

TD 97/D7 - Income tax: where a horticulture business buys plants from a nursery and has the nursery maintain them prior to delivery, are the costs of maintenance deductible under section 8-1 of the Income Tax Assessment Act 1997?

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This document has been finalised by [TD 98/3](#).

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: where a horticulture business buys plants from a nursery and has the nursery maintain them prior to delivery, are the costs of maintenance deductible under section 8-1 of the *Income Tax Assessment Act 1997*?

1. No. Unless the plants merely replace those from an existing plantation due to disease or death, the costs of maintenance are of a capital nature and are not deductible under section 8-1.
2. A practice common in the horticulture industry is for businesses to buy plants from nurseries under a contract where the purchased plants are held and maintained by the nursery until an agreed delivery date. Under the contracts considered, the price has been allocated between the plants and their maintenance.
3. We consider that the costs of the plants and of their maintenance prior to planting are establishment costs, and therefore of a capital nature. As Pincus J, with whom the other members of the Court agreed, said in *FC of T v. Osborne* 90 ATC 4889 at 4895; (1990) 21 ATR 888 at 895:

'It appears to be consistent with the trend of these authorities to hold that, in general, costs incurred in establishing a plantation of fruit or nut trees, at least up to the stage of getting seedlings established in the ground, are capital expenses.'
4. The deductibility of such capital expenses is considered in Taxation Determination TD 97/D8.
5. Where the plants merely replace those from an existing plantation due to disease or death, the costs will be deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

Example

6. *Jacob carries on a business from his orchard. To expand his orchard Jacob contracts with a local nursery to buy 2,000 seedlings. The total price will be \$10,000. This is allocated by the contract as \$2,000 for seedlings and \$8,000 for care and maintenance over four months. The nursery is to deliver the seedlings at the end of the four months.*
7. *The full cost of \$10,000 is considered to be of a capital nature and is not deductible under section 8-1.*

Your comments

8. If you wish to comment on this draft Determination, please send your comments by **24 October 1997** to:

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Commissioner of Taxation

24 September 1997

FOI INDEX DETAIL: [Reference No.](#)

Related Determinations: TD 97/D8

Related Rulings:

Subject Ref: capital expenditure; horticulture; primary production; revenue deduction

Legislative Ref: ITAA97 8-1

Case Ref: FC of T v. Osborne 90 ATC 4889; (1990) 21 ATR 888

ATO Ref: NAT 97/7897-7; CHM TTF 97-7

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