TR 94/D6 - Income tax: primary production and forestry

This cover sheet is provided for information only. It does not form part of *TR 94/D6 - Income tax: primary production and forestry*

This document has been finalised by TR 95/6.

Draft Taxation Ruling
Income tax: primary production and forestry

other Rulings on this topic

IT 360; IT 235

contents	para
What this Ruling is about	**1**
Ruling	**2**
Forest operations as primary production	2
Carrying on a business	9
Assessable income from forestry operations	11
Allowable deductions	27
Trading stock	36
Capital gains tax	39
Date of effect	**55**
Explanations	**56**
Profits from isolated transactions	56
Costs of planting and subsection 51(1)	58
Deductions when timber felled on land or right acquired	60
Examples	**64**

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling deals with the extent to which receipts derived by persons engaged in the forestry industry constitute assessable income and the deductions allowable in respect of that income. It is mainly concerned with the tax consequences of transactions entered into by persons engaged in a business of forest operations. However, where relevant, it also addresses the tax treatment of transactions related to plantations but which are not entered into in the course of carrying on a business of forest operations.

Ruling

Forest operations as primary production

2. A taxpayer who is engaged in forestry operations is a "primary producer" for income tax purposes if those forestry activities constitute the carrying on of a business (section 6(1)). The question of whether a taxpayer's activities amount to the carrying on of a business depend on the facts of each particular case. Activities that have a commercial or profit making purpose and are organised in a business-like way will generally amount to carrying on a business.

3. The definition of the term "primary production" (subsection 6(1)) includes "forest operations" (also defined in subsection 6(1)). Operations qualify as forest operations only if they are conducted in the course of, or for the purposes, of a business. This test must be satisfied in all cases before operations or activities can be accepted as "forest operations". The following paragraphs should be read with this requirement in mind.

4. The planting or seeding of trees in a plantation or forest, qualifies as forest operations (and accordingly as primary production), if the trees planted or tended are intended for felling. The planting or tending of trees other than in a plantation or forest does not qualify as forest operations, nor would the planting or tending of trees, wherever they are grown, qualify if they are intended for decorative purposes or to provide shelter.

5. In addition, forest operations includes the felling of trees in a plantation or forest, even though the taxpayer concerned did not plant or tend the trees. The term also includes the transport of trees (and parts of trees), by the person who felled the trees to the place where the first stages of milling or processing of the timber takes place.

6. Milling or processing does not include the normal preparation of felled trees to enable them to be moved, eg. the lopping of lateral growth or sawing them into manageable lengths. When carried out by the person who felled the trees, the normal preparation for removal is to be regarded as part of the felling operation. The production of posts, poles, railway sleepers. etc., or the preparation of felled trees for pulping is, however, regarded as milling or processing and not forest operations.

7. Also included in forest operations is the transport by the person who felled the trees in a plantation or forest to a delivery point (eg. a railway loading point) from which the trees are to be transported for milling or processing. For example, a person who contracts with a mill to supply timber, and who is required to cut, snig and haul the timber, in most cases will be engaged in forest operations (and a primary producer for income tax purposes) (Taxation Ruling IT 235).

8. Operations and activities that do not qualify as forest operations include transportation other than by the person who felled the trees or the milling or processing of the trees.

Carrying on a business

9. Forest operations carried on by the taxpayer must be carried on, in the course, or for the purpose, of a business. The term "business" is defined broadly in subsection 6(1) to include any profession, trade, employment, vocation or employment. Essentially, however, whether or not the activities of a taxpayer amount to the carrying on of a business is a question of fact and degree to be decided on the facts of each case.

10. In determining whether particular activities constitute the carrying on of a business, courts and tribunals have considered the following elements to be relevant:

(i) whether the activities have a significant commercial purpose: *Thomas v. FC of T* 72 ATC 4094; (1972) 3 ATR 165;

(ii) the scale of the activities (a person may carry on a business even though they do so in a small way) *Thomas* (supra);

(iii) the nature of the activities, particularly whether they have the purpose of profit making. (However, profit making in a particular year is not essential) *Ferguson v. FC of T* 79 ATC 4261; (1979) 9 ATR 873;

(iv) repetition and regularity of the activities *Ferguson* (supra);

(v) whether the activities are organised in a business-like manner *Ferguson* (supra);

(vi) the volume of the operations and the amount of the capital employed *Ferguson* (supra);

(vii) whether the activities may properly be described as the pursuit of a hobby or recreation: *Ferguson* (supra).

Assessable income from forestry operations

11. All income derived by a taxpayer in the course of carrying on a business of forest operations constitutes assessable income in the year of income in which it is derived. Receipts which constitute assessable income include:

- proceeds from the sale of felled timber;
- proceeds from the sale of standing timber;
- royalties received from granting rights to other persons to fell timber.

Sale of felled timber

12. Total receipts derived from the sale of felled timber constitute assessable income of the taxpayer in the year of income in which the timber is sold. The timber is sold on the day the contract of sale is entered into.

Standing timber

Disposal of standing timber

13. Where a taxpayer disposes of trees which have been planted (not necessarily by the taxpayer) and tended for the purpose of sale and, although the trees constitute the whole or part of the assets of a business, the disposal is not in the ordinary course of carrying on that business, the value of the trees constitutes assessable income of the taxpayer (subsection 36(1)).

14. If the taxpayer who has disposed of the trees (and is assessable on the value of the trees under subsection 36(1)) was also the taxpayer who planted the trees, deductions for expenditure incurred on the seedlings, planting and other non-capital costs incurred in the course of carrying on the business would have been allowable deductions in the assessments for the years of income in which the expenditure was incurred (subsection 51(1)) .

15. If a taxpayer who disposes of standing trees (and is assessable on the value of the trees under subsection 36(1)) purchased the plantation or forest from a person who was also assessable on the value of those trees (under subsection 36(1)), the taxpayer is deemed to have purchased the trees at a price equal to their market value on the day they were acquired from the previous owner. Expenditure on the deemed purchase price of the standing trees, ie. their market value on the day of acquisition, is expenditure of a capital nature, and therefore not deductible under subsection 51(1).

16. Where the trees are acquired in circumstances covered by subsection 36(1) and the taxpayer fells the timber for sale or use in manufacture for the purposes of producing assessable income, a deduction for the cost that is attributable to the trees felled in a particular year of income is allowable in the taxpayer's assessment for that year of income (section 124J). In the case of timber felled from trees acquired in circumstances covered by subsection 36(1), the value of the trees is deemed to be the purchase price and is the cost attributable to the trees.

Royalties

17. Royalties received by a taxpayer from granting a right to fell timber on land acquired by the taxpayer is assessable income of the taxpayer in the year of income in which the timber is felled (section 26(f)). The royalties are assessable income of the recipient even if the taxpayer granting the right is not carrying on a business of forest operations.

18. A taxpayer who receives royalties under a right to fell or remove trees on land owned by taxpayer is not generally regarded as conducting a business of forest operations if the trees were not planted or tended for the purposes of sale. Nevertheless, if payments received by the grantor or a right to remove trees are on the basis of the amount of timber cut or removed under a right to do so, the amounts are receipts "as or by way of royalty" and constitute assessable income (section 26(f)): *McCauley v. The Federal Commissioner of Taxation* (1944) 69 CLR 235.

19. For example, payments received by a taxpayer who entered into an agreement with a contractor to remove burnt trees for a specified amount for each ton of millable timber removed, were amounts received "as or by way of royalty" and constituted assessable income (section 26(f)): 6 CTBR (NS) Case 26

20. A landowner may sell stands of timber by granting a right to someone to cut and remove the timber for a specified amount which is payable whether or not the right to cut and remove the trees is exercised. If the price is not calculated on the amount of timber taken, it is likely that, in the absence of any special features, the amount received, even if in instalments, will not constitute assessable income: *Stanton v. The Federal Commissioner of Taxation* (1955) 92 CLR 630.

Insurance Recoveries

21. If trees in a plantation or forest planted or tended in the course of carrying on a business of operations are destroyed, insurance monies received for the loss of the profits or income that would have been derived from the trees constitute assessable income in the year of income in which the amount is received (section 26(j)).

22. If the trees are destroyed by fire, the taxpayer may elect to have the amount of the insurance recoveries spread over five years of income (subsection 26B(1)). Only amounts received under a contract or policy of insurance may be spread over five years of income. This concession does not extend to amounts received as compensation or damages received for the loss of trees.

23. If the taxpayer makes an election to spread the income over five years of income, one-fifth of the insurance received is assessable income in the year of income in which the amount was received, and one-fifth in each of the following four years of income (subsection 26B(6)). If a taxpayer is about to leave Australia, dies, becomes bankrupt or, in the case of a company, goes into liquidation, before the end of the fourth year of income, the whole of the unassessed insurance recovery will be assessable in the year of income in which the particular event occurs (subsection 26B(7)).

24. The portion of the insurance recovery carried forward to the four years of income following the year of receipt, is deemed to be income from primary production (subsection 26B(8)). Thus, even if the taxpayer ceases to carry on a business of primary production in those years, the averaging provisions continue to apply for those years, unless the taxpayer has not made an irrevocable election (subsection 158A) to withdraw from the averaging provisions.

Profits from isolated transactions

25. An isolated transaction involving forest operations may give rise to assessable income. This may occur when the taxpayer has a profit making intention or purpose and the transaction was entered into in the course of carrying on a business, or in carrying out a business operation or commercial transaction. The factors which are considered relevant in determining whether an isolated transaction amounts to a business or commercial transaction are set out in Taxation Ruling TR 92/3.

26. The sale of timber may result in an assessable profit even though:

(a) the trees have not been planted and tended for sale; or

(b) the trees do not constitute the whole or part of a business carried on by the taxpayer; or

(c) the disposal was not in the ordinary carrying of the business.

Allowable deductions

Taxpayer establishes a plantation or forest

27. Expenditure incurred in the course of planting trees to establish a plantation or forest, provided the expenditure is not of a capital nature, is an allowable deduction. Allowable expenditure would include the cost of seedlings, watering, fertilising, and expenditure incurred after the initial clearing in curtailing regrowth or in weed

control. The expenditure is deductible in the year of income in which it is incurred. The cost of constructing a dam to provide water for the trees is an example of expenditure of capital nature that is not an allowable deduction.

28. If a taxpayer acquires land and then plants trees, no part of the cost of the land is attributable to the trees. Accordingly, no deduction is allowable (under section 124J) in any year of income in which trees are felled.

Taxpayer purchases an immature plantation or forest

29. No deduction is allowable for expenditure incurred on the acquisition of a plantation or forest for the year of income in which the expenditure is incurred. However, if the taxpayer fells the timber for sale or uses it in manufacture for the purpose of producing assessable income, a deduction will be allowable to the taxpayer (under section 124J) for the part of the purchase price of the plantation or forest that is attributable to the timber felled in the particular year of income.

Person fells trees for the purpose of sale or use in manufacture

30. Expenditure incurred in acquiring the right to fell standing timber is of a capital nature. Although such expenditure is not allowable in the year of income in which it is incurred (subsection 51(1)), a deduction is allowable, in the years of income in which trees are felled for sale or use in manufacture, for the cost of the right that is attributable to the timber felled during the particular year of income (section 124J).

Taxpayer fells trees in an acquired forest or plantation

31. Expenditure necessarily incurred in maintaining a plantation or forest in the course of carrying on a business of forest operations is an allowable deduction in the year of income in which it is incurred. Deductions are allowable in each year of income in which trees are felled for the purpose of sale or use in manufacture, for the price paid for the land that is attributable to the timber felled during the particular year of income (section 124J). The deduction is allowable to the taxpayer whether the taxpayer fells the trees or the taxpayer receives royalties under a right granted to another person.

32. Expenditure incurred in felling and transporting the timber is allowable in the year of income in which the expenditure is incurred.

Taxpayer acquires a right to fell timber:

33. A taxpayer who acquires a right to fell timber on someone else's land for the purpose of sale or use in manufacture is entitled to a deduction in a year of income in which the trees are felled for the cost of so much of the right as is attributable to the timber felled during the particular year of income.

34. The taxpayer will be entitled to the deduction if he or she is felling the timber for the purpose of producing assessable income. It is not necessary for the taxpayer's activities in the forestry industry to constitute the carrying on of a business.

35. For the purposes of section 124J, payments are considered to be made to acquire a right to fell standing timber even though the vendor from whom the right was acquired did not grant or assign the right to fell the timber. Thus, deductions under section 124J are allowable to the purchaser of a right to fell standing timber where timber is felled under a right granted by the owner of the standing timber and not under the right acquired from the vendor: *Marbut Gunnersen Industries Pty Ltd v. FC of T* and *Monaro Sawmills Pty Ltd v. FC of T* 82 ATC 4182; (1982); 12 ATR 926.

Trading stock

Trees as trading stock

36. Trees form part of the land on which they grow and while standing do not constitute trading stock. Trees on hand at the end of a year of income that have been felled for the purpose of manufacture or sale in the course of carrying on a business of forest operations constitute trading stock and must be taken into account in calculating the taxpayer's taxable income (subsection 28(1)).

Valuation of trading stock

37. The value at which felled timber that is trading stock on hand at the end of a year of income is required to be taken into account is, at the option of the taxpayer, its cost price, market value or replacement price (subsection 31(1)).

38. If the taxpayer elects to value trading stock at cost price the cost price is calculated using the absorption cost method.. Thus, costs incurred in bringing the stock into its existing location and condition as well planting and maintenance costs would be taken into account. Such costs could include, for example, depreciation on the plant used to fell and transport the timber, wages, electricity, and transportation costs attributable to the trading stock. Costs not generally classified as production costs, such as selling and finance costs would not be included in the valuation.

Capital gains tax

Land and trees owned before 20 September 1985

39. There are no capital gains tax consequences for a taxpayer on the disposal of timber felled after 19 September 1985 where the taxpayer owned the land and trees before 20 September 1985. (TD 93/79)

40. While the trees are attached to the land, the land and trees are considered to be a single pre-CGT asset owned by the taxpayer. After the trees are cut, the taxpayer still retains ownership of the timber (now a chattel). In effect the original asset has been split into two pre-CGT assets. However, there has been no change in the ownership of any asset as a result of the cutting of the trees. Accordingly, there is no disposal for capital gains tax purposes (section 160M).

41. If the taxpayer later sells the timber, the sale of this asset will not be subject to capital gains tax as the taxpayer will be disposing of a pre-CGT asset. (However, if the taxpayer is engaged in timber operations or any income producing activity involving the felling of the trees, any profit will constitute assessable income of the taxpayer.)

42. Where the owner of pre-CGT land and trees sells timber according to two post-CGT contracts:

- a contract for granting the purchaser of the timber the right to enter the taxpayer's property over a period of time and remove timber as and when required; and
- a contract for the sale of the uncut timber;

the transactions are taken together to constitute the grant of a *profit à prendre*.

43. The grant of a *profit à prendre* gives rise to the disposal of a post-CGT asset created by the grantor (see below "Capital Gains Tax and *Profits à Prendre*"). The proceeds from the "sale" of the timber are treated as part of the consideration received from the granting of the *profit à prendre*. The capital gains tax consequences arising on

from the grant of a *profit à prendre* depends on when it was granted (see below). (TD 93/81)

Land and trees owned acquired after 19 September 1985

44. For capital gains tax purposes the felling of timber on land acquired on or after 20 September 1985 results in the original asset (the land with the trees) being split into two assets (the land and the timber) (subsection 160ZH(12)).

45. The cost base, indexed cost base or reduced cost base of the timber sold will be the amount of the relevant cost price of the combined asset that is attributable to the timber (subsection 160ZH(13)). If the taxpayer disposes of the land, the original cost base, indexed cost base or reduced cost base of the land will be reduced by the amount that was attributed to the timber (subsection 160ZH(14)).

46. Any capital gain arising on the disposal of the timber (or land) is assessable income of the year of income in which the disposal occurs.

Capital Gains Tax and Profits à Prendre

47. A right to remove standing timber is a *profit à prendre*. (A *profit à prendre* is a right to enter and remove some product or part of the soil from someone else's land). The effect of the capital gains tax provisions on a taxpayer who grants a *profit à prendre* depends on when it was granted.

(i) *Profits à prendre* granted after 19 September 1985 and before 21 September 1989

48. The granting of a *profit à prendre* during this period is treated by the Australian Taxation Office as a part disposal of the land in terms of section 160R. On this interpretation the capital gains provisions do not apply if the land had been acquired before 20 September 1985.

(ii) *Profits à prendre* granted after 20 September 1989 and before 26 June 1992

49. A *profit à prendre* is an asset created at the time it was granted. The asset is taken (by former paragraph 160M(5)(c)) to have been acquired by the grantor. Subsection 160C(2) then treats the grantor as owning the asset. The time of acquisition is determined by section 160U.

50. Where ownership of the asset changes, ie. where the grantee becomes the owner of the *profit à prendre*, there is a disposal of the asset by the grantor (and an acquisition of the asset by the grantee) in terms of subsection 160M(1). Of course, the grant of the *profit à prendre* may, by reason of subsection 160M(6) constitute the disposal of the asset created by the grantor.

51 It follows that, if the grant of the *profit à prendre* occurs on or after 20 September 1985 there is an acquisition by the grantor of a new asset created after that date. Therefore, the capital gains provisions apply on the disposal of the new asset. This is so notwithstanding that the underlying asset, for example the land, may have been acquired before 20 September 1985. (Taxation Ruling IT 2561)

(iii) *Profits à prendre granted after 25 June 1992*

52. Amendments to the capital gains tax provisions effective from 26 June 1992 apply to *profits à prendre* granted after 25 June 1992.

53. The effect of these amendments is that when a *profit à prendre* is granted, the asset is taken by paragraph 160M(6A)(a) to have been acquired by and commenced to be owned by the grantor. The time of acquisition is determined by subparagraphs 160U(6)(a)(ii) or (b)(ii). Further, the grantor is taken by new paragraph 160M(6A)(b) to have subsequently disposed of the asset to the grantee in whom it is vested on its creation. The time of disposal is determined by subparagraphs 160U(6)(a)(i) or (b)(i).

Capital Gains and Revenue costs

54. The cost base of a plantation or forest may include revenue costs incurred by the owner of a plantation or forest that was acquired after 20 August 1991. These costs may only be included in the cost base if they are not otherwise deductible. However, revenue costs cannot be taken into account in working out a capital loss, and will not be eligible for indexation.

Date of effect

55. 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 a 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

Profits from isolated transactions

56. A taxpayer although not carrying on a business of forest operations, may dispose of trees or standing timber at a profit in circumstances where the amount received is not as or by way of royalty. If the taxpayer makes a profit in these circumstances, that profit is income if:

(a) the intention or purpose of the taxpayer in entering into the profit-making transaction or operation was to make a profit or gain; and

(b) the transaction or operation was entered into, and the profit was made, in carrying out a business operation or commercial transaction. (TR 92/3 paragraph 16)

57. Where a taxpayer who is engaged in forest operations but disposes of a stand of timber is a transaction or operation that is not in the course of the taxpayer's forest operations, the profit on the transaction or operation will be income if:

(a) the intention or purpose of the taxpayer in entering into the profit-making transaction or operation was to make a profit or gain; and

(b) the transaction or operation was entered into, and the profit was made, in carrying out a business operation or commercial transaction. (TR 92/3 paragraph 15)

Costs of planting and subsection 51(1)

58. Expenditure incurred on seedlings and planting costs is incidental and relevant to carrying on a business of forest operations for the purposes of producing assessable income and is deductible in the year of income in which it is incurred. Ploughing of the land specifically for the purpose of planting the trees in a plantation or forest is accepted as the first step in the planting operations and is also deductible under subsection 51(1).

59. Expenditure on clearing or preparing the land for planting is capital and not deductible. Expenditure on curtailing regrowth or on weed control after the initial clearing is deductible under subsection 51(1).

Deductions when timber felled on land or right acquired

60. In a year of income in which timber is felled for the purpose of sale or use in manufacture, a deduction for the expenditure incurred by the taxpayer to acquire the land carrying standing timber or the right to fell standing timber, is allowable for the amount of the expenditure that is attributable to the timber felled (section 124J).

61. The deduction is allowable where:

(a) a taxpayer has acquired land carrying standing timber and during the year some or all of that timber is felled;

(b) the taxpayer has acquired a right to fell standing timber and during the year of income some or all of the timber is felled; or

(c) the timber is felled by another person who has acquired the right to fell the standing timber and royalties are paid to the taxpayer**.**

62. To qualify for a deduction under section 124J the taxpayer does not have to hold an intention to fell the timber at the time the standing timber or right is acquired.

63. The deduction is allowable in the year of income during which the timber is felled. Where the timber is felled over more than one year of income, the deduction allowable for each year is the amount of the cost of the timber that is attributable to the timber actually felled in that year.

Examples

Example 1:

64. A taxpayer, carrying on a business of forest operations, purchases land and trees for $60,000 ($20,000 of which is attributable to the timber). During the year 1992-93 the taxpayer fells all the timber and incurs $10,000 in felling and transportation costs. In 1993-94 the taxpayer sells all the timber for $100,000 and incurs $5,000 in selling costs. The tax treatment of these activities are outlined below.

1992-93 Year of income

Assessable income		
Sales of timber		Nil
Closing stock*	30,000	
Less opening stock	Nil	30,000
Gross income		**30,000**
Less: Allowable deductions		
Purchase price of land attributable to timber felled in 1992-93 year of income	20,000	
Felling and transportation costs	10,000	30,000
Net income from forest operations		**Nil**

1993-94 Year of income

Assessable income		**$**
Sales of timber		**100,000**
Closing stock	Nil	
Less: opening stock	30,000	-30,000
Gross income		**70,000**
Less: Allowable deductions		
Selling costs		5,000
Net income from forest operations		**$65,000**

65. *Closing stock is valued at cost under the absorption method (ie., the value includes transportation and felling costs attributable to closing stock on hand at year end).

Example 2:

66. A taxpayer purchases land for $80,000 and during the 1992-93 year of income, plants trees intended for felling. During that year the taxpayer incurred the following expenditure:

Clearing the land	$10,000
Ploughing for tree planting	$5,000
Fertilisers	$10,000
Weed control (regrowth only)	$500
Irrigation fees	$10,000
Seedlings	$4,500

67. During the following year (1993-94) the taxpayer fells all the timber and sells it for $100,000. Expenditure of $10,000 is incurred in felling and transportation costs. The tax treatment of these activities are outlined below.

1992-93 Year of income

Assessable Income		Nil
Allowable deductions:	**$**	
Ploughing for tree planting	5,000	
Fertilisers	10,000	
Weed control (regrowth only)	500	
Irrigation fees	10,000	
Seedlings	4,500	
Net loss from forest operations	**$30,000**	

(Note: the cost of clearing the land is capital expenditure and therefore, not deductible.)

1993-94 Year of income

Assessable Income:	
Income from sales of timber (subsection 25(1)	100,000
Less: Allowable Deductions:	
Transportation and felling costs	10,000
Net income from forest operations	$90,000

Commissioner of Taxation

3 February 1994

ISSN 1039 - 0731

ATO references
NO 92/7540-1
BO

Not previously released to the public in draft form

Price $1.60

FOI index detail
reference number

subject references
- forest operations
- carrying on a business
- primary production
- primary producer
- sale of felled timber
- standing timber
- disposal of standing timber
- royalties
- insurance recoveries
- profits from isolated transactions
- right to fell standing timber
- trading stock
- trees as trading stock
- valuation of trading stock
- profit a prendre
- costs of planting

legislative references
- ITAA 6(1)
  ITAA 26(f); 26(j)
  ITAA 26B
- ITAA 28
- ITAA 31
- ITAA 36
- ITAA 51
- ITAA 124J
- ITAA 158A
- ITAA 160C; 160M; 160R; 160U; 160ZH

case references
- Thomas v. FC of T 72 ATC 4094 (1972) 3 ATR 165
- Ferguson v. FC of T 79 ATC 4261 (1979) 9 ATR 873

- McCauley v The Federal Commissioner of Taxation (1944) 69 CLR 235
- 6 CTBR (NS) Case 26
- Stanton v The Federal Commissioner of Taxation (1955) 92 CLR 630
- Marbut Gunnerson Industries Pty Ltd v. FCof T and Monaro Sawmills Pty Ltd v. FC of T 82 ATC 4182 (1982) 12 ATR 926