TD 93/D66 - Income tax: capital gains: if a taxpayer who owns pre-CGT land and trees sells timber according to two post-CGT contracts - one for the sale of the uncut timber and the other for granting the purchaser of the timber the right to enter the taxpayer's property over a period of time and remove timber as and when required - how is the sale treated for CGT purposes?

This cover sheet is provided for information only. It does not form part of *TD 93/D66 - Income tax: capital gains: if a taxpayer who owns pre-CGT land and trees sells timber according to two post-CGT contracts - one for the sale of the uncut timber and the other for granting the purchaser of the timber the right to enter the taxpayer's property over a period of time and remove timber as and when required - how is the sale treated for CGT purposes?*

This document has been finalised by TD 93/81.

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.

Draft Taxation Determination

Income tax: capital gains: if a taxpayer who owns pre-CGT land and trees sells timber according to two post-CGT contracts - one for the sale of the uncut timber and the other for granting the purchaser of the timber the right to enter the taxpayer's property over a period of time and remove timber as and when required - how is the sale treated for CGT purposes?

1. Even though the sale of the uncut timber and the right to remove the timber are subject to two contracts, the transactions **together** are taken to constitute the granting of a *profit à prendre*.

2. Accordingly, as the grant of the *profit à prendre* gives rise to the disposal of a post-CGT asset created by the grantor i.e. the taxpayer, the sale of the timber is subject to the CGT provisions even though the land and trees were acquired pre-CGT (IT2561).

Example:

Farmer Joe is a primary producer who has been farming land acquired by him pre-CGT. On 1 July 1992, he sold all the pre-CGT timber growing on the land to an unrelated purchaser according to two contracts:-

(i) a contract granting the purchaser of the timber the right to enter his land over time and remove the timber as and when required. The consideration given in respect of this contract was $1.00.

(ii) a contract for the sale of the uncut timber for which the balance of the sale proceeds, $19,999, was payable.

The two contracts together comprise a profit à prendre granted on 1 July 1992. Accordingly, Farmer Joe is taken to have disposed of a post-CGT asset for a consideration equal to $20,000.

Note: It is assumed that the sale in this example does not give rise to income under ordinary concepts.

Commissioner of Taxation
18/3/93

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