Income Tax Summary

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Introduction slide – only for theoretical questions. Not for any fact pattern (contains no BLL)

# Liability to tax

* The jurisdictional base for taxation used in Canada is residence (***see residence jurisprudence on next page*** – below are the main statutory provisions)
  + SEE BELOW “residence” description – start there after stating s 2(1)
  + Resident not defined in the ITA; therefore must turn to case law
* **s 2(1)** An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person **resident in Canada** at any time in the year
* **s 2(3)** tax payable by ***non***-resident persons 🡪 also taxed but taxed differently
  + s 2(3) Where a person who is not taxable under subsection (1) for a taxation year
    - (a) was employed in Canada,
    - (b) carried on a business in Canada, or
    - (c) disposed of a taxable Canadian property,
  + at any time in the year or a previous year, an income tax shall be paid, as required by this Act, on the person's taxable income earned in Canada for the year
* **s 250(1)** person who **sojourns** in Canada for period or periods for **183 days or more** in a calendar year will be **deemed** to be resident ***throughout the entire year***
  + Sojourn does not equal residence. Sojourn is a temporary stay
  + A person who comes to Canada to their cottage for a few days is sojourning
  + Person working in daytime in US and home at night to Canada is not sojourning (*R&L food*) – thus not resident
  + Important because if you’re resident, you’re typically only taxed for the part of the year that you’re a resident, but this provision deems them resident for the *entire* year
* **s 250(3)** a reference to a person resident in Canada includes a person who was at the relevant time **ordinarily resident** in Canada
  + Reeder: hired by company, went to France for training, absent for most of the year, gave up apartment, stored car and furniture – held absence temporary, even though indeterminate, ties in Canada kept – ordinarily resident
  + *Midyette*: teacher exchange program, comes back to Canada after few years, held ordinarily resident
    - has maintained a sufficient nexus or connection therewith as to be logically regarded as being ordinarily resident in Canada, even though physically absent therefrom
* Pilot cases
  + Laurin: held not resident – went to central America, rented apartment there, set up corporation there, commuted to Canada to fly, visited Canada occasionally but never more than 183 days never had his own place – facts favour non-residence
  + Hauser: held residence – Furniture in storage; spouse in Canada
  + Price: held resident – lived in Bermuda; still had spouse in Canada
  + Now legislative change: s 115(3)
    - Where non-resident employed as airline pilot, certain rules apply
    - Where flight originated from and where it landed considered
* Others deemed resident
  + Canadian diplomats and public servants are deemed to be residents
  + spouses of those people
* **Resident**: no meaning in Act, but SCC held it to mean “a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question” (*Thomson*)
  + Highly factual test – no bright line test
  + Residence means more than mere presence (*Thomson*)
  + Person can be a resident in more than one jurisdiction at one time (*Thomson*)
  + Must be a resident in at least one jurisdiction at any given time (*Thomson*)
  + Taxpayer’s intention is not essential in determining residence (*Lee*)
  + *Sherwood*: even though did not have permanent residence in Canada, found to be resident of Canada (maintained a place for his daughter to live but stayed in hotels during his stays)
  + *Lee*: UK citizen who works outside Canada in non-resident corporation, but employment income deposited in Canadian bank account, regularly returned as visitor to Canada, eventually married Canadian citizen who was supported through his income, purchased matrimonial home with his money in Canada, acted as guarantor, etc. – held resident of Canada
  + *CRA* factors in determining residency
    - **Primary factors:**
    - Whether the individual has a dwelling place in Canada **(classified as a significant factor)**
    - Whether the individual has a spouse/common-law partner in Canada **(classified as a significant factor)**
    - Whether the individual has dependents in Canada **(classified as a significant factor)**
    - **Secondary Factors:**
    - Whether the individual is employed in Canada (i.e. a car)
    - Whether the individual has a spouse and/or dependents/children in Canada
    - Whether the individual has a Canadian bank account (economic ties)
    - Whether the individual has any religious or community connections
    - Whether the individual is a Canadian citizen
    - Driver’s license, gym membership, vehicle registration
  + *Lee* indicia of residence
    - Past and present habits of life
    - regularity and length of visits in the jurisdiction asserting residence
    - **ties within the jurisdiction**
    - ties elsewhere
    - permanence or otherwise of purposes of stay
    - **ownership of a dwelling in Canada or rental of a dwelling on a long-term basis**
    - **residence of spouse, children and other dependent family members in a dwelling maintained by the individual in Canada**
    - memberships with Canadian churches or synagogues, recreational and social clubs, unions and professional organizations
    - registration and maintenance of automobiles, boats and airplanes in Canada
    - holding credit cards issued by Canadian financial institutions and other commercial entities including stores, car rental agencies, etc.
    - local newspaper subscriptions sent to a Canadian address
    - rental of Canadian safe deposit box or post office box
    - subscriptions for life or general insurance including health insurance through a Canadian insurance company
    - **mailing address in Canada**
    - telephone listing in Canada
    - stationery including business cards showing a Canadian address
    - magazine and other periodical subscriptions sent to a Canadian address
    - **Canadian bank accounts other than a non-resident bank account**
    - active securities accounts with Canadian brokers
    - Canadian driver's licence
    - membership in a Canadian pension plan
    - holding directorships of Canadian corporations
    - membership in Canadian partnerships
    - frequent visits to Canada for social or business purposes
    - burial plot in Canada
    - will prepared in Canada
    - legal documentation indicating Canadian residence
    - filing a Canadian income tax return as a Canadian resident
    - ownership of a Canadian vacation property
    - active involvement in business activities in Canada
    - **employment in Canada**
    - maintenance or storage in Canada of personal belongings including clothing, furniture, family pets, etc.
    - obtaining landed immigrant status or appropriate work permits in Canada
      * severing substantially all ties with former country of residence
* **s 2(2), s 114** – **Part time** **residents**
  + s 2(2) certain part time income accounts
  + s 114 compute part time resident’s taxable income as aggregate of his/her taxable income computed in accordance with normal rules for residents throughout part of the year and another part during period taxpayer was non-resident
  + remember: deeming provision – 183+ days sojourning deems them a resident for the *entire year*
    - This is only in the case of a person who was resident (or ordinarily resident) for a period of the year in Canada
    - That way they would be taxed as residents for part of their income and non-residents for other parts
* **Residency of Corporations**
  + S 250(4) Any corporation incorporated in Canada is **deemed to be resident** in Canada
    - Only exception: pre-1965 companies: never otherwise resident in Canada or not carrying on biz in Canada (nearly no companies like that left)
  + Common law residence
    - **Test**: a company is resident in the country in which its central management and control is exercised
      * ***Usually***: **where directors meet** and hold their meetings
      * Where controlling shareholder is located is irrelevant – since directors are responsible for the management of the corporation
    - Mostly an issue if there are subsidiary corporations not incorporated in Canada for Canadian multi-national corporation
* **Residency of trusts** – question of fact
  + where the central management and control actually takes place (*Garron*)
    - Usually the management and control of the trust rests with, and is exercised by, the trustee, executor, liquidator, administrator, heir or other legal representative of the trust
* **Tie-breaking rules in tax treaties**
  + Mostly in Article IV
  + S 250(5) deemed non-resident if under tax-treaty resident in another country
  + **Hierarchy of rules – Canada-US tax treaty**
    - 1- Which country the **residence home** is located
      * But not always resolve – e.g. Thomson has homes in both countries available
    - 2- home in both states, look to the state where personal and economic relations are closest
      * Look Factually at personal relations
    - 3- habitual abode
      * Not usually used
      * Where person spends the most time in – factual
      * Could have habitual abode in both or neither
    - 4- look to citizenship – last of tie-breaker rules
    - 5- if not citizen of both statutes, countries get together and decide by mutual agreement theoretically (very rare!)
* **Tax on change in residency**
  + S 128.1(1) Immigration – deemed disposition and acquisition – therefore taxed
  + S 128.1(4) Emigration – deemed disposition and reacquisition – therefore taxed

# Basic Calculation

* Income minus deductions s 111 to get taxable income
* Then use s 3 formula
  + Obviously the other sections inform this formula

# The s 3 calculation – slide 6 good too

* s 3
  + preliminary notes: s 257: only positive amounts included – negative amounts deemed nil (relevant for each part of the calculation)
  + **FIRST:** (a)
    - Add up all income from a source (office/employment/business/property) O*THER THAN capital gains* from disposition of property
    - *Make sure to already* ***compute any necessary deductions***! \*\*
    - Sections:
    - Employment (subdivision a; sections 5 to 8)
    - Business (subdivision b; sections 9 to 37)
    - Property (subdivision b; sections 9 to 37)
  + **SECOND:** (b)
    - Determine what in effect are net capital gains (capital gains – capital losses) (except for listed personal property, see bullet below)
    - Determine net taxable gain from listed personal property (special rules)
    - Sections: subdivision c; sections 38 to 55
  + **THIRD:** (c)
    - ADD (a)+(b) and subtract by subdivision e deductions
      * Those ones that don’t have a direct connection to a source (e.g. child care expenses, moving expenses, etc.)
    - Sections: subdivision e; sections 60 to 66.8
  + **FOURTH:** (d)
    - Subtract (c) from each loss in the year
    - NOW this is the taxpayer’s income (3(e)) – if negative, zero 3(f)
  + **FIFTH:** s 2(2)
    - s 2(2) – taxable income is the taxpayer’s income plus additions and minus deductions permitted by *division* C
    - this is where you consider carry-forward / carry-back losses
    - Division C – sections 109 to 114.2
      * Loss carryovers – section 111
* **STATUTORY LANGUAGE:**
* (a) determine the total of all amounts each of which is the taxpayer's income for the year (*other than a taxable capital gain* from the disposition of a property) **from a source** inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,
* (b) determine the amount, if any, by which
  + (i) the total of
    - (A) all of the taxpayer's taxable capital gains for the year from dispositions of property *other than listed personal property*, and
    - (B) the taxpayer's taxable net gain for the year from dispositions of listed personal property,
  + exceeds
  + (ii) the amount, if any, by which the taxpayer's allowable capital losses for the year from dispositions of property *other than listed personal property* exceed the taxpayer's allowable business investment losses for the year,
* (c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) **exceeds** the total of the deductions permitted by subdivision e in computing the taxpayer's income for the year (except to the extent that those deductions, if any, have been taken into account in determining the total referred to in paragraph (a)), and
* (d) determine the amount, if any, by which the amount determined under paragraph (c) **exceeds** the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property or the taxpayer's allowable business investment loss for the year,
* **and for the purposes of this Part,**
* (e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer's income for the year is the amount so determined, and
* (f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

# The Source

* Total of TP’s income **from a “source”**
* Office, employment, property, business – deemed included (s 3 + inclusions in other sections)
* Some other sources also deemed included – ss 56 – 59.1
  + S 56(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year...
    - retiring allowances, s. 56(1)(a)(ii)
    - unemployment benefits, s. 56(1)(a)(iv)
    - spousal support, s. 56(1)(b)
    - payments from RRSPs and RRIFs, s. 56(1)(h)
    - scholarships, fellowships, bursaries and prizes, s. 56(1)(n)
    - Social assistance (welfare) payments, s. 56(1)(u)
  + S 56(3) Effectively exempts from income the full amount of a scholarship, fellowship or bursary received by a student enrolled in an elementary, secondary or post-secondary institution
* But the rest of income from “source” is defined in the case law
* An amount received by a taxpayer that has no recognized source (no productive source) (and is not proceeds from the disposition of a source) is not subject to tax (*Bellingham*)
  + Specifics:
  + Gift – no source
  + Inheritance – not source
  + Lottery or gambling winnings – generally no source
    - Gambling and Lottery winnings are *only* income if activities are organized and operated like a business
      * Similarly losses not deductible
    - *Walker*: gambling winnings assimilated to business of raising and racing horses
  + Funds obtained through fraud or embezzlement may be taxable, particularly where there is a business element (*Poynton*, *Buckman* (lawyer embezzled money from clients)
  + Insurance proceeds taxable under the *surrogatum* principle – e.g. payment for lost inventory
  + Mortality gain on life insurance not taxable because no source
  + Forgiveness of debt – detailed statutory scheme in s. 80 – notion of commercial debt imports source concept
  + *Peter fields*: amounts “received from RRSP are taxable” – part of it that wife took fraudulently not taxable on taxpayer (b/c not “received” by the TP)
* Courts have given narrow interpretation of “source” in Canada
* *Bellingham*: Punitive damages can’t be assimilated to productive source (did not come from biz or property) – therefore not taxable
  + Land expropriated inappropriately – amount received was described as additional interest but was actually punitive damages
* ***Cranswick* criteria for windfall**: (factors considered)
  + Taxpayer has no enforceable claim to the payment
  + No organized effort on the part of taxpayer to receive payment
  + The payment was not sought after or solicited by the taxpayer in any manner
  + The payment was not expected by the taxpayer, either specifically or customarily
  + The payment had no foreseeable element of recurrence;
  + The payor was not a customary source of income to the taxpayer
  + The payment was not in consideration for or in recognition of property, services or anything else provided or to be provided by the taxpayer; it was not earned by the taxpayer, either as a result of any activity or pursuit of gain carried on by taxpayer or otherwise.
* **Surrogatum principle**
  + The tax treatment of a payment of damages or a settlement payment is considered to be the same as the tax treatment of whatever the payment is *intended to replace* (*London and Thames Haven Oil Wharves*)
    - “Where, pursuant to a legal right, a trader receives from another person compensation for the trader's failure to receive a sum of money which, if it had been received, would have been credited to the amount of profits … the compensation is to be treated for income tax purposes in the same way as that sum of money would”
  + **TEST:** “The determinative questions are: (1) what was the payment intended to replace? And, if the answer to that question is sufficiently clear, (2) would the replaced amount have been taxable in the recipient's hands?” (*Tsiaprailis*)
  + **Compensation for the loss of or damage to property is a capital receipt and is taxed as proceeds from the disposition of the property**
    - Lease termination payment*, The Queen v. Westfair Foods Limited*, 91 DTC 5625 (FCA)
    - Cancelation of dealer agreements, *Valley Equipment Limited v. The Queen*, 2006 DTC 3593 (TCC)
  + **Compensation for the loss of a business is treated as a capital receipt and may be taxable as eligible capital property**
    - *The Queen v. Toronto Refiners and Smelters Limited*, 2003 DTC 5002 (FCA)
    - Payment for termination of non-compete agreements, RCI Environnement Inc. v. The Queen, 2007 TCC 647
  + **Compensation that qualifies as special or general damages for personal injury or death is generally not taxable**
    - Paragraph 2, Interpretation Bulletin IT-365R2: *Damages, Settlements and Similar Receipts*
* Schwartz (sued for breach of K – no source – cannot fall under retirement allowance or surrogatum principle as income he would have earned)
  + Taxpayer had executed a written employment contract with a new employer.
  + Before the taxpayer’s employment commenced the prospective employer terminated the employment contract
  + The taxpayer accepted a lump sum payment of $360,000 in settlement of his claim for breach of contract
  + Issue: is the $360k taxable?
  + Not retirement income (s 56) – b/c he didn’t even start employment at the time
  + substitution principle – but court rejected this argument b/c it was received b/c of breach of contract and not in substitution for his income

# Income Splitting

* Involves the transfer of income from one person (the high tax individual) to another person (the low tax individual) who is taxed at a lower marginal tax rate
  + Transferor gives up legal entitlement to the income but commonly still benefits from the use of the income
* **Four Basic Techniques**
  + Direction
  + Assignment of a right to income
  + Transfer of income producing property
  + Use of low or no-interest loans
* **The ITA contains numerous anti-avoidance rules (referred to as attribution rules) which are designed to minimize or eliminate income splitting behaviour**
* **Indirect Payment**
  + **S 56(2)** – Payment of transfer of property made at direction of taxpayer to some other person as a benefit that the taxpayer desired shall be included in TP’s income
  + *Neuman* case – see directly below
* **Assignment of right of income**
  + **S 56(4)** – TP transfer amount to person not dealing at arm’s length with TP any right to an amount, included in TP’s taxable income
  + *Neuman* – successful income splitting case – s 56(2) does not apply to dividend income
    - Set up corp where he and his wife held multiple classes of shares – wife is director – wife declares large dividend to her and smaller one to TP
    - HELD:
    - No. **Subsection 56(2) of the Act does not apply to dividend income** since, until a dividend is declared, the profits belong to the corporation as retained earnings
    - Neuman had no pre-existing entitlement to the amount of the dividend and could not direct its payment to Ruby
  + *Boutilier* – s 56(4) applied to person who created corporation for income-splitting
    - “The language used in the Transfer Agreement clearly supports my finding that the Appellant transferred to the Corporation the right to receive trailer fee income from his personal investment business and ***not the opportunity to provide the services to earn these fees***”
    - If it had been opportunity transferred – not sure if it would have worked
* **Transfers or loans to minor – s 74.1(2)**
  + 74.1(2) Transfer to minor by any means (incl. trust) deemed to be income/loss of individual and not minor
  + See slides 44-47
  + Income paid to a minor from a trust which is derived from transferred or lent property is also attributed to the transferor – section 74.3
  + Income received on substituted property is also attributed
  + Income on income is not attributed
  + Does not apply in respect of a transfer of property for fair market value consideration, including indebtedness where interest is charged at prescribed rates and paid within 30 days following the end of the taxation year – subsection 74.5(1)
  + Does not apply in respect of a loan where interest is charged at prescribed rates and paid within 30 days following the end of the taxation year – subsection 74.5(2)
  + Only applies when the transferor is resident in Canada
  + Does not apply to attribute capital gains
  + Only applies to attribute income from property (i.e. not business or employment income) – *Nathan Robins v. MNR*, 63 DTC 1012
* S 120.4 **Tax on Split Income – really complex not needed**
* **Transfers or loans to spouses – s 74.1(1) (income), 74.2(1) (capital gains)**
  + Income (or capital gains) paid to a spouse from a trust which is derived from (or from the disposition of) transferred or lent property is also attributed to the transferor – section 74.3
  + Income received or capital gains realized on substituted property is also attributed
  + Income on income is not attributed
  + Does not apply in respect of a transfer of property for fair market value consideration, including indebtedness where interest is charged at prescribed rates and paid within 30 days following the end of the taxation year, provided the transferor elected out of the spousal rollover in subsection 73(1) – subsection 74.5(1)
  + Does not apply in respect of a loan where interest is charged at prescribed rates and paid within 30 days following the end of the taxation year – subsection 74.5(2)
  + Does not apply if the spouse or common-law partner is living separate and apart due to a break down of the marriage or common-law partnership – subsection 74.5(3)
  + Only applies when the transferor is resident in Canada
  + Only applies to attribute income from property (i.e. not business or employment income) – *Nathan Robins v. MNR*, 63 DTC 1012
* **Back-to-Back Loans and Transfers – Subsection 74.5(6)**
  + The attribution rules apply in respect of a loan or transfer of property from a third party to an individual’s spouse or common-law partner or to a related minor (or niece or nephew), where the individual has made a loan or transferred property to any person on condition that the third party make a loan or transfer property to the individual’s spouse or common-law partner or a related minor (or niece or nephew)
* **Guarantees – Subsection 74.5(7)**
  + The attribution rules apply in respect of loans from third parties where the individual guarantees a loan made to his or her spouse or common-law partner or to a related minor (or niece or nephew)
* **Income Splitting re property loaned – Subsection 56(4.1)**
  + Attributes income earned on property loaned (or acquired with property loaned) from one individual to another non-arm’s length individual where it can reasonably be considered that one of the main reasons for making the loan was to reduce or avoid tax by shifting income from the lender to the borrower
* **Corporate attribution – s 74.4**
  + Not exactly an attribution – it instead deems them to have received phantom income, etc.
* Revocable trusts – s 75(2)
* **S 69 – non-arm’s length transfer for inadequate consideration – deemed FMW**
  + Deems proceeds of disposition and adjusted cost base equal to fair market value
  + Whenever a gift is given – this section applies!! E.g. give engagement ring 🡪 deemed disposed of for FMW, must pay capital gains tax
* **EXCEPTION FOR FAIR MARKET VALUE TRANSFERS: s 74.5(1)**
* **Rollovers**
  + Rollovers are exceptions to *general rules in s 69(1)* dealing with non-arm’s length transfers
  + **rollover treatment meaning that there is no immediate tax liability that arises as a result of the transfer of property from one spouse to another**
  + **Spousal rollover: 73(1)**
  + Other rollovers (see end of capital gains slides)
  + Transfers by individuals 65 years of age and older to a joint spouse or partner trust or an alter-ego trust – subsection 73(1), subparagraphs 73(1.01)(c)(ii) and (iii) and subsection 73(1.02)
  + Transfers of farm or fishing property by a transferor to his or her Canadian resident child – subsection 73(3)
  + Transfers of shares in a family fishing or farming corporation or an interest in a family fishing or farming partnership by a transferor to his or her Canadian resident child – subsections 73(4) and (4.1)
  + Transfer of capital property to a corporation in exchange for shares of the corporation – subsection 85(1)

# Capital Gains

* Only half taxed (and half deductible for losses)
* **Capital vs income**
  + *Eisner*: “The fundamental relation of “capital” to “income” has been much discussed by economists the former being likened to the tree or the land, the latter to the fruit or the crop…”
  + Inventory = bought it to immediately resell it (income – biz expenses) – most important exclusion from capital gains
    - E.g. real estate company that purchases houses to renovate and then sell; car dealership that buys cars to quickly resell, etc.
  + Share = bought it to receive dividends (sale of share is capital gains – but dividends are income)
  + Capital gain **must** be from the disposition of property (necessary component) based on definition in s 39
    - If not then it is business income
  + **Facts and circumstances test – Factors:** *(Regal Heights, Irrigation Industries)*
    - **Single and isolated transaction**
      * Single = more likely capital gain
      * Trading in general is included in income
      * But note: An “adventure or concern in the nature of trade” is also deemed to be business – therefore it is included in income
        + Speculators are also included in biz income if bought with primary or secondary intention to later resell at a higher price
    - **Subject-matter of realization**
    - **Length of ownership**
      * If you purchase it and hold onto it for a short while, then more likely biz income – by contrast, long holding period = likely capital gain
    - **Frequency of transactions by person**
      * Only entered into one – then more likely to be capital gains than if they are constantly selling things (more likely biz income)
    - **Preparing supplementary work to resale?**
      * You might fix up the property to prepare it for sale (that activity shows a trading intention than if someone just walks in an offers to buy it)
    - **Motive/intention**
      * Look at intention or motive of taxpayer in acquiring property
      * If intention to resell it, then income. If intention was to hold it, then likely capital
      * *Regal heights*: **secondary intention test**
        + Taxpayer group of people who bought land with intention of building shopping center (capital transaction) and then rent it out (income)
        + Another group built a shopping center mere miles away. The whole project was unfeasible and they sold the land; said it was a capital gain

b/c real intention was build the shopping center – hold it for a long period of time

* + - * + Court agreed that was their primary intention, but if your primary intention failed, your intention was to resell land at a profit
  + Note: shares are different from other assets – intention to sell at gain not enough – more difficult for shares to be classified as income (*Irrigation Industries*)
* 38 **taxable capital gains = ½ of capital gains** from disposition of property
* 39(1)(a) capital gain is disposition of any property to the extent that it is not included in other provisions (3(a))
  + Includes anything not disposed of in biz context (note: listed personal property applied differently)
* **40(1)(a) basic formula for capital gains = proceeds of dispositions – adjusted cost base – expenses**
  + Disposition defined term in s 248(1)
  + S 54 “proceeds of disposition” is defined broadly to effectively include the sale price of property sold or compensation received in respect of property that is involuntarily taken or destroyed
    - Usually sale price of property sold
    - Includes cash and non-cash or “in-kind” consideration
    - The proceeds of disposition of property disposed of by way of gift or to a non-arm’s length person for less than fair market value consideration is deemed to be the fair market value of the property – paragraph 69(1)(b)
    - Where an aggregate amount of consideration is paid for a group of assets, it is necessary to allocate the consideration between those assets in a reasonable manner:
      * Section 68
      * *The Queen v. Golden*, 86 DTC 6138 (SCC)
    - Also considers proceeds of involuntary disposition
      * Compensation re property unlawfully taken
      * Compensation for property destroyed under amount payable under insurance
      * Compensation for property taken under statute/authority – if expropriated
      * Compensation for property Injuriously affected – may be a partial disposition or may hold on to it after
      * Compensation for property damage except where you use money to repair damage
    - Deemed dispositions (SEE BELOW)
      * Deemed disposition on death
      * Deemed to dispose of all property upon death
      * Substitute for inheritance tax
      * Unrealized gains on property are realized on death
  + S 54 “adjusted cost base” to a taxpayer of any property at any time means, except as otherwise provided,
    - (a) where the property is depreciable property of the taxpayer, the capital cost to the taxpayer of the property as of that time, and
    - (b) in any other case, the cost to the taxpayer of the property adjusted, as of that time, in accordance with section 53, …
    - (d) in no case shall the adjusted cost base to a taxpayer of any property at any time be less than nil;
  + Cost (interpretation re adjusted cost base definition!)
    - Is not defined in the *Income Tax Act*
    - Generally includes the full amount of any capital expenditure incurred by the taxpayer in connection with acquiring or improving the property
    - The capital expenditure must be in money or money’s worth
    - The cost of property acquired in a barter transaction is the value of the property given-up in exchange
    - The cost of property acquired as a gift is deemed to be the fair market value of the property – paragraph 69(1)(c)
    - Lottery prizes are deemed to be acquired at a cost equal to fair market value – subsection 52(4)
    - Where a taxpayer has acquired property from a non-arm’s length person for consideration greater than its fair market value, the taxpayer’s cost of the property is deemed to be the fair market value of the property – subsection 69(1)(a)
    - Where an aggregate purchase price is paid for a group of assets it is necessary to allocate the purchase price between those assets in a reasonable manner
      * Section 68
      * *The Queen v. Golden*, 86 DTC 6138 (SCC)
* **Identical properties**
  + S. 47 – acb of identical properties is averaged
  + Taxpayer deemed to dispose of each previously-acquired property for PD = acb and immediately re-acquire it at a cost = acb of old property + acb of new property / number of properties
  + **Example**:
    - 2017 – TP buys 1,000 shares for $25/share
    - 2019 – TP buys 2,000 shares for $50/share
    - TP deemed to dispose of 1,000 shares for PD = $25,000 and to have acquired 3,000 shares at a cost of $25,000 + $100,000/3,000 = $41.66/share
* **Personal Use Property**
  + S 54 “personal-use property” of a taxpayer is defined to include
    - property owned by the taxpayer that is used primarily for the personal use or enjoyment of the taxpayer or a person related to the taxpayer,
    - any debt owing to the taxpayer in respect of the disposition of property that was the taxpayer's personal-use property, and
  + **Subsection 46(1) - *De minimis* rule:**
    - Where a taxpayer disposes of a personal-use property, the **adjusted cost base of the personal-use property is deemed to be the greater of $1,000 and its adjusted cost base otherwise determined**; and the taxpayer's proceeds of disposition are deemed to be the greater of $1,000 and the taxpayer's proceeds of disposition of the property otherwise determined
  + A **loss** from the disposition of personal-use property (***other than*** *listed personal property*) is deemed to be **zero (nil)** – subparagraph 40(2)(g)(iii)
    - Cannot have loss for PUP except for LPP
  + **Partial Dispositions**
    - S. 43(1) – **general rule for partial dispositions**: acb of part disposed of is the portion of the acb of the whole “**reasonably attributable**” to the part – normally, proportionate to FMV (fair market value)
    - ***For PUP*,** s. 46(2)(a) – acb of part disposed of is greater of
      * Acb otherwise determined (s. 43(1)); and
      * Proportion of $1,000 that acb otherwise determined bears to acb of whole property
      * S. 46(2)(b) – PD of part disposed of is the greater of the PD otherwise determined and the amount determined under s. 46(2)(a)
  + **Personal Use Property – Sets**
    - S. 46(3) – Where a number of PUPs which would normally be disposed of as a set in one disposition are disposed of in multiple dispositions to the same person or group of persons not dealing at AL and FMV of set>$1,000:
    - **Properties deemed to be a single PUP** and each disposition a partial disposition
    - **Result – Aggregate acb for the set is deemed to be $1,000**
    - See *Plamondon –* disposition of collection of 2,158 insects
      * Court agreed that it was PUP but held that provision does not apply, each insect has an adjusted cost base of $1k – because it was appraised separately
* **Listed Personal Property**
  + Difference: **You can recognize losses on listed personal property!!!! (s 41(1))**
    - 3(b)
    - Gains – losses / 2 (same as capital property) – s 41(1)
  + S 54 “listed personal property” of a taxpayer means the taxpayer's personal-use property that is all or any portion of, or any interest in or right to, any
    - (a) print, etching, drawing, painting, sculpture, or other similar work of art,
    - (b) jewellery,
    - (c) rare folio, rare manuscript, or rare book,
    - (d) stamp, or
    - (e) coin;
  + **Subsection 41(1)**
    - For the purposes of this Part, a taxpayer's taxable net gain for a taxation year from dispositions of listed personal property is 1/2 of the amount determined under subsection (2) to be the taxpayer's net gain for the year from dispositions of such property.
* **Deemed dispositions**
  + **Change in use** – s 45(1) (also called change of use for word search)
    - Deemed disposition for FMV
    - 45(2) election not to change use
  + Deemed disposition of capital property **on death** – subsection 70(5)
  + Deemed disposition of capital property held by a trust every twenty-one years – subsection 104(4)
  + Deemed disposition of capital property on immigration or emigration – section 128.1
* **Reserve for future proceeds**
  + If a taxpayer **sells a capital property but does not receive the full purchase price in the year of disposition** the taxpayer can delay the recognition of the full capital gain until the remainder of the price is paid – subparagraph 40(1)(a)(iii)
  + The **maximum** deferral period is four years – clause 40(1)(a)(iii)(D)
    - Four years of actual deferrals (i.e. year 1 is current year, then deferral available to year 2, 3, 4, 5)
  + The amount of the reserve taken in the preceding year is taken into account in determining the taxpayer’s gain on the property in the current taxation year – subparagraph 40(1)(a)(ii)
  + Clause 40(1)(a)(iii)(C) – Reasonable reserve is equal to the proportion of the gain which equals the proportion of the proceeds of disposition that are not payable until after the end of the taxation year
    - Clause 40(1)(a)(iii)(D) – sets a limit on the reasonable reserve of 1/5 of the gain x (4 - # of years after disposition)
    - Reasonable reserve lesser of those two values
  + See examples slide 27-30
  + SEE CED example – proceeds due in future year (same one)
* **Rollovers**
  + Exceptions to general rules in s 69(1) dealing with non-arm’s length transfers
  + **rollover treatment meaning that there is no immediate tax liability that arises as a result of the transfer of property from one spouse to another**
  + Spousal rollover: 73(1)
  + Other rollovers (see end of capital gains slides)
  + Transfers by individuals 65 years of age and older to a joint spouse or partner trust or an alter-ego trust – subsection 73(1), subparagraphs 73(1.01)(c)(ii) and (iii) and subsection 73(1.02)
  + Transfers of farm or fishing property by a transferor to his or her Canadian resident child – subsection 73(3)
  + Transfers of shares in a family fishing or farming corporation or an interest in a family fishing or farming partnership by a transferor to his or her Canadian resident child – subsections 73(4) and (4.1)
  + Transfer of capital property to a corporation in exchange for shares of the corporation – subsection 85(1)
* **Principle residence exemption – s 40(2)(b)**
  + If the individual would otherwise realizes a capital gain on the disposition of a residential property owned by them, the individual may be able to reduce or eliminate this gain by designating the property as his or her principal residence for any or all of the years during which the property was owned
  + In effect, this normally exempts the full amount of the gain from tax
  + **Criteria:**
    - Taxpayer must be individual (corporation can’t claim it)
    - Must be a **principal residence** (see definition below – multiple properties can fit it)
    - Must be inhabited by taxpayer, spouse, children
      * Must be occupied at some point, not necessarily habitually
      * Does not need to be primary residence (e.g. can be cottage)
    - Property must be **owned** by taxpayer
      * Joint ownership counts as ownership
    - Property has to be designated as principal residence on tax return
      * Can only **designate ONE principal residence** *per family* per year (even though multiple residences may be eligible)
        + no other property can have been designated as a principal residence for the particular year by the individual or the individual's spouse, common-law partner or minor child
      * Must see which is advantageous to designate for a particular year
    - A “**principal residence**” of the taxpayer is defined in section 54 to be a housing unit, leasehold interest or share of a cooperative housing corporation – must be “ordinarily inhabited”
      * A “housing unit” includes a house, duplex, apartment building or condominium, cottage, mobile home, trailer or houseboat
      * (e) **includes** land reasonably regarded as contributing to use/enjoyment of property ***except*** *more than half-hectre of land*
        + If the total area of the land **exceeds one-half hectare**, the excess land is deemed not to have contributed to the use and enjoyment of the housing unit as a residence unless the individual establishes that it was ***necessary*** to such use and enjoyment

*Stewart estate*: Only take into account **objective factors** such as **zoning laws** or **access** (road)

For use and enjoyment, taxpayer claimed they needed landscape, forests, etc. (aesthetic arguments **rejected**)

*Cassidy*; *Yates* (also stand for this)

* + - * + If only a portion of the property qualifies as a principal residence, it will be necessary to calculate the gain on such portion separately from the gain on the remaining portion which does not qualify as the individual's principal residence
  + **SPECIAL EQUATION – SEE SLIDES 40 CAPITAL GAINS**
* **Allowable capital losses**
  + Defined in paragraph 38(b)
  + One-half of the taxpayer’s capital loss in the year from the disposition of the property
  + **Capital Loss**
    - Defined in paragraph 39(1)(b)
    - “[T]he taxpayer's capital loss for a taxation year from the disposition of any property is the taxpayer's loss for the year...(to the extent of the amount thereof that would not [otherwise] be deductible in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property...other than..(i) depreciable property”
  + **Loss**
    - Defined in paragraph 40(1)(b)
    - The amount, if any, by which the taxpayer’s adjusted cost base **plus** any outlay or expense made or incurred for the purpose of making the disposition exceeds the proceeds of disposition
* **Allowable business investment loss**
  + **Allowable business investment loss (ABIL )** 
    - Defined in paragraph 38(c)
    - One-half of the taxpayer’s business investment loss from the disposition of the property
  + **Business investment loss** 
    - Defined in paragraph 39(1)(c)
    - The taxpayer’s capital loss from the arm’s length disposition of share or debt of a small business corporation
* **Net Capital Losses**
  + “net capital loss” of a taxpayer for a taxation year is defined in subsection 111(8)
  + Includes the unused portion of any allowable business investment loss realized in a taxation year more than 10 years ago
  + Can be **carried back 3 years** or **forward indefinitely** – paragraph 111(1)(c)
  + Are only deductible against taxable capital gains – subsection 111(1.1)
  + Losses from older years must be used before net capital losses from more recent years – paragraph 111(3)(b)
* **Superficial Losses –** reacquiring identical property within period of 30 days
  + **Designed to prevent TP from realizing a loss when there is no genuine disposition**
  + S. 54 – “Superficial loss ‘ is a loss where:
    - During the period **30 days before and ending 30 days after the disposition, the TP or an “affiliated person” acquired identical property**; and
    - The TP or affiliated person owned the property at the end of the period
    - Spouse and CL partner are affiliated (s. 251.1); children are not
    - S. 40(2)(g)(i) – **superficial loss is deemed to be nil**
    - Identical property is question of fact
    - Denied loss added to acb of substituted property (s. 53(1)(f)) – “pregnant” until disposed of to non-affiliated person

# Income From Business or Property

* 3(a) general inclusion or business or property income
* 9(1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's **profit** from that business or property for the year.
  + - **What is profit?**
      * “Profit” not defined in ITA
      * *Candarel*: (everything below)
      * the profit from a trade or business is the difference between the receipts from the trade or business less the expenditures laid out to earn those receipts
      * Profit is a determination of law, to be determined in accordance with the provisions of the *Income Tax Act* – not purely factual determination
        + In the determination of profit regard may be had to “well-accepted principles of business (or accounting) practice” or “ordinary commercial principles” – GAAP is an “interpretative aid”
        + But well-accepted principles of business (or accounting) practice are not determinative of the issue and are subject to modification in accordance with the provisions of the *Income Tax Act* or other established rules of law
      * principle goal in the determination of profit is to achieve an ***accurate* picture of income**
      * ***not*** necessary to show a causal connection between an expenditure and a receipt. An expenditure may be properly deductible even if it produces no income (i.e. creates a loss).
      * Where there is more than one approach to the calculation of profit, the taxpayer is free to choose any approach that is not inconsistent with the law and yields an accurate picture of income
        + Where the approach taken by the taxpayer is consistent well-accepted principles of business (or accounting) practice, is not inconsistent with the law and presents an accurate picture of income, the burden of proof is on the Minister to show that a different method would yield a more accurate picture of income
  + **Realization Principle**
    - 9(1) a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.
    - In computing a taxpayer’s profit for the year it is necessary to determine what items of income (revenue) need to be included in computing profit
    - Generally income must be included in computing profit when it is realized and income is realized once it has the **“quality of income”** (*Kenneth*)
      * An amount has the “quality of income” when the **taxpayer’s right to it is absolute and under no restriction**, contractual or otherwise, as to its disposition, use or enjoyment (*Kenneth*)
        + An amount may also have the “quality of income” even where the taxpayer has not physically received the amount but has only “realized” it in accordance with accrual accounting methods (*Ikea*)
    - **The realization principle has been modified by ss 12-17 ITA**
      * But it’s still generally relevant
* 9(2) loss
* **9(3) income from property does not include capital gain or loss**
* **ALSO TALK ABOUT BUSINESS VS PROPERTY INCOME (DIFFERENT IMPLICATIONS)**
* **Inclusions – s 12**
  + 12(1) There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable:
    - Unearned amounts – Amounts received on account of services not rendered or goods not delivered before the end of the year – paragraph 12(1)(a)
      * But NOTE: deductible reserves under s 20 (4 sections)
    - Amounts receivable for property sold or services rendered in the course of business – paragraph 12(1)(b)
      * Right to receive must be absolute (not subject to conditions precedent), although it may be paid at a later date (*J Colford Contracting*)
        + E.g. not legally entitled to payment until certificate issued = not “receivable”, but once that certificate is issued it is receivable (*J Colford Contracting*)
      * Until an amount is ascertained, it is not receivable (*Benaby Realties*)
        + E.g. when you have a legal right to be compensated for expropriation, but actual compensation is not determined (*Benaby*)
        + However, if it is “sufficiently ascertainable”, it should be included in income (*West Kootenay*, *Maritime Telegraph*)

TP entitled to payment to electricity it delivered, amounts were sufficiently ascertainable b/c of past data (*West Kootenay*)

*Maritime*: same thing for a telecommunications company that billed customers on a monthly basis – need to include an estimate of amounts payable by customers

* + - * But NOTE: deductible reserves under s 20
    - interest – paragraph 12(1)(c)
    - Amounts deducted in a preceding year as a reserve for doubtful accounts – paragraphs 12(1)(d)
    - Amounts deducted in the immediately preceding taxation year on account of a reserve for services not rendered or goods not delivered **or** in respect of reasonably warranty claims – paragraph 12(1)(e)
      * Anything you deducted as a result of a reserve, you include again the following year (makes sense)
    - An amount dependent on the use of or production from property whether or not that amount was an instalment of the sale price of the property (agricultural land) – paragraph 12(1)(g)
    - Amounts recovered on bad debts – paragraphs 12(1)(i) and (i.1)
    - Dividends – paragraphs 12(1)(j) and (k)
    - Partnership income – paragraph 12(1)(l)
    - Income from trusts – paragraph 12(1)(m)
    - Inducement or assistance payments – paragraph 12(1)(x)
* **Subdivision b – Income or Loss from a Business or Property**
  + Section 10 – Inventory Valuation
  + Section 13 – Depreciable Property
  + Section 31 – Restricted Farm Losses
  + Section 37 – Scientific Research and Experimental Development (SR&ED)
  + Section 67 – Reasonableness requirement
  + Section 67.1 – Limitation on expenses for food and entertainment
  + Section 67.5 – Non-deductibility of illegal payments
  + Section 67.6 – Non-deductibility of fines and penalties
* **Deductions – s 18**
  + S 9(1) income = **profit**
    - “Profit” not defined in ITA
    - *Candarel*
      * the profit from a trade or business is the difference between the receipts from the trade or business less the expenditures laid out to earn those receipts
      * Profit is a determination of law, to be determined in accordance with the provisions of the *Income Tax Act* – not purely factual determination
        + In the determination of profit regard may be had to “well-accepted principles of business (or accounting) practice” or “ordinary commercial principles” – GAAP is an “interpretative aid”
        + But well-accepted principles of business (or accounting) practice are not determinative of the issue and are subject to modification in accordance with the provisions of the *Income Tax Act* or other established rules of law
      * principle goal in the determination of profit is to achieve an ***accurate* picture of income**
      * ***not*** necessary to show a causal connection between an expenditure and a receipt. An expenditure may be properly deductible even if it produces no income (i.e. creates a loss).
      * Where there is more than one approach to the calculation of profit, the taxpayer is free to choose any approach that is not inconsistent with the law and yields an accurate picture of income
        + Where the approach taken by the taxpayer is consistent well-accepted principles of business (or accounting) practice, is not inconsistent with the law and presents an accurate picture of income, the burden of proof is on the Minister to show that a different method would yield a more accurate picture of income
  + S 67 **reasonableness** – In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, *except* to the extent that the outlay or expense was reasonable in the circumstances
  + **Recognition of expenses**
    - Contingent liabilities are non deductible until contingency is satisfied (*Guay*)
      * The taxpayer, a general contractor, was entitled to withhold 10% from the amount payable to subcontractors (a “holdback”) until an architect or engineer’s certificate was issued (*Guay*)
      * The taxpayer deducted an amount in respect of the holdbacks in computing his income (*Guay*)
    - **General Categories**
      * **Current Expense**
        + Value or benefit relates to current year
        + Generally relate to a particular item of revenue
        + ***Accounting***: Deductible in the current year
        + ***Tax***: Deductible in the year incurred
      * **Capital Expense**
        + Value or benefit endures for more than one year
        + ***Accounting***: Amortized/Depreciated over their useful life
        + ***Tax***: Deduction denied unless specifically permitted under the *Income Tax Act* – paragraph 18(1)(b) and section 20
      * **Pre-Paid Expense**
        + Expense in respect of a service or good to be received in a future year
        + ***Accounting***: Amortized over the period to which it relates
        + ***Tax***: Deduction for pre-payment of services, interest, taxes, rent and royalties is delayed until the year which it relates to – paragraphs 18(9)(a) and (b)
        + CRA generally requires the same treatment for all pre-paid expenses
  + S 18(1) In computing the income of a taxpayer from a business or property **no deduction shall be made** in respect of
    - General limitation – An outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property – paragraph 18(1)(a)
      * Expense must have a business purpose
      * It is **never necessary** to show a causal connection between an expenditure and a receipt. An item of expenditure made is properly deductible even if it is not productive of *any* income at all and even if it results in a loss (*Imperial Oil*)
        + It is sufficient that the expenditure was incurred in the income-earning process (*Imperial Oil*)
      * **Where might it apply?**
        + Expenses incurred prior to the commencement of a business: *Sherritt Gordon Mines, 1968 (Ex.Ct.)*
        + Expenses incurred by a person other than the taxpayer: *Scott v. MNR, 1989 (TCC)*
        + But compare *Lehndorff Realty v. MNR, 1986 (FCTD)* ; *Firestone v. MNR, 1987 (FCTD)* and *Potash Corporation v. The Queen, 2011 (TCC) –* expenses incurred in respect of subsidiaries found to be outside the prohibition in para. 18(1)(a)
    - An outlay, loss or replacement of **capital**, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion *except as expressly permitted by this Part* – paragraph 18(1)(b) – **SEE s 20**
      * Capital expenditure = “When a payment is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade…there is very good reason…for treating such an expenditure … as capital.” (*British Insulated*)
      * E.g. buildings, machinery, etc.
    - An amount as, or on account of, a reserve, a contingent liability or amount or a sinking fund *except as expressly permitted by this Part* – paragraph 18(1)(e)
      * **NOTE: See** s 20(1)(m) (unearned amounts), 20(1)(n) (deferred payments), 20(1)(l) and 20(1)(p) (doubtful and bad debts)
      * Allowed in certain circumstances
    - **Personal or living expenses of the taxpayer**, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business – paragraph 18(1)(h)
      * Generally personal living expenses not deductible except where expressly permitted under Act
        + i.e. moving and child care expenses
      * S 248(1) “personal or living expenses” *includes* (not exhaustive)
        + (a) the expenses of properties maintained by any person for the use or benefit of the taxpayer or any person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and not maintained in connection with a business carried on for profit or with a reasonable expectation of profit,
        + (b) the expenses, premiums or other costs of a policy of insurance, annuity contract or other like contract if the proceeds of the policy or contract are payable to or for the benefit of the taxpayer or a person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and
        + (c) expenses of properties maintained by an estate or trust for the benefit of the taxpayer as one of the beneficiaries;
      * Factors to consider in determining if personal expenses:
        + Whether the expense is one that would ordinarily be allowed as a business expense by accountants
        + Whether the expense is normally incurred by others in the same business
        + Whether the particular expense would have been incurred if the taxpayer was not carrying on business. Was it an expense of the trader or the trade?
        + Whether the taxpayer could have avoided the expense without an impact on gross income
      * Housekeeping = personal, except to the extent that wages were paid in respect of farm chores (*Thomas Harry*)
      * Legal fees to defend against criminal charges = personal (*Leduc*)
      * Child care expenses not allowed (not part of “income earning process” – even though it allowed her to work) (*Symes*) – except as allowed by statute under s 63
      * “extra” food allowed if related to the job (*Scott* – courier who ate extra meal due to physical rigour of job)
      * Commuting expenses (*Cumming*)
        + The costs associated with commuting to work are generally personal expenses.
        + The cost of work related travel from your place of work to other locations is generally characterized as a business expenses
      * Home office expenses – s 18(12), additional limitation
        + S 18(12) Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,
        + (a) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the “work space”) of a self-contained domestic establishment in which the individual resides, ***except to the extent*** that the work space is either

(i) the individual's principal place of business, **or**

(ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business; and

* + - * + (b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income for the year from the business *shall not exceed the individual's income for the year from the business*…; and
        + (c) any amount not deductible by reason only of paragraph (b) in computing the individual's income from the business for the immediately preceding taxation year shall be deemed to be an amount otherwise deductible that, subject to paragraphs (a) and (b), may be deducted for the year for the work space in respect of the business

**Can carry forward losses from prior year to next year (but not later!!)**

* + - **Expenses of a personal services business** – paragraph 18(1)(p)
      * Personal service biz = “incorporated employees” (employees -> independent contractors)
        + Generally senior employee who interposes a corporation b/w the corporation and employee
      * Limited deductions – see the section!! This only includes what qualifies as personal service biz
      * S 125(7) “personal services business” carried on by a corporation in a taxation year means a business of providing services where
        + (a) an individual who performs services on behalf of the corporation (in this definition and paragraph 18(1)(p) referred to as an “incorporated employee”), or
        + (b) any person related to the incorporated employee
      * is a specified shareholder of the corporation and the incorporated employee would reasonably be regarded as an officer or employee of the person or partnership to whom or to which the service were provided but for the existence of the corporation, unless
        + (c) the corporation employs in the business throughout the year more than five full-time employees, or
        + (d) the amount paid or payable to the corporation in the year for the services is received or receivable by it from a corporation with which it was associated in the year;
      * S 248(1) “Specified Shareholder”
        + Incorporated employee is a specified shareholder if they, together with non-arm’s length persons, owns, directly or indirectly, at any time in the year, not less than 10% of the issued shares of any class of the capital stock of the corporation or a related corporation
        + Takes account of shares owned by a trust or partnership of which the corporate employee (or a non-arm’s length person) is a beneficiary or partner
        + The incorporated employee is deemed to be a specified shareholder if the incorporated employee, or any person or partnership with whom the incorporated employee does not deal at arm's length, is, or by virtue of any arrangement may become, entitled, directly or indirectly, to not less than 10% of the assets or the shares of any class of the capital stock of the corporation or any related corporation
      * Also small business tax reduction under s 125(1) not eligible for PSB
  + **Prepaid Expenses – s 18(9)(a)**
    - S. 18(9)(a) denies the deduction of certain expenses incurred in a year for services to be provided after the end of the year
    - Applies to interest, rent, taxes or royalties in respect of a period after the end of the year or insurance premiums in respect of such a period
    - *Denied portion deductible in subsequent year* (when services are provided)
  + **Inventory – s 10**
    - **Two issues:**
      1. Determining inventory costs from other costs
      2. Determining how much each year the corporation can deduct as COGS
    - Commercial and accounting principles and s. 10 of the ITA attempt to “match” cost of inventory to associated revenue in the year
    - Recall: Not all expenses deductible – only ones that contribute (relate to revenue) to revenue that is realized in that year!!
    - **What is Inventory?**
      * Tangible personal property
      * Held for sale in the ordinary course of business
      * In the process of production for sale
      * For current consumption in producing goods or services to be sold
      * Includes finished goods (stock in trade) purchased or produced for resale; semi-finished products (work in progress); raw material and parts
    - **Amounts Deductible**
      * OI + CGA – CI
      * Value of opening inventory (OI) plus cost of goods acquired during the year (CGA) less value of inventory held at the end of the year (CI)
    - **Value of Inventory**
      * S. 10(1) – EACH item valued at lower of cost or fair market value, ***OR*** TP may elect to value ALL items at FMV (Regulation 1801)
        + *EXCEPT*: for purpose of income that is an adventure or concern in the nature of a trade, property described as inventory shall be valued at the cost at which the taxpayer acquired the property
      * Cost of Inventory 🡪 No specific rules in the ITA
        + Major problem is overhead costs (heat, light, labour, some storage costs, etc. included in cost of inventory)
        + S 10(5)(a) includes ***advertising and packaging materials*** in inventory
      * NOTE: see special rules below!!!
    - **Special Rules**
      * Ss. 10 (6) to (8) – value of inventory of artists is nil
      * S. 10 (4)(b) – advertising or packaging material and “other property” valued at replacement cost
        + “Other property” does *not* include finished goods, raw materials or damaged or defective goods

So basically just works in progress

* + **Entertainment expenses and business meals – s 67.1(1)**
    - for the purposes of this Act, other than sections 62 [moving expenses], 63 [child care], 118.01 [adoption expense credit] and 118.2 [medical expense credit], an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment is **deemed to be 50 per cent of the lesser** of
      * (a) the amount actually paid or payable in respect thereof, and
      * (b) an amount in respect thereof that would be reasonable in the circumstances
    - See **certain exceptions**!
  + **Education Expenses**
    - Educational expenses are generally characterized as personal expenses
    - Refresher course taken by professionals are generally permitted as business expenses
    - Section 118.5 – credit for tuition fees
    - Section 118.62 – tax credit for interest on certain student loans
  + **Deductibility of Damages**
    - In general, damages and similar payments are deductible if they were incurred for the purpose of generating income from business or property.
    - The principle question is whether the damages arose “as part of the operations, transactions or services by which the taxpayer earned income”
    - A payment in settlement of a claim for damages resulting from the negligence of an employee was found to be deductible, since it was a normal and ordinary risk of carrying on the taxpayer’s business – *Imperial Oil v. MNR* [1947], 3 DTC 1090 (Exch. Ct.)
    - The payment of damages by an accountant as a result of his breach of a non-compete agreement entered into in connection with the sale of his accounting practice was also found to be deductible – *McNeil v. The Queen,* 2000 DTC 6211 (FCA)
  + **Deductibility of expenses from an Illegal Business**
    - Can be allowed in limited circumstances provided that: (1) expense made for purpose of producing income, (2) deduction of the expense was not expressly disallowed by ITA
    - S 67.5: In computing income, no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under section 3 of the Corruption of Foreign Public Officials Act or under any of sections 119 to 121, 123 to 125, 393 and 426 of the Criminal Code, or an offence under section 465 of the Criminal Code as it relates to an offence described in any of those sections
      * Bribes to foreign public officials
      * Bribes to judges, public officials and law enforcement officers
      * Payments made for the purpose of influencing municipal officers
      * Payments made to buy an official appointment
      * Kickbacks and frauds on the government
      * Conspiracy
  + **Fines and penalties not deductible – s 67.6**
  + S 20(1) **Notwithstanding paragraphs 18(1)(a), (b) and (h)**, in computing a taxpayer's income for a taxation year from a business or property, there **may be deducted such of the following amounts** as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
    - **Capital cost allowance** – paragraph 20(1)(a)
      * Starting point: 18(1)(b) 🡪 prohibits deductions on capital expenses unless it is expressly authorized (20(1)(a) is the authorization))
      * **Capital expenditures tests** (vs expenses)
        + **Asset enduring benefit 🡪 most critical test**

Does it bring something to existence that is a permanent (or long lasting) advantage?

Capital expenditure = “When a payment is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade…there is very good reason…for treating such an expenditure … as capital.” (*British Insulated*)

E.g. buildings, machinery, etc.

* + - * + **Continuous expenditure 🡪 secondary test**
        + Capital vs current expenses – **Repair of Tangible Assets** – consider

Does the expense provide lasting benefits?

Does the expense maintain or improve the property?

Does the expense purchase a new asset or is it an integral part of an existing asset?

What is the value of the expense in relation to the value of the asset?

* + - * + **If repair, then likely current expense; if improvement, then likely capital expenditure. Replacement also capital expenditure** (*Shabro*)
        + *Shabro*: building built on top of landfill; TP replaced floor; improvement to the building was made, not merely a repair
        + *Gold Bar*: replaced exterior bricks with metal cladding. Held repair b/c alteration was less than 3% of the value of the building; did not substantially improve value of building
      * **20(1)(a) statutory framework**
      * Essentially: Must spread deduction over period during which you get benefit (useful life of item) – set periods included in regulations
      * 20(1) may deduct … (a) such part of the capital cost to the taxpayer of property, or such amount in respect of the capital cost to the taxpayer of property, if any, **as is allowed by regulation**;
      * **Separate classes of property** 🡪 *defined in regulations* 🡪 and has assigned a particular depreciation rate which is intended generally to reflect likely economic life of property
        + **NOTE: for some classes, calculate the class AS A WHOLE, meanwhile for other classes (e.g. buildings), calculate individuals buildings SEPARATELY**
      * **Depreciable property** = property on which CCA can be claimed (aka *property fitting in a prescribed class in Schedule II*) – subsection 13(21)
        + Depreciable property is a subset of “capital property” – section 54
        + The rates of CCA are set out in Schedule II and Regulation 1100
        + The classes of property described in Schedule II are deemed not to include property that is inventory or that was not acquired for the purpose of gaining or producing income - Regulation 1102(1)(b), (c)
        + **Includes** some intangible property – e.g. **patents** in Class 44; **goodwill** in Class 14.1
      * **Cost of depreciable property**
        + Normally the purchase price, including assumed debt
        + In some cases, must allocate between depreciable and non-depreciable (e.g. land and buildings)
        + Non-arm’s length acquisitions:

S 69(1)(a) Acquire something not at arm’s length for more than FMW, deemed to be acquired at FMW

Purchaser’s cost limited to vendor’s cost plus 50% of vendor’s capital gain (s. 13(7)(e)(i) and (ii))

Example: slide 44 timing

Where purchaser’s cost is less than vendor’s, purchaser deemed to acquire at vendor’s cost and difference treated as CCA claimed (s. 13(7)(e)(iii))

* + - * Some rules in s 13(7) – e.g. change in use from residential to income-producing = deemed disposition – see slide 43 comments
      * **Timing issues:**
        + property is acquired when incidents of ownership such as possession, use and risk have passed (*Wardean Drilling*)

TP lost b/c delivery did not occur even though agmt in ’63 (if agmt specified that title passes right away then it would have worked)

* + - * + ***“Available for use” rules –*** s. 13(26): property must be available for use before an amount can be added to UCC

ss. 13(27) and (28) deem available at earliest of several times, including time or first use, completion of construction, beginning of first taxation year commencing >357 days after acquisition

* + - * + **“*Half-Year Rule” –*** Reg. 1100(2) allows only half of the cost of a depreciable property to be added in computing UCC in the year of acquisition

For that year, reduce UCC otherwise determined by one-half of the cost of the new property (“notional UCC”)

Exception: if effectively replacing another property, can reduce the reduction in the UCC by whatever the sale proceeds of other properties are

Example on SLIDE 48

* + - * **Capital Cost Allowance Calculation**
        + ESSENTIALLY: A+B – E+F

Where A = total of capital cost of depreciable property of that class

B = recapture cost (the total of all amounts included in the taxpayer’s income under this section)

E = depreciation in previous years

F = lesser of proceeds of disposition and capital cost of sold assets (only if assets sold in that class)

REMEMBER TO COMPUTE HALF-YEAR RULE

* + - * + **Two scenarios**

13(1) **recapture** – If you sell it for more than depreciated cost (after you claim CCA), THEN you claimed too much CCA (depreciation). In case like that where only single property in a class, that difference is brought back into income (recaptured depreciation)

20(16) **terminal loss** – The converse of that is if you sell it for less than UCC, should have been allowed more CCA. In that case, where no other properties left in that class, you receive a terminal loss – you can bring it back into income

* + - * + **SAMPLE CALCULATIONS INCLUDED ON SLIDE 53-56 TIMING!!**

SEE THOSE FOR THE EXAM

* + - * **Leasing and Rental Property Restrictions**
        + Reg. 1100(11) and (15) prevent a taxpayer from creating a loss in respect of a rental or leasing property by claiming CCA

Leasing property includes vehicles, etc.

* + - * + *Exception*: Does not apply to a corporation whose principal business is renting real estate
        + Operates by limiting CCA to a maximum of the difference between income from renting or leasing and losses from renting or leasing, all calculated before claiming CCA
      * CCA is a discretionary deduction, meaning that a taxpayer can write-off any amount up to the maximum
    - **Interest** – paragraph 20(1)(c)
      * 20(1)(c) an amount paid in the year or payable in respect of the year pursuant to a legal obligation to pay interest on
      * (i) borrowed money used for the purpose of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt or to acquire a life insurance policy),
      * (ii) an amount payable for property acquired for the purpose of gaining or producing income from the property or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy),
      * OR a reasonable amount in respect thereof, whichever is the lesser;
      * **FOUR CONDITIONS:**
        + The amount must be paid in the year or payable in respect of the year
        + The amount must be paid pursuant to a legal obligation to pay interest
        + The amount must be paid on

borrowed money that is used for the purpose of earning non-exempt income from a business or property, or

the unpaid purchase price of property acquired for the purpose of gaining or producing non-exempt income from the property or from a business, and

NOTE: It is the *current use* of the funds that is relevant (if purchased initially for income producing property, but then replacement property is not income-producing, then not deductible) (*Bronfman*)

* + - * + The amount must be reasonable
      * *Singleton*: look at taxpayer’s purpose in using the money – do not look at overall purpose of borrowing
        + Law firm partner took money out of partnership to buy house, then borrowed funds to pay back partnership. Interest on borrowed funds to pay back partnership were held to be deductible
    - **Reserve** for services not rendered or goods not delivered in the year – paragraph 20(1)(m)
      * (m) *where amounts described in paragraph 12(1)(a) have been included in computing the taxpayer's income from a business* for the year or a previous year, a **reasonable amount** as a reserve in respect of
        + (i) goods that it is reasonably anticipated will have to be delivered after the end of the year,
        + (ii) services that it is reasonably anticipated will have to be rendered after the end of the year
      * SLIDE 26 TIMING REALLY GOOD EXAMPLE
      * **Exception**: 20(7) Paragraph 20(1)(m) does **not apply** to allow a deduction as a reserve in respect of guarantees, indemnities or warranties;
    - **Reserve** for unpaid purchase price of ***goods*** sold – paragraph 20(1)(n)
      * Reserve for unpaid amounts – **limit of 3 years** (s 20(8)(b))
        + A reserve cannot be claimed in a taxation year if the sale occurred more that 36 months before the end of such taxation year
      * Only for goods, ***not*** serviced rendered
      * Technically, three conditions must be met for a deferred payment reserve deduction: (a) the amount from the sale of the property must be included in income; (b) the property must be an inventory property; and (c) except where the property is real property, all or part of the purchase price must not be due until at least two years after the time of the sale.
      * (n) where an amount included in computing the taxpayer's income from the business for the year or for a preceding taxation year in respect of property sold in the course of the business is payable to the taxpayer after the end of the year and, except where the property is real property, all or part of the amount was, at the time of the sale, not due until at least 2 years after that time, a reasonable amount as a reserve in respect of such part of the amount as can reasonably be regarded as a portion of the profit from the sale
      * SLIDE 28 TIMING GOOD EXAMPLE
        + **The reserve is PROFIT x [Amount due after year / total price].**
    - **Reserve** for doubtful or impaired accounts – paragraph 20(1)(l)
      * S. 20(1)(l) allows deduction of a “reasonable reserve” for debts doubtful of collection; s. 12(1)(d) inclusion in subsequent year
      * Debts must have been included in computing income in the year or a prior year OR arising from loans in the ordinary course of a money-lending business
      * To substantiate doubtfulness, look at period of arrears, status and prospects of debtor, debtor’s credit record and value of security (factual matter)
      * Taxpayer makes reasonable estimate of portion of debt that will not be collected
      * E.g. if $100,000 receivable included in income under s. 12(1)(b) in year 1 and $5,000 likely to be uncollectable, claim reserve of $5,000 in year 1, include in income in year 2 and consider further reserve or bad debt deduction
    - **Bad debts** – paragraph 20(1)(p)
      * S. 20(1)(p) allows deduction of debts established to be bad in respect of accounts receivable for goods or services included in income or debts arising from a loan made in the ordinary course of lending money
      * Doubtful debts deducted under 20(1)(l) can become bad debts deducted under this section
        + Part of a debt can be claimed as bad ; IT-442R, para. 5
      * Subsequent recoveries included in income under s. 20(1)(i)
    - Employer contribution to a registered pension plan – paragraph 20(1)(q)
* **Distinguishing income from business and income from property**
  + **Why distinguish?**
    - Active business income earned by Canadian controlled private corporations is taxed at preferential rates
    - The corporate integration system works differently for business income and property income
    - The attribution rules in sections 74.1, 74.2, 74.3 and 75 apply to income from property, but not income from a business
    - The deductibility of certain amounts may be limited where income earned on real property is property income, but not where it is income from a business
    - Non-residents carrying on business in Canada pay tax on business income under Part 1 and tax on income from property under Part XIII
    - Treaty provisions may fully exempt non-residents from tax on Canadian business income (i.e. where it is not attributed to a permanent establishment in Canada) but may not exempt them from tax on Canadian source property income
    - The foreign affiliate rules in the Income Tax Act apply differently to foreign business income and foreign property income
    - For individuals, income from business is taxable in the province it is earned in; income from property is taxable in the province where the individual resided on the last day of the calendar year
  + **What is a Business?**
    - “anything which occupies the time and attention and labour of a man for the purpose of profit is business” (*Anderson*)
    - S 248(1)
      * “business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever and…an adventure or concern in the nature of trade but does not include an office or employment”
      * “property” means property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes
        + (a) a right of any kind whatever, a share or a chose in action,
        + (b) unless a contrary intention is evident, money,
        + (c) a timber resource property, and
        + (d) the work in progress of a business that is a profession;
    - **Two Step Test**: (*Stewart*)
      * The REOP Test should not be used as a stand alone test for determining a source of income
        + Overall, the assessment to be made is whether or not the taxpayer is carrying on the activity in a commercial manner.
      * **(1) Determine if the activity of the taxpayer is undertaken in pursuit of profit or as a personal endeavour**
        + **Factors**:
        + Reasonable expectation of profit (one factor to consider but not conclusive)
        + The profit and loss experience in past years
        + The taxpayer's training
        + The taxpayer's intended course of action
        + The capability of the venture to show a profit
        + The assessment should not, however, be used to second-guess the business judgment of the taxpayer. It is the commercial nature of the taxpayer's activity which must be evaluated, not his or her business acumen
      * **(2) If it is found not to be a personal endeavour, determine if the source of the income is business or property**
        + Generally the principal factor in distinguishing between business income or property income is the **level of activity involved in the earning of profits** (*Lois Hollinger*)
    - *Walls*: owned warehouse – substantial loss – activity was commercial, losses allowed
    - **Property or business income?**
      * *prima facie,* the receipt of rent as land owner is not the conduct of a business, **but cases** can arise where the extent of the various services provided by the landlord … and the time and labour devoted by him are such that the rental … can be regarded as … payment for such services as well as for the use of the property and the inter-relation of the use of the premises with the use of such services may be so extensive that the whole sum could readily be regarded not as mere rental of property, but as true receipts of a business providing apartment suites and services to tenants (*Walsh*)
      * s 39(4) Permits a one-time election to treat all dispositions of Canadian securities as dispositions of capital property
        + Not available if the taxpayer is:

a trader or dealer in securities,

a financial institution

a corporation whose principal business is the lending of money or the purchasing of debt obligations

a non-resident

* + - **Property Income**
      * Interest income (s 12(1)(c))
        + The general rule is that interest is included in income when received or receivable by the taxpayer
        + Corporations, partnerships required to include interest in computing income on an accrual basis (s 12(3))
      * Investment contract – special timing rules
      * Rent and royalties – para 12(1)(g)
        + “Shall be included any amount received by the taxpayer in the year that was dependent on the use of or production from property whether or not that amount was an instalment of the sale price of the property, except that an instalment of the sale price of agricultural land is not included by virtue of this paragraph”
        + The basic difference between a rent and a royalty is that rents normally a fixed amount and royalties vary with use
      * Canadian source dividend s 12(1)(j)
        + 12(1)(j) any amount required by subdivision h to be included in computing the taxpayer's income for the year in respect of a dividend paid by a corporation resident in Canada on a share of its capital stock;
* **Tax Treatment of Dividends (avoiding double-taxation)**
  + For individuals the rules attempt to integrate the shareholder and corporate levels of tax through the use of a dividend “gross-up and credit” mechanism – subsection 82(1)
  + For corporations the elimination of double tax is achieved by permitting the corporate shareholder a deduction equal to the amount of dividends received from other Canadian corporations – subsection 112(1)
  + SEE SLIDES IF NECESSARY FOR MORE DETAIL (SLIDE 50)
* **Methods of Accounting**
  + **Cash**
    - Income is accounted for on a **received** basis
    - Expenses are accounted for on a paid basis
    - Income from employment may use cash basis
    - Farming business may use cash basis – section 28
  + **Accrual**
    - Income is recognized in the year in which it is **earned**, *regardless* of when payment is actually received
    - Expenses are deducted in the year they are incurred, regardless of when they are actually paid
    - Used by corporations and in computing income from most businesses

OTHER THINGS RE INCOME FROM BIZ TEST: (NOTE THIS IS NOT THE PREDOMINANT TEST – EARLIER CASES)

* “reasonable expectation of profit” test (*Moldowan*) – NO LONGER VALID TO BE USED BY ITSELF
  + a taxpayer had a source of income if his or her activity or property carried a reasonable expectation of profit – otherwise did not constitute a source and expenses were not deductible
  + Landry: lawyer who started practice but didn’t keep biz records, no budget, didn’t always bill clients, etc. – no REOP, not carrying on biz
  + Tonn: bought properties, realized a loss. in the absence of any non-business motive the reasonable expectation of profit test should be applied sparingly and with a latitude favouring the taxpayer, whose business judgment may have been less than competent
* **Gambling**
  + In general, the gambling cases turned on the issue of whether it was **reasonable for the taxpayer to expect to make a profit** for the gambling activity undertaken.
  + Where the activity relied principally on luck and not skill there could be no reasonable expectation of profit and therefore no business
  + *Graham*: horse betting on large scale – held not biz income – *bet is irrational agreement*, activities of a gambler can be distinguished from those of book-maker who rationally organizes his activities in a way that is designed to earn a profit by setting odds and placing bets with different parties in an effort to earn a spread
  + Walker: horse betting operation – was systematically carrying with a view to making money – therefore taxable (at odds with Graham)
    - Distinguished from hobby
  + *Morden*: long time gambler; not biz income; gambled due to enjoyment, not with a view to making money
  + *Leblanc*:
    - Rare circumstance that gamblers will be taxed
    - There are three broad categories of gambling cases
      * (1) Those involving gamblers for whom gambling was a pleasurable pursuit and therefore not taxable
      * (2) Those where gambling gains were taxable as an incident of a business carried on by the gambler, e.g. a casino owner
      * Those where gambling gains were taxable because the gambler used his own expertise and skill to earn a livelihood in a gambling game *in which skill is a significant factor* (e.g. pool shark or riverboat gambler)
    - two taxpayers began participating extensively in sports lotteries, playing four to five times a week and betting $200,000 to $300,000 a week on average
      * They purchased thousands of lottery tickets that covered dozens of combinations selected using a computer program, which increased their potential payout and risk significantly
      * They negotiated volume discounts with lottery retailers and employed friends to pick up the tickets for them
      * Although they lost 95% of the time, they managed to win $2,761,544 from 1996 to 1999
      * Not taxable
    - not professional gamblers who assess their risks, minimize them and rely on inside information and knowledge and skill. They are not like the racehorse-owner, who has access to the trainers, the horses, the track conditions and other such insider information on which to base his wagers
      * rather they are compulsive gamblers
  + Luprypa
    - Appellant carried on a business of playing pool for profit
    - He had a system and a reasonable expectation of profit
    - He approached his business in a professional manner:
      * a) He carefully managed the risks.
      * b) He was a skilled player.
      * c) He played Monday through to Friday each week.
      * d) He spent his afternoons playing snooker to perfect his skills.
      * e) He played inebriated opponents after 11:00 p.m. to minimize his risk.
      * f) He won most of the time earning, approximately $200.00 daily.
      * g) He drank alcoholic beverages only on weekends when not playing pool to give him a sober advantage over his inebriated opponents.
      * h) He was calculating and disciplined.
      * i) It was his primary source of income and he relied on this steady income.”
  + Cohen
    - Cannot find that the taxpayer demonstrated he conducted his venture so as to fall withint he definition of a business
      * Lacked any real skill or training above that of a novice;
      * Did not have a well developed plan and what plan he did have he did not follow;
      * Lost consistently; and
      * Lacked credibility.

# Employment Income

* Relatively few statutory provisions
  + Inclusions – s 5-7
  + Deductions – s 8
  + S 3 – income from source is a net concept
    - First look at inclusions then deductions and you get your net
    - **Net income goes into s 3(a)**
    - **If negative it is subtracted under s 3(b)**
* Issues that arise from employment income
  + Employees receive many benefits – must determine if it is indeed a benefit provided in the course of employment and what value to place on it
  + Re deducibility – should be able to deduct expenses related to employment but not personal living expenses
    - Therefore takes a strict approach to employment
  + Only apply if they are specifically mentioned in s 8 of Act
    - Unlike s 9 for biz/property
  + Income – only when it is received, rather than receivable (receivable rather than accrual basis)
    - Tax avoidance concerns: **S 78(4)** where amount of remuneration of employment has not been paid by biz within 6 months after end of taxation year, it is deemed not to have been paid at all
* **S 3** includes income from **office or employment**
  + Definitions in s 248(1)
  + Employment and employee defined
    - Not particularly helpful though 🡪 **therefore look to case law**
    - Rules re deductions re employments are strict, plus employer must remit income, etc. 🡪 unlike independent contractor
      * Independent contractor may need to register for GST
  + Office is defined specifically though (directors, public office, judges, etc.)
  + **Employee vs independent contractor TEST**
  + **Multi-factor Test**: *Sagaz*
    - Overarching Question: Should this person from a normative perspective be an employee?
    - **“The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account”**
    - there is **no one conclusive test** which can be universally applied to determine whether a person is an employee or an independent contractor
      * the relative weight of the factors depend on the facts and circumstances of the case
    - **Factors to consider:**
      * If exclusive, then highly likely that there is an employment relationship (*McKee*) – very important – part of control technically (see last indicia)
      * the level of **control** the employer has over the worker’s activities **will *always* be a factor**
        + Indicia of control:
        + (1) worker subject to company policy and discipline? (e.g. hand booklets)
        + (2) does the company decide the method by which the work is performed? (how it should be done)
        + (3) does the company control the worker’s hours? What work is to be done? Which customers that worker can serve?
        + (4) does the company supervise and evaluate worker as he/she is doing his/her work?
        + (5) can the worker do work for others (relationship exclusive?)
      * other factors to consider include whether the worker provides his or her own equipment
      * whether the worker hires his or her own helpers
      * the degree of financial risk taken by the worker
      * the degree of responsibility for investment and management held by the worker
      * the worker’s opportunity for profit in the performance of his or her tasks
      * is individual’s work done as an integral part of the business or incidental? (*Stevenson*, *Kearney*)
      * non-exhaustive list of factors!
      * Can look at the intention of the parties (what parties said in the contract, how they described their relationship), but it is not the end-all be all – must look at substance
        + Usually only helpful if principal factors don’t yield a result
* **Inclusions in employment income**
  + **S 5(1)** salary, wages, and other remuneration, including gratuities
    - Payments must be causally related to employment
      * E.g. commissions and bonuses
  + Again note timing issue: amount ***received*** by employee (*cash* basis, not accrual)
  + **S 6** – specific inclusions; we tax *fringe benefits*
    - If we didn’t tax this, would violate principle of neutrality
    - But some benefits excluded based on administrative efficiency
    - 6(1)(a) the value of board, lodging and **other benefits of any kind whatever** received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment
      * **3 part test:**
      * **(1) Was something received or enjoyed in respect of, in the course of, or by virtue of an office or employment?**
        + Causal connection b/w employment and benefit 🡪 this is a very low standard though
        + *Savage*: “in respect of” 🡪 very broad; “any benefit of whatever kind” 🡪 again also very broad

Rebuttable presumption that if you receive a benefit from your employer it will be taxable

* + - * + *Perry*: voucher was regularly given, not a person gift, objective was to induce good relationship with employees, etc., therefore benefit received
        + *Waffle*: fact that it was not paid by employer does not mean that benefit did not accrue in respect of, by virtue of, etc. his/her employment
      * **(2) Was the thing received or enjoyed by the taxpayer a *benefit*?**
        + Question is *was it actually a benefit*?
        + *Sorin*: hotel manager gets place to sleep in b/w shifts. not established that appellant was lodging and evidence was that his home was preferable if his duties didn’t require him to be there. Not in any sense a benefit
        + *Lowe*: required to go on the trip to ensure the broker had fun; the pleasure derived from taxpayer was incidental to the business purpose
        + *Huffman*: officer reimbursed for some clothing purchases; allowance not taxable as benefits; this was used in connection with his employment duties and the allowance merely put him in the position he was in before
        + **Education benefits:**
        + *Detchon*: teacher allowed to send child to school but did not have to pay tuition, actual cost to school was low b/c always had empty seats, teacher not paid less for bringing child to school. It is a taxable benefit

NOTE reversed by amendment s 6(1)(a)(vi)

“except any benefit that is received or enjoyed by an individual other than the taxpayer under a program provided by the taxpayer’s employer that is designed to assist individuals to further their education, if the taxpayer deals with the employer at arm’s length and it is reasonable to conclude that the benefit is not a substitute for salary, wages or other remuneration of the taxpayer”

* + - * + *DiMaria*: TP’s son enrolled in university and paid an award by employer directly. Not a taxable benefit for the father. It was paid directly to the son, and father had no duty to support his 21-year-old son or pay his tuition fees – therefore did not relieve him of an obligation, so not enriched
        + **Housing losses** – s 6(19) to (23)

Slide 45-46 of PPT EMPLOYMENT

If an eligible relocation (s 62 – 40km+, some other requirements), then first $15,000 not taxed and rest is half-taxed

* + - * **(3) What was the value of the benefit?**
        + **SLIDE 55** summarizes it – employment slides!!

FMW except in certain cases opportunity cost

* + - * + *Giffen*: frequent flier points as a result of job, redeemed them and used them for his family, taxable benefit with value as fair market value (lowest price for the airplane ticket)

**Admin policy changed** with respect to goods and services obtained with loyalty points: *no longer* requires these benefits to be included in income *so long as* they are not converted into cash, not indicative of an alternate form of remuneration, or not for tax avoidance purposes: *Income tax Technical News No 40 (2009)*

* + - * + *Youngman*: family are shareholders of corporation, corporation built luxury home for them which cost $400k, TP paid monthly rental based on FMV and gave $100k interest-free loan. FMW not appropriate measure b/c corporation “overbuilt” the house compared to other houses in the area (made it better). Appropriate measure was corporation’s opportunity cost when it was provided at the request of and specifications of the tP (how much it could have earned had it invested the money elsewhere)

Not arm’s length transaction 🡪 could be a reason for it

* + - * + *Detchon*: FMV of sending student to school; measure of value is not incremental cost to employer
  + Some fringe benefits are excluded under 6(1)(a) b/c there are different rules that deal with them (e.g. retirement – taxed under a different part of the Act, automobile expenses – under s 6 later, counselling – excluded for public policy reasons)
  + **Allowances**
    - Allowance: fixed payment paid to employee, typically to reimburse them, whether or not their actual cost is lesser or greater (employer does not account for its use) (e.g. $200 a day for food and lodging while travelling for biz)
      * S 6(1)(b) personal/living allowances is generally taxable except as prescribed
    - Reimbursement: payment from employer to employee to compensate for actual amount of expense incurred by employee on behalf of the employer
      * This is generally not taxable!
  + EMPLOYER LOANS AND STANDBY CHARGE NOT ON EXAM
* **Deductions in employment income**
  + s 8(2) general rule – no deductions allowed to be made except as expressly authorized under this section
  + s 8(1)(b) legal expenses in recovering wages – suing employer
  + 8(1)(f) salesperson’s expenses – required under employment K to pay his/her own expenses, regularly away from workplace, remunerated by commission, can deduct those expenses
    - Cannot deduct the amount if you received a non-taxable allowance on these expenses
      * You either have one or the other
  + 8(1)(h) travelling expenses – generally where employee required to pay own expenses under employment contract and did not receive deductible allowance
  + 8(1)(h.1) motor vehicle travel expenses under (h.1)
  + Office rent and assistants salary required under employment contract – subparagraph 8(1)(i)(ii)
  + Supplies required under employment contract – subparagraph 8(1)(i)(iii)
    - Limited to materials that are consumed directly in the performance of the duties of the employment
  + Union dues – subparagraph 8(1)(i)(iv)
  + Professional board dues – subparagraph 8(1)(i)(vii)
  + CPP and EI premiums – paragraph 8(1)(l.1) – for remuneration paid to an assistant or substitute
  + Registered pension plan contributions – paragraph 8(1)(m)
  + Home office expenses
    - 8(13) is a limitation (not a permissive deduction)
    - **It is only relevant if the amount is otherwise deductible under 8(1)(f) or 8(1)(i)**
    - So you need to fit into 8(1)(f) (salesperson’s expenses) or 8(1)(i)(ii) (“office rent” and “assistant salary” only)
    - The limitation:
      * #1: Must be place where individual principally performs duties of employment, OR
        + Used exclusively during the period for purposes of earning income from employment and used on a regularly basis for meeting customers or other persons In the ordinary course of performing duties, and
      * #2 deduction shall not exceed amount of income earned from employment, and
      * #3 if not deductible because of #2, then may carry forward deduction for **one year only**

# Subdivision e deductions

* **Moving expenses – s 62**
  + Permits the deduction of moving expenses incurred in respect of an “eligible relocation”
  + “Eligible relocation” is defined in subsection 248(1):
    - The relocation enables the taxpayer to carry on business or be employed in Canada or to attend post-secondary education
    - New home and old home must be in Canada [exception for students, subsection 62(2)]
    - New home must be 40km+ closer to new work location than old home
  + “Moving expense” is defined in subsection 62(3)
    - Moving expenses – include travel costs, transportation and storage costs, legal fees and land transfer tax, mortgage cost + utility cost during reasonable measures to sell it (provided TP not living there at the time), cost of replacing drivers licence and vehicle permits, etc.
  + Limited to the taxpayer’s income from employment at the new location or amounts receive by students as scholarships, grants etc…
    - Unused portion can be carried forward
      * **Cannot create a loss through moving expenses**
        + May be deducted in one following year provided they have sufficient income if not enough income in current year
  + **CASE LAW:**
  + *Gianakopoulos* ***-*** Shortest distance is not the straight line – only shortest distance physically possible
  + *Nagy* ***-*** Shortest route that the reasonable person would travel
    - 18 left turns, 19 right turns, going through obscure roads – no reasonable person would follow this, so can’t consider it
  + *Wunderlich* ***-*** No requirement to cease employment and get employment to another
    - Moved 40km but kept same job
  + *Gelinas* ***-*** Part-time to full-time employment sufficient to ground claim
  + *Abrahamsen* ***–*** can re-locate, then find new employment
* **Child care expenses – s 63**
  + Permits a deduction in respect of child care expenses incurred to enable the taxpayer who resided with the child to carry on business or be employed in Canada or to attend post secondary education
* Individual w/ **eligible child**
  + Taxpayer’s child, spouse or common law partner who depends on partner’s support
  + Child must be under 16 at any time in the year or of mental infirmity
  + Child’s Income does not exceed $10k/yr
  + **Maximum deduction** is limited to the lesser of:
    - Two-thirds of income; and
      * The sum of:
      * $11,000 in respect of a disabled child
      * $8,000 in respect of each child under 7 years of age at the end of the year
      * $5,000 in respect any other child
  + Where both the taxpayer and a “supporting person” care for the child, child care expenses must normally be deducted by the person with the lower income
    - “Supporting person” generally means a parent of the child or the taxpayer’s spouse or common law partner
    - In effect Only available to lower income spouse
  + **Eligible expenses** = babysitting, child care, etc.
    - **Excludes recreational expenses**
    - Allowable expenses of only watching the children to protect them and allow parent to be employed/attend post secondary education
    - Does not allow for expenses relating to improving athletic/artistic ability, etc. b/c would have been incurred regardless of whether parent was working
  + **Provided they allow person to work, attend educational institutions, etc.**
* **Support Payments – Paragraph 60(b)**
  + Periodic payment exclusively for the support of a spouse or common-law partner or former spouse or common law partner of the taxpayer
  + Taxpayer and person are living separate and apart
  + Amount is paid pursuant to a court order
  + Amounts paid as child support are not deductible unless paid pursuant to an agreement entered into before May 1997, which has not been varied or amended
* **RRSP contributions – Paragraph 60(i); Section 146**
  + Amounts contributed to RRSP are deductible, and are taxed when you take it out (years later usually), but amounts earned from investing the contributions are non-taxable
  + If you make excess contributions, there is a tax penalty
  + Excess contributions by $2000 – 1% per month tax penalty

# CALCULATIONS AND CARRYFORWARD/CARRYBACK AND OTHERS

**To get 3(d) deduction FORMULA – *NOTE BETTER S 3 CALCULATION* UNDER ANOTHER SECTION (SEE TABLE OF CONTENTS)**

* + **Subdivision E calculations – under 3(c)**
  + losses from source, employment, biz, property are referred to as non-capital losses
  + **Losses form source, employment, office, biz, property taken into account under 3(d)**
  + Also different from capital losses; **Capital losses are dealt with in 3(b)**
  + Act may allow carryover where not used in some year
  + Carryover used to determine taxable income

**CALCULATION IN MORE DETAIL ON SLIDES 9-12 OF TAXABLE INCOME (SECOND LAST)**

* **NON-CAPITAL LOSS**
  + “non-capital loss” of a taxpayer for a taxation year is defined in subsection 111(8)
  + Includes the unused portion of an allowable business investment loss, provided the taxation year was not more than 10 years ago
  + **Can be carried back 3 years of forward 20 years – paragraph 111(1)(a)**
    - *NOTE*: carry forward restricted in certain cases, such as home office expenses (only one year forward)
  + Can be deducted against income earned in the year from any other source or taxable capital gains
  + Losses from older years must be used before non-capital losses from more recent years – paragraph 111(3)(b)
  + S. 111(8) definition – effectively is E-F
  + E are losses from employment , business or property plus amounts deducted under s. 111(1)(b); F are positive amounts from sources of income and capital gains (the amount determined under s. 3(c) less subdivision e deductions
* **NET CAPITAL LOSS**
  + “net capital loss” of a taxpayer for a taxation year is defined in subsection 111(8)
  + Includes the unused portion of any allowable business investment loss realized in a taxation year more than 10 years ago
  + **Can be carried back 3 years or forward indefinitely – paragraph 111(1)(c)**
  + Are only deductible against taxable capital gains – subsection 111(1.1)
  + Losses from older years must be used before net capital losses from more recent years – paragraph 111(3)(b)
  + S. 111(8) definition is A – B
  + A is amount determined under s. 3(b)(ii); B is amount determined under s. 3(b)(i)

**Tax rates in s 117** 🡪 the rates to which taxable income applies

**Restricted farm losses** 🡪 undeductible portion of part-time farm losses

* Can be carried back 3 years or forward 20 years, but only deductible against income from farming biz in one of thos years

**Farm losses**

* Not restricted farm losses – treated b/c farming is a biz just like any other

**Automobile / motor vehicle expenses limit**

* S 13(7)(g) Where cost to TP exceeds $30k, **capital cost deemed $30k**