



**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **15 September 2025**

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Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

Can a farmer who leases land deduct the tax book value of horticultural plants on the land when the lease ends?

Issued | Tukuna: xx

QB XX/XX

This question we've been asked considers whether a lessee farmer, who carries on a farming business on leased land, can deduct the remaining diminished value (the tax book value) of the expenditure incurred on planting horticultural plants in the income year the lease on the farmland ends.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss DO 4, DO 5, DO 6, DO 11

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

Question | Pātai

When a lease of farmland ends and the lessee farmer's farming business on the land ceases, can the lessee farmer deduct the remaining diminished value (tax book value) of the expenditure incurred by the farmer on planting horticultural plants on the farmland in the income year the lease ends?

Answer | Whakautu

The lessee farmer cannot deduct the remaining diminished value of the expenditure in the income year the lease ends. The ability to deduct the remaining diminished value of the plants is passed to the landowner farmer in the income year the lease ends.

The lessee farmer is allowed an amortisation-like deduction in each income year for expenditure on planting horticultural plants on land leased by that farmer, except in the income year in which the lease ends and they cease to carry on a farming business on the land.

If after the end of the lease the landowner carries on a farming business on the land with the plants, the landowner farmer assumes the lessee farmer's tax book values for the horticultural plants in the income year the lease ends and continues the annual amortisation-like deduction of the plants.

Key terms | Kianga tau tāpua

Farmer means a person who carries on a farming or agricultural business. The word farmer is used for convenience and does not indicate what activities are farming or agricultural activities. For example, a farmer may be an orchardist.

Farming business means carrying on a farming or agricultural business on land in New Zealand.

Lessee farmer is a farmer who carries on a farming or agricultural business on leased land.

Landowner farmer is a farmer who carries on a farming or agricultural business on land that the farmer owns.

Amortisation-like deduction – also described as a “depreciation-like” deduction, both expressions refer to allowing a deduction for the cost of an asset over time.

Explanation | Whakamāramatanga

Introduction

1. The Commissioner has been asked whether a farmer who has leased land and incurred expenditure on planting horticultural plants on the land can deduct the remaining diminished value of the expenditure when the lease ends. The Commissioner understands the issue has particular significance when a lease ends before its contract expiry date and the amount of the remaining diminished value is material.

Deductibility of expenditure on planting horticultural plants on leased land

2. Subpart DO sets out deductibility rules for farming and agricultural business expenditure. Relevantly, ss DO 4 and DO 5 allow an amortisation-like deduction for expenditure on planting non-listed horticultural plants and listed-horticultural plants, respectively, and s DO 6 allows a deduction for expenditure on replacing listed horticultural plants.

Improvements to farmland: non-listed horticultural plants

3. Section DO 4 applies to expenditure incurred on making a land improvement listed in sch 20, part A. One such improvement is the planting of non-listed horticultural plants on the land (sch 20, part A, cl 9).
4. The term “non-listed horticultural plant” is defined in s YA 1 and means a:
 - horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land and is not a listed horticultural plant; and
 - tree or other similar plant planted mainly for the purposes of ornamentation.The definition specifically excludes a tree planted mainly for the purposes of timber production.¹
5. Under s DO 4 a farmer is allowed an amortisation-like deduction for expenditure on planting non-listed horticultural plants if:
 - the farmer is carrying on a farming business on the land; and

¹ Section 44C of the Tax Administration Act 1994 provides that a certificate as to whether trees are planted mainly for the purposes of timber production provides conclusive evidence on that question if it is given by a person referred to in s 44C(4) of the Tax Administration Act 1994.

- ss DO 5 to DO 7 do not apply to the expenditure; and
 - the expenditure is:
 - incurred in making the improvement on the land;
 - not on anything described in ss DO 1 to DO 3;²
 - incurred in developing the land; and
 - of benefit to the business in the income year.
6. A deduction is allowed in each income year for a percentage of the diminished value³ of the expenditure, at the rate specified in sch 20, part A (s DO 4(4)). For the planting of non-listed horticultural plants, the rate is 10%. However, the deduction is not allowed in the income year in which the farmer:
- ceases carrying on their farming business on the land – in the case of a farmer who does not own the land (s DO 4(3)(d)); or
 - disposes of the land – in the case of a farmer who owns the land (s DO 4(2)(d)).
7. Section DO 4 overrides the capital limitation, but the general permission must still be satisfied, and other general limitations still apply (s DO 4(7)).⁴

Deduction while plants exist and are used to derive income

8. Different outcomes can result depending on whether the farmer is a lessee or the landowner.

Farmer is not the owner of the land

9. If the farmer is a lessee (not the owner of the land), they are allowed a deduction for the diminished value of the expenditure they have incurred on planting non-listed horticultural plants on the land in each income year, except in the income year in which they cease carrying on their farming business on the land (s DO 4(3)(d)). Therefore, a lessee farmer is not allowed a deduction in the income year that the lease, and their farming business on the land, ends.

² Sections DO 1 to DO 3 provide for a deduction of expenditure in the circumstances specified under those provisions in the income year in which the expenditure is incurred.

³ Section DO 9B sets out the formula for calculating, for an income year, the diminished value of an improvement for specified sections, including ss DO 4 and DO 5.

⁴ The general permission is contained in s DA 1, which requires an expenditure to have nexus with income for it to be deductible. If the general permission is satisfied, there are six general limitations to deductibility (s DA 2). This includes a deduction being denied to the extent that the expenditure is of a capital nature (the capital limitation) and to the extent it is of a private or domestic nature (the private limitation).

Farmer is the owner of the land

10. If the farmer owns the land, they are allowed a deduction for the diminished value of the expenditure they, or another person (such as a lessee or a previous landowner), has incurred in planting non-listed horticultural plants on the land (s DO 4(2)).
11. This means that when a lease ends, the landowner farmer can assume the amortisation-like deduction from the income year the lessee ceased being allowed the deduction because their business has ended. The landowner farmer's opening tax book value for the plants is the unexpired portion of the lessee's opening tax book value of the plants.
12. As a practical matter, the landowner farmer must obtain from the lessee the diminished value of the plants for the beginning of the income year in which the lease ends. Without this information, the landowner farmer is unable to establish the current year diminished value (opening tax book value) of the plants. The statutory provisions do not impose an obligation to provide nor create a right to the information. Accordingly, if the landowner farmer wishes to continue with the amortisation-like deductions they will need to obtain the diminished value information from the lessee. It is also a commercial matter between the landowner and the lessee to decide whether any compensation for the horticultural plants is appropriate when the lease ends.

Deduction when plants cease to exist or be used to derive income

13. Under s DO 4(6), when non-listed horticultural plants cease to exist or to be used in deriving income (eg, when the plants are destroyed), the amount of the deduction a farmer is allowed is the diminished value of the plants at the time they ceased to exist or be used to derive income.
14. The deduction is allocated to the income year in which the non-listed horticultural plant ceases to exist or be used to derive income. However, the deduction is not allowed in the income year in which the farmer:
 - ceases carrying on their farming business on the land – in the case of a farmer who does not own the land; or
 - disposes of the land – in the case of a farmer who owns the land.
15. This is because s DO 4(6) quantifies the amount of the deduction, but it does not allow the deduction – subss (2) and (3) of s DO 4 allow the deduction. These subsections specify that a landowner farmer is not allowed a deduction in the income year they dispose of their land (s DO 4(2)(d)) and a non-landowner farmer is not allowed a deduction in the income year they cease to carry on business on the land (s DO 4(3)(d)).

16. In the case of leased land, if the plant ceases to exist or be used to derive income in the same income year the lease ends and the farmer is no longer carrying on their business on the land, the lessee farmer is not allowed a deduction for the amount quantified under s DO 4(6).

Expenditure on planting listed horticultural plants

17. Section DO 5 applies when a farmer carries on a farming business, including a horticultural business, on land in New Zealand, and the land has been developed by the planting of listed horticultural plants.
18. "Listed horticultural plant" is defined in s YA 1 and means a horticultural plant, tree, vine, bush, cane or similar plant that is cultivated on land and is of a type listed in a determination made by the Commissioner.⁵
19. The definition specifically excludes a:
- tree planted mainly for timber production;
 - tree or similar plant planted mainly for ornamentation;⁶ and
 - vine planted mainly for the purposes of producing grapes for wine production.⁷
20. A farmer is allowed an amortisation-like deduction for expenditure incurred in planting a listed horticultural plant in the income year that the planting benefits the business, if subss (6) and (7) do not apply. However, a deduction under s DO 5 is not allowed in the income year in which the farmer:
- disposes of the land – in the case of a farmer who owns the land (s DO 5(3)(a)); or
 - ceases carrying on their farming business on the land – in the case of a farmer who does not own the land (s DO 5(3)(b)).
21. Section DO 5 overrides the general permission and the capital limitation. The other general limitations still apply (s DO 5(8)).

Deduction while plants exist and are used to derive income

22. Similar to how s DO 4 operates, if the farmer owns the land on which the farming business is carried on, they are allowed a deduction for expenditure on planting listed horticultural plants incurred by them or another person.

⁵ See DET 24/01: Amortisation rates for listed horticultural plants *Tax Information Bulletin* Vol 36, No 4 (May 2024): 153

⁶ These are included in the definition of non-listed horticultural plant.

⁷ Wine grape vines, therefore, fall within the definition of non-listed horticultural plant – see [4].

23. The discussion at [10] to [12] in relation to non-listed horticultural plants expenditure incurred by "another person" is applicable to listed horticultural plants.
24. If the farmer is not the owner of the land, they are allowed a deduction for the expenditure incurred on planting listed horticultural plants in each income year, except in the income year in which they cease carrying on their farming business on the land.
25. When the lease ends, the landowner farmer can assume the amortisation-like deduction from the income year the lessee ceased being allowed the deduction.
26. The amount of the deduction allowed in each income year is a percentage of the diminished value of the expenditure on the listed horticultural plant,⁸ at the rate specified in a determination issued by the Commissioner for that particular listed horticultural plant.⁹

Deduction when plants cease to exist or be used in deriving income

27. Under s DO 5(6), if a listed horticultural plant ceases to exist or be used to derive income (eg, if it is destroyed) and the farmer has no deduction under s DO 6 for expenditure in replacing the plant, the amount of deduction a farmer is allowed is the remaining diminished value of the plants that cease to exist or be used to derive income. The deduction is allocated to the income year in which the plant ceases to exist or be used to derive income.
28. However, similar to the application of s DO 4, if a listed horticultural plant ceases to exist or be used to derive income in the same income year as the lease ends and the lessee farmer's business on the land also ends, the farmer is not allowed a deduction under s DO 5.

Replacement listed horticultural plants

29. If the listed horticultural plant that ceases to exist or be used to derive income is replaced and the farmer chooses to deduct a proportion of the replacement expenditure under s DO 6, s DO 5(7) provides that the farmer is not allowed a deduction for the remaining diminished value of the plant.
30. Instead, the diminished value of the plant that ceased to exist or be used to derive income is added at the end of the year to the current diminished values of the remaining listed horticultural plants in the planting. The addition is recognised after the amortisation-like deduction for the remaining listed horticultural plants is allowed for the year and the resulting amount is the opening value of the listed horticultural

⁸ The diminished value is calculated using the formula in s DO 9B. See footnote 3.

⁹ See DET 24/01.

plants for the next income year (for the purposes of deduction allowed under s DO 5 in the next year). Essentially, the replacement plants are treated as a continuation of the plants that cease to exist.

Expenditure on replacing listed horticultural plants

31. Section DO 6 applies to a farmer who carries on a horticultural business on land in New Zealand and plants a listed horticultural plant as a replacement plant.
32. This section allows the farmer to choose to deduct a proportion of the replacement planting expenditure in the income year the expenditure is incurred (rather than capitalising and amortising the expenditure under s DO 5). If the farmer chooses to do this:
 - within any three-year period, the deduction cannot exceed 15% of the plot area; and
 - in any year in a three-year period, the expenditure must not be for replacement planting more than 7.5% of the plot area.¹⁰
33. Whether a farmer can choose a deduction under s DO 6, and the amount of deduction allowed, depend on the extent of replacement planting expenditure they have deducted over the previous two income years.¹¹
34. Section DO 6 overrides the general permission and the capital limitation. The other general limitations still apply (s DO 6(11)).
35. Only the person who has incurred the replacement expenditure is allowed a deduction under s DO 6. The deduction is allocated to the income year the expenditure is incurred, including the income year in which a lessee farmer ceases carrying on the farming business on the leased land. However, a landowner farmer is not allowed a deduction in the income year that the farmer disposes of the land on which the listed horticultural plant is cultivated (s DO 6(2)(c)).
36. Further, under s DO 6, there is no ability for a landowner farmer to deduct expenditure incurred by another person. This means that when the replaced listed horticultural plants are passed to the landowner farmer at the end of a lease agreement, a deduction under s DO 6 is not available to the landowner farmer. Instead, s DO 5

¹⁰ Section DO 8 defines the terms "planting" and "plot" for the purposes of ss DO 5 to DO 7. And s DO 9 defines the term "replaced area fraction" for the purposes of the formula in s DO 6.

¹¹ The formulas for calculating the amount of deduction are contained in s DO 6(3) (if the farmer had no deduction in one or both of two preceding income years) and in s DO 6(6) (if the farmer had a deduction in both of two preceding income years).

applies and the landowner farmer can continue to amortise the listed horticultural plants from the following income year.

Improvement destroyed or made useless

37. Section DO 11 applies when an improvement under sch 20 is destroyed or made useless for the purpose of deriving the farmer's income. This section allows a deduction of the remaining diminished value, and the removal costs, of the improvement if the requirements are met.
38. Relevantly, a farmer is allowed a deduction under s DO 11 if they would be entitled to a deduction under s DO 4 or s DO 5 for expenditure on the improvement if the improvement had not been destroyed or made useless.
39. Given the conclusion that a farmer is not allowed a deduction under s DO 4 or s DO 5 in the income year in which the farmer disposes of land (in the case of the landowning farmer) or ceases carrying on their farming business on the land (in the case of a farmer who does not own the land), a lessee farmer is not allowed a deduction under s DO 11 if the improvements are destroyed or made useless in the same income year in which the farming business ceases on the leased land.

Examples | Taurira

Example | Taurira 1 – Deductibility of expenditure on planting horticultural plants

In 2009, Luna leased a 25-ha lot of bare land in Nelson from Leo. Under the lease agreement, Luna would develop the land to establish a vineyard and an olive grove. The term of the lease is for 15 years, ending on 5 August 2024 (2024-25 income year).

In the first year, Luna planted 2,400 olive trees on 5 ha of the land to produce olive oil and planted 59,940 grape vines on 20 ha of the land to produce grapes for wine production. In May 2024, 240 olive trees were infected by a fungal disease and died. Since the lease agreement was ending soon, Luna decided to not replace the dead olive trees.

When the lease agreement ended, Luna's vineyard and olive grove business on the land also ended, and Leo took over the operations of the vineyard and olive grove business.

Deductibility of planting expenditure by Luna as the lessee farmer

Planting of vines

Vines planted mainly for the purpose of producing grapes for wine production is specifically excluded from the definition of "listed horticultural plant" and fall within the definition of "non-listed horticultural plant". Under s DO 4(3), Luna is allowed an amortisation-like deduction for the expenditure incurred on planting the grape vines in each income year she carried on her business on the leased land. The amount of deduction allowed each year is 10% of the diminished value. However, she is not allowed a deduction in the 2024-25 income year, as that is the year in which her lease, and therefore, her business ended on the land (s DO 4(3)(d)).

Planting of olive trees

An olive tree is a listed horticultural plant in the Commissioner's Determination DET 24/01: Amortisation rates for listed horticultural plants. Under s DO 5(2), Luna is allowed a deduction for the expenditure she incurred on planting the olive trees for each of the income year she was in business, except for the 2024-25 income year when her business ended on the leased land (s DO 5(3)). The amount of the deduction allowed each year is 7.5% (the rate as determined by the Commissioner in DET 24/01 when there are fewer than 500 olive trees per hectare) of the diminished value of the olive trees.

Olive trees that ceased to exist

The 240 olive trees infected with the fungal disease ceased to exist in the 2024-25 income year. That is the same year Luna's business ended on the leased land. Therefore, Luna is not allowed a deduction for the diminished value of the infected olive trees or the rest of the olive trees in the 2024-25 income year.

Deductibility of planting expenditure by Leo as the landowner farmer

As Leo has taken over the farming operations, Leo can assume the annual amortisation-like deductions for both the expenditure on planting the vines and the olive trees from the 2024-25 income year. Leo would need to obtain information about the diminished values of the horticultural plants at the beginning of the 2024-25 income year from Luna to claim the deductions.

Example | Tauira 2 – deductibility of expenditure on replacement plants

Using the same facts as Example | Tauira 1, except in this example, Luna replaces the infected olive trees and replants 240 olive trees on 0.5 ha of the land in May 2024.

Deductibility of replacement plant expenditure by Luna as the lessee farmer

Luna has chosen to deduct a proportion of the expenditure on replanting the 240 olive trees under s DO 6 instead of amortising the expenditure under s DO 5. Since Luna did not have a deduction under s DO 6 in the two preceding income years, Luna is allowed a deduction of up to 7.5% of the plot area in the 2024-25 income year. As half a hectare is 10% of the plot area (5 ha), Luna can deduct 7.5% of the plot area in the 2024-25 income year. The amount of deduction is calculated using the formula in s DO 6(3).

The diminished value of the infected olive trees is added to the diminished values of the remaining olive trees in the planting at the end of the year. This resulting amount becomes the opening tax book value for amortisation purposes in the following year.

Deductibility of replacement plant expenditure by Leo as the landowner farmer

Leo cannot obtain a deduction under s DO 6 (as he did not incur the replacement expenditure) or a deduction under s DO 5 (s DO 5(7)(a)) in the 2024-25 income year when he took over the business. However, he is allowed the annual amortisation-like deductions under s DO 5 from the following income year.

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References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss DA 1, DA 2, subpart DO, YA 1 ("listed horticultural plant", "non-listed horticultural plan"), sch 20

Tax Administration Act 1994, s 44C

Other references | Tohutoro anō

DET 24/01: Amortisation rates for listed horticultural plants *Tax Information Bulletin* Vol 36, No 4 (May 2024): 153

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