

TD 93/65 - Income tax: is a computer programmer a writer for the purposes of Division 16A of the Income Tax Assessment Act 1936 ?

! This cover sheet is provided for information only. It does not form part of *TD 93/65 - Income tax: is a computer programmer a writer for the purposes of Division 16A of the Income Tax Assessment Act 1936 ?*

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: is a computer programmer a writer for the purposes of Division 16A of the *Income Tax Assessment Act 1936*?

1. Yes. A computer programmer is a writer and thus qualifies for concessional treatment in terms of Division 16A.
2. Division 16A, comprising sections 158B - 158L of the ITAA, provides for income averaging for abnormal income of Australian resident writers, artists, inventors, sportspersons, composers, performers and production associates.
3. Section 158B defines a writer as 'the author of a literary or dramatic work'. The term author is not defined in the Division and must, therefore, take its popular and conventional meaning. In the *Macquarie Dictionary* an author is defined as the composer of a literary work. The term literary work is commonly used, and has been considered judicially, in relation to copyright laws. The High Court of Australia in *Computer Edge Pty Ltd v. Apple Computer Inc.* (1986) 161 CLR 171 considered whether the term 'literary work' encompassed a computer program for the purposes of the *Copyright Act 1986*. The Court decided that a computer program written in source code was a 'literary work' for the purposes of that Act.
4. We accept that a computer program is also a literary work for the purposes of Division 16A of the ITAA. Indeed the Explanatory Memorandum accompanying the *Taxation Laws Amendment Act (No 4.) 1987* which inserted Division 16A into the ITAA indicates that the definition of writer in Division 16A was linked to that term as used in the Copyright Act.
5. Accordingly the writer of a computer program qualifies for concessional treatment in respect of income derived from that source unless the provisions of section 158G apply. In general terms, section 158G operates to deny concessional treatment unless:
 - (a) an arrangement for the rendering of services was entered into solely for the completion of one or more specified programs; and
 - (b) the rendering of the services to the other person or associate does not result in substantial continuity of service.

Examples:

1. A computer programmer is employed (for example employed by a government body or non-government body) and in the course of that employment writes a computer program. The income derived from this source is not subject to concessional treatment under Division 16D because the employment results in the programmer continuing to render services to the employer.

2. A self employed computer programmer is engaged under a contract to write one program. The computer programmer will qualify for concessional treatment, where the rendering of services to the other person or an associate does not result in substantial continuity in the rendering of services .

Commissioner of Taxation

8/4/93

FOI INDEX DETAIL: Reference No. I 1214653

Previously issued as Draft TD 92/D175

Related Determinations:

Related Rulings: IT131; IT150; IT151; IT334; IT2009; IT2077

Subject Ref: authors; abnormal income; averaging; computer programs; computer programmers; copyright; intellectual property; literary work; writers

Legislative Ref: ITAA Division 16A of Part III; ITAA sections 158B - 158L; Copyright Act 1986; Taxation Law Amendment Act (No 4) 1987

Case Ref: Computer Edge Pty Ltd v Apple Computer Inc (1986) 161 CLR 171

ATO Ref: NOR J36/354/5

ISSN 1038 - 8982