

TD 92/161 - Income tax: property development: if land originally acquired (before 20 September 1985) and used as a farm, is later ventured into a business of subdivision, development and sale, how are the proceeds on the sale of a block returned as assessable income?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *1 October 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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 originally acquired (before 20 September 1985) and used as a farm, is later ventured into a business of subdivision, development and sale, how are the proceeds on the sale of a block returned as assessable income?

1. Net profit from the sale of each block is assessable income under subsection 25(1) of the *Income Tax Assessment Act 1936*.
2. The land is not trading stock and, therefore, the trading stock provisions do not apply.
3. The land is not trading stock because it was not originally acquired for resale. A view confirmed by Jacobs J in *St. Hubert's Island Pty Ltd v. FC of T* (1977-78) 138 CLR 210; 78 ATC 4101; 8 ATR 452. When considering the characterisation of activities involving the development and sale of an asset not acquired for the purpose of development, his Honour said: '*The asset must at least have been acquired for the purpose of resale before the question can arise whether the activities are trading activities.*'
4. Further authority for the land not being trading stock can be found in *A.R.M. Constructions Pty Ltd v FCof T* 87 ATC 4790; 19 ATR 337 and in the remarks of Brennan J in *John v FCof T* (1989) 166 CLR 417; 89 ATC; 20 ATR 1.
5. In calculating the net profit from the sale of a block, the sale proceeds are reduced by an appropriate amount based on the market value of each block at the time the land was ventured into the business.
6. This Determination does not attempt to lay down any guidelines for determining whether the sale of land previously used as a farm is the mere realisation of a capital asset or the carrying on of a business of land development. A discussion on the taxation principles involved when considering this question can be found in Taxation Ruling TR 92/3.

Example

A taxpayer acquires land in 1982 which is used as a farm. Many years later the city boundaries extend and the farmer decides to venture the land into a business of subdivision, development and sale.

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

Commissioner of Taxation

01/10/92

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Related Rulings: TR 92/3.

Subject Ref: land development; trading stock

Legislative Ref: ITAA 25(1); ITAA 28-31

Case Ref: St. Hubert's Island Pty Ltd v. FC of T (1977-78) 138 CLR 210; 78 ATC 4101; 8 ATR 452; John v. FC of T (1989) 166 CLR 417; 89 ATC 4101; 20 ATR 1; A.R.M. Constructions Pty Ltd v. FC of T 87 ATC 4790; 19 ATR 337

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