


IT 210 - Application of averaging provisions - income from hire of farm plant

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TAXATION RULING NO. IT 210

APPLICATION OF AVERAGING PROVISIONS - INCOME FROM HIRE
OF FARM PLANT

F.O.I. EMBARGO: May be released

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FARM PLANT - INCOME

6(1)

FROM HIRE OF

156

AVERAGING OF INCOME

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DEFINITION - PRIMARY

PRODUCTION

PREAMBLE

The Commissioner had occasion to reply to a Federal Member of Parliament concerning the treatment, for the purposes of the averaging provisions, of income derived by a primary producer from the hire of farm plant to other primary producers or from the operation of the plant by him on their properties. This ruling is in the form of an extract of the reply.

RULING

"You will appreciate that I must apply the law as enacted by the Parliament. As the law stands, leaving aside the amount of non-primary production income for purposes of the averaging provisions, the income that qualifies for the averaging benefit is income that a person derived from the carrying on of a business of primary production, or that was included in the assessable income of the person in consequence of the carrying on of a business of primary production by that person. "Primary production" is defined in the Income Tax Assessment Act to mean "... production resulting directly from -

- (a) the cultivation of land;
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase;
- (c) fishing operations; or
- (d) forest operations;

and includes the manufacture of dairy produce by the person who produced the raw materials used in that manufacture; ...".

That definition is of long standing in the Act. Whether or not income qualifies as income from primary production will, of course, depend on the facts in each case. As mentioned by the firm of accountants who raised the matter with you, there seems to be no scope to argue that income that a

cane harvesting contractor derived from the hire of plant, or from the hire of plant plus the services of the operator of the plant - which is their first example - is income from primary production.

As to the second example - of a few canefarmers grouping together to buy equipment in order to harvest their own cane - I am not at all clear that assessable income is being derived. It would well be that in such a situation the mutuality principle applies and that each person would be entitled to his share of appropriate deductions such as depreciation of the jointly owned property, or of fuel and oil and other expenses.

If, however, the circumstances were such that the mutuality principle did not apply, e.g. because some work was done for persons outside the group arrangement, it would again depend on the facts whether the partnership profits could be regarded as income from primary production. If the "outside" work were limited to merely incidental work done for neighbours the partnership profit would, in the absence of factors leading to a contrary conclusion, be accepted as income from primary production. This, of course, would not be the case if in fact a separate contracting business extending regularly to outsiders was being carried on.

The answer to the third example, which you have particularly stressed, would again depend on the facts. Where a separate contracting or hiring business is being operated by a canegrower after discussion and agreements with neighbours, or otherwise on a regular basis, the income would not be from primary production. The position would, however, be different if, as an incidental part of carrying on his farming operations, a canegrower were to derive income through helping out a neighbour on occasions by hiring out or using his own harvester to harvest the neighbour's cane.

You may recall that when the Treasurer announced the decision to change the averaging provisions in his 1978-79 Budget Speech, he said that the change would ensure that persons with minimal interest or activities in primary production are not able to abuse the system to reduce their tax on non-primary production income. Given that objective, I would think that it would be against the spirit of the legislation if I were to treat income that a person derives from what is virtually a separate contracting business as primary production income, because in such a situation it would be open to any contractor to get the benefit of the averaging provisions on income from contracting merely by having a minimal interest in a primary production business."

COMMISSIONER OF TAXATION