


TR 93/D30 - Income tax: income from the sale of tobacco leaf

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Draft Taxation Ruling

Income tax: income from the sale of tobacco leaf

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What this Ruling is about

This Ruling explains

(i) Why tobacco leaf stored by tobacco growers on their farms is not "trading stock on hand" for the purposes of section 28 of the *Income Tax Assessment Act 1936* (ITAA).

(ii) When tobacco growers are to return as income, amounts received from the sale of tobacco leaf.

Ruling

2. Tobacco leaf awaiting sale which is held by tobacco growers on their farms is not "trading stock on hand" for the purposes of section 28 of the ITAA. This means that growers need not account for the opening and closing values of tobacco leaf situated on their farms at the beginning and end of a year of income.

3. Payments received by tobacco growers from tobacco leaf marketing boards are income under section 25(1) of the ITAA.

The payment must be included in the growers' assessable income in the year of income in which the grower is notified by the marketing board of the amount to which the grower is entitled to receive.

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Date of effect

4. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Explanations

Background

5. Tobacco leaf is grown in Australia in Victoria, New South Wales and Queensland. The growing and selling of tobacco leaf in those states is closely regulated by statutory tobacco leaf marketing boards ("the marketing boards") in each state. The regulatory statutes are the *Marketing of Primary Products Act 1958* (Vic.), the *Marketing of Primary Products Act 1983* (NSW) and the *Primary Producers' Organisation and Marketing Act 1926-1987* (Qld.).

6. The statutory schemes in each state are similar and operate in this manner:

- . The marketing boards allocate a leaf quota to individual growers.
- . When the tobacco leaf becomes a "commodity" (i.e. is ready for sale as tobacco leaf), property in the leaf is divested from the tobacco growers and invested in the marketing boards.
- . The marketing boards conduct sales of tobacco leaf about three or four times a year.
- . Almost all of the growers' quota is offered for sale by the marketing boards. The remainder of the quota which is not offered for sale is stored by growers in kilns on their farms as a type of insurance against crop failure.

. Payments are made to growers by the marketing boards after the leaf is sold. Before making the payments to the growers, the marketing boards deduct from the proceeds of sale, various charges, costs and expenses. The growers receive this net amount for the sale of the tobacco leaf. It appears that, until this net amount is ascertained, the growers have no entitlement to a payment from the relevant marketing board.

. The marketing boards take out insurance on the leaf from the date of harvest.

When are goods "trading stock on hand"?

7. Goods will be "trading stock on hand" under section 28 of the ITAA provided the taxpayer has the power to dispose of the goods (see *Farnsworth v. F C of T* (1949) 78 CLR 504 and *All States Frozen Foods Pty Ltd v. F C of T* (1990) 21 FCR 457 (90 ATC 4175; (1990) 20 ATR 1874)). Where a taxpayer does not have property in the goods and where the power to dispose of the goods has been transferred to someone else, the goods will not be trading stock of the taxpayer (see generally Taxation Ruling No. IT 2670).

8. Because of the statutory marketing schemes tobacco growers have neither property in, nor the power to dispose of, tobacco leaf grown by them. Consequently tobacco leaf awaiting sale which is stored by growers on their farms is not "trading stock on hand" for the purposes of section 28 of the ITAA.

In what year of income must tobacco growers account for income received from the marketing boards?

9. Because the tobacco leaf is not trading stock, growers cannot use an ordinary trading account to calculate income received from the sale of tobacco leaf in a particular income year. The payments eventually made to the growers by the marketing boards constitute net amounts of the proceeds of sale of the leaf after various costs, charges and expenses have been deducted by the boards.

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10. Because the growers have no right to receive payments from the marketing boards before the net amount of their entitlement has been calculated, we consider that the growers will have derived income from the sale of tobacco leaf at the time they are advised by the marketing board of the amount of the net payment they are entitled to receive. We believe that in most cases this advice is received simultaneously with the payment from the board.

Commissioner of Taxation

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- ITAA 25(1), ITAA 238

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case references
- Farnsworth v FCT (1949)
78 CLR 504
- All States Frozen Foods
v. FCT
90 ATC 4175 (1990) 20
ATR 1874