

BEL 213: SUMMARY: GI & SPECIAL INCL

R
XXX

GROSS INCOME

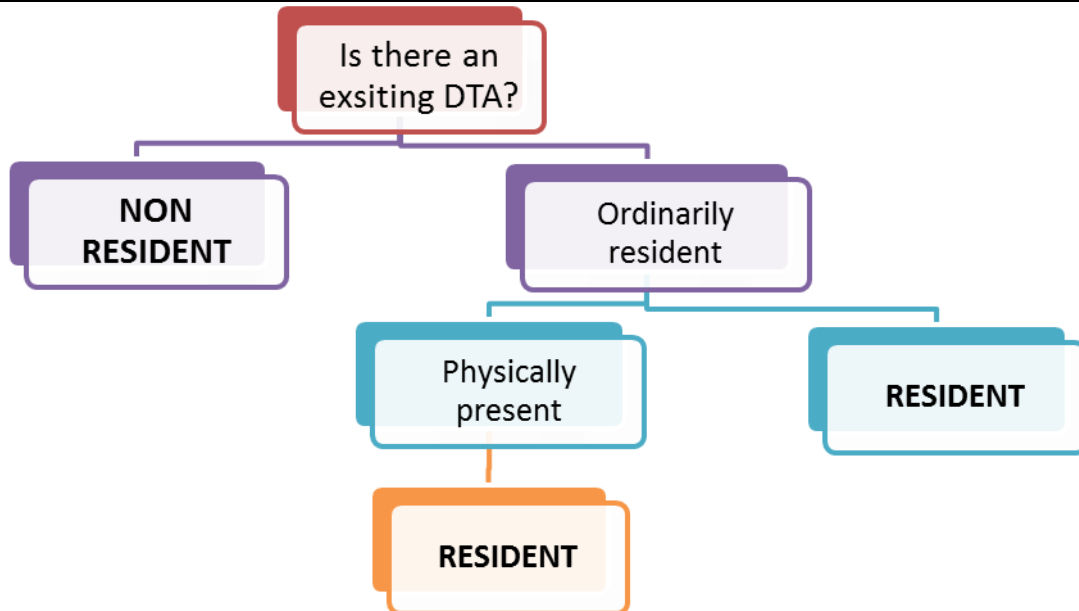
(S1)

DEFINITION	<u>RESIDENT:</u>	<u>NON-RESIDENT:</u>
	<ol style="list-style-type: none"> 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 	<ol style="list-style-type: none"> 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

RESIDENT

RESIDENT: NATURAL PERSON

Taxed on
worldwide
income



ORDINARILY RESIDENT

Burden of
proof on TP
prove not
ordinarily
resident

TP emigrating =
become non-
res on day he
emigrates

Case

Principle

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

<p>PHYSICAL PRESENCE</p> <p><i>Examples</i> 5.1, 5.2 SILKE</p>	<p>1. For period / periods > 91 DAYS in aggregate during relevant YOA</p> <p>AND</p> <p>2. Period(s) > 91 days in aggregate during 5 years of assessment preceding</p> <p>AND</p> <p>3. For period(s) exceeding 915 days in aggregate during 5 years of assessment</p> <p><i>Therefore becomes resident in year 6</i></p> <p>➤ Part of day is included in day</p> <p>➤ Day spent in transit through SA not included as day</p>		<p>PHYSICALLY ABSENT:</p> <ul style="list-style-type: none"> • 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 <p>REMEMBER: Never apply physical presence test if person ordinarily resident for ANY portion of the year</p> <p>THEREFORE: cannot apply test to person in the YOA they emigrate / immigrate</p>
<p>RESIDENT: OTHER THAN NATURAL PERSON</p>	<ul style="list-style-type: none"> • Co's; CC's; Trusts • Defined as "resident" IF - <ul style="list-style-type: none"> ○ Incorporated / formed in SA OR <ul style="list-style-type: none"> - Ito CO's Act - Liable for tax on world-wide income ○ EFFECTIVELY MANAGED in RSA <ul style="list-style-type: none"> - 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 		
<p>TOTAL AMOUNT IN CASH / OTHERWISE</p> <p><i>NB!</i> <i>Read chp 2 pg. 15 on cases details</i></p>	<p>Case</p>	<p>Principle</p>	
	<p>BUTCHER BROS</p>	<ul style="list-style-type: none"> • R's accruing must have ascertainable monetary value • Onus on CIR to establish amount • If cannot establish; then not incl in GI 	
	<p>DELFO</p>	<ul style="list-style-type: none"> • Must have monetary value • Or must be able to be converted into money 	
	<p>LACE</p>	<ul style="list-style-type: none"> • Market value of asset should be incl in TP's GI 	
	<p>BRUMMERIA</p>	<ul style="list-style-type: none"> • Monetary value can be d/mined for life-right that accrues to TP • Therefore amount of benefit valued against market-related i-rate = incl. in GI 	

		<ul style="list-style-type: none"> 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
	LATEGAN	<ul style="list-style-type: none"> Amount Must be received Not only in form of cash Incl value of nay form of property
RECEIVED BY / ACCRUED TO / IN FAVOUR OF	Case	Principle
	RECEIVED BY	
	DELFO	<ul style="list-style-type: none"> Commissioner cannot tax TP at both receipt & accrual (if date different)
	SILVERGLEN INVESTMENTS	<ul style="list-style-type: none"> Tax on whichever date occurs first
	GELDENHUYS	<ul style="list-style-type: none"> Received by person on their OWN behalf & FOR OWN BENEFIT
	GEN & CO	<ul style="list-style-type: none"> Receive for own benefit Borrowed money is not received by borrower within meaning of "GI"
	PYOTT	<p><u>DEPOSITS RECEIVED</u></p> <ul style="list-style-type: none"> 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	<p><u>STOLEN MONEY</u></p> <ul style="list-style-type: none"> Any amount which is stolen is not "received" MP FINANCE CASE overrules
	MP FINANCE	<ul style="list-style-type: none"> Retaining them for their own benefit Therefore = receipts
	ITC	<p><u>CONDUCTING ILLEGAL BUSINESS</u> (stolen diamonds; knowingly)</p> <ul style="list-style-type: none"> Proceeds from selling diamonds = receipts and accruals On own behalf
	DELGOA BAY	<ul style="list-style-type: none"> Lottery Irrespective of whether source legal or illegal Income of illegal business = taxable
	ACCRUED TO	
	LATEGAN	<ul style="list-style-type: none"> "Accrued to" = entitled to
	DELFO	<ul style="list-style-type: none"> "Accrued to" = due and payable
PEOPLE'S STORES	<ul style="list-style-type: none"> Confirmed Lategan 	

PROVISION	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Taxpayer must become “unconditionally entitled” to amount to be included in GI 		
IN FAVOUR OF			
WITWATERSRAND ASSOCIATION OF RACING CLUBS	<ul style="list-style-type: none"> • Embark on scheme of profit-making • Donated net income AFTER it was rec for own benefit • Association acted as principle rather than “Agent” • Incl in GI 		
S24 M	UNQUANTIFIED AMOUNTS: <ul style="list-style-type: none"> • 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	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>1. PRINCIPLE OF TREE AND FRUIT</p> <p>2. <u>SUBJECTIVE TEST: D/MINE INTENTION OF TP</u></p> <p>(A) <u>STOTT</u></p> <p>(B) <u>PICK ‘N PAY</u></p> <p>3. <u>CHANGE OF INTENTION</u></p> </td> <td style="width: 50%; vertical-align: top;"> <p><u>CIR V VISSER:</u> “Income is what capital produces”</p> <hr/> “carrying on scheme of profit making” <p>Intention = clear factor; must have profit-making motive to be incl in GI</p> <hr/> <ul style="list-style-type: none"> • Look @ intention • Will constitute revenue = if they are a “gain made by an operation of business in carrying out a scheme of profit making” <hr/> <p><u>STOTT:</u></p> <ul style="list-style-type: none"> • Mere fact that A sold at profit’ does not mean there was change off intention <hr/> <p><u>NATAL ESTATES</u></p> <ul style="list-style-type: none"> • Fact that initial intent = investment; not decisive • From all facts, establish if TP has crossed the RUBICON & gone over to profit-making scheme </td> </tr> </table>	<p>1. PRINCIPLE OF TREE AND FRUIT</p> <p>2. <u>SUBJECTIVE TEST: D/MINE INTENTION OF TP</u></p> <p>(A) <u>STOTT</u></p> <p>(B) <u>PICK ‘N PAY</u></p> <p>3. <u>CHANGE OF INTENTION</u></p>	<p><u>CIR V VISSER:</u> “Income is what capital produces”</p> <hr/> “carrying on scheme of profit making” <p>Intention = clear factor; must have profit-making motive to be incl in GI</p> <hr/> <ul style="list-style-type: none"> • Look @ intention • Will constitute revenue = if they are a “gain made by an operation of business in carrying out a scheme of profit making” <hr/> <p><u>STOTT:</u></p> <ul style="list-style-type: none"> • Mere fact that A sold at profit’ does not mean there was change off intention <hr/> <p><u>NATAL ESTATES</u></p> <ul style="list-style-type: none"> • Fact that initial intent = investment; not decisive • From all facts, establish if TP has crossed the RUBICON & gone over to profit-making scheme
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	<p>4. <u>MIXED INTENTION</u></p> <p>5. <u>S 82: onus</u></p> <p>6. <u>OBJECTIVE TEST</u></p> <p>7. <u>SPECIFIC TRANSACTIONS: (not special inclusions)</u></p> <p>a. GAMBLING WINNINGS / LOTTERY / PRIZES</p> <hr/> <p>b. GIFTS & INHERITANCE</p> <hr/> <p>c. GOODWILL</p> <hr/> <p>d. DAMAGES / COMPENSATION REC</p>	<ul style="list-style-type: none"> • Find dominant intention • Dominant = alternative intention entirely 2ndary <hr/> <ul style="list-style-type: none"> • Burden of proof that amount exempt / not liable to any tax • Is upon person claiming • Balance of probabilities <hr/> <ul style="list-style-type: none"> • Livelihood: income • Element of luck: capital • Breeders/trainers/owners of horses: knowledge & skill & trade : income <hr/> <ul style="list-style-type: none"> • Capital (not a business venture) <hr/> <ul style="list-style-type: none"> • Capital: for good name / client base • If sold for share of future profits: annuity = not capital <hr/> <ul style="list-style-type: none"> • Which “hole” is filled by amount? • Hole in profits? Or asset structure? <p><u>FOURIE BELEGGINGS</u></p> <ul style="list-style-type: none"> • Amount paid iro loss of future profit suffered through early termination • Revenue in nature <p><u>CTR which is means of producing income</u></p> <ul style="list-style-type: none"> ○ If cancelled: TP can't generate income = CAPITAL
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		<p><u>CTR which is directed by its performance towards making a profit</u></p> <ul style="list-style-type: none"> ○ CTR is not means by which TP earns income ○ BUT product of income earning activities ○ = REVENUE
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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 ito Act
 - BUT: DTA normally contains special rules iro 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 iro withholding taxes
 - 4. FOREIGN DIVIDEND INCOME**
 - Specifically included in GI
 - Exemption s10B (later in BEL 300)