TD 92/D214 - Income tax: when is income on a lay-by sale brought to account by the seller?

This document has been finalised by TR 95/7.

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Draft Taxation Determination

Income tax: when is income on a lay-by sale brought to account by the seller?

1. The full 'sales value' of the lay-by sale agreement is brought to account at the date of making the lay-by sale agreement.

2. In a common lay-by sale agreement between the seller and the buyer, the description of the goods and the full 'sales value' of the goods are shown on the lay-by sale docket. This docket also records the deposit paid and evidences that a lay-by debt is in existence. The goods are labelled with a reference to the lay-by sale agreement and are held by the seller separately from the trading stock on hand pending full payment by the buyer.

3. The lay-by goods are not trading stock on hand of the seller. Taxation Ruling IT 2670 explains the meaning of 'trading stock on hand' and at paragraph 4 advises the importance of the dispositive power over all other tests (such as, for example, property or possession) in determining whether goods are trading stock on hand.

4. In the absence of a breach of the lay-by sale agreement, the seller no longer has dispositive power over those goods.

5. As the goods are not trading stock on hand of the seller, section 28 requires that this be taken into account in determining the taxable income.

6. If there is a breach of the lay-by sale agreement, the transaction is treated as similar to one of a return of goods by the buyer at the date of the breach and there is a cancellation of the lay-by debt owing under the agreement.

7. Any money forfeited by the buyer under a breach of the agreement is assessable income of the seller in the year of forfeiture.

Example:
On 20 June 1992 buyer B, enters into a lay by sale agreement with seller S, for goods totalling $100. B pays $20 deposit leaving a balance of $80 owing under the agreement. The purchase price is to be paid in full by 30 September 1992.

The seller labels the goods with a reference to the lay-by sale agreement and holds them separately from the trading stock.

The lay-by goods held by the seller are not trading stock on hand in the income year 1991-1992.

The full sales value of $100 is returned in the profit and loss account as sales in the income year 1991-1992. The balance sheet as at 30 June 1992 will reflect $20 in cash and $80 in a lay-by debt.

Assume there is a breach of the agreement in the income year 1992-1993 by B not paying the balance by the final date and the deposit is to be forfeited . Accounting entries are made at the date of the breach to reflect the sales return of $100 for the lay-by sales; the $20 deposit forfeited is returned as income; and the $80 lay-by debt is cancelled.

The lay-by goods are returned to trading stock on hand by S at the date of the breach.

Commissioner of Taxation
26/11/92

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