


TD 93/D250 - Income tax: when does a person who is carrying on the business of licensing/sub-licensing the right to use proprietary computer software programs derive licence fee income under subsection 25(1) and/or paragraph 26(f) of the Income Tax Assessment Act (1936)?

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Draft Taxation Determination

Income tax: when does a person who is carrying on the business of licensing/sub-licensing the right to use proprietary computer software programs derive licence fee income under subsection 25(1) and/or paragraph 26(f) of the *Income Tax Assessment Act (1936)*?

1. Licence fee income is derived by the licensor when due under the terms of the licence agreement (Taxation Ruling IT 2669 paragraph 23).
2. A licence granting the right to use proprietary computer software is neither a contract for the rendering of services nor a contract for the supply of goods. Consequently, the licensor cannot rely on the decision in *Arthur Murray (NSW) Pty Ltd v FC of T* (1965) 114 CLR 314 to defer licence fee income past the date on which it becomes due. This also applies to fees properly attributable to further versions (upgrades) of the licenced program during the term of the agreement.
3. Where, however, the agreement includes licence and maintenance components, the amount which properly relates to maintenance services can be pro-rated over the term of the agreement in accordance with the decision in *Arthur Murray*.

Example:

Licensor, L Pty Ltd, an Australian company, enters into a licence agreement on 1 July 1991 with licensee, U Pty Ltd, which provides the right to use a proprietary computer software program for a term of 3 years. Maintenance service is also available under the agreement. A licence fee of \$30,000 and service fee of \$3,000 are payable on execution of the agreement.

The licence fee of \$30,000 is derived when a legally enforceable debt arises to L Pty Ltd, ie, on execution of the agreement.

The service fee of \$3,000 due to L Pty Ltd can be pro-rated over the term of the agreement ie, 3 years.

Commissioner of Taxation
30/9/93

FOI INDEX DETAIL: Reference No.

Related Rulings: IT 2669, IT 2660

Subject Ref: licence fee, computer software, derivation of income

Legislative Ref: ITAA ss6(1), 25(1), 26(f)

Case Ref: Arthur Murray (NSW) Pty Ltd v FC of T (1965) 114 CLR 314; 14 ATD 98; 9 AITR 673

ATO Ref: CWD Case 221 & 350

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