recog by statute (iv) trade union (v) per collect agreement 5) not deduct if not relate to op exp | | 8(13) | Home office deductible, need 1) princ place of work >50% OR 2) excl regular use for emp | | 1118.02 | Transit pass deductible |  Income from Office and Employ 2Empl v Ind K/Business  * Can request CRA ruling request * Nature: K of service vs k for service * Wthol: yes s153(1)(a) vs not (vol EI, mustCPP, GST, HST) * Measurement: cash basis vs accrual basis * Received s5&s6(1)(a))/paid s8 vs (earned/incurred) * Reporting period: both = calendar year (busi was flexy) * Scope of deduc: emp 8(1)&(2) vs wider s 9&20   **Characterizing**   * Question of fact and not bound by language * Old control test: right to cont: how, who, where, when, what vs only what * **Fourfold or total relationship**: control, ownership of tools, risk of loss, chance of profit – whose business is it? [*Weibe Door*] (use in Canada – not just add, holistically) * **Organization/intergration test** – integral or accessory from perspect of worker [*Weibe Door*] (factor in Cana) * **Common intention** of parties – balance w 4fold [*Lang*]   Avoidance attempts: (also splitting)   * Interposing k for personal service w gap – success * Interposing corp or trust – not success * Princ-for-Corp-of-Sharehold – legi bene away * Work: >5 emp, start w/ busi reln not emp * Prin-for-Trust-of emp * Taxed at highest rate and kiddie probs * Capitalization of Emp Bene * Capital asset at cl so tax free [*Schwartz*] – 6(3) ’in’ * Now: 6(3) blocks pmts even from 3rd pty [*Curran*] * Retiring Allowance * Was surrogatum loss of capital asset, now t emp * Need to apportion and can rollover [*Higginson* applying *Bellingham*]  Deductions  * only as specifically provided in 8(1) per 8(2) * Limits: * must be required for employ * unrsb expenses (s77) * food/bev enter – 50% rsb amt (67.1) * Traveling – sign T2200 to say required * Commuting is personal exp, expt transit [*Cavanaugh*] * Legal expenses – wages 8(b) * Depends on source(!) * Professional and Union Dues * 1) payment required to retain prof status 2) recog by statute 3) job related to prof statutes * yes law society, no CBA * Strike tax free [*Fries*, not from a source] * Home Office - Apportion * 1) princ plac of work OR 2) Excl, regular use for employ | Case LawWeibe Door Services v MNR – four fold test  * Door installer: had all four test so in business * Reject integral – accepts four fold and sends to trial  Cavanagh v Canada – four fold finds business  * TA, deduct office, supplies, commuting, T4 in error * 1) specific result (autonomy) 2) pens 34) paid if stdnt pass; integration) gone on w/o, time period/pmt) once at end of term and not on a continuing k  Curran v MNR – third party pmt caught by 6(3)  * Geologist left benefits, sum from 3rd party for k rights * Court: substance is acquisition of service  Higginson v babine – application of bellingham to retiring  * Punitive dam free, and roll over through Tax Deferral  Sorin v MNR – Illustration of Tenant Princ  * Room at hotel primary benefit to empler  The Queen v Savage – ‘In respect of’: in relation to emplmt  * Prize for course compl is taxable, it is in reln to emp  Laidler v Perry – ‘In the course of’: bene from empler persp  * Xmas voucher & deduc as busi expense, taxable since empler moti by better results in the future  Lowe v The Queen – ‘any kind whatsoever’: bene for emplee  * Ordered on trip, was a source, but bene for empler  The Queen v Huffman  * Work clothes, tax free where for empler benefit  Ransom v MNR – relocati loss reimb was tax free, not not  * Under sold house, 1ary to empler, since legi  The Queen v Phillips – incr living costs taxable  * Moved for emp, flat amt, no account  Campbell v MNR – taxable allowance: above and beyond expenses  * Flat amt for use of car, taxable  Include **Benefits** (s6(1)(a))   * Defn: materia acquisitio conferring an econ bene [*Savage*] * Valuation: fair market value [*Steen*] * Wider then British net (any kind whatsoever) * Purpose: not remu but maintain emp compet, offset risks * Was: 1) convtb to $ 2) 1 bene to empler [*Tennant v Smith*] * Now: **Primary Benefit for Employer –** not taxable * Working conditions [*Tennant* lodging, *Sorin* room] * Tuition fees, cont education, job skills [*Savage*, in relation to employment taxed – $500 training exempt] * Gifts (tax if empler moti by bene) [*Laidler*] * Busi travel, conferences, spouse [*Lowe*] * Uniform, work clothes [*Huffman*] * Reimb of Busi expenses [*Ransom*] * Can come from 3rd party (manu-dealer-empl) [*Waffle*] * Empl expense: payment against receipts (accountability)   **Remuneration** (s5)   * Reimbursement of accountable expense – tax free * Rsb empl related expenses tax free s6(1)(b)(i-xi) * Advance – tax free as long as need to repay * Relocation Expenses * Was: Compensation to break even where primary benefit is for empler = tax free[*Ransom*] * Now: reimb for housing taxable or partially if ‘elig loss’ * Increased Living Costs – taxable (s6(23)) * Except Northern resident deduct * Empl: could give home relocation loan (110(1)(j) tax fr   **Allowances** (6(1)(b))   * taxable – * above and beyond expenses [*Campbell*] * predeter arb amt, in adv, not accou * rsb allow: need record, correct formula, required for work [*Huffman*] |
| Income from Business or Prop 1  |  |  | | --- | --- | | 9(1),(2) | Income from BorP is (1) profit (2) loss | | 9(3) | Cap gain/loss excl from property (funda dist cl) | | 248(1) | Business – ‘profession, calling, nature of trade (Bellingham)… not OorE’ [1998] | | 248(1) | Property – ‘any kind whatever’ [2021] | | 12(1)(c) | Interest is taxable | | 12(3), (4) | Report on accrual method annualy | | 16(1) | Blended payments – apportionment required | | 12(1)(g) | Royalties formula | | **Deductions** | | | 18(1)(a) | ‘to the extent made or incurred for the purp of gaining or producing interest’ - corp cannot deduct dividends as expense | | 18(1)(b) | Capital loss or outlay disallowed | | 248(1) | ‘personal expense’ [2020] | | 18(1)(h) | Personal or living disallowed | | 62 | Moving exp deduct | | 63 | Child care cost limited | | 13(7)(g) | Max cap cost on car: $30,000 | | 18(12) | Work space in home – same test as emp | | 67.1 | 50% entertain exp and busi meals deduc | | 67.2 | Interest on car claim formula (300/mth) | | 67.3 | Max leasing costs to claim formula (800/mth) | | 67.5 | Pub policy – no bribes | | 67.6 | No staut fines and penalties | | 20(1)(c),(i), (ii), (d),(3) | Interest: d if (c)payable pursuant to lgl obli, (i) borrowed to earn, (ii) aqu prop to earn | | 20.1 | Cap cost allow deduct permitted, if elig, interest if for purp of earning income | | 18(2) | Covered? | | 18(9) | Covered? | | 67 | Reasonable amounts |  Income from Business or Prop 2Business:  * No definition of profit so use net – ? of law [*Canderel*] * Does not include windfall [Graham] * CRA: activity carried on for profit with evid to support that intention [Stewart] * Timin: incurred per GAAP; lawrs can opt for bill delv (s35)   + 1. Activity: numerous transactions [*Buckman*] * Ad of concern in nature of trade one deal [*Bellingham*]   + 1. Organized: Scheme [*Buckman*], System setting odds [*Graham*], inside info and syst scale [*Walker, Morden* (lost calling)], huge scale not enough if no syst [*Leblanc*]     2. Profit Motive: [*Stewart*] * was object REOL: prof/loss past yrs, training, intend course of act, capa to profit after cc allow [*Moldowan*] * now subjective: i) excl commercial w evid [*Stewart*] * ii) mix–**predomi purp** >50% to make busin [*Mold* facto] * iii) excl recreation, for fun, hobby [*Graeme*]  Property Interest   * Tax free savings account – no deduct, tax exemp, no dedu * No defn – compesentation for use of money, referable to a princ amout, accrues daily [*Miller*, *Sherway*] * Princ: t free; Debtor: dedu if for busi; Cred: ta as p income * Reduce tax: call bonus (cgain ½ allow) * **Blended pmt**: interst segregated, decreases, ? of fact * **Hidden Interest** 1) invariable prac to charge where install 2) sold for > market val 3) tp raised in nego [*Groulx*] * **Vs Interest from damages**: depends on award [*Bellinghm*] * Usually hit hard: min deduct, accrual required now (earn in year per 12(3)(4) - was flexi, ponzi implications)   Rents and Royalties   * Rent: own prop and provide min services to stay passive * Can own personally and net [*Stewart*] * Roy: based on production or use * was cap [*Spooner*] but now property [12(1)(g)] * avoid: sell fixed price, fixed w/ future install determ by formula, max f price w formula, min f price w/ formula   Dividends – MR<25.78%   * favorably taxed since company pd on profit * indiv can also get tax credit for **canadian corp** | Case LawGraham v Green – tax free windfalls if not bookmakes  * Betting on horses, no inside info, ‘mere bets’, hobby  Stewart v The Queen – definition of business; 3stg profit motive test  * Personal financing rental building w/loss  Groulx v MNR – hidden taxes test  * Farming prop, seller accepts install no interest   Deductions  i) Business purpose: Imperial Oil v MNR – operating expenses deduct as current  * Accid while transp oil, risk of neg incidental to ops  The Royal Trust Co v MNR – just need purpose  * Deductions for club dues, ok   ii) Personal or Living Expenses Benton v MNR – domestic helpers are not deduct  * Farming domestic  Leduc v The Q – legal unrelated to op of busi not deduct  * Pedophilia charges, activities not incidental per IO  Symes v The Queen – will consider reviewing trad nature  * Child care costs gendered? Look to 63 instead  Scott v MNR – narrow exemption to food and drink accept  * Foot courries, extra food is like fuel busi exp  Cumming v MNR - commuting  * Doc w/ home office and split w/ wife, dedu ok   iii) Public Policy Considerations MNR v Eldridge – illegal busi can have e if have proof  * Call girl expenses, can d  65302 BC Ltd v The Queen – report profit from crim on net  * over quota fine on eggs to keep client   iv) Interest Expenses The Queen v Bronfman Trust – borrowed funds must have purpose of earning income  * Bene wanted out, wrong order, no d  Singleton v The Queen – asset swap best  * Capital acc to purchase home, ok interest d  Deductions  * More generous then employment – gov may argue no source/windfall [*Stewart*] or employment [*Weibe Door*]   1) start w/ financial stmst – implicit in s 9 and 9(2)   * May need experts [*Royal Trust*]   2) Adjust per ITA, Regs and case law   * ex ddends not deduct exp unlk in GAAP [Newman] nor retained earnings of sal to sole prop of partner * 18(1)(a) Must be for purpose of earning income * Personal expenses apportioned and excl [change from IWTA to less restrictive ‘to the extent that’] * Test: loss incidental, party of process, op exp [*Imp Oil*], not too remote from income earning process [*Roy Tru*] * Do not need match of rev and tax/causal [*IO, Roy Tru*] * Deductible in year incurred [*Roy Tru*] * 18(1)(h) cannot be personal * costs that enable taxpaye to work not deduct [*Benton*] * legal expenses must relate to op of busi if d [*Leduc*] * unclear whether child care would have been, but covered by s63 [*Symes*] * food and drink related to work now flat rate [*Scott*] * commuting to work is personal, unless home is base for self emp [*Cumming*] – also [*Cavanaugh*] deduct * can claim d for some inter or lease on car [*Cumming*] * Public Policy: Disallow if frustration of public policy * Crime is a business and income from crim taxable [*El*] * Need proof of expenses (especially bribe) [*Eldridge*] * Not a bar if compensatory [*65302 BC*] * 20(1)(c): interest Expenses * asset swap best method: sell 🡪 buy 🡪 borrow to repay invest = d interest expense [*Singleton*] * not: borrow to repay so as to avoid selling [*Bronfman*] * form over substance, shuffle of cheques? [*Bronfman*] |