



***TD 2009/D13 - Income tax: does a failure to plant trees intended to be established under a forestry scheme affect the timing of deductions for expenditure on seasonally dependent agronomic activities where section 8-1(1)(b) of the Income Tax Assessment Act 1997 and section 82KZMG of the Income Tax Assessment Act 1936 have previously been ruled to be satisfied?***

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This document has been finalised by [TD 2010/14](#).

 There is a Compendium for this document: [TD 2010/14EC](#); [TD 2010/15EC](#) .



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## Draft Taxation Determination

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Income tax: does a failure to plant trees intended to be established under a forestry scheme affect the timing of deductions for expenditure on seasonally dependent agronomic activities where section 8-1(1)(b) of the *Income Tax Assessment Act 1997* and section 82KZMG of the *Income Tax Assessment Act 1936* have previously been ruled to be satisfied?

**❗ This publication provides you with the following level of protection:**

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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### Ruling

1. No. Subsection 82KZMG(2) of the *Income Tax Assessment Act 1936* (ITAA 1936) requires the expenditure to have been incurred in return for 'the doing of a thing under the agreement...'.  
2. If it transpires that the 'thing' is not done, for reasons outside the control of the parties, the timing of the deduction would remain governed by section 82KZMG of the ITAA 1936. Further, the amount may still be relevantly incurred for the purposes of the general deduction provision, section 8-1 of the *Income Tax Assessment Act 1997*, at the time the expenditure was made.

## **Example**

3. *Kane incurred expenditure under agreements that satisfied subsections 82KZMG(2) and (3) of the ITAA 1936 during the 2008 financial year. The nature of the agreements entered into also indicates that a business is being carried on. Under the agreement, the trees that were subject of the agreement were due to be planted by 30 June 2009. Due to the appointment of a liquidator or administrator, the trees were not planted by 30 June 2009. Nevertheless, the timing of the deduction for the expenditure remains within the scope of section 82KZMG of the ITAA 1936.*

## **Class of persons**

4. This draft Determination applies to participants in schemes that are either subject to a current product ruling, or were subject to a product ruling which has been withdrawn with effect from immediately before any material difference occurred.

## **Date of effect**

5. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

28 October 2009

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## Appendix 1 – Explanation

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❶ ***This Appendix is provided as information to help you understand how the Commissioner’s preliminary view has been reached. It does not form part of the proposed binding public ruling.***

### Explanation

6. For forestry projects where agreements are entered into on or after 2 October 2001 and on or before 30 June 2008, section 82KZMG of the ITAA 1936 applied to set the time for a deduction for expenditure on seasonally dependant agronomic activities. Subsection 82KZMG(2) required that planting be completed within the eligible service period, being a period of 12 months or shorter, and ending on or before the last day of the year of income after the year in which the expenditure was incurred.

7. Section 82KZMG of the ITAA 1936 involves a test, in the first instance, of determining, by reference to the agreement, when a thing *is to be done* and not by reference to when the thing is *actually done*. Accordingly, if under the agreement, the thing is to be done within the prescribed period but for reasons outside the control of the parties was done outside this period, or not at all, this does not mean that the test in section 82KZMG is not satisfied.

8. Where agreements entered into are of a similar nature to those entered into by the taxpayers in *Hance v. FC of T*; *Hannebery v. FC of T* [2008] FCAFC 196; 2008 ATC 20-085 it is likely to be concluded that a business is being carried on. In *Commissioner of Taxation v. Sleight* [2004] FCAFC 94; (2004) 136 FCR 211; 2004 ATC 4477; (2004) 55 ATR 555 the business of the taxpayer was found to have commenced at the time of entering into the relevant agreements. Refer to the judgment of Hill J at paragraphs 9 and 61. Accordingly, notwithstanding the failure to plant the trees within the agreed time, the expenditure otherwise allowable as a deduction may continue to be allowable provided there was a genuine intention at the outset to do what the agreements provided for.

## Appendix 2 – Your comments

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9. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

10. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Tax Office website at [www.ato.gov.au](http://www.ato.gov.au)

Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 27 November 2009  
**Contact officer:** Lynton Hastwell  
**Email address:** [Lynton.Hastwell@ato.gov.au](mailto:Lynton.Hastwell@ato.gov.au)  
**Telephone:** (08) 8208 1920  
**Facsimile:** (08) 8208 1898  
**Address:** Australian Taxation Office  
GPO Box 9977  
Adelaide SA 5001

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- advance expenses & payments
- afforestation expenses
- forest operations
- forestry
- prepayments
- primary production
- seasonally dependent agronomic activity

*Legislative references:*

- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1997 8-1
- ITAA 1997 8-1(1)(b)

*Case references:*

- Commissioner of Taxation v. Sleight [2004] FCAFC 94; (2004) 136 FCR 211; 2004 ATC 4477; (2004) 55 ATR 555
- Hance v. FC of T; Hannebery v. FC of T [2008] FCAFC 196; 2008 ATC 20-085

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ATO references

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