TD 93/81 - Income tax: capital gains: a taxpayer owns pre-CGT land and trees. The taxpayer 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. How is the sale treated for capital gains tax purposes?

This cover sheet is provided for information only. It does not form part of *TD 93/81 - Income tax: capital gains: a taxpayer owns pre-CGT land and trees. The taxpayer 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. How is the sale treated for capital gains tax purposes?*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination 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 Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: capital gains: a taxpayer owns pre-CGT land and trees. The taxpayer 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.**

How is the sale treated for capital gains tax purposes?

1. Even though the right to remove the timber and the sale of the uncut timber are subject to two contracts, the transactions **together** are taken to constitute the granting of a *profit à prendre*.

2. The grant of the *profit à prendre* gives rise to the disposal of a post-CGT asset created by the grantor i.e. the taxpayer (IT2561). The proceeds from the 'sale' of the timber are treated as part of the consideration received for the grant of the *profit à prendre*.

Example:

A taxpayer owns pre-CGT land and trees. On 1 July 1992, the taxpayer sold all the pre-CGT timber growing on the land to an unrelated purchaser according to two contracts:-

(i) a contract granting the purchaser of the timber the right to enter the taxpayer's land over time and remove the timber as and when required. The consideration given in respect of this contract was $1.00.

(ii) a contract for the sale of the uncut timber for which the balance of the sale proceeds, $19,999, was payable.

The two contracts together comprise a profit à prendre granted on 1 July 1992. Accordingly, the taxpayer is taken to have disposed of a post-CGT asset for a consideration equal to $20,000 (less incidentals).

Note: The sale proceeds in this example may be income under ordinary concepts.

Commissioner of Taxation
6/5/93

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