


***TD 93/D114 - Income tax:property development: where a construction contractor uses the basic method of returning income from long term construction contracts as outlined in Taxation Ruling IT 2450, when are advance or up front payments derived as income for the purposes of subsection 25(1) of the Income Tax Assessment Act 1936?***

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Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: property development: where a construction contractor uses the basic method of returning income from long term construction contracts as outlined in Taxation Ruling IT 2450, when are advance or up front payments derived as income for the purposes of subsection 25(1) of the *Income Tax Assessment Act 1936*?**

1. Advance or up-front payments are derived by a construction contractor using the basic method when the obligations under the construction contract for the earning of those payments have been fulfilled; i.e the payments no longer represent unearned income: see *Arthur Murray (NSW) Pty Ltd v FC of T* (1965) 114 CLR 314; (1965) 14 ATD 98, referred to in paragraph 18 of Taxation Ruling IT 2450.
2. In some instances this will mean bringing such payments to account over a period as work is performed and income earned; e.g. the period between receipt of an initial advance or up-front payment and receipt of the next such payment or first progress payment.
3. With respect to advance or up-front payments received by a construction contractor for the purchase or construction of plant or equipment for use during the life of a contract, the payments are derived when the contractual obligation to acquire or construct the plant or equipment is fulfilled and cannot be apportioned over the life of the contract. Previously, we adopted the view that such payments could be brought to account over the whole period of the contract: see paragraph 19 of IT 2450. However, it has been necessary to reconsider our view in light of the decision in *G.P International Pipecoaters Pty Ltd v FC of T* (1990) 21 ATR 1; 90 ATC 4413.
4. As this Determination involves a departure from our previous view, as outlined in IT 2450, it applies only to long-term construction contracts entered into after its date of issue (that is, the date of issue of the final Determination). This date of effect is subject to the exception that a legally binding private ruling cannot be withdrawn by a later inconsistent public ruling if the private ruling relates to a year of income that has already commenced (see Taxation Determination TD 93/34).

*Example:*

*A construction contract provides for an advance payment to the contractor for the purpose of acquiring certain machinery for use on the construction project. The payment will form part of the contractor's assessable income when the relevant machinery is purchased. At this point the contractor has fulfilled the contractual conditions associated with the payment.*

**Commissioner of Taxation**

13/5/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT 2450

Subject Ref: advance payments; long-term construction contracts; basic method

Legislative Ref: ITAA 25(1)

Case Ref: G.P International Pipecoaters Pty Ltd v FCof T (1990) 21 ATR 1, 90 ATC 4413; Arthur Murray (NSW) Pty Ltd v  
FC of T (1965) 114 CLR 314, (1965) 14 ATD 98

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