


# ***TD 92/D212 - Income tax: when is commission on the sale of real property derived as assessable income by taxpayers engaged in carrying on a real estate business?***

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Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: when is commission on the sale of real property derived as assessable income by taxpayers engaged in carrying on a real estate business?**

1. The law of real property in Australia varies between each State and Territory. Allowing for these variations, commission income is derived by a real estate agent when the right to receive it arises as a debt due and owing irrespective of when it is actually received. The terms of the contract or arrangement entered into between the vendor and agent will be a major consideration in determining when the commission income of an agent is derived. If the payment of the commission has matured into a recoverable debt, and the agent is not obliged to take any further step before becoming entitled to payment of the commission, the income has been derived. This would generally occur when the commission income is available for transfer from the statutory trust account to the agent's general account.

*Example:*

*In NSW a real estate agent who holds money on deposit for the purchase of real estate acts as a stakeholder for both the purchaser and vendor. The monies are held in a trust account separate from the agent's general account. On completion of the contract, ie. on settlement, an "order on the agent" is issued to the agent from both the purchaser's and vendor's solicitors. This is a letter permitting the agent to account to the vendor for the deposit less the agent's commission. It is the receipt of this "order on the agent" letter that determines when the commission income has been derived. At this point the funds are available for transfer from the statutory trust account to the agent's general account.*

**Commissioner of Taxation**

12/11/92

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