


TD 2006/D9 - Income tax: foreign currency gains and losses: if a forex realisation gain is made under section 775-55 of the Income Tax Assessment Act 1997 upon payment for the acquisition of foreign currency denominated trading stock, is that gain 'ordinary income' as defined in section 6-10 of the Income Tax Assessment Act 1997 for the purposes of subsection 45-120(1) of Schedule 1 to the Taxation Administration Act 1953 ?

 This cover sheet is provided for information only. It does not form part of *TD 2006/D9 - Income tax: foreign currency gains and losses: if a forex realisation gain is made under section 775-55 of the Income Tax Assessment Act 1997 upon payment for the acquisition of foreign currency denominated trading stock, is that gain 'ordinary income' as defined in section 6-10 of the Income Tax Assessment Act 1997 for the purposes of subsection 45-120(1) of Schedule 1 to the Taxation Administration Act 1953 ?*

This document has been finalised by TD 2006/29.



Draft Taxation Determination

Income tax: foreign currency gains and losses: if a forex realisation gain is made under section 775-55 of the *Income Tax Assessment Act 1997* upon payment for the acquisition of foreign currency denominated trading stock, is that gain ‘ordinary income’ as defined in section 6-10 of the *Income Tax Assessment Act 1997* for the purposes of subsection 45-120(1) of Schedule 1 to the *Taxation Administration Act 1953*?

❶ This Ruling provides you with the following level of protection:

This publication is a draft for industry and professional comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and you under-pay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the under-payment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes, for trading stock other than livestock that is only trading stock by reason of the statutory definition of trading stock. With the exception of such livestock a forex realisation gain made on payment for the taxpayer's trading stock is ordinary income as defined in section 6-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) for the purposes of subsection 45-120(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

Date of effect

2. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of 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).

TD 2006/D9

Commissioner of Taxation

15 February 2006

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.*

Explanation

3. Section 6-10 of the ITAA 1997 states that amounts that are not 'ordinary income', but which are otherwise included within a taxpayer's assessable income are 'statutory income'. Therefore, the first question is whether an amount is ordinary income. Section 6-5 of the ITAA 1997 states that ordinary income is income according to ordinary concepts.

4. The note to subsection 6-10(2) of the ITAA 1997 explains that:

Many provisions in the summary list in section 10-5 [List of provisions about assessable income] contain rules about ordinary income. These rules do not change its character as ordinary income.

Consequently, simply because a forex realisation gain arising from a payment for trading stock is included in the taxpayer's assessable income by section 775-15 of the ITAA 1997 does not mean that the amount so included is statutory income rather than ordinary income.

5. The reasoning used by the High Court in cases such as *Texas Co (Australasia) Ltd v. Federal Commissioner of Taxation* (1940) 63 CLR 382; (1940) 5 ATD 298; (1940) 2 AITR 4 and *International Nickel (Australia) Ltd v. Federal Commissioner of Taxation* (1977) 137 CLR 347; 77 ATC 4383; (1977) 7 ATR 739, clearly establishes that a foreign exchange gain arising from the acquisition of foreign currency denominated trading stock is income according to ordinary concepts.

6. Therefore, while section 775-15 of the ITAA 1997 has changed the provision under which such a gain is assessed, it has not changed the character of that gain as ordinary income in those case (the great majority) where the gain has that character. Note, however, the acquisition of livestock that is only trading stock by reason of the statutory definition of trading stock may raise different considerations.

7. Subsection 45-120(1) of Schedule 1 to the TAA 1953 provides that 'instalment income' for a period includes 'ordinary income' derived during that period, but only to the extent that it is assessable income of the income year that is or includes that period.

Appendix 2 – Your comments

8. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

Due date: 17 March 2006

Contact officer: Steve Wentworth

E-mail address: steve.wentworth@ato.gov.au

Telephone: (02) 9374 2316

Facsimile: (02) 9374 2693

Address: Centrepoint
100 Market Street
Sydney NSW 2001

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- foreign exchange gains and losses
- forex realisation event
- foreign currency translation
- trading stock

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-10

- ITAA 1997 6-10(2)

- ITAA 1997 10-5

- ITAA 1997 775-15

- ITAA 1997 775-55

- TAA 1953 Sch 1 45-120(1)

Case references:

- Texas Co (Australasia) Ltd v. Federal Commissioner of Taxation 1940) 63 CLR 382; (1940) 5 ATD 298; (1940) 2 AITR 4

- International Nickel (Australia) Ltd v. Federal Commissioner of Taxation (1977) 137 CLR 347; 77 ATC 4383; (1977) 7 ATR 739

ATO references

NO: 2006/665

ISSN: 1038-8982

ATOLaw topic: Income Tax ~~ Foreign exchange gains and losses
Income Tax ~~ Trading stock and work in progress