


TD 95/62 - Income tax: will the owner (or lessor) of land who allows the land to be used in a sharefarming arrangement be considered to be engaged in a business of primary production as defined by the Income Tax Assessment Act 1936 ('the Act')?

 This cover sheet is provided for information only. It does not form part of *TD 95/62 - Income tax: will the owner (or lessor) of land who allows the land to be used in a sharefarming arrangement be considered to be engaged in a business of primary production as defined by the Income Tax Assessment Act 1936 ('the Act')?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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: will the owner (or lessor) of land who allows the land to be used in a sharefarming arrangement be considered to be engaged in a business of primary production as defined by the *Income Tax Assessment Act 1936* ('the Act')?

1. Sharefarming or share cropping is a common farming practice where a farmer is allowed to farm and harvest a crop on someone else's land in return for payment to the owner of that land a percentage of the harvest proceeds. There are, of course, many possible variations in the sharefarming agreements and each case has to be dealt with on its merits.
2. Subsection 6(1) of the Act defines those activities which amount to '**primary production**' for the purposes of the Act. The cultivation of land is included among those activities. It is therefore necessary to determine whether the landowner is involved in a business of cultivation of land.
3. In certain circumstances, a sharefarming arrangement may amount to the carrying on of a business in partnership. Factors which are considered by the Commissioner to be relevant to the existence or otherwise of a partnership generally, are set out in Taxation Ruling TR 94/8. If a partnership is in existence then each partner will of course be considered to be carrying on that business.
4. Many arrangements do not amount to the carrying on of a business in partnership. In such cases, the fact that the land is used for cultivation in a business of primary production does not necessarily mean that the owner of the land is also carrying on that business.
5. To be carrying on a business, the taxpayer must be involved in the activities that make up that business. This would be evidenced by an element of control over, and/or an ongoing participation in, the business. The involvement should be direct or immediate, rather than passive. The payment of expenses relating to the ownership of the land would not, without more, be sufficient.
6. In the absence of such an involvement, the landowner would not be regarded as being engaged in the business of primary production. The receipt by the landowner of a payment from the farmer for the use of the land would be in the nature of income from property rather than from the carrying on of a business of primary production.

7. Similar reasoning would apply if the sharefarming agreement was for the provision of machinery or items of plant.

8. These principles would also apply if instead of cultivation of the land, the activity conducted was any of those mentioned in the definition of primary production in subsection 6(1).

EXAMPLES

Example 1: *Sharefarmer Y agrees to pay to landowner X a designated share of crop proceeds in consideration for use of the land owned by X. X does not participate in the cultivation of the land. Only Y involves himself in the farming activities.*

Y would be considered to be engaged in a business of primary production.

The share of crop proceeds received by X is not considered to be income from primary production. It is not personal exertion income and would in essence be income from property.

Example 2: *Sharefarmer Y pays an agreed consideration to X, the owner of items of machinery or other plant for their use in primary production. Only Y is involved in the day to day activities of farming.*

For the same reasons as above, Y is considered to be a primary producer, but X is not.

Commissioner of Taxation

20/12/95

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