

NO.: **IT-481 (Consolidated)**

DATE: See *Bulletin Revisions* section

SUBJECT: INCOME TAX ACT
Timber Resource Property and Timber Limits

REFERENCE: The definition of “timber resource property” in subsection 13(21) of the *Income Tax Act* (the “Act”); and subsection 1101(3), paragraph 1100(1)(e), Class 33 of Schedule II and Schedule VI of the *Income Tax Regulations* (the “Regulations”) (also the definition of “undepreciated capital cost” in subsection 13(21), paragraph 20(1)(a) and paragraph 39(1)(a) of the Act; and subsection 1102(14) and subparagraph 1100(1)(a)(xxiv) of the Regulations)

Latest Revisions – Reference section and ¶s 2, 7 and 8

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Application

This bulletin is a consolidation of the following:

- Interpretation Bulletin IT-481 dated November 27, 1981; and
- subsequent amendments thereto.

For further particulars, see the “*Bulletin Revisions*” section near the end of this bulletin.

Unless otherwise noted, all statutory references throughout the bulletin are to the Act.

Summary

This bulletin discusses the differences between the tax treatment of “timber resource properties” (as defined in subsection 13(21)) and “timber limits” (referred to in paragraph 1100(1)(e) of the Regulations). The cost of acquisition of the former is included in Class 33 (which has a 15% rate of capital cost allowance (“CCA”)), and a disposition of such property generally results in an income inclusion rather than a capital gain. A deduction in respect of the capital cost of a timber limit or a right to cut timber from a limit other than a timber resource property is calculated in accordance with Schedule VI of the Regulations and the disposition of such property may result in a capital gain.

Discussion and Interpretation

Timber Resource Property

¶ 1. A timber resource property is defined as a right or license to cut or remove timber from a limit or area in Canada (an “original right”) if that original right was acquired by the taxpayer after May 6, 1974 and, at the time of acquisition of the original right, the taxpayer may be reasonably regarded as having acquired, directly or indirectly, the right to

- (a) extend or renew that original right, or
- (b) acquire another such right or license in substitution therefor,

or the taxpayer may reasonably expect, at the time of acquisition of the original right, to be able to extend or renew that right or to acquire another right or license in substitution therefor in the normal course of events. Any right or license acquired after May 6, 1974 as an extension, renewal or substitution, or as one of a series of extensions, renewals or substitutions, for the original right, is also timber resource property even if the original right or license was acquired before May 7, 1974. In determining whether a particular right is a timber resource property, it will therefore be necessary to determine whether the right is extendable, renewable or can be substituted for. To do so may involve examining the issuing documents or applicable provincial legislation or even determining provincial practice where the documents and legislation are silent.

¶ 2. A timber resource property is depreciable capital property and is included in class 33 of Schedule II of the Regulations. It is distinguishable from other capital property in that its disposition for proceeds in excess of its capital cost does not result in a capital gain by virtue of the exclusion provided by subparagraph 39(1)(a)(iv). Any excess of proceeds of disposition, net of costs of disposition over the undepreciated capital cost of all of the timber resource properties in class 33, is included in income by virtue of variable G in the definition of “undepreciated capital cost” in subsection 13(21) and subsection 13(1). There is no requirement that timber resource properties be included in separate classes.

Timber Limits and Cutting Rights

¶ 3. Paragraph 20(1)(a) and paragraph 1100(1)(e) of the Regulations provide for a deduction in respect of the capital cost of a timber limit or right to cut timber from a limit, other than a timber resource property. The amount claimed may not exceed the amount calculated in accordance with Schedule VI of the Regulations. Each property that is a timber limit is prescribed by subsection 1101(3) of the Regulations to be a separate class of property. Paragraph 1100(1)(e), subsection 1101(3) and Schedule VI of the Regulations specifically exclude timber resource properties from their application. Rather than deduct an amount calculated pursuant to section 1 and section 2 or section 3 of Schedule VI of the Regulations, a taxpayer may elect to deduct the lesser of \$100 and the amount of his timber sales

in the year in accordance with section 4 of Schedule VI of the Regulations.

¶ 4. A timber limit or cutting right may be acquired with or without title to the land on which the timber stands. Unlike land on which is located a property which qualifies for inclusion in one of the classes in Schedule II of the Regulations, land which is acquired as a part of a timber limit is depreciable under Schedule VI of the Regulations and does not exist as a separate property for purposes of the Act. Accordingly, any proceeds received from the sale of such land (up to the cost of the whole property) must be credited to the class and will result in a recapture of capital cost allowance if the credit exceeds the undepreciated capital cost of the timber limit prior to the sale.

¶ 5. The sale of a timber limit or cutting right, unlike the sale of a timber resource property, may, depending on all of the facts, result in a capital gain where the proceeds of disposition exceed the capital cost. Paragraph 39(1)(a) does not exclude timber limits from capital gains treatment as it does timber resource properties. A capital gain will not result, of course, if the facts indicate that the sale transaction is of an income nature.

¶ 6. Although paragraph 65(1)(a) provides for the deduction of an amount as an allowance in respect of a timber limit as may be allowed by regulation, this provision does not have any effect, because Part XII of the Regulations, the prescribed regulation, does not provide for any allowance in respect of a timber limit.

General

¶ 7. A timber resource property is defined in subsection 13(21), while a timber limit is not defined in the Act. A property that would be a timber resource property except for the fact that it was acquired before May 7, 1974 is a timber limit. Where a taxpayer purchases a right to cut timber from a limit from a province, whether that right is a timber resource property or a timber limit depends on all of the characteristics of the arrangement with the province. If a taxpayer acquires land on which there is standing timber (for example, freehold timberlands), such property is a timber limit.

¶ 8. Timber limits that are owned by a corporation and acquired by a taxpayer in the course of a reorganization or from a non-arm’s length party described in paragraphs 1102(14)(a) and (d) of the Regulations, respectively, are also timber limits to the taxpayer acquiring the property. This is so despite the fact that, at the time of the reorganization or transfer from a non-arm’s length party, the property may otherwise qualify as a timber resource property. It should be noted that, in determining whether the parties are not dealing at arm’s length for this purpose, the anti-avoidance rule in subsection 1102(20) of the Regulations should be consulted. For a discussion of the meaning of “arm’s length”, see the current version of IT-419, *Meaning of Arm’s Length*.

Bulletin Revisions

Since the issuance of IT-481 on November 27, 1981, there have been no significant revisions to ¶s 1 and 3 to 6 (formerly ¶s 2 and 4 to 7). [January 13, 2004]

In the Reference section, certain provisions of the Act and Regulations have been moved from being a secondary reference to a primary reference and certain minor references have been deleted. [January 13, 2004]

The Reference section and ¶s 2 (former ¶ 3) and 7 (former ¶ 8) have been updated to reflect the formatting changes of certain definitions contained in subsection 13(21) following the adoption of chapter 1 of R.S.C. 1985 (5th Supplement). [January 13, 2004]

“Content”, “Application” and “Summary” sections have been added to the bulletin. [January 13, 2004]

¶ 1 of IT-481 is now contained in the Summary of the consolidated bulletin. Consequently, ¶s 2 to 9 of IT-481 have been renumbered as ¶s 1 to 8, respectively. [January 13, 2004]

In ¶ 7, the first and part of the second sentence of former ¶ 8 have been deleted in order to eliminate superfluous wording. [January 13, 2004]

¶ 8 (former ¶ 9) has been revised to reflect the repeal of paragraphs (b) and (c) of subsection 1102(14) of the Regulations and now refers to paragraphs (a) and (d) of the Regulations that apply to property acquired in the course of a reorganization or from a non-arm's length party, respectively. [January 13, 2004]

Throughout the bulletin, we have made minor changes for clarification or readability purposes. [January 13, 2004]