

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: when is a commission receivable by a travel agent from a service provider (e.g. an airline) derived as assessable income under section 25 of the *Income Tax Assessment Act 1936*? What happens if a client subsequently cancels the travel and the commission is refunded?

1. The terms of the contractual arrangement between the travel agent and the service provider under which the commission is payable are a major consideration in determining when the commission income of the travel agent is derived. If the payment of the commission has matured into a recoverable debt, and the agent is not obliged to take any further steps before becoming entitled to the commission, this will generally indicate that the commission has been derived. (*Henderson v FC of T* (1970) 119 CLR 612, 70 ATC 4016, (1970) 1 ATR 596; *J Rowe and Son Pty Ltd v FC of T* (1971) 124 CLR 421, 71 ATC 4157, (1971) 2 ATR 497; *FC of T v Australian Gas Light Co* 83 ATC 4800, (1983) 15 ATR 105. See also paragraph 19 of Taxation Ruling IT 2626). Recoverability by legal action may not necessarily be required. (*Barratt & Ors v FC of T* 92 ATC 4275, (1992) 23 ATR 339).
2. Accordingly commission income is considered to be derived when it becomes a recoverable debt in accordance with the terms of the contractual arrangements between the travel agent and the service provider. The following scenarios illustrate the probable effect of this principle (subject to whatever specific contractual conditions may apply).
3. Where a travel agent operates a trust account or otherwise holds moneys on trust for the service provider, there is no entitlement to the commission income until payment is made to the service provider or the moneys are otherwise satisfactorily accounted for to the service provider and settlement made (*Stephens Travel Service International Pty Ltd (Receivers and Managers Appointed) & Ors v Qantas Airways Ltd* (1988) 13 NSWLR 331). We consider commission income is not derived until this point has been reached. This could occur at the time when an amount of commission income is retained by a travel agent and a net amount forwarded to the service provider.
4. Where a travel agent does not operate a trust account or hold moneys on trust we consider entitlement to commission income arises at the time the agent provides their services, usually when the travel is arranged. Accordingly, commission income will be derived at this point, even if this precedes the receipt of moneys from the client and/or the payment of monies to the service provider.
5. It is not correct to say that the decision in *Arthur Murray (NSW) Pty Ltd v FC of T* (1965) 114 CLR 314, (1965) 14 ATD 98 is authority for the view that commission income, in the circumstances

described above, is not derived until the service arranged for to be provided by the service provider has been actually enjoyed by the client. In the case of a travel agent the commission income is generally not payable for the specific service to be provided (e.g. the airline flight) but for the arranging or facilitating of that service (e.g. the booking of the flight).

6. If the travel agent is required to repay an amount of commission income to a service provider, for example in the case of a cancellation, and the amount of the repayment has been previously included in the assessable income of the travel agent, the amount repaid is considered to be a loss or outgoing incurred in gaining or producing the assessable income of the travel agent or necessarily incurred by the travel agent in carrying on business for that purpose, and therefore deductible under subsection 51(1).

Example:

A travel agent signs up a client for an overseas flight for which the client pays a deposit. The trip is to take place in August 1993, but the travel agent hands over the tickets to the client, upon receipt of full fare, on 20 June 1993. The funds are held on trust until 25 June 1993, at which time the amount of the fare, less the commission, is remitted to the airline. Even though the client has not used the ticket for the flight as at 30 June 1993, the travel agent has still derived commission income in respect of the flight before 30 June 1993 and would include the amount of that commission income in their assessable income for that year.

If the client cancels the flight on 15 July 1993 and the travel agent is required to refund the amount of the commission, the travel agent can claim a deduction under subsection 51(1) in their tax return for the year ended 30 June 1994.

Commissioner of Taxation

5/8/93

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Related Determinations:

Related Rulings: IT 2626; TR 93/11

Subject Ref: commission, income derived, time of derivation, travel agent, refunds, allowable deductions

Legislative Ref: ITAA 25, 51(1)

Case Ref: Henderson v FCT (1970) 119 CLR 612, 70 ATC 4016, (1970) 1 ATR 596; J Rowe and Son Pty Ltd v FCT (1971) 124 CLR 421, 71 ATC 4157, (1971) 2 ATR 497; FCT v Australian Gas Light Co 83 ATC 4800, (1983) 15 ATR 105; *Stephens Travel Service International Pty Ltd (Receivers and Managers Appointed) & Ors v Qantas Airways Ltd* (1988) 13 NSWLR 331; Barratt & Ors v FCT 92 ATC 4275, (1992) 23 ATR 339

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