**Gross Income**

**Definition:** In the case of any resident, the total amount, in cash or otherwise, received by or accrued to OR in the case of a non-resident, the total amount, in cash or otherwise, received by or accrued to from a source with the Republic, during the period of assessment, excluding receipts or accruals of capital nature, but including such amounts, (special inclusions).

- The total amount: Butcher Bros v CIR
- In cash or otherwise: Lategan v CIR, Brummeria v CSARS, CIR VS Ochberg
- Received by or accrued to: Delfos v CIR, Pyott Ltd v CIR, Witswatersrand Racing Club v CIR, Geldenhuys v CIR
- Resident: Cohen v CIR
- Not of a capital nature: Burea West v CIR, Natal Estates v CIR, Founders Hill vs CIR

**Residents VS Non-residents**

➤ Non-residents must be from a source within the republic.

**Total Amount**

- The amount must be quantifiable >> CIR VS Butcher Bros
- Difference between no amount and difficult to calculate!
- Does NOT include notional amounts (interest you could have earned if you invested your money)

➤ S24M: Disposal of asset for an unquantified amount: Delay in accrual >> Deemed to be accrued to/received in the year the amount is quantified.

**In Cash or Otherwise**

“Otherwise” = Non-cash items

- Includes every form of property, including debts and rights of action = CIR VS Lategan
- Must be unconditionally entitled to = CIR VS Lategan
- Includes barter transactions (Trading)
- Valued at earliest of receipt or accrual
- Can no longer use present value of accruals, must use face value = Peoples store case
SARS takes the market value of the item

The right to receive an interest free loan is a benefit received to a person > would’ve had to pay say R60 000. It is therefore included in gross income = **CSARS VS Brumeria**

**Received by or Accrued to**

Either receipt OR accrual >> It’s a question of timing - *always earlier!*

Cannot be at both, either received or either accrued = **Delfos v CIR**

Accrued = you are unconditionally entitled to

E,g All legal conditions are fulfilled (delivery)

Use the value ‘now’ FACE VALUE

* Amounts disposed are included. E,g Receive money and transfer straight away

Shares received: The value of the shares received is included as gross income irrespective of the % holding, whether 100% or not = **CIR VS OCHBERG**

S7 B. >>>> If there is a variable renumeration (commission, bonuses, leave pay) then it is only included in gross income when the amount is received.

Therefore it is also only a deduction for the employer (person paying) when paid

**Receipt**

Must be received on taxpayers behalf for their own benefit

If an agent or rep, amount does not constitute as received for taxpayers own benefit, therefore not included in gross income = **Geldenhuys v CIR**

Ignore amounts received on behalf of others

Must be a legal obligation to pay an amount over to the taxpayer

Uncertain legal obligation to pay amounts over is still a receipt

Illegal receipts:

Illegal receipt is included in gross income if have *no intention to repay* it. >> Cannot have an accrual for illegal transaction but can have a beneficial receipt if stole cash etc = **MP Finance group case**

- **Person stealing money:** No transaction between 2 parties = No receipt
- **Fraudulent transactions:** Is a receipt as there’s an agreement (contract)

IN80: Differs!! SARS wants person stealing money to include in gross income
If money is received by the taxpayer for another party and they do not have a MORAL (have a voluntary) OBLIGATION to pay it over, then it is included in the taxpayers income. = CIR VS Witwatersrand Racing Club > Must consider S18(A) - Donations to PBO > 10% limit

Entitled to once all obligations and conditions are fulfilled = Cactus Case

Variable expenses such as bonuses, commission, leave pay etc, is only included in gross income once cash is received by the taxpayer.

Thus variable expenses only qualifies as a deduction for the employer when paid over.

Receipts in Advance + Deposits

S24 C Deduction!!

- Allows a taxpayer who has income received in advance
- Which is included in income
- A deduction can be claimed as a provision when:
  
  a) An amount is received or accrued in terms of a contract
  
  b) SARS is satisfied that the amount will be used to finance future expenditure
  
  c) Which will be incurred in the performance of his obligations in terms of the contract

  **VALUE of deduction**: (Cost% x Amount received or Accrued) - Actual expenditure incurred

  >> Receipts in advance & Deposits IF NOT REFUNDABLE

  >> Settlement discounts:

  - Discounted amount before settlement date = Gross Income
  
  - Add discount disallowed now if not paid before settlement date (This will only be added to gross income after settlement date - when know if will pay or not)
Differentiate from tax payer having an obligation to pay back as in a contract or if needs to just deliver service.

- E.g. Deposits or provisions for warrantees - Anything where the company must refund a portion of revenue which was included in income, to the customer Pyott Ltd Case

*** Cannot use S24C for contingent liabilities for possible obligations, must be definite.

**Accrual**

An amount accrues to a taxpayer only when he becomes unconditionally entitled to it = Lategan

--- Discounts depends on whether the customer paid in time the frame, then revenue less the discount is included in gross income. If paid after time frame = no discount = full amount in gross income.

**Value and Timing**

*Face Value! -- Use actual value of receipt/ market value of any amount which accrues to taxpayer in future. = People stores case*

- Timing: Which tax year it accrues to you

- Earlier of receipt or accrual

>>> Unquantifiable amounts and deemed non-accruals is not included in gross income.

**Resident vs. Non-Resident**

- From a SOURCE within SA

*source: All income is taxed where it arises, irrespective of who earns it

- Source = CAUSE

  * ASK: 1) What CAUSED the income 2) Where is the CAUSE located

**Tax Consequences:**

*residence: All income of local residents taxed, irrespective of where it arises

* Tax system in SA is a combination:

- Primarily residence-based

*non - resident: any person other than a resident
*natural persons* = resident if passes physical presence test

* Companies = resident if:
  a) incorporated in SA
  b) established in SA
  c) formed in SA
  d) effectively managed in SA

**Ordinary Resident**

Cannot be an ordinary resident in more than one place supported by - *Cohen v CIR*

If someone classifies SA as their ordinary residence, then they are resident irrespective of how long out of SA

**Temporary Absence:** If have a *temporary* contract in another country, that country is not your ordinary residence as you will return to your home country.

**Physical Presence Test**

1) more than 91 days in aggregate in the current tax year

2) more than 91 days in aggregate in EACH of the 5 preceding years

3) more than 915 days in aggregate over the 5 preceding years
Part of a day = 1 whole day

The start date for becoming a resident is beginning of current tax year (1 March)

Remain resident until the end of the current tax year

UNLESS continuous absence of at least 330 days; then only resident till last day SA

Ordinary resident is from the specific day

**Capital gains effect on Resident and Non Resident**

- **When becoming a resident** = deemed to have acquired all assets (world wide) on that day at market value

- **When becoming non-resident** = Deemed to have disposed (sold) all assets (worldwide) at market value on that day.

Does not apply to immovable property that the persons owns in SA or assets which are part of persons permanent establishment in SA as this is subject to normal CGT tax.

**Non - Resident tax effect:**

- Income tax = source
- CGT = immovable property
- Estate duty = SA property
- Donations tax = nil

**Source and Deemed Source**

- **Source = CAUSE**
  
  * Ask: 1) What CAUSED the income  2) Where is the CAUSE located

Mainly relevant for non-residents

Double Tax Agreements

“Source” ... something the practical man would regard as a real source of income

**MAIN TEST** = The location of originating cause

1) Identify cause  2) Identify location

If several cause, use the dominant cause

NB
Established Source Situations

1) Sale of immovable property

2) Business Income
   - where capital employed OR where business is located (depends on dominant cause)

3) Manufacturing and Resale
   - The place of manufacturing...
   - Must be based on own scenario facts

4) Income for services rendered
   - Place where services rendered
   - Not dependent on place where service contract is signed or payment made

5) Sale of Business Assets
   - Location of business operations

6) Interest Income

   LOANS
   - Place where credit is granted (E.g Creditors business)
   - Where the lender makes the funds available.
   - If a bank provides credit > location of the bank where the main activities are done

   CREDIT SALES
   - Location of creditor’s business operations
   - Place where capital is employed

7) Rental
   - Usually where property is located

   Movable property: location of asset or lessor’s business operations > Depends on significance of asset
Not of a Capital Nature

>Must be EITHER revenue OR capital

Revenue: Gross Income (100%)

Capital: Taxable Capital Gain (33.3% or 66.6%)

Tree = Capital

Fruit = Revenue produced by capital

>>> LOOK AT INTENTION:

* Scheme of profit-making Richmond Case (means business or trading in the ordinary sense)... indicates revenue intention. = Pick n Pay Case

Intention >> Profit making or Investment

1) What was the intention at acquisition?

2) Was there any change in intention? Look at Founders Hill vs CSARS

Will look at taxpayers ipse dixit “what he himself said” and consider facts and circumstances in order to prove it!!

1) Intention at acquisition

1. Can conclude the intention was at acquisition UNLESS evidence shows otherwise

2. If there are mixed intentions at acquisition, identify the DOMINANT ONE.

Evidence to be considered

*** ONUS IS ON THE TAXPAYER! (Proof of evidence is on the taxpayer)

- Nature of taxpayers business
- Length of time held
- Objects clause of company
- Income generated
- Nature of asset
- Reasons for disposals
- Frequency of transactions
- Financial resources
- Continuity of activities
- Recording of transaction
2) Change of Intention

- A mere decision to sell is not change of intention
- A large profit does not indicate change of intention
- Can realize a capital asset = **Burea West v CIR; Stott Case**

* If the taxpayer ‘crossed the rubicon’ something more = change of intention = **Natal Estates v CIR**

**Assets similar in Trading Stock SjA**

- If a company is a manufacture, construction or production company, then any assets manufactured by the company will become assets similar in Trading stock, and thus INCLUDED IN GROSS INCOME.

- The asset in question must be made/constructed by the business
- Does NOT apply to assets that are bought!!

---

**E.g Car manufacturer, Uses a car to drive around**

- When that car is disposed it will be treated as trading stock and included in gross income.

**Deemed capital profit on shares S9C**

- This section applies to shares that are disposed on or after 1 October 2007.

- The sale of shares which have been held for **3 years or longer** is **deemed** to be of a **capital** nature.

- **Shares are NOT** subject to S9C if the shares are held by taxpayers who are connected persons in relation to the company.

- The result of the anti-avoidance provision is that when the shares are sold, the proceeds will be income if they are sold in a scheme of profit making.

- **Applicable to shares of private & public companies, Listed shares, CC’s**

---

* Payment (compensation) received for loss of income = Revenue
* Payment (compensation) received for a loss of right = Capital
* Selling a right = Capital, unless in a profit scheme
Established Capital and Revenue

1. Trading stock sales = Revenue in Nature
2. Interest Received = Revenue in Nature
3. Receipts for services rendered = Revenue
4. Donations, Gifts and Inheritance = Usually Capital
5. Gambling = Occasional winnings is Capital; Professional is Revenue
7. Realization companies
8. Shares = Usually Capital unless a Share Dealer

* Capital to one person, Revenue to another = CVisser v Cir

Always state the obvious

General starting:
- All requirements of gross income definition must be met for amount to be included in gross income
- Capital is not defined in Act, will look at case law
- Onus of proof is on the taxpayer

NB Cases

1. Butcher Bros v Cir
   - The onus is on the commissioner to establish an amount. If an amount is difficult to determine, that doesn’t mean that it doesn’t exist.

2. Lategan v CIR
   - Gross of income is not just an amount of money, but every other form of property including dents and rights of actions

3. Brummeria v CSARS
   - The right to receive an interest free loan is an amount and the loan is not immediately repayable, so such right had a monetary value.
4. CIR VS Ochberg

- Shares received by the taxpayer is for the taxpayers benefit and no one else. Irrespective of the % of ownership, the share is still a value.

5. Delfos v CIR

- Commissioner *may not* include an amount in gross income **BOTH** when it accrues and when it is received. It must be one or the other.

6. Pyott Ltd v CIR

- Company manufactures and sells biscuits, as well in containers.
- If the tin was returned, the customer would get a refund.
- The amount paid for the tins is still income until the tin is returned, the customer may never return it.
- Deposits are therefore revenue in nature and the company may get a S24C deduction if customers need to be refunded (paid).

7. Witswatersrand Racing Club v CIR

- Money was collected as a fundraiser from an event held for charity.
- The charity was to fund students with bursaries
- The money was to be paid in a trust for the students
- Court held that the company did not have a **LEGAL OBLIGATION** to pay the money over to the trust account, as it was a voluntary obligation to do this.
- The amount received from the event is therefore included in the company’s gross income.

8. Geldenhuys v CIR

- An amount received by the taxpayer for his *own benefit* is included in his gross income.
- Amounts received on behalf of someone is not included in gross income. *(Rep, Agent)*

9. Cohen v CIR

- The court held that a person may have more than one resident
- The country as to where the person is a resident is the country where the taxpayer/person will naturally return to. His real home.
10. Berea West Estates vs SIR

A company was formed to assist the realization of land which formed part of the assets of a deceased estate.

The company acquired the land and after sub-dividing it, sold the subdivided plots as a profit.

Court concluded that this was just realizing a capital asset to its best advantage

There was not something more - Didn’t cross the rubicon.

11. Natal estate vs SIR

Land originally acquired for purposes of farming sugar cane= Original intention is capital nature

The way in which the land was sold suggested there was a change in intention.

It was similar activities as a land dealer

The company had converted its intentions to trading stock by its actions performed when disposing the land.

There was something more

12. Founders Hill v CSARS

AECI Ltd set up Founders Hill as its wholly-owned subsidiary to sell off a portion of land which was to develop residential units.

AECI then transferred the land to Founders Hill which they proceeded to realize the property to its best advantage - so capital BUT

Court then held that Founders Hill was not a proper realization company, a proper one is where it is formed to be enable land to be sold where it cannot in the original company (In this case, they could’ve!). it was formed in order to make profits from the residential units. There was a change of intention by doing this, Founder’s Hill became a company that deals with selling residential units.

The profits made by this is thus included in gross income as it is no longer capital, but revenue in nature.

Founders Hill did not have to be formed as AECI could have sold the property itself as capital.
Extra cases

CSARS v People Stores

If there is an accrual, how must the outstanding amounts be valued for tax purposes? At present value (PV) or at face value (FV)?

The court held at PV

However the Act was changed, and section 1 now provides that when a taxpayer becomes entitled to an amount (i.e. there is an accrual), and that amount is payable after the tax year, it will be deemed that the face value of the amount, and not is PV, must be included in gross income

CIR v People Stores as amended by the Income Tax Act

Taxpayer sold clothing on account

Outstanding amounts owing to the taxpayer were included in gross income because the taxpayer was entitled to them (if bad or doubtful, claim a deduction)

The full amount is included in gross income, no discounting to present value allowed

MP Finance Group CC v CSARS

Taxpayer ran a pyramid scheme

Deposits were received from customers

The deposits were used to pay interest and capital to investors

The amounts were not kept in a separate trust account

Taxpayer had no intention to repay the full amounts to investors

The amounts received were immediately repayable because it was fraud but the court held that it was gross income because the operators intended to keep the money for themselves

The court held that the deposits were received and applied by the taxpayer for its own benefit

The Act refers to amounts received by OR accrued to (therefore, once it is received, the issue of “entitled to” is not relevant: once received, simply ask, did the taxpayer intend to use the amount for his own benefit)

Taxpayer argued that they were deposits and therefore not taxable: court disagreed. The rule therefore is as follows: if an amount is received, it will be received by a taxpayer for the purposes of gross income, if the taxpayer intended the amount to be received for his or her own benefit

If a person receives rent in advance for 2 years, that amount will be gross income

If a person receives money as a deposit, and keeps it apart from his or her own funds in a trust account, that amount will not be regarded as gross income
**CIR v Richmond Estates** = Profit making scheme

- The intention with which the asset was acquired is important
- Intention: if the intention is to acquire an asset for resale at a profit, the asset is trading stock
- The intention of a company: a company is an artificial person. Therefore look at the actions of the directors of the company
- Court: look at directors’ resolutions
- It is almost impossible to have a change of intention from speculating to investing in the same asset
- Principle: a change in intention has CGT and income tax consequences

**CIR v Stott**

- A taxpayer can realise a capital asset to “best advantage” without causing a change of intention

**Fourie Beleggings CC v CSARS**

- This case deals with damages and compensation
- The taxpayer leased a hotel and conducted a hotel business
- It had a contract to supply accommodation and meals to students from the UAE
- The contract was cancelled and it got paid damages. Was this gross income?
- It would be capital if the cancelled contract was a loss of part of its income-earning structure
- The court held that the lease contract was part of its income-earning structure: this was capital, but this had not been lost
- The taxpayer could still conduct its business without restriction
- The court concluded that the contract was a product of the use of its income earning structure
- The compensation therefore was included in gross income