


TD 93/D25 - Income tax: will a taxpayer who provides land, plant or labour for use in sharefarming arrangement be treated as being engaged in a business of primary production as defined in subsection 6(1) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 95/62.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: will a taxpayer who provides land, plant or labour for use in sharefarming arrangement be treated as being engaged in a business of primary production as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*?

1. There are a wide variety of sharefarming arrangements. A common form of sharefarming occurs when a farmer who does not own land proposes to farm and harvest a crop on someone else's land and pay the landowner a percentage of the proceeds as consideration for use of that land.

2. When deciding if a party to a sharefarming arrangement is carrying on a business of primary production regard must be had to both the agreement between the parties and the actual activities carried on by each party. The mere fact that one party to a sharefarming agreement is engaged in the business of primary production does not mean that the other parties to the agreement will also be engaged in such a business. Simply because land or plant is used in a business of primary production does not mean that the owner of that land or plant is carrying on that business. Likewise simply providing labour in a primary production business would not be sufficient.

3. In order to be carrying on a business of primary production the taxpayer must be involved in the activities which make up the business, i.e. engaged in the particular farming activity. The involvement should be direct or immediate, rather than passive. There should be an element of day to day control. The mere payment of expenses relating to the ownership of the land or plant used in a business of primary production is not sufficient.

4. If upon a correct interpretation of all circumstances it is concluded that there is a partnership between the parties rather than a sharefarming agreement and the partnership is carrying on a business of primary production, then each partner will be considered to be carrying on that business.

5. Even if there is no partnership there may be a joint venture between the various parties in which case each party may, depending on the facts, be carrying on a business of primary production. However, simply providing the land or plant would not be sufficient.

EXAMPLES:-

LANDOWNER:- *Y pays to landowner X a share of crop proceeds in consideration for use of the land. X is not engaged in the activity of farming. Only Y is involved in the day to day farming activities.*

The crop proceeds received by Y are considered to be income from primary production because Y is actively participating in the growing of the primary produce.

The amount received by X is not income from primary production. It is not personal exertion income and would in essence be income from property. X in fact receives an amount that is determined as a proportion of crop proceeds, as distinct from receiving the actual share of the crop.

PLANT OR MACHINERY:- *Y pays an agreed consideration to X, the owner of items of machinery or other plant for their use in primary production. Only Y is involved in the day to day activities of farming.*

For the same reasons as above, Y is considered to be a primary producer, but X is not.

LABOUR:- *Y pays an agreed consideration to X, to provide labour only, in the conduct of a business of primary production conducted by Y.*

In those circumstances, although X may be described as a sharefarmer, and be paid an amount determined as a proportion of the crop proceeds, he or she would in all practical respects be an employee, and not a primary producer.

Commissioner of Taxation

04/02/93

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Related Determinations:

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