

## **Profits from the occupation of woodlands: Quantifying profits or gains**

### **Part 07-03-09**

This document should be read in conjunction with section 232 of  
the Taxes Consolidation Act 1997

Document last reviewed July 2023

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## 1. The exemptions

### 1.1. Income / Corporation tax

Under section 232 Taxes Consolidation Act 1997 (TCA 1997), profits or gains from the occupation of woodland in the State:

- which is managed on a commercial basis and
- with a view to a profit

are exempt from Income Tax and Corporation Tax (but not Universal Social Charge and Pay Related Social Insurance).

The exemption granted to individuals is one of the 'specified reliefs' to which Chapter 2A of Part 15 TCA 1997, the High-Income Earner Restriction ("HIER"), applies. In order to determine whether or not the HIER applies, it is necessary to calculate the profits or gains which are exempt from tax under section 232 TCA 1997.

### 1.2. Capital Gains Tax

Section 564 TCA 1997 provides that, in the case of individuals, the value of the standing timber is not taken into account for CGT purposes.

## 2. What qualifies for the exemptions?

The question arises as to whether or not certain activities involving forestry fall within the tax exemptions.

### 2.1. Felling trees

The majority of foresters realise their profits from the occupation of woodlands on a commercial basis by felling the trees and by selling the hewn timber. In most cases, there will be little doubt but that the exemption in section 232 TCA 1997 applies. However, there are other occasions where one must determine the difference between 'tree farming' and 'forestry'.

#### 2.1.1. Christmas trees

Revenue has, in precedent IT 96 3506, confirmed that the profits from planting and harvesting Christmas trees are exempt under section 232 TCA 1997.

#### 2.1.2. Other 'decorative' trees, bushes or shrubs

The English case of **Jaggers v Ellis [1997] 71 TC 164** examined whether or not the term woodland simply meant a site covered with trees. It was found that it did not.

Lightman J found that, in everyday language, a woodland is:

“...a sizeable area of land to a significant extent covered by growing trees of some maturity, height and size. There is no mathematical or scientific formula for deciding the area of land, the density of the trees or maturity, height or size required for this purpose. As to the maturity, height and size of the trees there is something to be said for the rule of thumb that their wood should be capable of being used as timber, for woodlands are frequently used and cultivated for timber production and this is the size of trees ordinarily associated in the mind's eye with a wood. Whether the trees on a particular area of land are such as to entitle it to be regarded as woodlands is very much a matter of impression and personal judgment for the viewer. He may find it difficult (if not impossible) to give his definition of woodlands as he would of an elephant, but he will know when he has had the pleasurable experience of seeing either.”

Areas of land used to grow decorative trees, or short rotation coppice, rather than trees for felling and for the production of timber, are likely to fail the ‘elephant’ test. They are more likely to resemble a nursery than a woodland.

Revenue’s precedent in relation to Christmas Trees cannot be extended to other types of crops.

## 2.2. Sale of branches and foliage

### 2.2.1. Thinnings

Part of managing a woodland on a commercial basis involves managing the growth of the trees and removing branches and foliage to ensure optimum growth for the tree. Where such thinnings are sold, they are a by-product of managing the woodlands on a commercial basis and therefore are within the exemption set out in section 232 TCA 1997.

### 2.2.2. As the main “crop”

Land used to grow holly, eucalyptus, viburnum etc. is likely, not woodland, but rather a nursery. This follows the decision in **Jagger v Ellis**.

In addition, as the purpose of growing such plants is to harvest a crop from the plants, rather than to harvest the plants themselves, it again is akin to the trade of ‘tree farming’, or market gardening, rather than to silviculture.

## 2.3. Selling standing timber

Some foresters, rather than fell trees themselves, will allow others onto their land for the purpose of felling specific trees, or specific areas of trees. The forester continues to hold the same interest in the land upon which the trees grow.

The case of **Coates v Holker Estates Co [1961] 40 TC 75<sup>1</sup>** was in respect of a forester who, in addition to felling trees, allowed merchants to purchase standing timber to fell for themselves. The price paid was originally a lump sum amount and subsequently it was a price per hoppus foot.

Profits from this type of activity fall within the exemption contained in section 232 TCA 1997.

## 2.4. Selling timber products

Some taxpayers will engage in certain processing of the hewn timber before selling the wood to another person. It will be a question of degree as to what profits relate to:

- the occupation of the woodland and
- the timber processing activities.

## 2.5. Selling the land on which timber is standing

Certain taxpayers may not want to, or be in a position to, wait until the forest has matured in order to realise their profits on their investment. Therefore, such taxpayers may sell their forest to another person.

This can be done either as a sale of:

- the land, and all of the timber standing thereon, or
- the standing timber with an interest in the land created to give the purchaser access to the standing timber.

There are a number of considerations here:

### 2.5.1. As a once off

In law, the sale of land (which includes an interest in land under section 5 TCA 1997) includes the sale of anything growing on the land. The sale of woodland is, legally, the sale of land. It is not the sale of land and the sale of standing timber as two separately identifiable assets. Therefore, the full proceeds are applicable to the sale of land and there should, on first principles, be no apportionment of proceeds between the trees and the land.

The gain realised on the sale of the woodland itself arises from the person alienating themselves from the woodland: it does not arise from the occupation of the woodland.

Therefore, profits from the sale of the land with standing timber do not fall within the exemption of section 232 TCA 1997.

If an individual is disposing of woodland and the disposal is within the scope of CGT (i.e. it is a normal disposal and not part of a trade), then section 564 TCA 1997 applies. Section 564 specifically provides that the

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<sup>1</sup> Discussed in [3.2.2](#) below.

proceeds should be apportioned and that no account should be taken of either the cost of the trees, or the value associated with the trees.

If a company is disposing of a woodland and the disposal is within the scope of CGT, then CGT applies to the full proceeds.

#### 2.5.2. As part of a trade

Certain taxpayers may engage in the trade of selling established woodlands (similar to the case of **Leach v Pogson (1962) 40 TC 585** where the taxpayer engaged in the trade of establishing and selling driving schools). These taxpayers will account for the woodlands as trading stock in their accounts, rather than as a fixed asset.

While the taxpayer may occupy the woodlands on a commercial basis as part of establishing the woodland, the actual profits arise not from occupying the woodland, but from selling the woodland.

Income tax or corporation tax on trading profits will apply in these cases. The exemption contained in section 232 TCA 1997 will not apply.

## 2.6. Grants

The Afforestation Grant and Premium Scheme<sup>2</sup> provides a package to encourage the planting of forests by compensating forest owners for:

- the costs of forestry establishment and
- the income foregone during the maturation of the timber crop.

The premium attaches to the afforested area. If the afforested land is sold or bequeathed, the premium may continue to be paid to the new owner provided that individual satisfies the conditions.

#### 2.6.1. Income under the Scheme

The Grant and Premium rates payable are determined by the category of the planted lands together with the tree species, farm size and area planted.

#### 2.6.2. Treatment for Tax Purposes

The amount of the planting grant and the forest premium paid is exempt from tax by virtue of section 18 FA 1969 and is likewise exempt from Income Tax and Corporation Tax by virtue of Section 232 (2) TCA 1997.

#### 2.6.3. Statement of Practice

A Statement of Practice which has been issued by the Revenue Commissioners is attached as [Appendix II.](#)

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<sup>2</sup> The previous scheme ran from 2007 to 2013 with the above scheme running from 2014 to 2020. Details of the

## 2.7. RCT (s.530A(1)(b)(iii) TCA 1997)

A person who carries on a business:

- that includes the processing of wood from thinned or felled trees, or
- who supplies thinned or felled trees for such processing,

may be a “principal” for the purposes of Relevant Contract Tax<sup>3</sup>.

Relevant Contracts Tax applies to a person carrying out “Forestry operations” of any of the following descriptions:

- a) The thinning, lopping or felling of trees in woods, forests or other plantations;
- b) With effect from 6th October 1997, the planting of trees in woods, forests or other plantations;
- c) With effect from 6th October 1997 the maintenance of woods, forests and plantations and the preparation of land, including woods or forests which have been harvested, for planting;
- d) The haulage or removal of thinned, lopped or felled trees;
- e) The processing (including cutting or preserving) of wood from thinned, lopped or felled trees in sawmills or other like premises;
- f) The haulage for hire of materials, machinery or plant for use, whether used or not, in any of the operations referred to above.

## 3. Calculating the profits or gains from the occupation of woodlands

### 3.1. Is the occupation of woodlands a trade?

In order to determine whether or not the occupation of woodlands on a commercial basis is a trade, the first step should be to examine the taxpayer’s activity in the context of the Badges of Trade<sup>4</sup>. Taking each in turn:

- the subject matter – the produce which is sold is hewn timber which is unlikely to be determinative either way.
- the length of period of ownership<sup>5</sup> – the fact that it takes 20+ years for a woodland to mature and produce hewn timber indicates against the woodland being a trade.

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current scheme are available from the Department of Agriculture, Food and the Marine website.

<sup>3</sup> Refer to manual [18-02-02](#) for more details on the operation of RCT.

<sup>4</sup> They were set out by the Royal Commission on the Taxation of Profits and Income in 1954 and set out in [Appendix I](#).

<sup>5</sup> Where a person holds a large number of woodlands and where those woodlands mature at different times, then a combination of these two badges of trade can indicate that a trade is being carried on.

- frequency of similar transactions<sup>6</sup> – in general a person only holds a single woodland, or a single ‘batch’ of woodlands if they have a number of land holdings which are partially planted at the same time, which would indicate that no trade was being carried on.
- supplementary work – while the commercial occupation of woodlands involves thinning and other annual works on the woodlands, the extent of these works is likely to be minimal. It is likely that in most cases the extent of any supplementary work undertaken will indicate that no trade is being carried on.
- circumstances of the realisation – in most cases the hewn timber will be sold as expected upon the woodland reaching maturity. This is unlikely to be determinative either way.
- motive – in some cases a person’s motive will have been to earn an exempt amount of income. In others it may have been to create an exempt source of income for a successor. In either case, it is unlikely to be a determinative factor.

Given the nature of the activities generally carried out by persons who occupy woodlands on a commercial basis, in most cases the application of the ‘badges of trade’ may indicate that a trade is not being carried out.

### 3.2. The Income / Corporation Tax exemption

An examination of the history of the exemption and relevant case law supports the ‘badges of trade’ analysis. In most cases, the occupation of woodlands on a commercial basis may not be a trade.

#### 3.2.1. The legislative history of the exemption

Historically, the occupation of woodlands situated in the State was assessed to income tax under Schedule B, which was a tax on the occupation of land. The occupier could, however, elect under Section 36 of the Income Tax Act 1967 (“ITA 1967”) to be assessed under Schedule D instead of Schedule B. If such an election was made, it was deemed to be a trade. Where such an election was made, section 307(1) ITA 1967<sup>6</sup> provided that relief for losses would be given for a loss incurred in “the occupation of woodlands in respect of which he has elected to be charged to tax under Schedule D”. That is, ITA 1967 recognised that the occupation of woodlands was not a trade but could in certain circumstances be a deemed trade.

Reflecting the fact that the commercial occupation of woodlands should be regarded as a “deemed” trade, and not a trade per se, Finance Act 1969 (FA 1969):

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<sup>6</sup> The precursor to section 381 TCA 1997.



- abolished Schedule B,
- provided “the profits or gains arising... from the occupation of woodlands managed on a commercial basis and with a view to the realisation of profits, shall not be taken into account for any purpose of the Income Tax Acts” (section 18 FA 1969) and
- amended the loss relief provisions to replace references to an election to be taxed under Schedule D with occupying woodlands which were “managed on a commercial basis with a view to the realisation of profits.”

For completeness, it should be noted that section 17 Finance Act 1979, removed the loss relief available for the occupation of woodlands.

### 3.2.2. Case law on the occupation of woodlands:

#### **Coates v Holker Estates Ltd [1961] 40 TC 75**

Plowman J concluded that the occupation of woodlands on a commercial basis with a view to a profit was not a trade. Contributing to this view was that loss relief for the occupation of woodlands had to be specifically provided for, which would not have been the case had the occupation of woodlands actually been a trade.

Plowman J also went on to consider whether or not the growing timber could ever be considered to be stock-in-trade. In order to determine this, it is necessary to determine exactly what the activity of the forester is:

“If the growing timber is fixed capital, and not circulating capital, such as stock in trade, then it was properly omitted from the ... profit and loss accounts.”

He found the Special Commissioners were correct when they noted that the taxpayer:

“...did not trade in buying and selling woodlands, or any interest in land, but in hewn timber.”

He noted that the occupation of woodlands on a commercial basis involved dealing in timber, sometimes felled, sometimes standing. When it was sold as standing timber it is for short term felling. The woodlands were the means by which taxpayers get their supply of timber.

#### **Connolly (Inspector of Taxes) v WW [1975] II ITR 657**

The taxpayer had elected to be taxed on the profits from the occupation of woodlands on a commercial basis and with a view to a profit under Schedule D. The question then arose as to whether or not the cost of planting the trees was an allowable deduction.

Kenny J cited **Coates v Holker Estates** and stated that standing timber is not trading stock. He held that:

- The cost of reclamation and preparation of land for planting trees was capital expenditure, and therefore not deductible;
- Land does not become 'woodland' by virtue of the intention to plant trees on it;
- The cost of trees and the cost of planting trees, for the first time, is therefore not part of the cost of occupying 'woodlands'; and
- The cost of trees and the cost of planting trees in old woodlands are an allowable cost.

### 3.3. The legislation – CGT

The provisions of Section 564 TCA 1997 further demonstrate that the growing timber is an asset and not trading stock. The section specifically excludes consideration for the disposal of growing timber from the charge to CGT, in the case of an individual. If it were not a chargeable asset, there would have been no necessity to exclude it as charges to income tax take precedence over charges to CGT.

There is no such exclusion in the case of a corporate body, where the CGTA brings consideration for growing timber into charge to CGT.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### 3.4. Calculating the profits

Section 35(1)(b)(ii) Finance Act 2003 introduced certain reporting requirements, in relation to the exempt income. It requires that a person to whom such profits or gains arise must:

- compute the profits or gains, or any loss and
- make a return of income under Part 41 / 41A TCA 1997<sup>7</sup>, as appropriate,

as if the exemption did not exist.

In order to determine what profits or gains should be reported each year it is necessary to determine what rules would apply to determining the profits or gains as if the exemption was not in place.

It is clear that the occupation of woodlands, in the majority of cases, may not be a trade. It would, therefore, be incorrect to apply the Case I rules and Case IV is therefore the appropriate assessment basis.

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<sup>7</sup> Part 41 was deleted by the Finance Act 2012, and the relevant provisions included in Part 41A, with effect from 1/1/2013.

#### 3.4.1. Basis of assessment

Section 74 TCA 1997 sets out the basis of assessment for Case IV as on the full amount of the profits or gains arising in the year of assessment.

Rowlatt J<sup>8</sup> in determining in what year casual profits should be taxed held that:

“receipts must be treated as appertaining ... to the year in which they were actually received... [I]n dealing with these casual profits coming under [Case IV], you must look at the time when the casual profits come in...”

Therefore, the theoretical Case IV charge arises in the year in which the profits from the occupation of the woodlands are realised.

#### 3.4.2. Deductible expenses

As set out above, trees are a capital asset and therefore, for the purposes of determining the profits to be assessed under Case IV, they are not valued as stock-in-trade. However, a deduction is available for the cost of trees and planting trees for established woodland, as set out in 3.2.1 above.

### 4. Conclusion

Occupation of woodlands on a commercial basis is, in most cases, not a trade. As it is not a trade, the Generally Accepted Accounting Principles are not relevant when determining the profits for the purposes of the Tax Acts. Only the expenses related to managing woodlands on a commercial basis are allowable expenses, and this does not include the cost of trees for planting on a piece of land which will become woodland but does include the cost of trees for an existing woodland.

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<sup>8</sup> Grey v Tiley [1930] 16 TC 414.

## Appendix I

### Badges of Trade

- **The subject matter of the sale.**

Whilst almost any form of property can be acquired to be dealt in, those forms of property, such as commodities or manufactured articles, which are normally the subject of trading, are only very exceptionally the subject of investment. Again, property, which does not yield to its owner an income, or personal enjoyment merely by virtue of its ownership is more likely to have been acquired with the object of a deal than property that does.

- **The length of period of ownership.**

Generally speaking, property meant to be dealt in is realised within a short time after acquisition. But there are many exceptions from this as a universal rule.

- **The frequency of similar transaction.**

If realisations of the same sort of property occur in succession over a period of years or there are several such realisations at about the same date a presumption arises that there has been dealing in respect of each.

- **Supplementary work.**

If the property is worked up in any way during the ownership so as to bring it into a more marketable condition, or if any special exertions are made to find or attract purchasers, such as the opening of an office or large-scale advertising, there is some evidence of dealing. When there is an organised effort to obtain profit there is a source of taxable income. But if nothing at all is done, the suggestion tends the other way.

- **The circumstances that were responsible for the realisation.**

There may be some explanation, such as a sudden emergency or opportunity calling for ready money that negates the idea that any plan of dealing prompted the original purchase.

- **Motive.**

There are cases in which the purpose of the transaction and sale is clearly discernible. Motive is never irrelevant in any of these cases and can be inferred from surrounding circumstances in the absence of direct evidence of the seller's intentions. It is, however, important to appreciate that the "whole picture" must be taken into account, so that the weight to be given to the various factors may vary according to circumstances. Furthermore, it is important to recognise that any given factor may be present to a greater or lesser degree, and that the absence (or presence) of any single factor is unlikely to be conclusive in its own right.

## Appendix II

### SP - IT/1/90

#### Statement of Practice

#### Taxation of Farmers and Landowners

#### New Forest Premium Scheme

1. A Forest Premium Scheme was introduced on 7 February 1990 by the Minister for Energy under EEC Council Regulation No.797/85 as amended by EEC Council Regulation No. 1609/89.
2. Briefly the Scheme provides for the payment of premiums at the following rates:
  - (a) Land which was previously unenclosed for agricultural purposes - £20 per acre (£50/hectare) each year for 15 years.
  - (b) Land which was previously enclosed for agricultural purposes - £47 per acre (£116/hectare) for the first twenty acres and £35 per acre (£86/hectare) thereafter each year for 15 years.
  - (c) All lands planted with Broadleaved species - £47 per acre (£116/hectare) each year for 20 years.
3. The Revenue Commissioners accept that the amount of the premium paid is exempt from tax and is not taken into account for any purpose of the Income Tax Acts by virtue of Section 18 Finance Act 1969. Expenses or capital allowances relating to expenditure incurred in connection with the preparation of land for afforestation or in the subsequent planting or management of the afforested area are not however allowable under any heading for tax purposes. Interest on money borrowed to purchase land for afforestation, or to purchase trees or develop the forestry, is also not allowable for tax purposes.
4. The Scheme is administered by the Department of Energy Forest Service, Leeson Lane, Dublin 2<sup>9</sup>, from whom full details are available.

#### The Revenue Commissioners

#### Dublin Castle

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<sup>9</sup> Now the [Department of Agriculture, Food and the Marine](#).