

TD 18 - Capital Gains: From what time is indexation available in "off the plan" purchases?

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 18

Capital Gains: From what time is indexation available in "off the plan" purchases?

Determination

1. An "off the plan" purchase occurs where the acquisition of land or land and building cannot be completed until certain events have happened. For example, where the owner of the land has not completed all capital works required before building can commence such as finalisation of boundaries, roads and telephone and electricity connections. Another example where an "off the plan" purchase can occur is where an apartment block is in the course of construction.
2. In these cases, the purchaser enters into a contract, usually paying a deposit on signing the contract, with settlement and payment of the balance of the purchase price not occurring unless a specified event happens. This could be the finalisation of all capital works needed before building can commence or the completion of the building or apartment.
3. An "off the plan" contract is a contract subject to a condition precedent to the performance of the contract (rather than a condition precedent to the existence of the contract).
4. On this basis the contract is "made" at the time it is executed (subsection 160U(3)). However no liability for the balance of the purchase price arises until the condition precedent, for example, the registration of title, is satisfied.
5. Both the amount of the deposit paid and the balance of the purchase consideration are indexed from the time the liability to pay the respective amounts is incurred. For the balance of the purchase consideration, this would usually be from the time the condition precedent is satisfied.
6. This Determination is not inconsistent with Taxation Ruling IT 2362 which deals with the timing of payment once the liability has arisen. In "off the plan" purchases, the liability to pay the deposit and the liability to pay the balance of the purchase price arise at different times.

COMMISSIONER OF TAXATION

31 October 1991

FOI INDEX DETAIL: Reference No. CGT 18

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Legislative Ref: 160ZJ, 160U(3). ATO Ref: BRIS LAF, IT2362.