



TD 2010/14 - Income tax: does a failure to plant trees intended to be established under a forestry scheme affect the timing of deductions for expenditure on seasonally dependent agronomic activities where paragraph 8-1(1)(b) of the Income Tax Assessment Act 1997 and section 82KZMG of the Income Tax Assessment Act 1936 have previously been ruled to be satisfied?

 This cover sheet is provided for information only. It does not form part of *TD 2010/14 - Income tax: does a failure to plant trees intended to be established under a forestry scheme affect the timing of deductions for expenditure on seasonally dependent agronomic activities where paragraph 8-1(1)(b) of the Income Tax Assessment Act 1997 and section 82KZMG of the Income Tax Assessment Act 1936 have previously been ruled to be satisfied?*

 There is a Compendium for this document: **TD 2010/14EC; TD 2010/15EC** .



Taxation Determination

Income tax: does a failure to plant trees intended to be established under a forestry scheme affect the timing of deductions for expenditure on seasonally dependent agronomic activities where paragraph 8-1(1)(b) of the *Income Tax Assessment Act 1997* and section 82KZMG of the *Income Tax Assessment Act 1936* have previously been ruled to be satisfied?

❶ This publication provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. No. Subsection 82KZMG(2) of the *Income Tax Assessment Act 1936* (ITAA 1936) requires the expenditure to have been incurred in return for 'the doing of a thing under the agreement...'.

2. If it transpires that the 'thing' to be done under the agreement is not actually done, for reasons outside the control of the parties, subsection 82KZMG(2) of the ITAA 1936 will continue to be satisfied. Accordingly, the timing of the deduction would remain governed by section 82KZMG of the ITAA 1936 and therefore not be subject to spreading under sections 82KZMD and 82KZMF of the ITAA 1936. Further, the amount may still be relevantly incurred for the purposes of the general deduction provision, section 8-1 of the *Income Tax Assessment Act 1997*, at the time the expenditure was made.

Example 1

3. Kane incurred expenditure under agreements that satisfied subsections 82KZMG(2), (3), (4) and (5) of the ITAA 1936 during the 2008 financial year. The nature of the agreements entered into also indicates that a business is being carried on. Under the agreement, the trees that were subject of the agreement were due to be planted by 30 June 2009. Due to the appointment of a liquidator or administrator, the trees were not planted by 30 June 2009. Nevertheless, the timing of the deduction for the expenditure remains within the scope of section 82KZMG of the ITAA 1936.

Example 2

4. Zane incurred expenditure under agreements that satisfied subsections 82KZMG(2), (3), (4) and (5) of the ITAA 1936 during the 2008 financial year. The nature of the agreements entered into also indicates that a business is being carried on. Under the agreement, the trees that were subject of the agreement were due to be planted by 30 June 2009. Due to a natural disaster, the trees were not planted by 30 June 2009. Nevertheless, the timing of the deduction for the expenditure remains within the scope of section 82KZMG of the ITAA 1936.

Class of persons

5. This Determination applies to participants in schemes that are either subject to a current product ruling, or were subject to a product ruling which has been withdrawn with effect from immediately before any material difference occurred.

Date of effect

6. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will 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 this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

2 June 2010

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

7. For forestry projects where agreements are entered into on or after 2 October 2001 and on or before 30 June 2008, section 82KZMG of the ITAA 1936 applied to set the time for a deduction for expenditure on seasonally dependant agronomic activities.

Subsection 82KZMG(2) of the ITAA 1936 required that planting under the agreement be completed within the eligible service period, being a period of 12 months or shorter, and ending on or before the last day of the year of income after the year in which the expenditure was incurred.

8. Section 82KZMG of the ITAA 1936 involves a test, in the first instance, of determining, by reference to the agreement, when a thing *is to be done* and not by reference to when the thing is *actually done*. Accordingly, if under the agreement, the thing is to be done within the prescribed period but for reasons outside the control of the parties was done outside this period, or not at all, this does not mean that the test in section 82KZMG of the ITAA 1936 is not satisfied.

9. Where agreements entered into are of a similar nature to those entered into by the taxpayers in *Hance v. FC of T*; *Hannebery v. FC of T*¹ it is likely to be concluded that a business is being carried on. In *Commissioner of Taxation v. Sleight*² the business of the taxpayer was found to have commenced at the time of entering into the relevant agreements. Refer to the judgment of Hill J at paragraphs 9 and 61.³ Accordingly, notwithstanding the failure to plant the trees within the agreed time, the expenditure otherwise allowable as a deduction may continue to be allowable provided there was a genuine intention at the outset to do what the agreements provided for.

¹ [2008] FCAFC 196; 74 ATR 644; 2008 ATC 20-085.

² [2004] FCAFC 94; (2004) 136 FCR 211; 2004 ATC 4477; (2004) 55 ATR 555.

³ *Commissioner of Taxation v. Sleight* [2004] FCAFC 94; (2004) 136 FCR 211; 2004 ATC 4477; (2004) 55 ATR 555.

References

Previous draft:

TD 2009/D13

Related Rulings/Determinations:

TR 2006/10

Subject references:

- advance expenses & payments
- afforestation expenses
- forest operations
- prepayments
- primary production
- seasonally dependent agronomic activity

Legislative references:

- ITAA 1936 82KZMD
- ITAA 1936 82KZMF

- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMG(5)
- ITAA 1997 8-1
- ITAA 1997 8-1(1)(b)
- TAA 1953

Case references:

- Commissioner of Taxation v. Sleight
[2004] FCAFC 94; (2004) 136 FCR 211;
2004 ATC 4477; (2004) 55 ATR 555
- Hance v. FC of T; Hannebery v. FC of T
[2008] FCAFC 196; 74 ATR 644; 2008
ATC 20-085

ATO references

NO: 1-1SFRUF3

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Deductions ~~ miscellaneous expenses
Income Tax ~~ Deductions ~~ other business and professional expenses