

***TD 93/D62 - Income tax: when is a fee or premium derived on an option granted by a financial institution in the ordinary course of its 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.

## Draft Taxation Determination

### Income tax: when is a fee or premium derived on an option granted by a financial institution in the ordinary course of its business?

1. We consider that the fee or premium is assessable income derived by the financial institution at the time when the option is granted, in terms of subsection 25(1) of the *Income Tax Assessment Act 1936*, see *The Commissioner of Taxes (South Australia) v. Executor Trustee & Agency Company of South Australia Limited* (Carden's case) (1938) 63 CLR 108; *Henderson v. FC of T* (1970) 119 CLR 612.

2. The fact that the fee or premium is calculated having regard to the expected future costs of hedging does not, in our view, alter the assessability of the gross amount of the fee when the option is granted.

3. We do not accept, in these circumstances, a profit emerging basis of accounting for tax purposes. As stated by the High Court in *J. Rowe and Son Pty Ltd v. FC of T* (1970-71) 124 CLR 421 the concept of aggregation of the profit element of each transaction undertaken by a taxpayer in the course of its business to arrive at taxable income is inconsistent with the fundamental scheme of the Act.

*Example:*

*Bank A grants to customer B an option to buy from the bank US\$1 million at A\$.80 in six months time. Bank A charges a A\$10,000 fee for the option.*

*The fee is derived in terms of subsection 25(1) by Bank A at the time when the option is granted.*

**Commissioner of Taxation**

04/03/93

FOI INDEX DETAIL: Reference No.

Subject Ref: option fee; option premium; assessability; derivation.

Legislative Ref: ITAA 25(1).

Case Ref: *The Commissioner of Taxes (South Australia) v. Executor Trustee & Agency Company of South Australia Limited* (1938) 63 CLR 108.

*Henderson v. FC of T* (1970) 119 CLR 612.

*J. Rowe and Son Pty Ltd v. FC of T* (1970-71) 124 CLR 421.

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