



TD 19 - Capital Gains: From what time are construction contract payments indexed if paid in instalments subject to an architect's certificate?

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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 19

Capital Gains: From what time are construction contract payments indexed if paid in instalments subject to an architect's certificate?

Determination

1. Where a taxpayer enters into a set fee construction contract which provides for payment by instalments corresponding to the value of work done by the builder (as per an architect's certificate), the purchaser acquires the building at the time the contract is made i.e. executed (subsection 160U(3)).

2. Liability to pay or give consideration in the form of each progress payment only arises on the completion of the various agreed stages of work i.e. on the architect's certification. Accordingly, each progress payment is indexed from the issue of the architect's certificate in relation to that payment.

Example:

A taxpayer entered into a \$200,000 construction contract with a builder on 1 July 1990. The contract called for the construction of a small factory building.

The architect's certificates were issued on 12 September 1990, 21 December 1990 and 15 February 1991, and amounts of \$60,000, \$90,000 and \$50,000 respectively, were paid.

The \$60,000 payment is indexed from 12 September 1990;

The \$90,000 payment is indexed from 21 December 1990; and

The \$50,000 payment is indexed from 15 February 1991.

COMMISSIONER OF TAXATION

31 October 1991

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