


***TD 93/D90 - 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 ?***

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This document has been finalised by TD 93/149.

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: 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*?**

1. The terms of the contractual arrangements between the agent and the service provider under which the commission is payable are a major consideration in determining when the commission income of the 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 would indicate that the commission income has been derived. (*Henderson v FC of T* (1970) 119 CLR 612, 70 ATC 4016, (1970) 1 ATR 596; *J Rowe & 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. Also discussed in Taxation Ruling IT 2626).
2. If the agent forwards to the service provider the gross amount received from the client, the commission is derived when it is a recoverable debt in accordance with the terms of the contractual arrangements between agent and service provider.
3. If the agent retains the commission and forwards to the service provider the net amount, the commission is derived when the gross amount is received from the client.
4. It is not correct to say that the decision in *Arthur Murray (N.S.W.) Pty Ltd v. FC of T* (1965) 114 CLR, 14 ATD 98 is authority for the view that a commission is not derived until a particular service (e.g. an airline flight) has been provided to the client. In the case of a travel agent the commission is not payable in relation to the provision by the service provider of the service to the client (e.g. the airline flight), but rather in relation to the arranging of that service (i.e. the booking of the flight). Therefore, it can be expected that all the necessary services have been performed by the agent when the commission is received.
5. If the agent is required to repay the commission to the service provider (e.g. in case of cancellation) and the amount of the repayment has been previously included in assessable income of the agent, the amount repaid is a loss or outgoing incurred in gaining the assessable income of the agent and is therefore deductible under subsection 51(1)

*Example:*

*A travel agent signs up a client for an overseas holiday 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 the full fare, on 20th June 1993. Even though the client has not used the tickets for their holiday as at 30th June 1993, the travel agent should declare the commission income in the tax return for the year ended 30th June 1993..*

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FOI INDEX DETAIL: Reference No.

Related Determinations: TD 92/D212

Related Rulings: IT 2626

Subject Ref:

Legislative Ref: ITAA 25(1); 51(1)

Case Ref: *Henderson v. F. C. of T.* (1970) 119CLR 621, 70 ATC 4016; (197) 1 ATR 596 *Arthur Murray (N.S.W.) Pty. Ltd. v. F.C.T.* (1965) 114 CLR 314; 14 ATD 98; *J Rowe & 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.

ATO Ref: A25

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ISSN 1038 - 8982