


# ***IT 240 - Restoration of flood damaged land - expenditure incurred by primary producers***

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TAXATION RULING NO. IT 240

RESTORATION OF FLOOD DAMAGED LAND - EXPENDITURE  
INCURRED BY PRIMARY PRODUCERS

F.O.I. EMBARGO: May be released

REF

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1102752	FLOOD DAMAGED LAND RESTORATION EXPENDITURE PRIMARY PRODUCTION	51(1) 75A

PREAMBLE

The question of deductibility of expenditure incurred by primary producers to repair flood damage in the nature of soil erosion to their properties has been raised. Particulars of damage incurred and restoration required in the case in question were:

- a. The top soil was washed away from the affected areas to a depth of three feet in places exposing heavy gravel.
- b. The damage was caused because the tobacco plants had been harvested and there were no root structures to hold the soil together.
- c. The pasture land of the property was not affected by the flood.
- d. The restoration of the land was achieved by using earth moving scrapers which scooped gravel stones back into the holes and then redistributed the remaining soil on the property providing an even growing surface of less depth which, however, was sufficient for further tobacco production.
- e. The hiring costs of the earth moving machines was stated to be \$20 per hour.

RULING

2. It was concluded that expenditure in restoring primary production land damaged by flood would generally not qualify as a repair but, if of a capital nature, section 75A(1)(d) would apply.

3. However, as indicated in paragraph 41 of CITCM 879, in determining whether the expenditure in question is of a capital or revenue nature it would be reasonable to give the taxpayer the benefit of any doubt. The view is held that expenditure in restoring flood-damaged land, where incurred by an established primary producer, could generally be accepted as qualifying for deduction under section 51.

4. For example, in the particular case described, it is

apparent that the taxpayer's tobacco-growing activities were a significant factor contributing to the erosion of top-soil in the flood. Tobacco-growing, like other agricultural activities, would no doubt involve, as part of the normal cycle of operations, land being left for a period in a condition which would be vulnerable to erosion. In these circumstances, the expenditure incurred in re-distributing top-soil to the tobacco growing area for further production purposes could fairly be regarded as a revenue expense in accordance with the principle outlined in paragraph 41 of the CITCM.

5. Similar expenditures by established primary producers in consequence of floods should also be considered in this light. Where, however, damaged land has been acquired by the taxpayer subsequent to the floods or, for other reasons, the expenditure incurred in restoring the land is clearly of a capital nature, annual deductions should, as mentioned, be allowed in accordance with section 75A.

COMMISSIONER OF TAXATION