TD 92/128 - Income tax: property development : if land is acquired for development, subdivision and sale but after some initial development the project ceases and is recommenced in a later income year, how is a profit on the sale of the land treated for income tax purposes?

This cover sheet is provided for information only. It does not form part of *TD 92/128 - Income tax: property development : if land is acquired for development, subdivision and sale but after some initial development the project ceases and is recommenced in a later income year, how is a profit on the sale of the land treated for income tax purposes?*

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax : property development : if land is acquired for development, subdivision and sale but after some initial development the project ceases and is recommenced in a later income year, how is a profit on the sale of the land treated for income tax purposes?

1. Net profit from the sale of the land is assessable income under subsection 25(1) of the *Income Tax Assessment Act 1936.*

2. The land is not treated as trading stock at the time of its sale. The land is treated as trading stock when it is acquired and during the initial development stages. It ceases to be treated as trading stock, however, when the business activities cease.

3. Land can only be treated as trading stock if a business of trading in land is actively being carried on. There must be present the continuity of activity which characterises a business, refer to the remarks of Jacobs and Aickin JJ. in *F C of T v. St. Hubert's Island Pty Ltd* (1).

4. When the business activities recommence, the land is not brought back into the business and treated as trading stock. No section in the Act allows a deduction for the notional cost of introducing trading stock into a business, see the remarks of Brennan J. in *John v FC of T* (2).

5. The existence of a tax liability on the disposal of an item that was previously trading stock is reinforced by subsection 36(1).

Example

A taxpayer acquires broadacres for development, subdivision and sale. After some initial development work the project is abandoned because of lack of finance. Some years later the taxpayer obtains new finance and the project is recommenced and completed with the sale of residential blocks.

Net profit on the sale of each block is brought to account as assessable income under subsection 25 (1).

Commissioner of Taxation
16/07/92

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Related Determinations: TD 92/124; TD 92/125; TD 92/126; TD 92/127

Subject Ref: land development; project ceases and recommenced

Legislative Ref: ITAA 25(1); ITAA 36(1).

Case Ref: (1) FC of T v. St. Hubert's Island Pty Ltd. (1977-78) 138 CLR 210 ; (2) John v FC.of T (1989) 166 CLR 417.

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