### RESIDENT

#### TAXED ON WORLDWIDE INCOME

1. **Total amount**
2. **Cash or otherwise**
3. **Received by; accrued to; or in favour of the resident**
4. **In YOA**
5. **Excluding amounts of capital nature**

#### NON-RESIDENT

1. **Total amount**
2. **Cash / otherwise**
3. **Received by; accrued to; in favour of non-resident**
4. **From source within / deemed to be within RSA**
5. **Excluding amounts of capital nature**

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### CASES

<table>
<thead>
<tr>
<th>Case</th>
<th>Principle</th>
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</table>
| COHEN | - Place where person will return after “wanderings”  
- Mode of life outside YOA must be considered  
- Decision = TP = RESIDENT  
- Country to which person naturally & as matter of course return |
| KUTTEL | - Ordinary resident where usual / principal residence = “real home”  
- Where had usual / principal residence  
- May have 2nd home in SA (NOT be seen as home that return to after wanderings) |
| LEVENE | - If person lives in place with degree of permanence = ordinary |
**PHYSICAL PRESENCE**

**Examples 5.1, 5.2 SILKE**

1. For period / periods > **91 DAYS** in aggregate during relevant YOA

   AND

2. Period(s) > **91 days** in aggregate during **5 years of assessment preceding**

   AND

3. For period(s) exceeding **915 days in aggregate** during **5 years of assessment**

   Therefore becomes resident in year 6

   - Part of day is included in day
   - Day spent in transit through SA not included as day

**PHYSICALLY ABSENT:**

- Outside RSA for CONTINUOUS PERIOD of at 330 full days

- Immediately after day person ceases to physically present

- If return to RSA and meets > 91 days and other requirements = resident again from FIRST day of YOA

**REMEMBER:** Never apply physical presence test if person ordinarily resident for ANY portion of the year

**THEREFORE:** cannot apply test to person in the YOA they emigrate / immigrate

**RESIDENT: OTHER THAN NATURAL PERSON**

- Co’s; CC’s; Trusts

- **Defined as “resident” IF** -
  
  - Incorporated / formed in SA OR
  - Ito CO’s Act
  - Liable for tax on world-wide income
  
  - **EFFECTIVELY MANAGED** in RSA
  - Income Tax interpretation note 6
  - Where CO managed on day-to-day basis
  - Key management & commercial decisions necessary for conduct of business are in substance made

- **Note: Double Tax agreements have priority**

**TOTAL AMOUNT IN CASH / OTHERWISE**

**NB! Read chp 2 pg. 15 on cases details**

<table>
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<tr>
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<tbody>
<tr>
<td>BUTCHER BROS</td>
<td>• R’s accruing must have ascertainable monetary value</td>
</tr>
<tr>
<td></td>
<td>• Onus on CIR to establish amount</td>
</tr>
<tr>
<td></td>
<td>• If cannot establish; then not incl in Gi</td>
</tr>
<tr>
<td>DELFOS</td>
<td>• Must have monetary value</td>
</tr>
<tr>
<td></td>
<td>• Or must be able to be converted into money</td>
</tr>
<tr>
<td>LACE</td>
<td>• Market value of asset should be incl in TP’s GI</td>
</tr>
<tr>
<td>BRUMMERIA</td>
<td>• Monetary value can be d/mined for life-right that accrues to TP</td>
</tr>
<tr>
<td></td>
<td>• Therefore amount of benefit valued against market-related i-rate = incl. in Gi</td>
</tr>
<tr>
<td>Received By / Accrued To / In Favour Of</td>
<td>Case</td>
</tr>
<tr>
<td>----------------------------------------</td>
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<tr>
<td>LATEGAN</td>
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- Where i-free loan is given in return for something, THEN notional I represents total amount: ONLY apply if i-free loan granted in exchange for G&S’s
- Amount Must be received
- Not only in form of cash
- Incl value of any form of property

<table>
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<th>RECEIVED BY</th>
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<tbody>
<tr>
<td>DELFOS</td>
<td>Commissioner cannot tax TP at both receipt &amp; accrual (if date different)</td>
</tr>
<tr>
<td>SILVERGLEN INVESTMENTS</td>
<td>Tax on whichever date occurs first</td>
</tr>
<tr>
<td>GELDENHUYS</td>
<td>Received by person on their OWN behalf &amp; FOR OWN BENEFIT</td>
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</tbody>
</table>
| GEN & CO                              | Receive for own benefit
|                                       | Borrowed money is not received by borrower within meaning of “GI” |
| PYOTT                                 | Deposits Received
|                                       | Received deposit for own benefit
|                                       | Once TP rec an amount as his own to be dealt with as he wishes = incl in GI
|                                       | If placed in separate trust account = not GI |
| COT                                   | Stolen Money
|                                       | Any amount which is stolen is not “received” |
|                                       | MP Finance CASE overrules |
| MP FINANCE                            | Retaining them for their own benefit |
|                                       | Therefore = receipts |
| ITC                                   | Conducting Illegal Business (stolen diamonds; knowingly)
|                                       | Proceeds from selling diamonds = receipts and accruals
|                                       | On own behalf |
| DELGOA BAY                            | Lottery |
|                                       | Irrespective of whether source legal or illegal |
|                                       | Income of illegal business = taxable |

<table>
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<tr>
<td>LATEGAN</td>
<td>“Accrued to” = entitled to</td>
</tr>
<tr>
<td>DELFOS</td>
<td>“Accrued to” = due and payable</td>
</tr>
<tr>
<td>PEOPLE’S STORES</td>
<td>Confirmed Lategan</td>
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</table>
### PROVISION
- ACT altered
- Amounts rec **BEFORE 23 MAY 1990**: allowed to be discontinued to their PV
- Amounts rec **AFTER** are not allowed to be discontinued; **TOTAL** amount included

### MOOI
- Taxpayer must become “unconditionally entitled” to amount to be included in GI

### IN FAVOUR OF
- **WITWATERSRAND ASSOCIATION OF RACING CLUBS**
  - Embark on scheme of profit-making
  - Donated net income **AFTER** it was rec for own benefit
  - Association acted as principle rather then “Agent”
  - Incl in GI

- **S24 M**
  - **UNQUANTIFIED AMOUNTS**:
    - If A disposed of for a consideration that cannot be quantified in that YOA;
    - The unquantified amount is deemed to not have accrued to that person in that YOA
    - Only accrued when it can be quantified

### NOT CAPITAL NATURE

1. **PRINCIPLE OF TREE AND FRUIT**
2. **SUBJECTIVE TEST: D/MINE INTENTION OF TP**
   - **(A) STOTT**
   - **(B) PICK ‘N PAY**
3. **CHANGE OF INTENTION**

### CIR V VISSER:
- "Income is what capital produces"
  - "carrying on scheme of profit making"
  - Intention = clear factor; must have profit-making motive to be incl in GI
  - Look @ intention
  - Will constitute revenue = if they are a “gain made by an operation of business in carrying out a scheme of profit making”

### STOTT:
- Mere fact that A sold at profit’ does not mean there was change off intention

### NATAL ESTATES
- Fact that initial intent = investment; not decisive
- From all facts, establish if TP has crossed the RUBICON & gone over to profit-making scheme
4. **MIXED INTENTION**

5. **S 82: onus**

6. **OBJECTIVE TEST**

7. **SPECIFIC TRANSACTIONS: (not special inclusions)**
   
   a. **GAMBLING WINNINGS / LOTTERY / PRIZES**
   
   b. **GIFTS & INHERITANCE**
   
   c. **GOODWILL**
   
   d. **DAMAGES / COMPENSATION REC**

- Find dominant intention
- Dominant = alternative intention entirely 2ndary

- Burden of proof that amount exempt / not liable to any tax
- Is upon person claiming
- Balance of probabilities

- Livelihood: income
- Element of luck: capital
- Breeders/trainers/owners of horses: knowledge & skill & trade : income

- Capital (not a business venture)

- Capital: for good name / client base
- If sold for share of future profits: annuity = not capital

- Which “hole” is filled by amount?
- Hole in profits? Or asset structure?

**FOURIE BELEGINGS**

- Amount paid iro loss of future profit suffered through early termination
- Revenue in nature

**CTR which is means of producing income**

- If cancelled: TP can’t generate income = CAPITAL
CTR which is directed by its performance towards making a profit
- CTR is not means by which TP earns income
- BUT product of income earning activities
- = REVENUE

REBATES FOR 2013

S6
- Primary rebate 11 440 (2012: 10 755)
- Secondary rebate 6 390 (2012: 6 012)
- Tertiary rebate (> 75 years) 2 130 (2012: 2 000)

RESIDENTS EARNING FOREIGN INCOME:

- S25D: spot rate vs. average rate → the TP can elect

1. BUSINESS ACTIVITIES
   - Include in GI (worldwide income)
   - AND all deduction allowed to Act
   - BUT: DTA normally contains special rules into income from PE
   - Foreign Losses ring-fenced: cannot be set off against RSA trade

2. RENT EARNED FROM IMMOVABLE PROPERTY OUTSIDE RSA
   - GI with allowable deductions
   - DTA normally contains special rules regarding immovable property

3. ROYALTIES
   - GI and deductions (s11D / s11(gC))
   - DTA usually contains special rules into withholding taxes

4. FOREIGN DIVIDEND INCOME
   - Specifically included in GI
   - Exemption s10B (later in BEL 300)