TD 93/D65 - Income tax: if a taxpayer owns pre-CGT land and trees and after 19 September 1985 the taxpayer cuts the trees, are there any CGT consequences arising from the subsequent sale of the timber by the taxpayer?

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This document has been finalised by TD 93/79.

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Draft Taxation Determination

Income tax: if a taxpayer owns pre-CGT land and trees and after 19 September 1985 the taxpayer cuts the trees, are there any CGT consequences arising from the subsequent sale of the timber by the taxpayer?

1. No. The sale of the timber in these circumstances will not be subject to CGT.

2. Whilst attached to the land, the trees and the land 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). From this point, the timber is no longer part of the land. In effect, the original asset has been split into two pre-CGT assets.

3. 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 CGT purposes (section 160M of the *Income Tax Assessment Act 1936*).

4. If the taxpayer later sells the timber, the sale of this asset (a chattel) will not be subject to CGT as the taxpayer will be disposing of a pre-CGT asset.

Note: This determination is not concerned with situations where the sale may give rise to income under ordinary concepts or where the taxpayer has granted a *profit à prendre* or disposed of an interest in land.

Commissioner of Taxation
18/3/93

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