

***TD 93/D65 - Income tax: if a taxpayer owns pre-CGT land and trees and after 19 September 1985 the taxpayer cuts the trees, are there any CGT consequences arising from the subsequent sale of the timber by the taxpayer?***

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This document has been finalised by TD 93/79.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: if a taxpayer owns pre-CGT land and trees and after 19 September 1985 the taxpayer cuts the trees, are there any CGT consequences arising from the subsequent sale of the timber by the taxpayer?**

1. No. The sale of the timber in these circumstances will not be subject to CGT.
2. Whilst attached to the land, the trees and the land are considered to be a single pre-CGT asset owned by the taxpayer. After the trees are cut, the taxpayer still retains ownership of the timber (now a chattel). From this point, the timber is no longer part of the land. In effect, the original asset has been split into two pre-CGT assets.
3. There has been no change in the ownership of any asset as a result of the cutting of the trees. Accordingly, there is no disposal for CGT purposes (section 160M of the *Income Tax Assessment Act 1936*).
4. If the taxpayer later sells the timber, the sale of this asset (a chattel) will not be subject to CGT as the taxpayer will be disposing of a pre-CGT asset.

**Note:** This determination is not concerned with situations where the sale may give rise to income under ordinary concepts or where the taxpayer has granted a *profit à prendre* or disposed of an interest in land.

**Commissioner of Taxation**

18/3/93

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