



***TD 98/3 - Income tax: where a horticulture business buys plants from a nursery and has the nursery maintain them prior to delivery are the costs of buying and maintaining the plants deductible under either:(a) section 8-1 of the Income Tax Assessment Act 1997 ; or (b) Division 10F of Part III of the Income Tax Assessment Act 1936 ('the 1936 Act)?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *3 March 1998*



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 Rulings TR 92/1 and TR 97/16 together explain 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: where a horticulture business buys plants from a nursery and has the nursery maintain them prior to delivery are the costs of buying and maintaining the plants deductible under either:**

- (a) section 8-1 of the *Income Tax Assessment Act 1997*; or**
- (b) Division 10F of Part III of the *Income Tax Assessment Act 1936* ('the 1936 Act')?**

1. **Answers:** Question (a) - no, other than in limited circumstances; Question (b) - yes.
2. Where the plants merely replace those from an existing plantation due to disease or death, the costs are deductible under section 8-1 of the *Income Tax Assessment Act 1997*. In other circumstances, the costs are of a capital nature and are not deductible under that section.
3. It is common practice in the horticulture industry for a business to buy plants from a nursery under a contract where the purchased plants are held and maintained by the nursery until an agreed delivery date. In contracts we have considered, the price has been allocated between the plants and their maintenance. The maintenance component of the total price is often said to be an allowable tax deduction. Many of the contracts examined appear to have been designed with this tax benefit in mind.
4. The maintenance costs typically cover such services as potting, pruning, staking, weeding, spraying, watering and other horticultural services considered necessary to keep the plants alive and growing at an acceptable rate. The longer the time, between entry into the contract and delivery of the plants, generally the greater is the amount of the maintenance component. Whether property in the plants passes on entry into the contract or on delivery varies from contract to contract.
5. 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 Full Federal 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.'

6. The Court went on to say that costs incurred in getting seedlings established in the ground encompassed costs of preparing the ground to plant the seedlings. It concluded that these costs should be treated as being in the same category as the costs of buying and planting the seedlings, that is, as capital expenditure (at ATC 4896; ATR 895). The Court did not set out to define precisely what would be 'establishment costs'.

7. We consider that maintenance costs of the type described fall within what are commonly accepted as 'establishment costs'. Almost invariably, the maintenance costs are incurred in respect of capital assets. Their dominant purpose is preserving and improving the assets until they are ready to be used, by planting or establishing them in their long term growing medium, to produce assessable income in the horticultural business. The maintenance costs also fall within the same category as the costs of buying and planting these capital assets and should be given the same classification, that is, as capital expenditure.

8. The costs - both purchase and maintenance - form 'establishment expenditure' for the purposes of section 124ZZJ of the 1936 Act and may, therefore, be deductible under Division 10F. Establishment expenditure is either deductible in full under section 124ZZF of the 1936 Act (for plants with an effective life of less than 3 years) or over a period under section 124ZZG of that Act (for plants with a longer effective life).

#### **Example**

*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 is \$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.*

*The full cost of \$10,000:*

- (a) is considered to be of a capital nature and is not deductible under section 8-1; and*
- (b) is establishment expenditure; the amount of the deduction each year depends on the effective lives of the plants and when the plants begin what is expected to be their first commercial season.*

#### **Commissioner of Taxation**

4 March 1998

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FOI INDEX DETAIL: [Reference No. I 1015560](#)

Previously issued as Draft TD 97/D7 and Draft TD 97/D8

[Related Determinations:](#)

[Related Rulings:](#)

[Subject Ref:](#) capital expenditure; deductions and expenses, horticulture, primary production; primary production expenses; revenue deduction

[Legislative Ref:](#) ITAA36 Div 10F of Part III; 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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