



TR 94/9 - Income tax: Income from the sale of tobacco leaf

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Taxation Ruling

Income tax: Income from the sale of tobacco leaf

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*This Ruling, 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 Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

This Ruling explains:

- (i) Why tobacco leaf stored by tobacco growers on their farms is not 'trading stock on hand' for the purposes of section 28 of the *Income Tax Assessment Act 1936* (ITAA).
- (ii) When tobacco growers are to return as income, amounts received from the sale of tobacco leaf.

Ruling

2. Tobacco leaf awaiting sale which is held by tobacco growers on their farms is not 'trading stock on hand' for the purposes of section 28 of the ITAA. This means that growers need not account for the opening and closing values of tobacco leaf situated on their farms at the beginning and end of a year of income.

3. Payments which tobacco growers are entitled to receive from tobacco leaf marketing boards are income under section 25(1) of the ITAA. The amount of payment to which a grower is entitled to receive must be included in the grower's assessable income in the year in which the entitlement arises.

Date of effect

4. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Explanations

Background

5. Tobacco leaf is grown in Australia in Victoria, New South Wales and Queensland. The growing and selling of tobacco leaf in those states is closely regulated by statutory tobacco leaf marketing boards ('the marketing boards') in each state. The regulatory statutes are the *Marketing of Primary Products Act 1958* (Vic.), the *Marketing of Primary Products Act 1983* (NSW) and the *Primary Producers' Organisation and Marketing Act 1926-1987* (Qld.).

6. The statutory schemes in each state are similar and operate in the following manner:

- . The marketing boards allocate a leaf quota to individual growers.
- . When tobacco leaf is ready for sale, property in the leaf is statutorily divested from the tobacco growers and invested in the marketing boards (section 17(1) of the Victorian Act, section 56 of the New South Wales Act and section 9(2) of the Queensland Act).
- . The marketing boards conduct sales of tobacco leaf in May, June, July, August and September each year.
- . Almost all the growers' quota is offered for sale by the marketing boards. The remainder of the quota which is not offered for sale is stored by growers in kilns on their farms as a type of insurance against crop failure. Property in the leaf remains invested in the marketing boards.
- . Payments are made to growers by the marketing boards after the leaf is sold. Before making the payments to the growers, the marketing boards deduct from the proceeds of sale, various charges, costs and expenses. The growers are then entitled to receive this net amount for the sale of the tobacco leaf. The effect of the relevant legislation is that, until this net amount is ascertained, the growers have no entitlement to payment from the marketing boards (section 25 of the Victorian Act, section 64 of the New South Wales Act and section 18 of the Queensland Act).

- . The marketing boards take out insurance on the leaf from the date of harvest.

When are goods 'trading stock on hand'?

7. Goods will be trading stock on hand under section 28 of the ITAA provided the taxpayer has the power to dispose of the goods in question (see *Farnsworth v. F C of T* (1949) 78 CLR 504 and *All States Frozen Foods Pty Ltd v. F C of T* (1990) 21 FCR 457; 90 ATC 4175; (1990) 20 ATR 1874). Where a taxpayer does not have property in the goods and where the power to dispose of the goods has been transferred to someone else, the goods will not be trading stock of the taxpayer (see generally Taxation Ruling IT 2670).

8. The terminology used in the three state statutes differs slightly but has the same effect. In each case the Governor is able to execute an instrument that declares the commodity be divested from the growers and become absolutely vested in and be the property of the relevant marketing board.

9. Instruments have been executed in respect of tobacco leaf in each state. The instruments divest property in the leaf at the time it is ready for sale. Consequently tobacco leaf that is ready for sale and which is stored by growers on their farms is not 'trading stock on hand' for the purposes of section 28 of the ITAA.

10. Because the state legislation divests property in **all** leaf ready for sale, it is irrelevant that a grower may hold leaf which is in excess of quota. No amount of leaf in which property has been divested, (i.e. leaf that is ready for sale) is trading stock. Leaf which is on hand but not ready for sale is not a commodity and therefore not trading stock.

In what year of income must tobacco growers account for income received from the marketing boards?

11. The decisions in *Farnsworth v. F C of T* and *Dawson v. Bolton* (1952) 10 ATD 252 indicate that where there is a debt owing for the sale of some product, an amount needs to be brought to account as income in respect of that sale.

12. In the case of tobacco growers the relevant legislation provides that until the tobacco leaf is sold by the marketing boards and until various charges, costs and expenses have been deducted from the gross proceeds of sale of the leaf, there is no debt owing to the grower. Because the growers have no right to receive payments from the marketing boards before the net amount of their entitlement has been calculated, we consider that the growers will have derived income from the sale of tobacco leaf at the time the marketing board has

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FOI status may be released

determined their net entitlement. We understand that payment by the Board is made by an electronic transfer of funds and that advice of net entitlement usually occurs simultaneously with payment.

Commissioner of Taxation

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ATO references

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subject references

- income derived
- time of derivation
- tobacco leaf
- trading stock on hand

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legislative references

- ITAA 25(1), 28

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case references

- All States Frozen Foods v. FC of T
90 ATC 4175; (1990) 20 ATR 1874
- Dawson v. Bolton (1952) ATD 252
- Farnsworth v. FC of T (1949) 78
CLR 504