CMT301 Taxation 1
Topic 4 Statutory Income & Non-Assessable Income

Objectives

Understand Statutory Income

- Return to work payments
- Interest on overpayments tax
- Assessable recoupments
- Trading Stock
- Non-cash Business Benefits
- Dividends & Imputation Credits

Understand Non Assessable Income

- Amounts not ordinary or statutory income
- Exempt income
- Non assessable non exempt income

1. Introduction

As discussed previously, assessable income comprises ordinary income and statutory income. This topic examines the statutory income provisions not covered in other topics (that is, excluding capital gains, capital allowances, entity and anti-avoidance measures). Statutory income constitutes amounts that are not ordinary income but are included in assessable income by provisions about assessable income: see s6-10(2) ITAA 1997.

Where a receipt falls under both ordinary and statutory income provisions the rule is that unless the contrary intention appears, the statutory income provisions prevail over ordinary income: see s6-25(2). Note: You may need to consider both the application of the statutory and ordinary income provisions, as many of the statutory income provisions exclude amounts that are ordinary income: eg. see s15-10 as an example.

**Online activity 1:** read s15-10.
2. The following guide outlines the statutory income provisions firstly for individuals not in business and then for business taxpayers.

2.1 Individuals not in Business

For example for individuals that are not in business, in addition to ordinary income\(^1\) individuals must include statutory income as assessable income. This commonly includes the following amounts:

- dividends paid as a shareholder
- income or credits received from any trust investment product
- Income from capital gains
- partnership and trust income
- Foreign income
- Discounted shares or rights (including options) to acquire shares
- Prizes or awards associated with investments, depending on the circumstances.
- Return to work payments
- Interest on overpayments of tax
- Reimbursed car expenses
- Assessable recoupments of deductions
- Non cash business benefits
- Traditional securities

Amounts not included as income

For individuals some amounts are not needed to be included as income on your tax return but may be used in other calculations on their tax return. This includes exempt income, non-assessable non-exempt income or other exempt amounts such as most child support and spouse maintenance payments.

2.2 Business

For businesses, in addition to ordinary income\(^2\) businesses must include statutory income as assessable income. This includes the following amounts:

- dividends that are paid as a shareholder
- income or credits received from any trust investment product.

\(^1\) (ie employment income, pensions, annuities and government payments and certain kinds of investment income, Prizes or awards associated with employment, compensation or insurance payments you receive for lost income)

\(^2\) (ie ordinary course of business income, incidental to the ordinary course of business income, government payments and certain kinds of investment income, compensation or insurance payments you receive for lost income)
• Income from capital gains
• partnership and trust income
• Foreign income
• Discounted shares or rights (including options) to acquire shares
• Prizes or awards associated with investments, depending on the circumstances.
• Accrued leave payments
• Interest on overpayments of tax
• Non cash business benefits
• Trading stock transactions
• Work in progress payments
• Leased plant
• Taxation financial arrangements
• Life insurance company rules
• General insurance rules
• Primary production rules
• Foreign currency gain and losses
• Traditional securities
• Research and development

3. Statutory income provisions categorised into ITAA 1997 and ITAA 1936, include the following:

3.1 ITAA 1997 statutory income provisions

The statutory income provisions in the ITAA 1997 have generally replaced statutory income provisions previously contained in ITAA 1936 s 26. These provisions include:

Benefits relating to employment or services rendered: s 15-2

Section 15-2 provides that assessable income:

(1) Your assessable income includes the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums *provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you (including any service as a member of the Defence Force).

(2) This is so whether the things were *provided in money or in any other form.

(3) However, the value of the following are not included in your assessable income under this section:

(a) a *superannuation lump sum or an *employment termination payment;

(b) an *unused annual leave payment or an *unused long service leave payment;

(c) a *dividend or *non-share dividend;

(d) an amount that is assessable as *ordinary income under section 6-5.
Note: * refers to a defined term in the ITAA 1997.

**Return to work payments: s 15-3**

Payments received by a person and made by an entity to induce a person to return to work are income: see s 15-3 (although generally such payments would otherwise be ordinary income).

**Accrued leave payments: s 15-5**

This section has the effect that any payment of accrued leave transfer payments to an employer by another employer in respect of a transferring employee will be assessable income to the recipient employer.

**Bounties and subsidies: s 15-10**

Section 15-10 requires that you include bounties and subsidies received in relation to carrying on a business as assessable income, if the amount is not ordinary income: see s 6-5. *Squatting Investments Company v FCT* (1953) 86 CLR 570; 10 ATD 126 defines a bounty or subsidy as payments made for the purpose of assisting persons to carry on a business at the time the payments are made or, perhaps, to commence a business in the future.

However, since bounties and subsidies received in relation to carrying on a business will generally be ordinary income (see s 6-5), this section will have limited operation.

**Royalties: s 15-20**

Section 15-20 requires that assessable income include: an amount that you receive as or by way of royalty that is within the ordinary meaning of royalty and the amount is not ordinary income: see s 6-5.

Generally, royalties will be ordinary income under s 6-5, so s 15-20 will have a limited operation.

**Amount received for lease obligation to repair: s 15-25**

As the lessor of premises you need to include as assessable income any payments that you receive from an entity for failing to comply with a lease obligation to make repairs. The entity must use the premises for income-producing purposes and the amount must not be assessable income as ordinary income: see s 6-5.

**Insurance and indemnities for loss of assessable income: s 15-30**

Section 15-30 requires that your assessable income include: an amount received by way of insurance or indemnity for the loss of an amount if the lost amount would have been included in assessable income and the amount is not ordinary income: see s 6-5.

However, given the compensation receipts principle, most insurance payments that replace lost income would constitute ordinary income. Thus, this provision has a limited application, that is, it will only apply to capital items.
Interest on overpayments of tax and early payments of tax: s 15-35

Such interest payments from the Australian Taxation Office need to be included as assessable income.

Work in progress payments: s 15-50

Receipts from the sale of work in progress, other than goods, are assessable under s 15-50. Note that receipts from the sale of work in progress for goods are assessable under s 6-5.

Reimbursed car expenses: s 15-70

Section 15-70 includes reimbursed car expenses per s 22 FBTAA (that are not fringe benefits) as assessable income.

Assessable recoupments of allowable deductions: subdiv 20-A

Where a taxpayer has claimed a deductible expense that is repaid, recouped or refunded, there is no general principle that the repayment be included as assessable income. So, s 20-20 seeks to bring the recoupment of certain deductible expenses into assessable income that does not otherwise constitute ordinary income.

There are two types of recoupments (see s 20-20):

1. insurance or indemnities
2. listed recoupments see s 20-30.

However, amounts that are ordinary income do not fall within s 20-20.

Given that many recoupments of expenses obtained by business will be ordinary income pursuant to Warner Music Australia v FCT 96 ATC 5046, as being incidental to the ordinary course of business, s 20-20 may only have a limited operation for business recoupments.

However, for non-business taxpayers that receive assessable recoupments there exists no principle that payments received as compensation for deductible expenses would form part of assessable income: see FCT v Rowe (1997) 187 CLR 266; 35 ATR 432. Thus, s 20-20 will have a greater role for non-business taxpayers.

Under s 20-20(2) a recouped expense that is an amount received as insurance or indemnity that is deductible under the ITAA constitutes an assessable recoupment, and thus assessable income.

Under s 20-20(3) a recoupment of an expense (except by way of insurance or indemnities) will constitute assessable income where the recouped loss or outgoing is or was deductible under the provisions listed in s 20-30 (bad debts, capital allowances, rates or taxes etc).

Online activity 2: Read ITAA 1997 s 20-20, 20-30
Trading Stock: ITAA 1997 Div 70

Generally, Div 70 trading stock rules apply to all businesses that have trading stock. Small Business Entities though can elect to adopt a simplified trading stock regime: see Small Business Entities below.

What is trading stock: subdiv 70-A

Trading stock is defined as anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a business, and livestock but excludes Div 230 financial arrangements: see s 70-10.

Acquiring trading stock deductions: subdiv 70-B

Trading stock is deductible when incurred: see s 8-1. Section 70-20 requires that for non-arm s-length transactions you must use market value in working out the deduction. Section 70-25 provides that the cost of trading stock is not capital. Pursuant to s 70-30, where you bring into trading stock an item you own, you are deemed to have brought the item into trading stock at cost or market value and sold it for the same amount.

Accounting for trading stock: subdiv 70-C

Section 70-35 provides that if you carry on a business and have trading stock on hand:

- the excess of closing stock over opening stock is included in assessable income
- the excess of opening stock over closing stock is deductible.

Online activity 3: Read ITAA 1997 s 70-35

When is stock on hand?

Trading stock is on hand when the taxpayer has power to deal with the stock as if it were his or her own: see FCT v Sutton Motors (1985) 16 ATR 567. Also, goods in transit can be trading stock, per All States Frozen Foods Pty Ltd v FCT (1990) 20 ATR 1874; 90 ATC 4175.

Value of opening stock

You must use the same value of opening stock as that used at the end of the previous income year: see s 70-40.

Value of closing stock

You can elect to value each item of trading stock at the end of the income year at either (see s 70-45):

- cost, or
- market selling value, or
- replacement.
Cost

Cost refers to the full absorption cost of inventory, that is, all the costs of getting the stock in its condition and location: see Philip Morris v FCT 79 ATC 4352.

The Commissioner accepts the following methods for cost: first in first out (FIFO); average cost; retail inventory and standard cost.

The following methods, though, are not acceptable: last in first out (LIFO), and base stock.

Market selling value

Australasian Jam Co Pty Ltd v FCT (1953) 88 CLR 23 provides authority that the market selling value is the amount which will be realised in the company’s own selling market in the ordinary course of business.

Replacement price method

This is the price at which the taxpayer can replace the goods on the last day of the year of income, including freight, insurance and any other costs.

Valuing trading stock and GST: s 70-45(1A)

In valuing trading stock at the end of the year, disregard the input tax credit.

Special valuation rules

For obsolete stock (see s 70-50), you can value trading stock below the values in s 70 45. If stock is obsolete then you can use a reasonable value.

Online activity 4: Read ITAA 1997 ss 70-40 to 70-50

Generally, sales of trading stock are included as assessable income under s 6-5. However, special provisions apply for unusual situations, as follows.

Assessable income from disposal of trading stock: subdiv 70-D

Disposals outside the ordinary course of business: s 70-90

Such trading stock is to be included in your assessable income at market value: see s 70-90.

Disposal when you stop holding trading stock: s 70-100

If you stop holding trading stock but do not dispose of it, you are required to include its market value in assessable income.

Death of owner: s 70-105

Upon death, the market value of trading stock needs to be included as assessable income, although the legal personal representative can elect to use another value.
You stop holding trading stock but still own it: s 70-110

You are treated as having sold it at cost.

Compensation for lost trading stock: s 70-115

Include as assessable income any insurance or indemnity received for loss of trading stock (see s 70-115) unless it is otherwise assessable income: see s 6-5.

**Online activity 5**: Read ITAA 1997 ss 70-90 to 70-115

**Miscellaneous subdiv 70-E**

Subdiv 70-E ITAA 1997 provides deductions for capital costs of acquiring land carrying trees or acquiring a right to fell trees.

**Small Business Entitie (SBE)**

The SBE regime provides a single test for determining what constitutes a small business. This SBE test was extended to numerous small business tax preferences that were outside the scope of the former Simplified Tax System (STS), although some of these concessions provide additional criteria that need to be satisfied and that do not relate to determining whether the taxpayer is a small business. These SBE concessions include:

- CGT small business concessions Div 152
- depreciation rules: subdiv 328-D
- simplified trading stock rules: subdiv 328-E
- deducting certain prepaid business expenses immediately: ITAA 1936 ss 82KZM and 82KZMD
- accounting for GST on a cash basis: GSTA 1999 s 29-40
- annual apportionment of input tax credits for acquisitions and importations that are partly creditable: GSTA 1999 s 131-5
- paying GST by quarterly instalments: GSTA 1999 s 162-5
- FBT car parking exemption: FBTA 1986 s 58GA
- PAYG instalments based on GDP-adjusted notional tax: TAA 1953 Sch 1 s 45-130
- standard two-year period for amending your assessment applies to you: ITAA 1936 s 170
- PAYG instalment reduction TAA 1953 Schedule 1 s 45-400
- Small Business Tax Break: 50% Investment allowance ITAA 1997 Div 41.

Small business entities have the choice of applying for the various concessions as the concessions are not compulsory, unlike some of the former STS concessions. Also, there is no need to lodge an election with the Australian Taxation Office to access the concessions.
**Eligibility**

An entity is a small business entity if (per ITAA 1997 s 328-119, s 995 1(1)) it: carries on a business, and satisfies the $2M aggregated turnover test.

**Aggregated turnover test**

An entity can satisfy the $2M aggregated turnover test in the following three situations (ss 328-110, 328-115):

- the entity aggregated turnover for the previous income year was less than $2M (the look back test);
- the entity aggregated turnover for the current income year is likely to be less than $2M, calculated as at the first day of the income year (the look forward test); or
- the entity actual aggregated turnover for the current income year was less than $2M, calculated as at the end of the income year (the actual turnover test).

**Aggregated turnover**

Aggregated turnover is defined in s 328-115:

(1) Your aggregated turnover for an income year is the sum of the relevant annual turnovers (see subsection (2)) excluding any amounts covered by subsection (3).

(2) The relevant annual turnovers are:

(a) your* annual turnover for the income year; and

(b) the annual turnover for the income year of any entity (a relevant entity ) that is* connected with you at any time during the income year; and

(c) the annual turnover for the income year of any entity (a relevant entity ) that is an* affiliate of yours at any time during the income year.

(3) Your aggregated turnover for an income year does not include the following amounts:

(a) amounts* derived in the income year by you or a relevant entity from dealings between you and the relevant entity while the relevant entity is* connected with you or is your* affiliate;

(b) amounts derived in the income year by a relevant entity from dealings between the relevant entity and another relevant entity while each relevant entity is connected with you or is your affiliate;

(c) amounts derived in the income year by a relevant entity while the relevant entity is not connected with you and is not your affiliate.

* Refers to defined terms in ITAA 1997.
Annual turnover

An entity’s annual turnover for an income year is generally the total ordinary income that the entity derives in the income year in the ordinary course of carrying on a business excluding amounts that relate to GST and amounts derived from sales of retail fuel. Any ordinary income that an entity derives from any dealing with an associate of the entity is stipulated as the amount of ordinary income the entity would derive from the dealing if it were at arm’s length.

If a business is carried on for part of the income year only, the entity’s annual turnover for the income year must be worked out using a reasonable estimate of what the entity’s annual turnover for the income year would be if the entity carried on a business for the whole of the income year. Regulations may allow a different calculation of annual turnover for particular entities.

Trading stock exemption for small business entities (SBEs)

Under the small business entities trading stock regime (SBE is defined below at 4.53), where the difference between the value of the trading stock on hand at the start of an income year and the reasonably estimated value at the end of the year is less than $5000, a SBE taxpayer does not have to value each item of trading stock at year end and account for any changes in the value of trading stock: ITAA 1997 subdiv 328-E. If the change in trading stock value is greater than $5000, the normal trading stock rules apply. SBE taxpayers have the choice of adopting the simplified trading stock regime or utilising the normal trading stock rules in Div 70. If the SBE trading stock rules apply, the opening value of the trading stock is deemed to equal the closing value of the trading stock. Given the minute size of the variation of $5000, many SBE taxpayers carrying trading stock would not appear to be affected.

Employee Share Schemes, Div 83A

From 1 July 2009, the new provisions relating to employee share schemes apply to all shares, rights and stapled securities acquired under employee share schemes from that date. Also transitional measures from the former Div 13A ITAA 1936 apply to shares, rights and stapled securities acquired before 1 July 2009. Under the new rules a taxpayer’s assessable income includes discounts on shares, rights and stapled securities acquired under an employee share scheme. A taxpayer may be entitled: to have the amount included in your assessable income reduced; or to have the income year in which it is included deferred.

Franking credits: Div 207

Section 207-20(1) includes the amount of the franking credit attached to a franked dividend (or franked distribution) in an entity’s assessable income. Note that a refundable tax offset is available for such imputation credits: ITAA 1997 s 67-25.

Primary production: Div 384

Special rules apply for primary producers.
Foreign currency gains and losses: Div 775

Division 775 includes certain foreign currency gains as assessable income.

3.2 ITAA 1936 statutory income provisions

Non-cash business benefits: ss 21, 21A

Section 21 deems consideration to have been paid if non-cash consideration is provided to a taxpayer. Section 21A provides the basis for determining the amount of assessable income and requires:

- that in determining the income derived by a taxpayer, a non-cash business benefit that is not convertible to cash shall be treated as if it were convertible to cash
- the value of the benefit is the arm’s-length value ignoring any restrictions; the Commissioner has a discretion to provide a valuation if the taxpayer cannot do so
- that if the benefit is to be deductible to the recipient if he or she had incurred the cost, the benefit will be reduced by the amount of the deduction
- no application to non-cash business benefits less than $300.

This has the effect of overcoming the requirement in Cooke and Sherden, that income must be convertible into cash.

However, s 21A only applies to business relationships, so it will not have any effect on employee-employer relationships (although FBT may apply).

Prizes from investment-related lotteries: s 26AJ

The value of any prize from an investment-related lottery is assessable income.

Traditional securities: s 26BB

Gains on the disposal of traditional securities are included as assessable income. Certain types of non-deferred interest and non-capital indexed loans qualify as traditional securities.

Dividends: s 44

Australian resident shareholders are assessable on all dividends paid out by an Australian resident or foreign resident company out of profits from any source. A dividend includes any distribution made by a company to any of its shareholders, whether in money or other property; and any amount credited by a company to any of its shareholders as shareholders: s 6(1). Amounts paid out of a share capital account of a company are excluded as dividends.

Under the dividend imputation system, in the case of franked dividends paid by an Australian resident company to an Australian resident shareholder, the shareholder also includes the value of the franking credit in assessable income: s 207-20(1) ITAA 1997. The shareholder though receives a tax offset for the value of the franking credit.

Online activity 6: Read ITAA 1936 s 44
4. **Non-Assessable Income**

There are three ways an amount may be excluded from assessable income. **First**, if an amount is not ordinary income or statutory income, it is not assessable income: see s 6 15(1).

**Second**, an amount of ordinary income or statutory income that is exempt income is not assessable income: see s 6-15(2). Exempt income is ordinary income or statutory income that is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law, s 6-20(1). See below.

**Third**, an amount of ordinary income or statutory income will not be assessable income if it is non-assessable non-exempt income: see s 6-15(3). Ordinary income or statutory income is non-assessable non-exempt income if a provision of the ITAA 1997 or another Commonwealth law states that it is non-assessable non-exempt income, s 6-23. Not only do the ITAAs make certain types of income exempt or non-assessable non-exempt, some types of entities have income exemptions. Thus, this Topic first considers the exempt income/non-assessable non-exempt income provisions before examining the exempt entities.

5. **Exempt income**

The logical process is to first work out if an amount is ordinary or statutory income and then to see if it is exempt. Not only does exempt income escape tax liability, there are other consequences in the ITAAs 1936 and 1997 as follows:

- A loss or outgoing incurred in deriving exempt income is not an allowable deduction: ITAA 1997 s 8-1.
- Exempt income may decrease a deduction for a tax loss pursuant to s 36 10.
- The disposal of an asset used only to generate exempt income does not produce a capital gain or loss: s 118-12.

Exemptions include the following:

| 5.1 | ITAA 1997 exempt income provisions |

**Defence: s 51-5**

Generally, income received by members of the Defence Forces (wages and allowances) constitutes assessable income. However, certain prescribed payments to members of the Defence Forces are exempt. For example, pay and allowances for part-time members of the Defence Force Reserves and Emergency Reserve forces are exempt: see items 1.3 and 1.4.

**Education and training: s 51-10**

Generally, Commonwealth education or training grants also form part of assessable income. Some exemptions, though, apply for:

- scholarships for full-time students: item 2.1A
- students under Commonwealth schemes: item 2.1B
• payments received under a grant from the Australian American Educational foundation: item 2.1
• rebates paid to employers under the CRAFT apprentice training incentive scheme: item 2.2
• Recipient HECS – HELP benefit.: item 2.9.

Welfare: s 51-30

Periodic maintenance payments, certain rent subsidy payments, and the open employment incentive bonuses are exempt.

Compensation payments for the loss of tax-exempt payments: s 51-32

Section 51-32 exempts compensation payments for the loss of pay or an allowance for warlike service.

Part-time defence reservists injury compensation: s 51-33

Compensation for injury during employment received by part-time defence reservists will be exempt under s 51-33 (proposed).

Payments to a full-time student: s 51-35

Section 51-35 provides conditions for the exemption of payments to full-time students per item 2.1A, s 51-10.

Payments to a secondary student: s 51-40

Section 51-40 provides conditions for the exemption of payments to secondary students per item 2.1B, s 51-10.

Bonuses for early completion of an apprenticeship: s 51-42

Bonuses for early completion of an apprenticeship are exempt.

Income collected or derived by a copyright collecting agency: s 51-43

Section 51-43 exempts certain income derived by a copyright collecting society.

Maintenance: s 51-50

Periodic maintenance payments received by a taxpayer are exempt if the taxpayer is a spouse or former spouse, or child of the payer.

Post-judgment interest: s 51-57

Post-judgment interest in respect of personal injury compensation cases is exempt.

Prime Minister’s prizes: s 51-60

Certain Prime Minister’s prizes are exempt income.
**Certain pensions, benefits, and allowances: Div 52**

Generally, social security payments are assessable income (see s 6-5), unless a specific exempting provision applies. Exemptions provided under Div 52 include:

Social security payments- Certain exempt social security payments are set out in s 52-10.

Veterans entitlement pensions- Section 52-65 sets out the components of these pensions that are exempt.

**Various exempt payments: Div 53**

Various exempt payments are provided and these include:

- disability services payment
- domiciliary nursing care benefit
- drought relief payments
- wounds and disability pension
- supplementary amount of exceptional circumstances relief payment or farm income support
- exemption of similar Australian and United Kingdom veterans payments, and
- amounts of farm household support converted into grants.

**Personal injury annuities and lump sums: Div 54**

Certain annuities and lump sums to personal injury victims under structured settlements and orders are exempt under Div 54.

Other exemptions under the ITAA 1997 include capital gains tax exemptions and international tax exemptions.

### 5.2 ITAA 1936 exempt income provisions

**United Nations service: s 23AB**

The income of persons serving in the armed forces under the control of the United Nations is exempt.

**Certain foreign employment s 23AF-AG**

Certain foreign employment income of residents is exempt.

**Credit unions interest: s 23G**

Income received by an approved credit union from interest paid by members is exempt.

**Non-cash business benefit: s 23L(2)**

A non-cash business benefit falling within s 21A but not exceeding $300 is exempt income.
**Online activity 7**: Read ITAA 1936 s 23L(2)

**Interest on infrastructure borrowing: s 159GZZZZ**

Certain interest on infrastructure borrowings (made prior to 14 February 1997) is not assessable to the lender.

### 6. Non-assessable and non-exempt income

An amount of ordinary income or statutory income is non-assessable non-exempt income (NANE) if a Commonwealth law says that it is non-assessable, non-exempt income: see s 6 23. Thus, amounts of ordinary or statutory income that are non-assessable, non-exempt income are excluded from assessable income and has no effect on tax losses (unlike exempt income). These include the following.

#### 6.1 ITAA 1997 non-assessable and non-exempt income

**GST payable on a taxable supply: Div 17**

Division 17 ensures that there is a neutral interaction with the GST and the income tax provisions. Section 17-5 excludes the following from assessable income and exempt income:

- GST payable
- increasing adjustment relating to a supply, and
- if the recoupment of an amount paid in acquiring something is included in assessable income, the GST effect of that recoupment.

Section 17-10 will include an amount as income, if there is a change in creditable purpose of an acquisition that results in a decreasing adjustment in certain situations.

**Non-assessable non-exempt income amounts: Div 59**

Non-assessable non-exempt income amounts under ITAA 1997 Div 59 include:

- bonus payments to older Australians: s 59-5
- compensation under firearms surrender arrangements: s 59-10
- mining payments to Aboriginals and distributing bodies subject to withholding tax: s 59 15
- taxable amounts relating to franchise fees windfall tax: s 59-20
- Commonwealth places windfall tax taxable amounts: s 59-25
- amounts that must be repaid: s 59-30
- amounts that would be mutual receipts but for the prohibition on distributions to members: s 59-35
- issue of rights, s 50-40.
6.2 ITAA 1936 non-assessable and non-exempt income

ITAA 1936 non-assessable non-exempt income provisions include:

- non-cash fringe benefits: s 23L(1)
- demerger dividends: s 44(4)
- alienated personal services income: Divs 85 and 86
- trusts attributable income: s 99B(2A)
- luxury car leases: Sch 2E, s 42A-40, and
- amounts subject to family trusts distribution tax: Sch 2F, s 271-105(3).

Online activity 8: Read ITAA 1936 s 23L

6.3 Payments that are not exempt from income tax

Division 55 of ITAA 1997 lists the following payments that are not exempt from income tax (even though they are similar to other exempt amounts):

- occupational superannuation payments: s 55-5, and
- education entry payments: s 55-10.

7. Exempt entities

For certain organisations and funds all of their ordinary and statutory income is made exempt, although this exemption is usually subject to special conditions. The organisations that may obtain exemption include:

7.1 ITAA 1997 exempt entities

charitable, public educational, scientific and religious institutions: s 50-5

non-profit organisations established for community service purposes: s 50-10

trade unions and employer associations: s 50-15

friendly societies: s 50-20

local government, municipal corporation or Commonwealth Public Authorities: s 50-25

income of public and non-profit hospitals and organisations: s 50-30

non-profit organisations to promote: the development of primary and secondary resources and tourism; and to promote the development of information and technology resources in Australia: s 50-40

non-profit organisations to promote the development of animal racing, art, game, sport, culture, literature, music and film: s 50-45, and

HIH claims support trust: s 322-10.
Online activity 9: Read *FCT v Word Investments Ltd* [2008] HCA 55; ITAA 1997 Div 50

### 7.2 Temporary residents: subdiv 768-R

As discussed previously, temporary residents obtain a tax exemption for all ordinary and statutory income from a foreign source, net capital gains from assets that do not have the necessary connection to Australia and for interest withholding tax obligations associated with amounts owing to foreign lenders. The exemption does not apply to income from or associated with employment, or for services performed, while a temporary resident, including any benefits from employee share schemes.

### 7.3 Principle of mutuality

Even if a body is not exempt under ITAA 1997 Div 50, the proceeds may not be income under the principle of mutuality. For non-profit bodies, subscriptions and payments for services provided by a club to members (such as food and drinks and poker machines) do not form part of ordinary income. Receipts from non-members for services such as food and drinks and poker machines will, however, constitute ordinary income.

**Online Activity 10**: What takes precedence?

1. s 15-5 or s 6-5
2. s 15-20 or s 6-5

**Online Activity 11**: Trading stock figures for 30 June of previous tax year for DVC were $1,100 stock on hand. What value can DVC bring trading stock in at 1 July of current tax year?

**Online Activity 12**: A shop gifts chocolate to the Salvation Army. What are the tax implications?

**Online Activity 13**: Sally receives a dividend from Santos a $100 cheque plus an imputation credit of $40. What are her tax implications?

**Online Activity 14**: A scholarship of $25,000 paid to Natasha who is studying commerce at Flinders. What are her tax implications?

**Online Activity 15**: Australian Tax Chapter 6 Practice Problems 1-3, Chapter 7 Practice Problem 13