



IT 169 - Double wool clips

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TAXATION RULING NO. IT 169

DOUBLE WOOL CLIPS

F.O.I. EMBARGO: May be released

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DOUBLE WOOL CLIPS

26BA

PREAMBLE

The following ruling issued as a result of the insertion of section 26BA into the Income Tax Assessment Act. It details the practical application of the section which relates to the assessability of proceeds received by woolgrower for double wool clips arising from advanced shearing because of drought conditions.

2. It should be noted that section 26BA as originally enacted was repealed and substituted by Act No.50 of 1966. The original section applied to the 1964-65 year only while the substituted section extended the section to the 1965-66 year. An amendment by Act No.76 of 1967 extended the application of the section indefinitely and, for the 1966-67 year et seq, to circumstances arising from fire or flood in addition to drought.

RULING

3. It may be observed at the outset that section 26BA does not apply where, because of drought, a shearing is delayed and as a consequence the assessable income of one year includes the proceeds of two wool clips. These cases are to be dealt with in line with the principles that have been adopted in the past.

4. Section 26BA also does not apply, where there has been an advanced shearing because of drought conditions, to wool shorn at the advanced shearing that is on hand at the end of the 1964-65 income by reason of the advanced shearing.

5. Shortly stated, section 26BA applies where the assessable income of a woolgrower of the 1964-65 income year includes proceeds of the sale of two wool clips - one of which results from an advanced shearing because of drought conditions. The woolgrower is entitled, under section 26BA, to elect to transfer the net profit on the sale of wool shorn at the advanced shearing (i.e., proceeds of sale less shearing and selling expenses) from the 1964-65 income year to the 1965-66 income year.

6. Subsection (1) of section 26BA formally provides the right of election in cases in which a business of primary production is carried on by a person as sole trader and states the circumstances in which the right of election is to be available.

7. Paragraph (a) of the subsection confers the right of election where, during the 1964-65 income year, a taxpayer carried on a business of primary production in Australia. If the taxpayer has adopted a substituted accounting period ending on some day other than the 30th June, the 1964-65 income year of the taxpayer for this purpose will be the accounting period that is in substitution for the year ended 30th June, 1965.

8. Paragraph (b) provides that, subject to other conditions of the subsection, the right of election is available if the assessable income of the taxpayer of the 1964-65 income year includes proceeds of the sale of wool referred to in either subparagraph (i) or subparagraph (ii).

9. Subparagraph (i) refers to the proceeds of wool that was shorn in the 1964-65 income year from sheep forming assets of the taxpayer's business. In effect, the wool referred to in this subparagraph is the wool shorn at the normal shearing during the year. If sheep shorn by a taxpayer are leased to him they should, for the purposes of section 26BA, be regarded as assets of his business.

10. Subparagraph (ii) relates to wool that was shorn in the 1963-64 income year from sheep forming assets of the taxpayer's business and was on hand at the beginning of the 1964-65 income year and brought to account at that time for taxation purposes at its cost price. If the wool is brought to account at the beginning of the income year 1964-65 at market selling value the profit on the wool attributable to the 1963-64 income year would be taxed in that year and not in the 1964-65 income year.

11. Paragraph (c) requires as a condition of the right of election that, by reason of a drought in an area in Australia in which the taxpayer carried on his business, another shearing of sheep additional to the shearing referred to in paragraph (b) has taken place. The other shearing is required to have taken place at a time earlier than the time at which, but for the drought, it would ordinarily have taken place. In other words, paragraph (c) requires an advanced shearing to have taken place by reason of drought.

12. The question whether an advanced shearing has taken place by reason of drought will, of course, arise. This question is essentially one of fact to be decided in the light of the circumstances of each case. Section 26BA will probably in practice apply in relation to woolgrowers in New South Wales and Queensland only and the lodgment of an election under the section by a woolgrower carrying on business in an area in those States declared by appropriate State authorities to be a drought area may be accepted as sufficient evidence that this condition in paragraph (c) is satisfied. In other cases, woolgrowers' claims that shearing has been advanced because of drought conditions should not be subject to exhaustive enquiries in the absence of any indication that the shearing was not advanced for this reason.

13. Paragraph (d) limits the right of election to those cases in which the assessable income of the 1964-65 income year includes proceeds of the sale of wool shorn at the advanced shearing, as well as of a shearing referred to in paragraph (b). In the case of both paragraph (b) and paragraph (d) it is not necessary that proceeds of the sale of all the wool shorn at the particular shearing be included in 1964-65 assessable income - it is sufficient if proceeds of the sale of some only of the wool is so included.

14. Where the tests of subsection (1) are satisfied the taxpayer is entitled to elect that succeeding provisions of section 26BA will apply in relation to the profit on the sale of wool shorn at the advanced shearing, proceeds of the sale of which are included in his 1964-65 assessable income. (The profit on the sale of the wool is to be ascertained in accordance with subsection (7)). Appropriate checks should be made to ensure that any election relates only to wool shorn at an advanced shearing.

15. Subsection (2) will ensure that a right of election will be available to each member of a partnership if the advanced shearing by the partnership took place in circumstances that, if the partnership business had been conducted by a sole trader, that person would have been entitled to make an election under subsection (1). In other words, the partnership is treated as a taxpayer and, on this basis, the amount of profit on the sale of wool shorn of the advanced shearing is determined. Each partner is then granted an independent right of election in respect of the part of the profit that is included in his individual interest in the net income of the partnership of the income year 1964-65. If one partner makes an election, and the others do not, the provisions of section 26BA are to be applied in determining the net income of the partnership under Division 5 as regards that partner but not as regards the others.

16. Cases involving advanced shearings may arise in which a partnership has been created, varied or dissolved during the 1964-65 income year. If a normal shearing (paragraph (b) of subsection (1)) has been made by a partnership and, after variation of the partnership by the addition of new partners or the withdrawal of partners, an advanced shearing (paragraph (c) of subsection (1)) is made by the reconstituted partnership, subsection (2) should be applied on the same basis as if the new partnership had conducted the business during the whole of the income year. A corresponding approach should be taken where a business formerly conducted by a sole trader is, before the advanced shearing, transferred to a partnership of which he is a member. In the converse case where a partnership business ceases and is then run by one of the partners as a sole trader, the sole trader may make an election under subsection (1).

17. Subsection (3) extends to trustees of trust estates and persons presently entitled to the income of trust estates the same principle as is adopted in subsection (2) in relation to partners. If there are a number of beneficiaries presently entitled to income of the trust estate, each may make a separate

election under paragraph (b).

18. As was noted in paragraph 22 of CITCM 810 in relation to section 36AA, problems could arise in the application of subsection (3). Comments by Deputy Commissioners on the preliminary draft of section 26BA indicate that provisions in other sections corresponding with section 26BA(3) have operated satisfactorily in practice. If, however, in any case a satisfactory practical solution of any problems arising under the section cannot be reached with the trustee, the matter should be referred to Head Office.

19. Subsection (4) is the operative provision. It provides that where an election is made by a taxpayer, the assessable income of the taxpayer of the income year 1964-65 is to be reduced by the profit (or the part of the profit) to which the election relates. It also provides that the assessable income of the taxpayer of the income year 1965-66 is to include the amount to which the election relates.

20. Paragraph (a) of subsection (4) provides that, where an election is made in relation to the whole amount of the profit (e.g., in the case of a sole trader), the assessable income of the taxpayer of the 1964-65 income year is to be reduced by the amount of the profit on the sale of the wool. The paragraph also establishes a corresponding position where an election relates to part of the amount of the profit (e.g., where an election is made by a partner).

21. The operation of paragraph (a) may be illustrated by the following example -

Assessable Income 1964-65

Wool - 1st shearing	10,000
Wool - 2nd shearing	7,000
Other	3,000
	20,000

Less

Allowable deductions	10,000
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Taxable income	10,000
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Adjustment under paragraph (a)

Assessable income	20,000
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Deduct

Wool - 2nd shearing	7,000	
Less expenses of		
2nd shearing	2,000	5,000
		15,000

Less allowable

deductions	10,000
Taxable income	5,000

The amount excluded from the 1964-65 assessable income pound 5,000 - is to be included in the assessable income of the year 1965-66 by reason of paragraph (b).

22. Under paragraph (b) the assessable income of the taxpayer of the income year 1965-66 is to include the profit, or the part of the profit, by which the assessable income of the 1964-65 income year has been reduced. The paragraph deems the amount so included to be income derived from primary production. The effect of this is that, irrespective of whether he continues to carry on a business of primary production during the 1965-66 year, a taxpayer who in the 1964-65 year is subject to the "averaging provisions" of the Principal Act and makes an election under the section, will continue to have those provisions applied in his assessment for the 1965-66 year unless he elects under section 158A of the Principal Act to withdraw from the averaging system.

23. There may be cases in which the making of an election is not to the taxpayer's ultimate advantage. For example, if a trustee assessable under section 99 for the 1964-65 income year makes an election under section 26BA, the amount to be treated as assessable income for 1965-66 may fall to be taxed at the special rate provided for in section 99A. Another illustration is where an election is made by a company that, for the 1964-65 income year, is not a private company but which, under the new definition, is a private company in relation to the 1965-66 income year.

24. There may be other cases of a different nature. For example, a grazier who has in the past normally shorn in July may, because of the drought, have advanced his 1965 shearing to May. If he decides that, when in May 1966 his sheep have twelve months' growth of wool on them, he will shear again and will have sold the wool before 30th June, 1966, the making of an election under section 26BA would in effect mean that his 1965-66 income includes the proceeds of two wool clips. There may not be authority, in any such cases, for this position to be ameliorated.

25. If any cases of the type referred to in the preceding paragraphs should come under notice at the time an election is received from a taxpayer, the taxpayer should be advised of the situation and given an opportunity, if he so desires, to withdraw the election. However, should an election that has been accepted and applied prove to be disadvantageous to a taxpayer, no application by him for restoration of the position that would have existed if the election had not been made should be refused without prior reference of all the relevant facts to Head Office.

26. Subsection (5) applies in the case of a taxpayer who would have been entitled to make an election under section 26BA but who has died before the end of the 1964-65 income year.

27. In these circumstances, the subsection declares that the trustee of the deceased taxpayer's estate may make the election. Where this is done so much of the profit on the sale of wool to which the election relates is to be excluded from the 1964-65 assessable income of the deceased taxpayer. The subsection also provides that, where the trustee makes the election, the relevant amount is to be treated as assessable income of the deceased taxpayer of the income year 1965-66, i.e., it is not to be treated for assessment purposes as income of the estate to which no beneficiary is presently entitled, and is to be deemed to be income derived by the trustee from carrying on a business of primary production.

28. Subsection (5) will not apply if a taxpayer entitled to make an election under section 26BA dies after the end of the 1964-65 income year. In any such cases his trustee, acting on behalf of the deceased, may make the election under preceding provisions. If a taxpayer has a normal shearing in 1964-65 and, after his death, an advanced shearing was made in that year by his trustee, section 26BA would not apply. In such circumstances, however, no one assessment would include proceeds of two wool clips as a result of the advanced shearing.

29. Subsection (6) provides for the time and manner in which elections are to be made. The subsection specifies that elections are to be in writing. The time for lodgment is the later of the 31 December 1965 and the date of lodgment of the 1964-65 return of the taxpayer or of the deceased taxpayer for whom the election is made. The Commissioner is, however, empowered to grant an extension of time for lodgment. The time may be extended even though the assessment for the year has been made - subsection (8) gives a power to amend assessment to give effect to section 26BA.

30. Subsection (7) specifies the meaning to be attached to the expression "profit on the sale of wool", that is, the amount that may, on election, be transferred for assessment purposes from the 1964-65 income year to the 1965-66 income year. Broadly stated, the profit is the net proceeds of the wool after deduction of shearing and sale expenses.

31. The commencement point for the ascertainment of this profit is the amount of the proceeds of the sale of wool shorn at the advanced shearing that are included in the assessable income of the taxpayer of the income year 1964-65. If these proceeds are only part of the total proceeds of wool shorn at the advanced shearing, the part is the amount to be taken into account. From this amount is to be deducted the expenses incurred by the taxpayer in the 1964-65 income year which are directly attributable to the shearing and sale of the wool the proceeds of sale of which are included in the 1964-65 assessable income of the taxpayer. If only part of the wool shorn at the advanced shearing is sold in 1964-65 an apportionment of the relevant expenses will be necessary.

32. Shearing and sale expenses that are directly attributable to

the wool shorn at the advanced shearing will include such items as wages paid to shearers, classers and shed hands, payments to shearing contractors, costs of branding fluid, fuel for shearing - plant engines, food for shearers etc., bales, freight to wool store, classing, storage, insurance and auctioneer's commission. Wages paid to persons normally employed in the taxpayer's business should not be regarded as expenses to be taken into account in calculating the profit. As any expense taken into account in calculating the profit will reduce the amount to be transferred from 1964-65 to 1965-66, any calculation by the taxpayer which you consider reasonable may be accepted.

33. Subsection (8) gives a power to amend assessments to give effect to elections made under section 26BA. In the absence of this power section 170 of the Principal Act may operate as an impediment to amendment of an assessment where the assessment has been made before lodgment of an election by the taxpayer.

COMMISSIONER OF TAXATION