

Royal Commission on the taxation of profits and income (1955) Cmd. 9474 Comments on what is a trade

1. We concluded that it was better that there should be no single fixed rule [to determine what is a trade]. This means that each case must be decided according to its own circumstances. The general line of enquiry that has been favoured by appeal Commissioners and encouraged by the Courts is to see whether a transaction that is said to have given rise to a taxable profit bears any of the “badges of trade”. This seems to us the right line, and it has the advantage that it bases itself on objective tests of what is a trading adventure instead of concerning itself directly with the unravelling of motive. At the same time we have noticed that there has been some lack of uniformity in the treatment of different cases according to the tribunals before which they have been brought. This seems to us unfortunate and, for the sake of clarity, we have drawn up and set out below a summary of what we regard as the major relevant considerations that bear upon the identification of these “badges of trade”.

1. The subject matter of the realisation. While almost any form of property can be acquired to be dealt in, those forms of property, such as commodities or manufactured articles, which are normally the subject of trading are only very exceptionally the subject of investment. Again property which does not yield to its owner an income or personal enjoyment merely by virtue of its ownership is more likely to have been acquired with the object of a deal than property that does.
2. The length of the period of ownership. Generally speaking, property meant to be dealt in is realised within a short time after acquisition. But there are many exceptions from this as a universal rule.
3. The frequency or number of similar transactions by the same person. If realisations of the same sort of property occur in succession over a period of years or there are several such realisations at about the same date a presumption arises that there has been dealing in respect of each.
4. Supplementary work on or in connection with the property realised. If the property is worked up in any way during the ownership so as to bring it into a more marketable condition; or if any special exertions are made to find or attract purchasers, such as the opening of an office or largescale advertising, there is some evidence of dealing. For when there is an organised effort to obtain profit there is a source of taxable income. But if nothing at all is done, the suggestion tends the other way.
5. The circumstances that were responsible for the realisation. There may be some explanation, such as a sudden emergency or opportunity calling for ready money, that negatives the idea that any plan of dealing prompted the original purchase.
6. Motive. There are cases in which the purpose of the transaction of purchase and sale is clearly discernible. Motive is never irrelevant in any of these cases. What is desirable is that it should be realised clearly that it can be inferred from surrounding circumstances in the absence of direct evidence of the seller’s intentions and even, if necessary, in the face of his own evidence.

1 Cmd. 615, para. 91

2 *Leeming v. Jones*, (1930), 15 T.C. 333, at p. 357.