

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.

Draft Taxation Determination

Income tax: in "Take or Pay" contracts, is income derived at the time of receipt/ billing or when the product is delivered?

1. Income is derived at the time of billing.
2. A "Take or Pay" contract can be described as one where payments must be made whether or not the product is actually delivered. The obligation to pay is absolute and is not dependent on the buyer taking delivery of the goods.
3. Under a "Take or Pay" contract the buyer contracts to purchase an annual minimum quantity of product and where a shortfall occurs in the amount of product taken, an enforceable debt is created. The debt is billed and is due and payable under the terms of the contract.
4. In *Barratt v F.C. of T*(1992) 23 ATR 339; 92 ATC 4275 Gummow J at pp 4281-4282 said in discussing the relationship between recoverability and derivation "that a debt is derived if it is presently recoverable, in the sense that there is a present right to receive the amount that is both earned and quantified, without any contingency or defeasibility of that right."

Example:

A, the buyer contracts with B, the seller to purchase an annual minimum quantity of product G say 100,000 units. If in any year the buyer only takes delivery of 80,000 units, A is obligated to pay for the shortfall of 20,000 units. B bills A for the shortfall and the debt becomes due and payable under the terms of the contract.

Commissioner of Taxation

10/6/93

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 93/18

Related Rulings:

Subject Ref: derivation of income; contracts

Legislative Ref: ITAA 25(1)

Case Ref: *Barratt v. FC of T* (1992)23 ATR 339, 92 ATC 4275;

ATO Ref: Mel Cas X

ISSN 1038 - 8982