TD 2006/29 - Income tax: foreign currency exchange gains and losses: if a foreign exchange 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 (other than livestock that is only trading stock by reason of the statutory definition of trading stock), is that gain 'ordinary income' as defined in section 6-5 of the Income Tax Assessment Act 1997 for the purposes of subsection 45-120(1) of Schedule 1 to the Taxation Administration Act 1953 ?

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Taxation Determination

Income tax: foreign currency exchange gains and losses: if a foreign exchange 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 (other than livestock that is only trading stock by reason of the statutory definition of trading stock), is that gain 'ordinary income' as defined in section 6-5 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 Ruling provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes. With the exception of livestock that is only trading stock by reason of the statutory definition of trading stock a foreign exchange realisation gain made on payment for the taxpayer's trading stock is ordinary income as defined in section 6-5 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).

Date of effect

2. This Determination applies to years commencing 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.

Commissioner of Taxation
26 April 2006

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the 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.

5. Consequently, simply because a foreign exchange 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.

6. The reasoning of 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, establishes that a foreign exchange gain arising from the acquisition of foreign currency denominated trading stock is income according to ordinary concepts.

7. 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 cases (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.

8. Subsection 45-120(1) of Schedule 1 to the TAA 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.

9. Nothing in this Determination prevents certain entities from using a net foreign exchange gain in the calculation of instalment income in accordance with Law Administration Practice Statement PS LA 2005/17.

References

Previous draft:

TD 2006/D9

Subject references:

- foreign exchange gains and losses
- forex realisation event
- foreign currency translation
- PAYG instalments
- 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
- 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

Other references:

- Law Administration Practice Statement PS LA 2005/17

ATO references

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