

Defining "Income"

Author : admin

What is "Income"

[This Chapter is in progress. This notation will be removed when the Chapter is no longer in Draft form]

The *Income Tax Act* does not define the term "income" exhaustively, but rather describes it ([Wood v MNR](#)) and uses words that indicate that the ordinary definition of income is expanded to include enumerated sources of income. The Supreme Court of Canada has stated that "income" must "receive its ordinary meaning keeping in mind [...] the ordinary concepts and usages of mankind" ([Curran v MNR](#)), such that "income is to be understood in its plain ordinary sense and given its natural meaning" ([Wood v MNR](#)). The task of defining the ordinary meaning of "income" is one that falls on the courts. The Canadian courts have tended to follow the English decisions and have approached the definition of "income" without relying on economic theory. It is this "common usage" and "economic theory free" approach to defining income that has resulted in some commentators arguing that "income" is not a rule but a standard (see [Alice G Abreu and Richard K Greenstein, "It's Not a Rule: A better Way to Understand the Definition of Income" \(2012\) 13 Florida Tax Review](#)).

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The definition of income is one of the biggest issues in income tax policy. The leading economic definition of income, sometimes called the ideal definition of income, was articulated by Henry Simons (see Henry C Simons, *Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy* (Chicago: University of Chicago Press, 1970) Original 1938). Simons set out the general requirements of a definition of income such that the definition general requirements for the definition of income are (i) must be quantitative and objective, (ii) must be measurable with actual procedures for measuring them, (iii) must reduce arbitrary distinctions and (iv) must reduce obvious inequities and ambiguities (p 43). He defined "income" for income tax purposes as "personal income" to be determined as "the algebraic sum of (1) the market value of rights exercised in consumption, and (2) the change in the value of the store of property rights between the beginning and end of the period of question" (p 50). This definition aims to capture a person's ability to exercise control over the use of society's resources and includes in income all net accretions to economic power of a person. This definition was also the one adopted by the [Carter Commission Report](#).

Canada has chosen not to use the comprehensive definition of income as proposed by Simons or the Carter Commission. In Canada, not all receipts of money or property, and not all gains in economic power are included in the income tax definition of "income". For example, personal

gifts, inheritances, windfalls (gambling winnings), damages for personal injury (unless a surrogate for income), payments for non-competition agreements (before introduction of section 56.4), and others are received free of income tax. *[Note that since the enactment of Section 56.4 amounts received or receivable in relation to a "restrictive covenant" are included in income, unless an exemption applies. This section was added by 2013, c. 34, s. 195(1), applicable to amounts paid/payable/received/receivable after Oct. 7, 2003, other than amounts before 2005 under the grand of a written restrictive covenant before Oct 7, 2003 between arm's length persons.]*

Although the Supreme Court of Canada has recognized that the definition of income in the *Income Tax Act* is not limited to the enumerated sources of income, leaving open the existence of unenumerated sources of income, the practical reality is that "income" in Canada is almost exclusively limited to income from office or employment, income from business or property, and the other sources of income in subsection d, Division B, Part I of the Act.

[For a more in-depth analysis, until the completion of this Chapter, see [Ansari, Sas and Taylor, Jackson A., Fortuitous Victims: Some Tax Law Consequences of Ponzi Schemes \(August 28, 2013\)](#)]

Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 &3

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