Week ONE – Key Taxation Law Concepts

WHAT IS TAX? Contribution levied on persons, property or business for support of the government
WHY? Community services, social engineering and to achieve government objectives

Direct taxes – imposed on the person that is going to pay the tax (like personal income tax or company tax)
• What is meant by a progressive tax? – takes more tax as income increases (like we have in AUS)

These Acts have concurrent operation
One Rating Act: Income Tax Rates Act 1989

Why are the tax rates in the government
• What is meant by a progressive tax? – takes a lower amount as the amount of income increases (i.e. GST - so impact more significant upon the lower income earners)

ASSESSABLE INCOME
2. 1. Key points to pull out from these two Acts:

- Residence and source (if resident for tax purposes then liable for AUS income tax for all income earned worldwide, if not a resident of AUS but source income in AUS, will be taxed on portion of income linked to AUS)

Administration of the taxation legislation
• Tax Rulings carry a lot less weight that any legislative provision – they can be wrong and are corrected by the ATO in light of Court decisions
• Commissioner of Taxation – s 3A ITAA
• Commissioner’s view
• Public Rulings & Private Rulings

RESIDENCE OF THE TAXPAYER
• Under s 6(5) ITAA97 the assessable income of a resident taxpayer includes the gross income they have "derived" from all sources, whether in Australia or elsewhere.
• The assessable income of a non-resident taxpayer includes only so much of their gross income as is derived from sources within Australia – s 6(5)3

The determination of the taxpayer’s residence is, therefore, the first step in ascertaining their income tax liability.

S 995-1 ITAA97 refers back to: S 6(1) ITAA36 definition of ‘resident’ (sets out 4 tests)
• resident or resident of Australia means:
  a) a member of the superannuation scheme established by deed under the Superannuation Act 1990; or
  b) you are an Australian resident within the meaning of this Act, and any of the following conditions apply:
    i. whose domicile is in Australia, unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia or
    ii. if he has actually been in Australia, continuously or intermittently, during more than one-half of the year, unless the Commissioner is satisfied that his usual place of abode is outside Australia; and
    iii. if he isn’t:
      a) a member of the superannuation scheme established by deed under the Superannuation Act 1990; or
      b) an eligible employee for the purposes of the Superannuation Act 1976; or
      c) the spouse, or a child under 16, of a person covered by sub-subparagraph (A) or (B).

The 4 tests of residency - s 6(1) ITAA36:

1. The common law test (if satisfied, then: don’t need to consider anything further)
   - resident (applies to NR->A and A->NR)

2. Domicile (only applies to R->NR)
   - 3. 183 day test (only applies R->NR)

3. Superannuation (only applies to R->NR)

The interpretation of the tests

1. The CIT TEST or ‘RESIDENCE ACCORDING TO ORIGIN CONCEPTS’
   - a question of fact and degree - not a question of law

Some of the main factors:
- physical presence in Australia;
- frequency, regularity and duration of visits;
- maintenance of a home in Australia during absences;
- family and business ties in a particular country; (Court puts lots of emphasis on family ties)
- present habits and way of life;
- maintenance of bank accounts

Jenkins v FCT - Bank officer went to Vila for 3 years (set time) - Returned after 18 months due to illness – HELD can have a permanent place of abode overseas even if intention to return to AUS at a specified time
IT 2650 - BROAD rules of thumb: More than 2 years
• Generally a substantial period and will have a permanent place of abode overseas.

3. THE 183-DAY RULE
   - Must be in Australia more than 1/3 of the year

UNLESS
Commissioner satisfied:
• usual place of abode outside Australia; or
• does not intend to take up residence on return

Key points – 183 Day Test
• 183 days may be continuous or intermittent;
• ‘usual abode’ is something less than permanent residence
• ‘residence in Australia’ taken to mean resident under immigration law – TR 98/17

4. SUPERANNUATION TEST
   - Member of Superannuation scheme established by deed under the Superannuation Act 1990; or
   - An eligible employee for the purposes of the Superannuation Act 1976; or
   - The spouse, or child under 16 covered by points 1 and 2 above

COVERS EMBASSY STAFF OVERSEAS

TEMPORARY RESIDENTS
You are a temporary resident if: (a) you hold a temporary visa granted under the Migration Act 1958; or
(b) you are not an Australian resident within the meaning of the Social Security Act 1991; and
(c) your *spouse is not an Australian resident within the meaning of the Social Security Act 1991.
However, you are not a temporary resident if you have been an Australian resident (within the meaning of this Act), and any of paragraphs (a), (b) and (c) are not satisfied at any time after the commencing of this definition.

Subdiv 768-B provides a tax exemption to temporary residents for:
1. All ordinary & statutory income derived from a foreign source (foreign income exemption) – s 768-9
2. Capital gains & capital losses made on assets that are not taxable Australian property (capital gains exemption – s 768-915)
3. Interest withholding obligations associated with amounts owing to foreign lenders (interest withholding tax exemption – s 768-980)

Week TWO – Source and Derivation
Source of income (only an issue if a NR)

Ordinary income
S 6-5(2) - If you are an Australian resident, your assessable income includes the ordinary income you derived directly or...
indirectly from all sources whether in or out of Australia during the income year. S 6-53) - If you are not an Australian resident, your assessable income includes:
(a) the ordinary income you derived directly or indirectly from all Australian sources during the income year; and
(b) other ordinary income that a provision includes in your assessable income for the income year on some other basis other than having an Australian source.

Statutory income S 6-19 (4) - if you are an Australian resident, your assessable income includes your* statutory income from all sources, whether in or out of Australia S 6-19 (5) - If you are a foreign resident, your assessable income includes:
a) your * statutory income from all * Australian sources; and
b) other * statutory income that a provision includes in your assessable income on some other basis other than having an *Australian source.

Nathan v FCT (1918) – “determining source of a given income is a practical, hard matter of fact”

Remuneration for services rendered (salary & wages) CT (NSW) v Cam and Sons (1936)
Jordan CJ outlined the relevant factors for determining the source.

- Contract - the place where the contract was entered into
- Performance - the place where the contract was performed (most important)
- Payment - the place where payment is made

FCT v French (1957) – majority held source of remuneration under a normal contract of employment or contract for services is generally the place where the services were performed

FCT v Mitchum (1965) - If creative powers or special knowledge is involved to such a high degree that the place where those powers or knowledge are utilised is relatively unimportant, the dominant source may be the place where the contract was made.

Evans v FCT – teacher performed some work overseas whilst on a sabbatical – HELD that even though the work was performed overseas, source was still in AUS as work could have been performed anywhere

Financial Transactions
- Always a question of fact
- Generally source will be where services of the company are performed
- Tariff Reinsurances Ltd v CT (Vic) (1938) - Held that source was in UK as profit was derived from the K entered in the UK – nothing was done in AUS – payment in AUS was just a matter of banking
- Thorpe Nominees Pty Ltd v FCT – considered the economic activity giving rise to the income
- Where the relevant acts consist largely of the making of contracts, and the place of their performance is unimportant, the place where the contracts are made may be the only significant determinant of source. If the making of the contract is of little importance and the chief factor is

The Meaning of Income
Source v FCT & Carden Income must be determined in accordance with the ordinary concepts and usages of mankind, except insofar as the statute states or intends to indicate the contrary...” per Jordan CJ

Economic perspective – income as a “gain”
- Economics recognises income as a form of financial “gain”
- Tax law only recognises realised gains as income

Judicial perspective – income as a “flow”
- Eisner v Macomber (1920) - “The fundamental relation of “capital” to “income” has been much discussed by economists, the former being likened to the tree or land, the latter to the fruit or crop; the former being depicted as a revenue generated from a capital investment, the latter as the outlet stream, to be measured by its flow during a period of time.”

KEY FEATURES OF ORDINARY INCOME

1. It comes in to the recipient
- FC v Dunn (1965) - Sellers of soft drinks were awarded a free holiday by their supplier – “Income is what comes in, it is not what is saved from going out”

2. It is money or money’s worth
- Must be money or capable of being converted into money
- FCT v Cooke & Sherden - Non-transferable holiday and therefore not income – it couldn’t be converted into money
- Payne v FCT – tickets bought with frequent flyer points not income as tickets not transferable and couldn’t be sold
- See TR 1999/6 – benefits received by employees under frequent flyer programs are not deemed to be assessable income

NOTE – 21A ITAA36 (relates to non-cash business benefits - converts these benefits into a pecuniary amount – it only applies to business relationships)

3. It must be ‘received’ as income
- The receipt is characterised at the moment of derivation, and is characterised objectively and from the perspective of the person deriving the income – see Scott v FCT (1996)

4. It will often exhibit periodicity, recurrence and regularity (PF indicators that an amount is income – it is important, but not essential to determine whether FCT v T v Cooke & Sherden)

5. The amount has a sufficient nexus with an earning activity (pure gifts don’t constitute income – so windfall gains are generally not characterised as income)
- TEST: Whether the receipt is the product of any employment or services rendered by the recipient or of any business or other revenue-earning activity carried on by him/her
6. Compensation receipts may be income if they replace a revenue loss
• A compensation payment will generally take the same character as the amount it replaces
  o Compensation to replace salary while injured – income
  o Compensation for loss of limb – capital

7. Illegal, immoral or ultra vires receipts (still characterised as ordinary income)
• Lindsay & Ors v IRC (1933) - Whisky smugglers in the 1920’s – immaterial that the particular method of the trade tainted by an illegality - “good social policy” – otherwise tax system encourages immorality

8. Capital gains are not income at common law

9. “Mutual” receipts are not income
• Payments to yourself are not income – i.e. a person, club or association can only derive income from outside themselves
  o i.e. receipts from non-members constitute assessable income but receipts from members doesn’t constitute income

EXEMPLARY INCOME
S 6-10 ITAA97, Subdivision 11-A (checklist of provisions that spells out what is exempt income);
• Three types of exempt income:
  1. Certain kinds of income are income tax exempt (hospitals etc.)
  2. Certain kinds of income are income tax exempt (i.e. interest on judgment debt relating to personal injury)
  3. Certain kinds of income to certain kinds of taxpayers are income tax exempt (i.e. defence personnel get certain benefits)

CATEGORIES OF INCOME
Remuneration for services rendered
S 6-11 ITAA97 - “income from personal exertion or income derived from personal exertion” means income consisting of earnings, salaries, wages, commissions, fees, bounties, pensions, superannuation allowances, retiring allowances and retiring gratuities and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer etc
• The most important factor is the connection between the receipt and the employment or services provided provided
• FCT v Dixon (1952)
• Salary is return for personal services – it is regular, recurrent and periodic

Brent v FC of T (1971)
• Sold rights to her life story
• HELD to be income as a reward for services provided (her story) and it was a reward for her skills and efforts in providing the story

Moorehouse v Dooland (1955)
• Professional cricketer received money for “meritorious performances” – HELD income as employment K invited the player to collect these ‘donations’
• See also TR 1999/17 – discusses need for a nexus between sportspersons employment and the payments received

Seymour v Reed (1927) – proceeds of a one off match were a tribute to his attributes – not his services rendered and therefore not income
• Kelly v FCT - Taxpayer was a footballer – HELD income as there was a sufficient nexus with the player’s employment as a professional footballer

Whether gifts to employees are income:
• Degree of connection to employment or services provided
  o Reasonable expectation payment would be made
  o Dependence upon payment to meet usual living expenses
  o Payment replaces income
  o Motive of the payer or donor
  o Periodical, recurrent and regular
  o Money or convertible into money

Voluntary Payments
• Consider:
  • Relationship between services provided and payment. Is the payment is a mere gift?
  • Money or money’s worth
  • Can constitute a product of employment even if the gift is voluntary
  • Personal gifts aren’t taxable (i.e. a wedding present) – doesn’t relate to personal exertion

Hayes v FCT (1956) - Taxpayer received gift of $10,000 from former employer – no relationship to services provided by the employee – had already been remunerated for all work that the employee performed in K and occurred after the course of his employment – HELD not income

Taxation Rule IT 167 “Treatment for Income Tax purposes of Radio and Television Prizes” – says there’s no one rule and it is a question of fact – in the absence of unusual features there is generally no liability for tax – if a taxpayer that makes regular appearances on a show should then considered as assessable income

Moore v Griffiths (1972) – received a testimonial for winning the World Cup – no knowledge on the player’s part and not expected – HELD not income

Taxation Rule IT 167 “Treatment for Income Tax purposes of Radio and Television Prizes” – says there’s no one rule and it is a question of fact – in the absence of unusual features there is generally no liability for tax – if a taxpayer that makes regular appearances on a show should then considered as assessable income

Case 4/2008
• Collection of art works
• Kept at a private residence
• Conclusive factors: Record keeping, business philosophy , use of professional consultants and annual audits & value of the property were decisive factors in finding that the taxpayer was carrying on a business

Application of business methods
• Brajkovich v FCT - Taxpayer retired at 36 - gambled heavily - e.g. horse races, card games etc. - did not maintain records – he owned a number of racehorses that were ancillary to his gambling activities – he claimed deductions for tax losses – HELD not carrying on a business of gambling – he was just engaging in a hobby or pastime

Martin v FCT (1953) - Taxpayer made substantial gains from betting - kept records of his bets – he made systematic bets – he bred his own racehorses and employed trainers – HELD winnings were not assessable and taxpayer was not carrying on a business of gambling – must show taxpayer was more involved than passionately pursuing a past-time – need a clear profit making incentive and design to overcome the element of chance

Compensation for contractual losses
While compensation for the partial or total destruction of an asset may be capital in character, compensation for the temporary disablement of a revenue-producing asset will be income in the hands of the recipient

Burmah Steamship Co Ltd v IRC (1930) – repair of ship was delayed and company got compensation for the delay – HELD that it filled the hole of lost profit and was therefore of an income nature

Van Den Berghs v Clark (1935) – breach of an agreement to share profits – damages received held to be capital as it related to the entire structure of the profit making activities and affected the entire conduct of the business

Allied Mills v FCT
Payment received to terminate sole distribution right
• HELD payment filled in hole of lost profits and therefore income and not capital – it didn’t affect the entire business – no disposal of a part of the business – lump sum payment doesn’t change character from income to capital

Consideration for trade ties or restrictive covenants (depends whether a payment for income that has been forgiven)

Beak v Robson (1943) - for not payment for agreeing to not be involved in a competing business – held to be capital in nature as separate from his employment K and occurred after the course of his employment – restricted his capital right to work

Dickenson v FCT (1958)
• Signed a trade tie agreement with Shell for 10 years – received payments - held to be capital amounts as a substantial change to the capital structure of the taxpayer’s business

Higgs v Olivier (1952)
• Received $15,000 not to act / produce directly
• HELD no disposal of a part of the employment K in that it will constitute income but if sterilises ability to work

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Income generated from a business activity
• Is the taxpayer carrying on a business?
  o If yes, when did it commence?
  o If yes, has it ceased?
  o Is the receipt income or capital?
    • Income – business proceeds
    • Capital – proceeds of a capital nature

Factors to consider
1. Systematic and Organisational
  • Scale of activities
  • Sustained, regular and frequent transactions
  • Turning talent to account for profit
  • Profit motive
  • Commercial character of transactions
  • Characteristics or quantities of property dealt in
  • Inherent characteristics of the taxpayer

SYSTEM AND ORGANISATION
• Ferguson v FCT – cattle case - leased five cows for few years before retirement - incurred leasing, agistment and artificial insemination fees and insurance premiums
• HGL – taxpayer was engaged in a business of primary production as venture had a commercial flavour and carried out in a systematic and organised manner

FCT v Walker – purchased one goat – kept detailed books of account, organised breeding program, member of the Angora Breed Society - HELD to be a business even though the venture wasn’t profitable

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CASE OF ACTIVITIES
• Thomas v FCT – Barrister – planted many avocado, macadamia nut and pine trees
• No other growers around – wrong zone
• Irrigation system in place – didn’t water much
• Expert report that said he was a bad farmer

COULD claim deduction as involved in the business of primary production – set out to grow on scale much greater than required for domestic consumption – didn’t matter that he was a bad business man

SUSTAINED, REGULAR & FREQUENT TRANSACTIONS
• Courts have acknowledged that frequent transactions are not necessary and business isn’t confined to being busy

3
**TAXATION RULE TO ACCOUNT FOR PROFIT**
- **Stone’s case**
  - Stone turned her athletic talent to account for money – carrying on the business of sport

**PROFIT MOTIVE** - absence does not necessarily mean that a taxpayer cannot be carrying on a business (i.e. **Thomas's Case**)

**COMMERCIAL CHARACTERISTICS OR QUANTITIES OF PROPERTY DEALT IN**
- Purchase of domestic materials in vast quantities gives them a commercial flavour
- **Rutledge v IRC** (1929) – purchased 1m rolls of toilet paper and he tried to argue that it was a personal/educational need – held a commercial undertaking

**REALISATION OF CAPITAL ASSETS**
- Can be realisation of a mere capital asset or carrying on a business
  - **Californian Copper Syndicate** (1904)
  - Where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit and not assessable as income tax – but may be assessable if an act done in what is truly the carrying on, or carrying out, a business
  - **Scottish Australian Mining v FCT**
  - Purchased land in 1860’s and mined it for years – sold land many years later - built roads, railways, set aside land for parks, churches and schools - large profits received
  - HELD not income – land wasn’t purchased for property development purposes – it wasn’t a profit making scheme – doesn’t matter that they went about the realisation in an enterprising sort of way
  - **FCT v Whittfords Beach** (1982)
  - It clearly limits, if it does not overrule, the principle applied in **Scottish Australian Mining**
  - **HC** indicated that it was willing to treat isolated transactions as constituting a business generating “gross income” falling within the ordinary income provisions
  - Fishermen sold land to developers – they had the land zoned and developed but only developed it into residential lots - Mason J – planned subdivision took on such a massive scale that it is impossible to say that it is the mere realisation of an asset
  - **Myer Emporium v FCT (1987)**
  - Myer Emporium principle requires:
    - Receipts gained not in the ordinary course of business will be income if there exists a profit-making intention
    - There must be the carrying on of a business and transaction must relate to the business; &
    - The taxpayer must have a profit-making purpose at the time transaction is entered into
    - **First Strand** – “Ordinary transactions”
      - May be income where the transaction was entered into with the intention or purpose of making a profit
    - **Second Strand** – “Income conversions”
      - Amounts received as compensation for loss of income are themselves income
      - Lump sum taken on the character of the income stream that it represents – this is referred to as the “substitution principle”
  - **FCT v Spedley Securities Ltd**
    - Lump sum payment for breach of K - some was allocated to loss of reputation and some to loss of commission
    - HELD not assessable as part related to reputation and this is capital in nature
  - **FCT v Cooling**
    - Cash incentive payment received to take up lease - HELD of lease income as taxpayer moving offices was a trading activity that gave rise more directly to its assessable income
  - **Westfield Ltd v FC of T**
    - Acquired land and sold for a profit on the basis that it would be employed to construct a shopping centre – HELD to be capital in nature - profits weren’t received as part of taxpayer’s ordinary business activities (building shopping centres) – there wasn’t a motive of profit with respect to the very means that gave rise to the profit actually made
  - **TR 92/3 Profits from isolated transactions**
    - Not all receipts of a business are income
      - **Relevant paragraphs**
        - (a) Not the subjective intention or purpose, but objective consideration
        - (b) Not necessary that intention of profit-making be the sole or dominant purpose - sufficient if significant purpose
        - (c) Taxpayer must have had purpose at time of entering transaction – if the transaction involves the sale of property then usually the taxpayer should have the purpose of profit-making at the time the property was acquired
        - (d) If a transaction is outside the ordinary course of a taxpayer’s business then the intention of profit-making must exist in relation to the transaction
        - (e) Transaction may be in the course of business even if transaction is outside the ordinary course of the taxpayer’s business
        - (f) For a transaction to be characterised as a business operation or a commercial transaction, it is sufficient if the transaction is business or commercial in character
      - **FCT v Montgomery**
        - Law firm received a lease incentive to move
        - HELD to be income as an ordinary incident of taxpayer’s business activities
  - **FCT v Thomas’s Case**
    - More than one payment in disposing of real property is assessable
    - **Second Strand of the Reasoning in MYER: Income Transactions**
      - **Henry Jones (IXL) Ltd v FCT**
        - Taxpayer’s assessed rights to receive royalties to finance company for $7.6M
      - **HELD amount received in substitution of the income stream is treated as assessable income**
      - **Sale of “Know-How”**
        - **Moirarty v Evans Medical Supplies Ltd**
          - Taxpayer provided ‘know-how’ and secret processes to Burmese government
        - **Loss of ‘know-how’ would bring down the organisation** – held to be capital in nature and therefore not assessable
        - **Rolls Royce v Jeffrey (Inspector of Taxes)**
          - License agreement to supply details & assist in manufacture of engines
        - **HELD license agreements were just an extension of its trading activities – not a problem that some of the payments received were lump sums**
        - **Interest**
          - Income according to ordinary concepts:
            - ° Compensation for income taxpayer could have obtained from using capital asset
            - ° Periodic and regular payment
        - **Rent**
          - ° Adelaide Fruit & Produce Exchange Co Ltd v DFC of T (1932) – rent is by its very nature income
          - ° It can be a lump sum and still have the character of income

**WEEK FIVE – Deductions**

**General Deductions**

**S 8-1(3) - The positive limbs**

**Common issues:**
- Loss or outgoing
  - To the extent that:
    - ° First limb issues (applies all taxpayers)
      - Incurred
      - Gaining or producing
      - Assessable income
    - ° Second limb issues (only applies to tax payers that are carrying on a business)
      - Necessarily incurred
      - Carrying on a business
      - Purpose of gaining or producing assessable income

**S 8-1(2) - The negative limbs**

- Cannot deduct if:
  - Capital or capital nature (but may get an allowance under a special provision – such as the capital allowances scheme)
  - Private or domestic nature
  - Incurred in relation to exempt income
  - Provision of the act prevents you from deducting it

**Meaning of “Losses or Outgoings”**
- The difference between a “loss” and an “outgoing” lies in the degree of voluntariness of the expenditure
- Outgoing is voluntary and a loss is not
- **Charles Moore & Co (WA) Pty Ltd v FCT (1956)** - Department store’s staff member robbed on way to bank - HC held loss was deductible as banking was incidental to earning activities – there was a sufficient nexus between the loss and the earning activities

**When is a Loss or Outgoing “Incurred”?**

- **CIR v Napier Motors (1969)** - Courts have held that a business commences at the point when its “current operations” begin
- For individuals - **TR 2000/5** – costs of drawing up an employment K are an allowable deduction

**Income and Deductions not in the Same Income Year**
- Not necessary that the expenditure in question should produce assessable income in the same year in which the expenditure is incurred - **Herald & Weekly Times Ltd v FCT (1932)**
  - Published an article that was defamatory – sued for damages - this occurred in the following income year – Court held that this was okay as sufficient nexus between damages and assessable income

**Expenses Incurred in Closing Down a Business**

**Peyton v FCT (1963)** – generally not deductible as no longer paying tax

**Expenses Incurred after Business has ceased Operations**

- **Placer Pacific v FCT**
- Legal claim 6 years after they stopped the business – had to pay damages – could claim as a deduction providing expenditure would have been deductible providing that business was still trading

**S 40-880 - Blackhole Expenditure**
- Deduct 20% of the following CAPITAL expenditures over 5 years:
  - Expenditure not otherwise taken into account, and
  - A deduction is not denied by another provision, and
  - Business was or is proposed to be carried on for a taxable purpose.
  - **A Post applies 1 July 2005**
- The expenditure is not apportioned or pro-rated if it is incurred part way through a year
- Can deduct capital expenditure that the taxpayer incurred:
  - in relation to the taxpayer’s business;
  - in relation to a business that used to be carried on;

**TAXATION Ruling TR 97/7**

- Not to be paid to bring an outgoing - Paragraph 6(a) states:
  - ° A “loss or outgoing may be incurred within a s-8 if even though it remains unpaid, provided the taxpayer is 'completely subjected' to the loss or outgoing”
- Paragraph 21 re voluntary payments – these are incurred when they are paid

**Does a Loss or Outgoing have to be Exactly Quantified?**

- **RXV Insurance v FCT**
  - ° $1.25 set aside for unreported claims
  - ° HELD to be deductible as once accident occurred, the liability arose, even though an exact quantification of the liability wasn’t available

**In Gaining or Producing Assessable Income**

**Expenses Incurred Before a Business Commences**

- Expenses incurred before commencement of business are not deductible under s-8-1
- **Softwood Pulp & Paper Ltd v FCT** – acts which are merely preparatory or contribute to the decision as to whether to proceed with a venture, such as pilot projects or feasibility studies, do not constitute part of the business
- **CIR v Napier Motors (1969)** - Courts have held that a business commences at the point when its “current operations” begin
- For individuals - **TR 2000/5** – costs of drawing up an employment K are an allowable deduction