


***TD 93/33 - Income tax: can a "first year of income" for purposes of averaging provisions for artists etc contained in Division 16A be an earlier year than the year a former resident returns to Australia?***

 This cover sheet is provided for information only. It does not form part of *TD 93/33 - Income tax: can a "first year of income" for purposes of averaging provisions for artists etc contained in Division 16A be an earlier year than the year a former resident returns to Australia?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Taxation Determination

### **Income tax: can a "first year of income" for purposes of averaging provisions for artists etc contained in Division 16A be an earlier year than the year a former resident returns to Australia?**

1 Yes. A former resident returning to Australia must treat as the "first year of income" the year in which a taxpayer first was a "qualifying resident taxpayer" in receipt of "eligible taxable income" greater than \$2,500.

2 Subsection 158K(3) of the *Income Tax Assessment Act (1936)* applies in determining the "average eligible taxable income" for a taxpayer who is "other than an original non-resident taxpayer".

3 In a continuous working life of years of income a taxpayer can have only one "first year of income" (Case Z6 92 ATC 128; AAT Case 7674 22 ATR 3587).

#### Example:

*A writer/actor, a "qualifying resident taxpayer" in 1973 in receipt of eligible taxable income greater than \$2,500, ceased to be a resident of Australia in the 1978 year. The taxpayer was a non-resident of Australia for the years ended 30 June 1979 to 1988. The taxpayer came back to Australia during the 1989 year.*

*For the purposes of calculating the "average eligible taxable income" the "first year of income" is the year that the taxpayer was originally a "qualifying resident taxpayer" i.e. 1973.*

**Commissioner of Taxation**

04/03/93

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