**SOURCE CONCEPT OF INCOME –** allocation to a source [***Schwartz***]

**2(1)**: Tax payable on taxable income by Residents

**2(3)** Tax payable by non-Residents employed, carrying on business, or disposing of taxable property in Canada

**3(a)** taxable income ‘without restricting generality’ from sources [O, E, B, P] – argument specified not exhaustive [wrt Parliament, not courts]; see **Recognized Exceptions** (8)

***Bellingham***: Non-Compensatory [punitive] amounts not taxable; *surrogatum principle*; assess **nature** & **purpose**; ***Cranswick*** Factors

***Schwartz***: sources watertight; sources have start & end date;

**no source = no income**; operation s.56 if E started, instead loss of cap-asset]

**Personal injury** (TF): emotional distress/pain & suffering; medical care; defamation. IT-365R2: special & general damages for personal injury tax free, including loss of earnings unless considered income from employment. Annuity pmts not taxable, not interst is taxed.

**3(b)** TCGs – ACLs = NTCG

**4(1)** Income from each source calculated separately, then aggregated [losses and income] for **total income**

**56** added source of income: pension, EI, RRSP, retiring allowance

**Negative balance/refund not permitted –> nil** return

**3(d)** losses from **3(a)** can offset on an aggegate basis; ‘net-out’

**Refer Below: Taxation Year**

**LOSSES:** **Taxable Income** (3a) – **Deductible Expenses** (3d) = **NI/Loss**

**TVM**: 1) Deduct Current 🡪 2) 3 years prior 🡪 3) Carryforward

**Non-Capital Loss**: net loss from non-capital sources [e.g. B(l)>E]

**111(1)(a)**: 24yr deduction: 3 years back, current, 20 forward

**39(1)(c)**: **Allowable Business Investment Loss** – from qualifying CCPC [capital investment] ½ can be used to offset all sources of income; breaks down watertight view. 3 CB; 10 CF

**31** **Farm losses** (capital inv) up to **$17.5** can deducted from any source; must be business; not hobby farm

**3(b)** ACLs can only be used to offset TCGs

**Net-Capital Loss:** on **capital property**; can not be used against **3a**

**111(1)(b)** 3 year CB; Indefinite CF. **111(8)** Requires disposition realized (not accrued), **39(1)(b)** no loss on depreciable property

Exception: **111(2)** can deduct from all sources in year of death & immediate year prceeding death. Not transferrable to estate

**Nexus** between taxpayer and source of income: **receipt + benefit; conduit** not taxable, merely flow-through [***Field*** – victim of fraud: W benefitted from RRSP, H did not, notwithstanding tax deferral]

***Buckman***: embezzlement, but to not need absolute right to $ for it to be income [*receipt+benefit*], ‘active embezzlement business’. If repaid $ could have ‘embezzlement loss’

**Income Splitting**: transfer to taxpayer w/ lower marginal rate; larger benefit where income disparity.

**8(1)(i)(ii)**: hire family as ‘assistnat’; splits income w/ deductible employment expense [needs to be in ‘er K]; **67** must be reasonable

**Countered by Attribution: 56(2)** $ that would be in TP’s income if received txble to TP if diverted to other for benefit of TP or other [***Neuman***: $to other than TP, allocation by TP, benefit of TP or someone he chose to benefit; included in TP had not been moved] separate entity – unpaid dividends would belong to corp, not TP

**56(4)** transfer to N-AL person, unless income from property also assigned to N-AL person ***Boutiller***: ‘beneficial entitlement test’

**120.4** kiddie tax: highest rate on private Co divs to child under 18

**WHO IS SUBJECT TO CANADIAN INCOME TAX**

 Resident? If Yes –/broken by 114? If no: is there CDN income

**2(1) Resident** (any point) on worldwide**; 2(3) Non-Resident** on CDN

**Individual Residence by:**

1) Factual: ***Thomson***: centralized mode of living; every person has a residence = where spends time & accustomed to living;

***Lee***: analysis of situation, not intention [but *Shih*]; marriage & 114
2) Ordinarily: **(3)** resident includes ‘ordinarily resident’

***Reeder***: despite depature intended to return to Canada. Entire year.
3) Deemed: **250(1)** **Deemed Residence** [subject **2(1)**]; **(a)** soujourned 183 days; ***Thomson***: connotes temporary residence, could be factual in less days. Vacationing/not commuting for work.

Any part = 1 day; not ncly consecutive. Deemed entire year. 4) Part Time: **114** divided based on emigration/immigration. **S5-F1-F1** residential ties; **1.11** often, but not ncly, determinative

**Corporation Residence:** Resident: worldwide income; Non-R: CDN

1) Incorporation in Canada: **250(4)(a)** after April 27, 1965. CDN Resident forever; CL N/A
2) Incorporation in Canada: **250(4)(c)** before April 27, 1965 + a) **Resident**  [per CL/ ***De Beers***] or b) ‘carried on business in Canada’ = **Deemed Resident**

3) Non Incorporate in Canada: Taxable on CDN (N-R) or as **resident** if satisfies CL/***De Beers*** = ‘where is central mgmt + control’; i.e. Director’s meetings + high-level decisions/strategy
**Trusts**: ***De Beers*** test in ***Fundy***: where Bs (not Ts) were as Bs were actually running; also considers T property/where rights enforceable

**CDN Source Income: Non-Residents**

**Part 1 Tax: 2(3)**: **NET basis**: income, employment, TCG on ppty disp

Employed **115(1)(a)(i)**: NR taxed on CDN employment under **2(3)**

Business **115(1)(a)(ii):** NR taxed on CDN “business”; **253** extension

***Grainger****:* biz **with**, is not biz **within** a country: contract is where **acceptance is communicated**; IC not caught by **253(b)** not ‘ee; not agent

***GLS Leasco***: where profits arise/substance of business. Sufficient CDN activity [biz done, but no building] 🡪 Watertight Source [***Schwartz***]

***Sudden Valley***: substance in US per Ks/only invitation to treat in CDA by satellite call center, ntwthstdg **253(b)** ‘sales offer’, sales in US

Disposition Txbl CDN Property **115(1)(b)** Non-Rvendor taxed;

**116(1&2)** notice to Minister by V to get compliance certificate for proposed disposition w/pmt of security **OR** **116 (3&4)** Notice by V after sale w/ payment to get compliance certificate

 **116(5)** CDN P liable unless after rsbl inquiry did not know NRV or where there is a compliance certificate [includes liabiliy unpd excess]

**Part 13 Tax: 212-215: GROSS basis:** no expense deductions [**214(1)]** **212** 25% on non-resident income from CDN property [some interest, dividends, rents, royalties.

**215(1)** resident w/holds & remits **(6)** liable for failure

**216(1)** NR can elect net basis for RENTS

**212(1)(b)** INTEREST exemption where to an arm’s length party

 **Deductions in Computing Income** **8(1)** list; **8(2)** if not in **(1)**, no dedct
\***62** moving expenses; **63** child care expenses [regardless of source]

**67** must be reasonable; **67.1** 50% food & enterntainment

**118.02** transit pass credit

Principles: required for employment; income earning purpose; may be apportioned, must be current not capital [intitiation fee]

**CANS 28 8(10)** requires ‘er certificate

**8(1)(b)** legal expenses to collect/establish right to $ inc’d as E income

***Blagdon***: not dedctble re right to employment/prof’l misconduct
**60(o.1)(i)(B)** legal expenses to establish right to retirement allowance to the extent taxpayer had income from RA in the year

**60(j.1)** Retirment allowance transfer

**8(1)(e)** railway employees meals and lodging

**8(1)(f)** commission sales: selling property/negs K; advert, promo

**8(1)(g)** transport ‘ee: vehicle use, meals & loding away from mun.

**8(1)(h)** non-vehicle travel expenses

**8(1)(h.1)** motor vehicle expenses

**8(1)(i)(i)** annual[not entry] dues ncry to prof’l status\* **(iv)** trade union membership or **(v)** ‘ER req’d dues for trade union; ‘ee not member

**8(1)(j)** interst cost for financing work-req’d vehicle

**8(4)** meals if ‘ee has been away from ‘er’s municipality >12 hours

\***8(5)** dues not deductible under **(i)** where part of a fund or annuities unless malpractice or liability insurance ncsy to prof’l status
**8(13)** Home office deductions (gen apportion by sq foot) require:

a) HO TP’s principal place of performing O/E duties[***Cumming***] **OR**
b) HO used exclusively for earning income from O/E & used on regular and continuous basis for meeting customers or others ;
**(b)** can not create loss; indefinite carryforward

 **Income Inclusions 5** salary, wages [compensatory] , & other remuneration, including gratutities [voluntary]; **248(1)** director’s fees, but not fees for services

**6(1)(a)** lodging & any other benefit ‘of any kind whatever’…’in the course of, or by virute of TP’s O or E’; Cash or Non-Cash [non-covertible]

\*Unless primary benefit to ‘er [***Tennant v Smith***] or ‘ee derives no benefit [***Sorin***: room cramped, nominal value [not worth apportioning], needed for work] or **T4130** $500 non-cash dedctbl & exempt

***Savage***: **6(1)(a)** not restricted to remuneration for services; includes **benefit arising from employment** Benefit = material acquistion conferring economic benefit on the taxpayer & not an exemption
Prize for doing course, but **56(1)(n); 56(3)** exclusion of scholarships

***Laidler***: mere gesture/reward for service ? of degree. Gifts can not be to obtain future service/ go to all. Need to be special/one-time

***Waffle***: gift can come from 3rd party [Canucks tix from supplier]
***Dunlop***: assessed on per person cost of office party

***Lowe***: is the expense [BUSINESS TRIP] primarily for **benefit of** biz or employee? Can be apportioned, no need if ‘merely ancillary’

***Huffman***: work reimbursement not taxable, restore econ situation. Clothing only used for work.; ***Ransom***: reimbursement loss on house where required to move for work [+ must account] not taxable

**CRA:** **6(19)** ‘eligible housing loss' [40km] taxed**(20)**½ over 15k [‘er deducts all]; **62** deduct moving expenses for ‘eligible relocation’ [40km]

***Phillips***: pmt for unsubstantiated [too subjective] amt for inc’d housing costs; material benefit: inc net worth; $ rec’d as employee

**Legal Fees**: paid by ‘er; txble unless nexus b/t outlay & TP’s position

Notwithstanding **67.5** bribes are income in hands of recipient
**Valuation of Benefit***:* ***Wilkins v Rogerson***: convertible ‘$’s worth
***Steen***: FMV: amt non-oblgtd B would pay non-oblgtd S @ arm’s lngth

**INCOME FROM OFFICE AND EMPLOYMENT**: source for ‘ees, servants, and officers. **Contract of [not for] service [=IC/’er]**

**Implications**: 1) *Withhodling* – ‘er must remit **153**; IC makes quarterly instalments **156**2) *Basis of Measurement:* **cash: 5** income when received/ **6(1)(a)** non-cash benefits; **8** expenses deducted when paid. Limited scope
3) *Reporting Period:*  **249** calendar year
**‘EE or IC *Wiebe Door* – Total Relationship Test:**

1) Control – over method of work: method (ee); task (IC)
2) Ownership of tools
3) Chance of Profit/Risk of loss: form of pmt, responsibility for work
4) Integration test: **integral** (ee) to operation or is work **ancillary** (IC). Assessed from worker’s point of view [***Cavanagh***]
***Cavanagh*** – T4 & ‘ee return not determinative; IC based on *Wiebe*; consider hired for task, would need to reneg K. Paid for car expenses due to home office [always traveling from work, for work]

**Avoiding Characterization as Employment Income:**

1) Interposing K for Services: terminate K of service to be IC =retire & rehire. ***Boardman***: courts not bound by terms, look to substance [20]
2) Interposing Corp/Trust: terminate employment K; incorporate your services for rehire.

‘Personal Services Business’ **125(7)** no access to corporate tax rate where TP is ‘specified shareholder (>10%) where but for incorporation TP would be E/O; unless >=5 F/t employees
**18(1)(p)** limts on pb deduct expenses, but can deduct salary/benefits
3) Capitalization of Employment Benefit: SAAR: **6(3)(c-e)** unless not received as c-e, will be included as E income; can not capitalize employment benefit or restrictive covenants [***Curran***: **c-e can** be deemed regardless of form/effect, **a&b**  speak to payments during or immediately around employment for payer, with exceptions under **c-e**; **6(3)** not frustrate by corporate veil/ look at **substance**]

**Retirement Allowance** included under **56(1)(a)(ii)**, but can be deducted by transfer (in part) under **60(j.1)**

**Allowances**: **6(1)(b)** taxed as remuneration; *doctrine befcl receipt*
***Huffman:*** 1) Arbitrary predetermined sum to ‘ee for certain expense
 2) Determine in advance
 3) No required accouting; $ at ‘ee’s complete discretion
***Campbell:*** volunteered car for hopsital needs; taxable allowance: paid an arbitrary amount & not required by work [not reimbrsement]/voluntary. Need a basis for allowance, e.g. kms
***Huffman***: pmt to offset, indemnify, or reimburse actual expenses incurred for work not an allowance. Arbitrary, but receipts required

**DEDUCTIONS FROM BUSINESS OR PROPERTY 9(1)** profit [rev – exp]

**18(1)** general limitations**(a)** expenses except to **extent** inc’d for income\*; **(b)** disallow capital outlays; **(h)** disallow personal/living exp

**20(1)** permitted deductions; **(a)** allows for CCA; **(c)** interest paid/payable for B/P inc; **67** to the extent rsbl
**\*Income Earning Purpose Test *Imperial Oil***: general, broader **purpose**. **Not result.** Deducted in year **incurred**/**when quantified**

Need **not** be directly/wholly responsible for earning income [matching principle/causation not req’d] SEE TIMING BELOW

***Royal Trust*:** expense deducted when incurred (not matched to when it produces profit); assess standard **business** (and acctg) **practices**;
Initiation fees were one time pmts w/t future benefit, but were recurring across ‘ees; **CRA resp** **18(1)(l)** club dues not deductible
***Benton***: apportionable

***Symes; Leduc***: expenses of a personal nature that exist regardless of the business [Business Needs Test], but can deduct where above personal need [***Scott***]; possibly where personal merely **ancillary**

**Dividends**: A-T distribution of RE, not to earn income, not ddctbl

**Prepaid Expenses**: **18(9)** no deduct on interest & services for next yr

**PUBLIC POLICY *Eldridge:*** not barred by public policy, can deduct crim biz expenses. Includes **legal fees** if primary purpose that led to the criminal charges was income based; ***65302 BC***: can deduct statutory fines, unless ITA
**67.5** can not deduct bribes/criminal offence/public officials

**67.6** can not deduct statutorily imposed fines; **18(1)(t)** tax arrears interest & penalties not ddctbl. K/torts fine still deductible [***Imperial***]

Theft: ***General Stampings***: by ‘ee *prima facie* deductible, seen as inevitable; no allowed where one is proprietar or similar (manager)

**18(1)(h)**; **248(1)** ‘**personal** living expenses’ other than travel to COB
***Benton***: farming operation; apportion farm help from housekeeping portion; **CRA resp**: **64(ii)(J)** disability support deduction: home care
***Leduc***: legal fees incurred for personal reasons, not needed to preserve business income; ***Blagdon***: “means of livelihood” not dctble
***Symes***: **63** complete child care code, not expanded by **18(1)(a)**

***Scott:*** exception for food beyond avg where foot/bike courier
***Cumming:*** commuting generally personal, but allowed when traveling b/t [home] office and work [hospital], meets Biz purpose
Car deduction: **13(7)(g)** w/ **Reg 7307** max $30k. **Class 10.1** @ 30%

**67.2** max Interest $300; **67.3** leasing cost $800; **67.4** apportioned b/t owners

**Home Office 8(13)**: can be applied to the extent used to derive income for the business [if **9(1), 18(1)(a)** met]

**Entertainment Expenses:** 50% lesser of paid or what is rsbl for food/entertainment

**Education: *Levin:***prof’l refresher deductible; grad courses not, but tax credits [**118.5** tuition; **118.62** student loan interest **]**

**T4130**: can deduct non-cash gifts to ‘ees up to $500
**18(1)(t)** interest on late tax pmts not deductible
**20(1)(cc)** deduct expenses of representation; **(dd)** site investigation

**Interest Expense** deduct for **20(1)(c) (i)** borrowing $ to earn B/P inc; **(ii)** to acquire property to produce B/P in; **(d)** includes compound int

**(3)** borrowed money to repay **c(ii)** deemed used for same purpose; **20.1** where borrowed $ no longer traced to income, interest can still be deducted on funds outstanding despite income no longer derived

**18.2** interest&property tax not deduct on vacant land; disc speculation

***Bronfman Trust***: direct use of funds not B/P; indirect use insufficient. “judicial musings” would have changed ***Singleton*** re econ substance

***Singleton****:* **legal form** of txns prevails over economic substance. Court will give effect to formalities minimizing taxes

**ABOVE = CURRENT EXPENSES; SEE CAPITAL EXPENDITURES BELOW**

**INCOME FROM BUSINESS OR PROPERTY: 248(1)**‘business’; property’

**9(1)** B/P Income = profit (undef – see Chapter 6 role of accounting; ***Canderel***); **3(a)** Biz income; **3(d)** net out
**CL: B =** 1)Organized Activity + 2) Pursuit of Profit; **248(1)** +’s A/C NT

**Organized Activity:** organization/effort + intention [property passive] regardless of legality [***Buckman***]. ***Graham***: not gambling: **unorganized**, subject to luck need more than habit/skill/system

***Walker***: **intention** for profit vs fun; ***Leblanc***: large scale, but for fun

 ***Morden:*** ‘calling’ when owned/trained horses, otherwise hobby

**Pursuit of Profit**
***Moldowan: \**REOP,** objective determination: 1) P/L in past 2) TP’s training 3) TP’s biz plan 4)Profitability after CCA ->***Cohen***: poker

**Stewart**: REOP not required where purely commercial

1) Is the activity undertaken [**intention, not result**] in **pursuit of profit**? Or is a personal endeavour?
a) If **purely commercial**, no further inquiry required = B/P. Court would only consider REOP if sham/illegal tax avoidance
b) If **purely personal** = hobby
c) if **mixed personal/commercial:** **OBJ: \*REOP** (& antcipated capgain [long-term]) ***Sipley***: amount of time on activity**+ SBJ Intention**
2) If not a personal endeavour, is the income **B** or **P?
Adventure or Concern in the Nature of Trade –** isolated, speculative transaction intended to yield profit; does not require repeated txns

***Bellingham****:* land bought w/ **intention at time of acq’n** to resell
**Distinguished from: E: *Wiebe* Total Relationship Test
CG:** CGs taxed @ ½ [TP want if gain], B = rev - expenses [if TP loss]
CG where selling Fixed Capital Asset, sale of l-t property // B where selling Inventory or Circulating Capital. Can be in B of selling P
**P:** arises from property ownsership [other than CG on disp]; e.g. rent, royalties, interest, dividends. **Passive income** [look @ activity level – hard for rental income; distinction not made in ***Stewart***];

**248(1)** ‘property’; **9(1)** inc =profit; **9(3)** P does not include CG or CL; arises from use, but does not include economic benefit from TP’s own property in a non-market txn [**imputed income** not taxable; e.g. living in own home] **Interest Income** **12 B/P** inc inclusion **(c)** interest rec’d [**cash**] or rec’ble[**accrual**] includes ‘on account of, in lieu of, or in satisfaction of interest. Discounts on bonds. Bonus/penalty in excess of interest payable not ncly interest, but mostly covered in **(c)**

**(3)** accrual for interest on debt obligation; **(4)** accrual for interest on investment contract. **81(1)(g.1)** personal injury exclusion

**16(1) antiavoidance**: deferred pmts, including disguised loan can be deemed interest payments; separation of interest and capital repmt
***Groulx***: not true interest free loan **16(1)** interest assessment test

1) Invariable business practice for interest rates
2) Property sells above FMV
3) Negotiations/structure. \*G bargained for no interest w/higher CC
**Rents & Royalties**; **12(1)(g)** pmts based on production/use of property whether or not instalment of sale price [brings CGs in P inc] ***Vulcan***: ‘earn-out’ [$ over purchase price paid out on future profits]; land was sold, but 12(1)(g) brings into income; **formula** for $/use

Avoid: fixed price; fixed price w/ instalments (ind of use); sale for maximum fixed price [reverse earn out: price could drop]; sale for minimum fixed price + formula [partial avoidance}
**Dividends:** favourable due to Div Tax Credit [up to $50k tax-free CDN]; **83(2)** tax exemption from private corp

**CAPITAL EXPENDITURES:** Current/ Revenue Expenses vs Cap-Ex

**18(1)(b)** disallows to extent capital outlays. Legal fees Cap-ex or Rev

***British Insulated*** 1) One time, non-recurring [pension] expenditure
2) Acq’n/Bringing into existence of ‘asset or advantage’. **B/S**

 ***Dominion Natural Gas***: includes preservation, TS disagrees, legal fees protect franchise (similar to maintenance) should be expensed
3) For the enduring benefit of a trade
***Denison Mines***: primary purpose haulageway: extracting ore, not building **enduring** asset; current expense, not capital outlay

***Johns-Manville***: land an **enduring** asset generally, but purchased for removal; recurring & did not retain or produce income from land 🡪 treat as current expense despite acq’n of a capital asset

***Kellog:*** legal fees expensed, were not spent to acquire asset or trade advantage; preserved status quo & nothing to put on **B/S**

***Canada Starch***: internal/inherent goodwill = current expense [not acq’d need to buidl] to acquire right to trademark, does not appear on **B/S.** Only capital outlay if buying ext. goowill [acq’n]

**Repair of Tangible Assets:** 1) Mtc or One time? 2) Mtc or Improve?
3) Separate Asset? 4) Amount wrt property value [may N/A]

 Renewal or Replace Part of Asset **18(1)(a)** Revenue Expense
***Canada Steamship***: where equal replacment/not bettering; ordinary wear and tear on asset integral to business, notw/stdg cost

***Shabro***: undoing deterioration, restoration; repair (even sudden) material defect
 Improvements (or replacement) of Asset **18(1)(b)** Capital Outlay
***Canada Steamship***: distinct asset capital outlay [boiler on ship]

***Shabro***: adding value, upgrading/renovation; extending life; apportionable – amounts to extent imporoved initial state
***MacBlo***: tires integral to trucks, capital outlay
**Intention:*****Gold Bar***: why did TP spend $; expense emergency repairs, no real choice, may be Cap-ex where improvement; steel v brick too subjective & adopts **modern** construction; despite being one time[not mtc wear and tear]

**TIMING PRINCIPLES: RECOGNITION OF REVENUE AND EXPENSES**

O/E cash basis: little tax planning B/P accrual; progressive rates are reducted by deferring revenue and claiming deductions ASAP
***Canderel***: GAAP guidelines, not legally binding. *West Kootenay* uses matching principle – only saarting point. Obligation to present clear and accurate picture; where met TP’s choice; profit a ? of law

**Tax Year 249(1)(a)** Corp – fiscal year (reported in the calendar year in which it began; **(b)** individual (including non-corp B income) = calendar year; **150(1)(d)(i)** self-employed can elect for June 15 return date; **(ii)(A)** but interest accrues

**Method of Accounting**

**Cash:** required for employees; based on receipt of cash or cheque; **28** optional for farming or fishing business. Investor choice

**Accrual**: revenue as earned; expenses as incurred; includes all business income [S/E = accrual on calendar year]. Investor choice
**Timing 12** income **inclusions** **(1)(b)** Amounts receivable, notw/stdg when they are due **34** prof’ls exclusion WIP until bills delivered. Not collection [bad debts reserve] treatment of expenses? Deduct @time

**Expense**: ***JL Guay Ltee***: incurred & deductible when expense can be determined with rsbl accuracy; ***Imperial Oil***

**CCA 18(1)(b)** disallows capital outlays, loss, or replacement; **20(1)(a)** allows CCA to exclusion of GAAP. Can be apportioned

**Reg 1100(1)(a)** max permitted rate; **Sched II** class & rate

Must be fixed capital asset aquired to **1101(2)(c)** gain/produce income & must be wasting [depreciable].
***Ben’s***: needs to be 1) depreciable asset [\*54]+ 2) acquired for gaining/producing income; (1) insufficient on its own: purchased houses, but not to produce income, not w/standing rental revenue
1) Is it a capital outlay?

2) Is it wasting/depreciable? **13(21)** where a 20(1)(a) deduct allowed
3) Is it used to gain/produce income?
4) Is it **13(26)-(27)** “available for use” ***Wardean Drilling***: Title Passes + Asset Exists; ***Schultz***: building needed to be completed: title + acq’n

Note Exclusions: **Reg 1102(2)** Land; **1102(1)(a)** currently deductible, **1102(1)(c)** not acqured to gain income

**Allocation**: can add legal/acctg fees to property **CC**, but need to allocate to land/buildings, etc. Oppsoing buyer/seller positions

**13(21.1)** if V demos building pre-sale, everything allocated to land

**68**: allocaion to the extent that is reasonable, otherwise CRA changes

***Sask Drug:*** hard-fought bargainied figures betrween NAL parties that are advised & knowledgeable are **conclusive**

**Calculations:**

**13(21)** UCC formula, but **1100(2)** ½ year rule in year of acq’n

5) Pool in class [based on expected life] & assign rate

**Except** (Own Class) **1101(1af)** Cars >30k; **1101(ac)** Rental Ppty> 50K, **1100 (11)** but can not use to create or increase net rental loss
6) All but leasehold interest used declining balance, instead of straightline depreciation

**UCC(ye) = A – E – F + B** if given **UCC(y1)** – **CCA(y1)** = **UCC(y2).** *Uses year end CCA to calculate UCC at beginning of next year*

**A:** cumulative capital cost [acq’n] of every asset in class

**E:** Total depreciation, cumulative CCA on entire class
**F:** Cumulative dispositions: lesser of 1) Net Disp Price or 2) Cap Cost

**B:** **13(1)** recaptured depreciaton

**IF ACQUISTION**: **UCC**(**not)** = **UCC(ye)** **- ½ (acquisitions – dispositions)**

Applies ½ year rule to net change in assets.

Calculate **UCC(ye)** as above, then **UCC(not)**, take CCA on **UCC(not)**

**Acquisition** at **Cap Cost**; **Disp** at lower of **CC or POD**

**DISPOSITIONS** [Simpler **UCC**(**by) – Disp** [lesser of CC or POD]

**Terminal Loss:** 1) Sell Last Asset in Class for less than its UCC
2) UCC(ye) is **positive** [UCC > CCA claimed]
3) The asset has unclaimed dep’n or dep’d faster than allowed rate: **20(16)(c)** must deduct 100%, **(d)** no CCA claim on the class

BUT **39(1)(b)**no ACL on **depreciable property**

**Recaptured Depreciation:** 1) Sell an asset for more than UCC
2) UCC(ye) is **negative**
3) Too much dep’n claimed, still have value beyond UCC
**13(1)** must be 100% included in income

Due to pooling, othe assets can ‘sop up’ extra dep’n

**13(4)** Deferral of RD when disposition involuntary (fire, expropriation, or disposal of ‘former business property’. Deferred iff **13(4.1)** ‘replacement property acquired’ in 24(vol) or 12 (invol) mths

**ECE:** Fed Budget 2016 – class of depreciable property at 5% rate for intangbiles; no separate ECE as of 1/1/2017

**Objections & Appeals**

**152(8)** Assessment, subject to objection, appeal, or reassessment deemed valid and binding ntw/stdg any error, defect, or omission

**165(1) Notice of Objection** to assessment to be filed later of 1 year of TP’s filing and 90 days after assessment if an individual; or 90 days after assessment for corp.

**169(1) Appeal** TP who served notice of objection may appeal to TCC after **(a)** Minister has confirmed assessement/re-assessment; **(b)** 90 days after NoO if Minister has not vacated or confirmed [no reply]

Objection & Appeal generally suspends collections, while considered by District, then regional appeals office and then TCC

**Informal v Formal Procedure** [CAN 4]

***Johnston***: Minister’s assumptions in making assessment presumed correct, taxpayer needs to disprove

But, Minister does need to prove facts for civil penalties and
***Taylor*** AR + MR for criminal penalties

**Settlements** **220(1)(a)** Minister administers and enforces Act 🡪

***Cohen:*** compromise to ‘split difference’ not legal or binding; CRA not bound to past capital/biz assessments. MUST PAY TAX LIABILITY

***See Waiver*** – can waive interest and penalties

**Audit and Investigation *consider assessment time period***

**Powers of Investigation and Enforcement:**

**231.1** INSPECTION: **(1) (a)** audit/examine books&records; **(b)**examine property in inventory; **(c)** require owner/mgr to assist and answer ?s

**(2)** dwelling house requires consent or **(3)** warrant

**231.2** PROVIDE DOCUMENTS OR INFORMATION; **231.6** FOREIGN too

**231.3** WARRANT to permit seraching anything for docs; *ex parte*

**231.4** EXAMINATION UNDER OATH at CRA field office, allowed counsel ***Jarvis***: no Charter rights invoked if pursuing civl penalties, need to inform TP if audit switches to criminal investigation, but does not provide retroactive protection

**231.5** CAN COPY DOCS

**231.7** COMPLIANCE ORDER BY JUDGE to provide access, info or doc

**232** LAWYERS CAN CLAIM SCP where failure to comply with **231.2**; provided there are rsbl grounds. ‘SCP’ does not include accounting record of a lawyer

**Collections** CRA issues Certificate (equivalent to court order); can then execute against property/ Crown has priority among creditors
**160** IMPOSITION ON 3RD PERSON for NAL transfers

**222(5)** LIMITATION EXTENDED where TP acknowledges debt/Minister commences action

**223** CRA can file liens on real property

**224** Garnishment of debts

**225** Siezure and sale of goods, chattel, & property

**227.1** PIERCING CORPORATE VEIL for liability for directors for corporate debts for *inter alia* **153**

**Bankruptcy** only escape from the tax liability, only interest can be forgiven, but could enter into a structured payment plan

**DISPUTE RESOLUTION & TAX AVOIDANCE**

**Returns & Assessments**

**150(1)(d)** file return by April 30; **151** all person req’d estimate tax
**150(2)** CRA can compel regardless of liability

**152(1)** Minister assesses (NOA) tax return; **152(1.1)** Deter’tn of Loss

**NOA** starting point for Reassessment; ***Okata Oil***: not nil
**152(3.1)(a)** corp 4 years; **(b)** CCPC/individual 3 years

**152(4)(a)** Can reassess after ‘normal reassessment period’ if **(i)** TP misrep/fraud or **(ii)** TP’s waives reassessment

**152(7)** Minister not bound by return in assessment – can compel
NW assessment = assets – liabilities + personal expenditures

**Refunds, Interest, and Penalties**

**153** employer withholds taxes; **227** no action again any person for deducting or withholding money in ITA compliance/intended comply

**156(1)** quarterly instalments for ‘other’ – ***TS:*** Self-Employed

**Interest**: Refunds accrue **3%** interest 45 days after April 30, taxable

**161** sets out interest rate/structure

Late pmts **162(1)** Accrues starting April 30th @ **5%**
**163(1)** **10%** if repeated failure [last year + 1 of 3 preceeding]

**163(2) 50%** if false stmt/omission or gross negligence

**163.1** **50%** for late or deficient instalments

**Waiver**: **152(4.2)** refunds to TP beyond normal limitation period

**220(3.1)** waiving interest & penalties: discretion/ up to 10 years back

**220(3.2)** extension up to 10 yrs to make, amend, or revoke election

**Civil Penalty**: **163.2** – **(2)** misrepresentation in tax planning: every person who makes or causes another to make (tax planner) false statement is liable to cvil penalty: **(3)** > of $1k or pay for services
**163.2 (4)** particpation in misrepresentation; **(5)** $1K + < of penalty under **163(2)** and $100k + gross compensation

**(6)** defence of reliance in good fatih

**Criminal Penalty** requires AR&MR; ***Jarvis***: notice audit 🡪 crim pros

**238(1)** summary conviction offence for non compliance w/ filing provision. $1-$25k fine and/or up to 12 months imprisonment

**239(1)** other offences/punishment; e.g. tax evasion; summary offence or **239(2)** AG can proceed by indictment

**Voluntary Disclosure Penalty** to avoid **238/239** [must be facing]

1) Voluntarily made [before audit or investigation]
2) Full disclosure of relevant facts
3) TP undertakes to pay additional taxes owing
4) Taxes must be more than one year overdue 🡪 “Tax Amnesty”
CRA refrains imposing crim/civ penalties & relieves some interest