

Question 1

ISSUE

What is Allan's taxable income?

RELEVANT LEGISLATION

Taxable income = Assessable income - Allowed deductions

S 6-5 ITAA 97

Assessable income includes income according to the ordinary concept, which is called ordinary income. If a person is an Australian resident, his assessable income includes the ordinary income directly or indirectly derived from all sources, whether in Australia or not.

s 21A ITAA 36

"Non-cash business benefit" means property or service provided to a business taxpayer wholly or partly in connection with a business relationship. Also a non-cash business benefit may be treated as an income according to ordinary concept even if it is not convertible into cash, provided otherwise of an income nature. "Non-cash business benefit" implies exchange of goods or services, where business relationship is involved, between parties. However, this section is not applicable where the total value of non-cash benefits received by the taxpayer in the income year does not exceed \$300 (ITAA36 s 23L (2));

A capital gain from a dwelling is ignored for CGT purposes if the taxpayer is an individual and the dwelling was the taxpayer's main residence through the ownership period (s 118-110);

All remuneration or rewards for personal service, whether received in capacity of employee or otherwise in connection with employment or personal service, are income according to ordinary concept. In turn, assessable earnings for personal service include salaries and wages.

According to the TR 97/11 in order to determine whether person carries on a business the following has to be considered:

- whether the activity has a significant commercial purpose or character; this indicator comprises many aspects of the other indicators;
- whether the taxpayer has more than just an intention to engage in business;
- whether the taxpayer has a purpose of profit as well as a prospect of profit from the activity;
- whether there is repetition and regularity of the activity;
- whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business;
- whether the activity is planned, organised and carried on in a businesslike manner such that it is directed at making a profit;
- the size, scale and permanency of the activity;

- Whether the activity is better described as a hobby, a form of recreation or a sporting activity.

Barter

The consideration received from a barter represents assessable income under s 21 A where the transaction is a business one (IT 2668). However, according to the Tax Ruling 1999/17 consideration which is merely the proceeds of a hobby, pastime, domestic or social agreement, or the receipt of a windfall gain would not fall within the concept of s 25(1).

ATO accepts a fair market value of the asset as adequate reflection of the money value or arm's length value of the consideration. As far as business-orientated countertrade organizations levy a number of charges and fees on the member, some of those fees and charges will be allowed as deductions under s 51.

Service and transaction fees, where they directly related to the business transactions are deductible expenses. Joining fees, which are one-off payments that give parties access to the countertrade organisation's services and to new areas of opportunity for trade, are considered as a capital in nature and are not deductible under s 51(1).

APPLICATION & CONCLUSION

Allan and Bettie sold their residential property and this gain is an exempt from CGT, so no taxes need to be paid on this receipt. Also given that both individuals are employed their income from employment is subject to s 6-5, which clearly states that their salary is an assessable income. Allan is usually shared a home-made cakes and scones, and as such these delights are less likely being regarded as assessable income as far as their total value won't exceed \$300, even though they are deemed to be convertible into cash due to the fact that it is a "non-cash business benefit".

However, considering the fact that he also receives bottles of Shiraz, where value of each bottle exceed \$300, this "non-cash business benefit" is a subject to the income tax and will be regarded as assessable income.

2) Betty started to make marmalade and relish and was exchanging with neighbours, which under s 25(1) is not regarded as taxable income. Nevertheless, after the successful exchange Betty opened up a store on the market and started was trading twice a week selling the remainder of the stock to the supermarkets. Even though she did not have an intention to make profit, the other indicators of whether person carries on a business has to be considered.

Most likely Allan's activity has a significant commercial character as far as she deals with supermarkets, where business relationship involved. Also his wife was studying course related to her business activity prior to commencing her business, which means that she probably had initially an intention to start such a business. In addition, even though she trades on the market only twice a month, her activity is regular and involves a relationship building process with the clients and other businesses. Consequently, taking all the facts into account it can be said that Allan and Betty carry on a business and their income will be assessable.

3) According to the s 21 A Betty and Allan's activities are regarded as business one, thus consideration received from the barter (other services) will be treated as assessable income. All business related expenses can be claimed as deductible.

(b) All participants who are subject to \$50 charge are not able to deduct such an expense under s 51 (1) due to the fact that this is a one-off payment and it is treated as the joining fees, rather than as service and transaction fees. Thus, Suzie and other participants are not allowed to deduct \$50 joining fees, however they are allowed to deduct any other business related expenses.

Question 2

RELEVANT LEGISLATION

Tax Ruling 95/20

A deduction is not allowable for the cost of meals consumed by employee performing artists in the normal course of working day. Court held that the cost of meals does not have sufficient nexus with the income-producing activity. Even though there are some special requirements by employer such as consumption of abnormal amount of food in order to gain weight, it is not treated as allowable deduction. *Cooper's* case can support this point of view, where football player was required to consume an excessive amount of food in order to maintain and gain some weight for playing purpose. In this case court held that the fact that the employee is required, as a term of his contract, to incur a particular expense does not convert the expenditure that is not incurred in the course of income producing operations into deductible outgoings.

In order to claim a clothing expense, there has to be a sufficient nexus between conventional clothing and income producing activity of a person. The fact that expenditure is on additional clothing is not sufficient to establish deductibility. If the income-earning activity does not imply the wearing of the additional clothing and the clothes are not specific and suited only for the income-earning activities (TR 97/12).

A deduction is not allowable for a cost of maintaining general fitness or body shape. However, a deduction may be allowable if an artist can show that physical fitness and physical activity are essential elements of income-earning activity and are the means by which the performing artists earn their income.

A deduction is allowable for the cost incurred by a performing artist in undertaking work-related travel. Travel expenses include the cost of accommodation, fares, meals and incidentals. The cost of accommodation is deductible as long as the occasion of the outgoing gives the expenditure the essential character of a working expense.

Deductions are allowable for the cost of training to maintain existing skills or acquire or improve related skills.

According to the **ATO** a person can make tax deductible gift or donation to organisations that have the status of deductible gift recipients (DGR). The Royal Children's Hospital has a DGR status.

According to **Tax Rulings 93/30** the deductions are allowable where

- part of home is used for income producing purpose and has a character a "place of business";
- part of home is used in connection with taxpayer's income - earning activities and does not constitute a "place of business";

There are 2 types of expenses associated with home:

- 1) Occupancy expenses. Related to ownership or use of a home. This includes rent.
- 2) Running expenses. Related to use of facilities at home.

APPLICATION & CONCLUSION

- 1) Referring to Cooper's case and TR 95/20 it is clear that even though the taxpayer has to put on extra weight and this requirement is a special requirement of her employment, there is no sufficient nexus between income producing activity and consumption of fast food leading to the inevitable weight gain. Thus, \$1,000 will not be allowed as a deduction.
- 2) As far as Nicole purchased new clothing that is not related to her employment, there is no sufficient connection between additional clothing purchased and her income-gaining activity. Consequently, the cost of new clothing (\$2,000) will not be allowed as a deduction. Hiring of dietician and personal trainer and spending a week in a health clinic are not related to the income-producing activity of Nicole, because it is her own initiative and wish. Therefore, no deduction is allowed. However, if it is a requirement of a producer she will be able to claim mentioned costs as deductions.
- 3) As far as Royal Children's Hospital has a DGR status, according to the ATO rules Nicole will be allowed to deduct the cost of donations (\$2,000).
- 4) Travel expenses of Nicole to USA are deductible according to TR 95/20 as well as cost of accommodation and meals, because all those expenses are able to meet test of deductibility as well as related to income-producing activity. The reason of staying further for a week in USA was communication with agents, which means that it is directly related to the income-producing activity.
- 5) Nicole hired a trainer to improve her voice projection and she was advised to do so by her manager meaning that it is of utmost importance for her career to maintain the certain level of voice. Thus, referring to TR 95/20 it can be clearly seen that such activity is related to coaching expenses and this expense is tax deductible.