



CR 2003/85 - Income tax: treatment of receipts from Business Exit Assistance scheme: Western Australian Timber Industry Structural Adjustment Program

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Class Ruling

Income tax: treatment of receipts from Business Exit Assistance scheme: Western Australian Timber Industry Structural Adjustment Program

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a ‘public ruling’ and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this ruling are:

- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Section 8-1 of the ITAA 1997;
- Section 15-10 of the ITAA 1997;
- Section 20-20 of the ITAA 1997;
- Section 20-35 of the ITAA 1997;
- Section 20-40 of the ITAA 1997;
- Section 40-285 of the ITAA 1997;
- Section 40-290 of the ITAA 1997;
- Section 40-295 of the ITAA 1997;
- Section 40-300 of the ITAA 1997;

- Section 40-305 of the ITAA 1997;
- Section 40-880 of the ITAA 1997;
- Section 104-25 of the ITAA 1997;
- Section 104-235 of the ITAA 1997;
- Section 108-5 of the ITAA 1997;
- Subdivision 110-A of the ITAA 1997;
- Subsection 110-40(3) of the ITAA 1997;
- Subsection 110-45(3) of the ITAA 1997;
- Division 116 of the ITAA 1997;
- Division 152 of the ITAA 1997;
- Section 40-285 of *Income Tax (Transitional Provisions) Act 1997* (ITTPA 1997); and
- Section 40-345 of the ITTPA 1997.

Class of persons

3. The class of persons to which this Ruling applies are recipients of a receipt under the Business Exit Assistance scheme in respect of the Western Australian ('WA') Timber Industry Structural Adjustment Program.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is in accordance with the arrangement described in paragraphs 10 to 21.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. The Ruling applies from 1 July 2001. However, the Ruling does 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This ruling is withdrawn from 30 June 2004.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling from the Western Australian Department of Conservation and Land Management dated 12 June 2002;
- Draft deed of discharge dated 21 August 2002;
- Timber Industry Assistance Program – Application for Business Exit Assistance form;
- Timber Industry Assistance Program - Business Exit Guidelines;
- Labor Party, Protecting Our Old Growth Forests policy;

- Government of Western Australian media statement dated 1 June 2001, announcing the expanded assistance package for timber workers and indicative timber yields;
- Memorandum of Understanding - Commonwealth and Western Australian Governments - Western Australian Hardwood Timber Industry Development and Restructuring Program;
- Advice from the Western Australian Department of Conservation and Land Management;
- Letter dated 1 July 2002; and
- Emails dated 24 October 2002 and 16 January 2003.

11. In May 1999 the Commonwealth of Australia ('the Commonwealth') and the State of Western Australia ('the State') agreed to a Regional Forest Agreement ('RFA') which established a framework for the management of the native hardwood timber forests of the South-West Region of Western Australia.

12. The State and the Commonwealth announced a Western Australian Forest Industry Structural Adjustment program the objectives of which are to help timber businesses directly affected by the operation of the RFA in Western Australia. Under the terms of the Memorandum of Understanding that established the Program, Business Exit Assistance is intended to provide reasonable financial assistance to help certain businesses completely or partially to leave the Western Australian native forest timber industry ('the industry') as a direct result of the outcomes of the RFA.

13. The Business Exit Assistance Scheme is designed to achieve long-term sustainability of regional timber resources, and enable other businesses with good long-term prospects to remain and invest in value adding opportunities.

14. Assistance is not intended to apply where adverse financial consequences have occurred because of periodic fluctuations in supply and demand or in market circumstances affecting native forest timber; or reduced availability of timber resources not arising from the operation of the 'Protecting Our Old Growth Forests Policy', ('the Policy').

15. An application for Business Exit Assistance had to be lodged with the Western Australian Department of Industry and Technology on or before 31 December 2002.

16. An applicant for Business Exit Assistance must demonstrate that they were carrying on a business for at least 9 months within the period commencing 1 September 1999 and ending 1 March 2001 and:

- directly participated in the industry; or
- was directly dependent on the industry: that is, a substantial proportion (usually more than 50%) of their income was derived from directly supplying goods or services to the industry.

17. The receipt is consideration for the following:

- (a) The cancellation of any contracts between the Recipient and a State party on account of the deed of discharge or the Policy;
- (b) The partial or whole cessation of the business and business activities of the Recipient on account of the deed of discharge;
- (c) The loss of or diminution in value of plant and equipment of the Recipient on account of the deed of discharge; and
- (d) The Recipient, related companies and associated persons agreeing that each of them will not without the prior written consent of the State at any time during the restraint period be directly or indirectly engaged concerned or interested in any capacity in any business which anywhere in the Restraint area is engaged or concerned in any Restraint activity.

18. The receipt includes the following:

- A Business Exit Assistance compensation receipt for the net value of the business. This is determined by reference to an independent assessor's view of what the value of the whole or the relevant part of the applicant's business would have been, if the Policy did not apply;
- A Business Exit Assistance compensation receipt for loss of or diminution in value of plant and equipment. This is determined by reference to an independent assessor's view of the expected loss on the sale of plant and equipment as a result of the Policy;
- The reimbursement of approved costs of the Recipient's accountant preparing the application for Business Exit Assistance; and

- The reimbursement of all redundancy payments arising from obligations under awards or certified, industrial or workplace agreements, paid to the Recipient's employees made redundant as a direct result of the Policy.

19. The Business Exit Assistance guidelines provide that the receipt is calculated by an independent assessor who will be appointed to assess the value of the business or the relevant part of the business eligible to receive Business Exit Assistance. Essentially the value will be calculated in the following steps:

Estimate future maintainable EBIT ('earnings before interest and tax')

Less income tax rate thereon

Earnings after tax _____

Capitalised using the multiple for estimated future maintainable EBIT

Value of business _____

Less the net realisable value of tangible assets that would normally be acquired with the business: eg plant and equipment or the residual value of any relevant lease held by the business, and an inventory of the assets and values.

Net value of business _____

20. The payment by the state government is a single lump sum amount for the heads of claim listed in paragraph 17 which was calculated with regard to an amount for the net value of the business and an amount for the loss of value of plant and equipment. In addition to this the State will reimburse redundancy payments made to employees and approved accountancy costs for preparing the application for Business Exit Assistance.

21. The arrangement does not include:

- (a) any additional receipts that are not specified in paragraph 17 of this Ruling; or
- (b) arrangements where the Recipient assigns rights to the Business Exit Assistance receipt to associates or other parties.

Ruling

Income according to Ordinary concepts or Statutory income

22. An amount received for any of the things described at paragraph 17 would not be income according to ordinary concepts. As such, no part of the total receipts constitutes assessable income under section 6-5 of the ITAA 1997.

The receipt also does not constitute a bounty or subsidy under section 15-10 of the ITAA 1997.

Uniform Capital Allowances

23. The uniform capital allowance provisions may apply to that part of the receipt for the loss in value of plant and equipment as a balancing adjustment amount referable to a balancing adjustment event for a depreciating asset. Depending on the outcome of the calculation this amount may either be included as assessable income or allowable as a deduction.

Capital Gains Tax provisions

24. The capital gains tax provisions apply to the rest of the receipt described at paragraph 17 which is for items (a), (b) and (d) and also apply to item (c) to the extent that the uniform capital allowance provisions in Division 40 do not apply. A capital gain or capital loss may arise in relation to that part of the receipt which relates to a CGT event.

- To the extent that the receipt is for subpara (a) then CGT event C2 occurs which may result in a capital gain or capital loss;
- To the extent that the receipt is for subpara (b) then CGT event C2 occurs which may result in a capital gain or capital loss;
- To the extent that the receipt is for subpara (d) then CGT event D4 occurs which may result in a capital gain or capital loss;

(**Note:** If the parties are dealing at arm's length and do not allocate any specific part of the receipt to the restriction on operating in the industry the Commissioner accepts that no part of a Recipient's compensation receipt is attributable to the restraint clause); and

- To the extent that the receipt is for sub para (c), an amount received for the permanent reduction in the value of a post-CGT underlying asset, and there is no disposal of the asset at the time of receipt we consider that the amount represents a recoupment of all or part of the total acquisition costs of the asset. The total acquisition costs of the post-CGT asset should be reduced in terms of subsection 110-40(3) of the ITAA 1997 by the amount of the compensation for assets acquired before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997 and subsection 110-45(3) for assets acquired on or after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. If the compensation amount equals or exceeds the total acquisition costs at the time of compensation, the costs are reduced to zero. If the compensation amount exceeds the total unindexed acquisition costs (including a deemed cost base) of the underlying asset, there are no CGT consequences in respect of the excess compensation amount. There are no CGT consequences if the underlying asset was acquired before 20 September 1985 or is any other exempt CGT asset.

25. Apportionment of the proceeds for capital gains tax purposes is covered by Section 116-40 of the ITAA 1997 which provides that if a payment relates to more than one CGT event, the capital proceeds from each event are so much of the payment as is reasonably attributable to that event.

26. To the extent to which the recipient is unable to allocate the receipt to relevant assets it will be treated as capital proceeds for the CGT event relating to the Recipient's right to seek compensation from the State – CGT event D1.

Reimbursement of redundancy payment/s to employee/s and accountancy costs

27. A reimbursement of a redundancy payment to employees because of the whole or partial cessation of the Recipient's business is assessable income under section 20-20 of the ITAA 1997 if the redundancy payment is deductible under the ITAA 1997. In this situation, that income will be offset by a deduction under the ITAA 1997 of an identical amount. This results in a neutral tax effect.

28. If the redundancy payment is not deductible under the ITAA 1997 then section 20-20 will not apply. In either case there will be a neutral tax effect.

29. A reimbursement of approved accountant's costs for preparing the application for Business Exit Assistance is not assessable income under the ITAA 1997.

Explanation

Ordinary income or statutory income

30. A receipt under the business exit assistance scheme equal to the net value of a business or part of it is a receipt of a capital nature having the character of compensation for closing down a business or part of it. Where the amount is paid to recipients directly dependent on the industry the conditions of payment reflect a significant adjustment to the structure of the business. In relation to a business that continues to operate, a receipt for agreeing to give up part of the profit-earning structure is on capital account (*Dickenson v. FCT* (1958) 98 CLR 460 at page 483; *Allied Mills Industries v. FCT* 89 ATC 4365 at pages 4371-4372). The receipt does not constitute income under ordinary concepts for the purposes of section 6-5 of the ITAA 1997.

31. As the business or part of it ceases the receipt does not constitute statutory income as a bounty or subsidy under section 15-10 of the ITAA 1997.

Uniform Capital Allowance provisions - the loss in value of plant and equipment

32. A balancing adjustment event occurs for a depreciating asset where a taxpayer:

- stops holding a depreciating asset (paragraph 40-295(1)(a) of the ITAA 1997); or
- stops using the asset for any purpose and expects never to use it again (paragraph 40-295(1)(b) of the ITAA 1997); or
- stops having it installed ready for use and expects never to install it ready for use again (paragraph 40-295(1)(b) of the ITAA 1997); or
- has not used the asset and decides never to use it (paragraph 40-295(1)(c) of the ITAA 1997).

This may be the case for a Recipient of a Business Exit Assistance receipt.

33. Where a balancing adjustment event occurs, a taxpayer is required to make a balancing adjustment calculation under section 40-285 of the ITAA 1997. The balancing adjustment amount is the difference between the termination value of the depreciating asset and its adjustable value just before the event occurred. Where the termination value of the depreciating asset is greater than its adjustable value just before the event occurred, the difference is included in assessable income (subsection 40-285(1) of the ITAA 1997). Where the termination value of the depreciating asset is less than its adjustable value just before the event occurred, the difference is allowed as a deduction (subsection 40-285(2) of the ITAA 1997).

34. The termination value is, generally, what the taxpayer receives or is taken to receive for the asset when a balancing adjustment event occurs (section 40-305 of the ITAA 1997).

35. If the taxpayer stops using the depreciating asset, or having it installed ready for use, for any purpose and the taxpayer expects never to use it again even though the taxpayer still holds it, the termination value is the market value of the asset when the taxpayer stops using it or having it installed ready for use (item 1 in the table in subsection 40-300(2) of the ITAA 1997).

36. If the taxpayer decides never to use a depreciating asset that the taxpayer has not used even though they still hold it, the termination value is the market value of the asset when the taxpayer makes that decision (item 2 in the table in subsection 40-300(2) of the ITAA 1997).

37. If a depreciating asset is used for both taxable and non-taxable purposes, the balancing adjustment amount must be reduced by the amount that is attributable to the non-taxable use (section 40-290 of the ITAA 1997). In addition, a capital gain or capital loss may arise equal to the difference between the asset's cost and its termination value that is attributable to the non-taxable use (section 104-235 of the ITAA 1997).

38. If a balancing adjustment event occurs for:

- a depreciating asset that is an item of plant acquired at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999; or
- a depreciating asset that is not plant and that the taxpayer acquired before 1 July 2001,

then the amount to be included in the taxpayer's assessable income as a result of the balancing adjustment event is reduced to preserve the benefit of various CGT exemptions and applicable pre-CGT asset rules (section 40-285 of *Income Tax*

(Transitional Provisions) Act 1997 (ITTPA 1997)) and CGT indexation (section 40-345 of the ITTPA 1997).

Capital Gains Tax

39. The application of a Recipient's compensation receipt to the items listed as (a), (b) (c) & (d) in paragraph 17 of this Class Ruling will depend on the Recipient's individual business circumstances. As most compensation receipts from the State will relate to more than one relevant asset, a Recipient's compensation receipt will need to be apportioned between those assets (taking into account the amounts relevant to plant and equipment, which is quantified by the business exit assistance assessor) under section 116-40 of the ITAA 1997. If a Recipient allocates a compensation receipt on a reasonable basis between the relevant assets, the Commissioner of Taxation (the Commissioner) will generally accept that basis of allocation.

40. Taxation Ruling TR 95/35 provides the Commissioner's guidelines on the apportionment of lump sum compensation receipts for capital gain tax purposes. This ruling should be considered in apportioning a business exit assistance receipt.

41. The Commissioner accepts that no part of a Recipient's compensation receipt is attributable to the restraint clause. This approach is consistent with paragraph 35 of Taxation Ruling TR 99/16.

To the extent that the receipt is attributable to the cancellation of a contract between a Recipient and the State

42. A right of the Recipient under a contract between a Recipient and the State is a CGT asset under subsection 108-5(1) of the ITAA 1997.

43. A receipt from the State which is attributable to the cancellation of a Recipient's contract with the State will be treated as capital proceeds for the Recipient for the cancellation of these contractual rights under paragraph 104-25(1)(a) (CGT event C2) of the ITAA 1997.

44. Where the contractual rights were acquired from the State by a Recipient before 20 September 1985, a capital gain or capital loss made by the Recipient on the cancellation of the contract is disregarded under subsection 104-25(5).

45. Where the contractual rights were acquired from the State by a Recipient on or after 20 September 1985, a capital gain made by the Recipient on the cancellation of the contract may be offset against other capital losses. Where the rights were owned for at least 12 months, the capital gain may be eligible for indexation or the CGT discount if the Recipient is not a company. The small business CGT concessions may also be available if the Recipient satisfies the requirements of Division 152 of the ITAA 1997.

To the extent that the receipt is attributable to the cessation of the whole or relevant part of a Recipient's business

46. A receipt from the State which is attributable to the cessation of the whole or relevant part of a Recipient's business will be treated as capital proceeds for the Recipient for the abandonment, surrender or forfeiture of all the intangible assets, including goodwill, of the Recipient's Western Australian native timber business under paragraph 104-25(1)(d) (CGT event C2) of the ITAA 1997.

47. Each individual intangible asset, including goodwill, of a Recipient's Western Australian native timber business is a CGT asset under paragraph 108-5(2)(b).

Receipts attributable to goodwill

48. If a Recipient allocates this portion of the compensation receipt on a reasonable basis between the individual intangible assets, including goodwill, the Commissioner will generally accept that basis of allocation.

49. If an intangible asset, including goodwill, was acquired by a Recipient before 20 September 1985, a capital gain or capital loss made by the Recipient on the abandonment, surrender or forfeiture of the intangible asset is disregarded under subsection 104-25(5).

50. For the purposes of paragraph 39 of this Class Ruling, when a Recipient commenced the business and started to create goodwill before 20 September 1985, the goodwill is considered by the Commissioner to have been acquired before 20 September 1985.

51. If an intangible asset, including goodwill, was acquired by a Recipient on or after 20 September 1985, a capital gain made by the Recipient on the abandonment, surrender or forfeiture of the intangible asset may be offset against other capital losses. Where the intangible asset, including goodwill, was owned for at least 12 months, the capital gain may be eligible for indexation, or for the CGT discount if the Recipient is not a company. The small business CGT concessions may also be available if the Recipient satisfies the requirements of Division 152 of the ITAA 1997.

52. It is accepted that a compensation receipt by a Recipient in these circumstances may reflect compensation for permanent damage suffered to the Recipient's goodwill.

53. In these circumstances the receipt will represent a recoupment of all or part of the acquisition costs of the Recipient's goodwill.

54. By reducing the cost base, any capital gain or capital loss is deferred until the Recipient's goodwill is sold or ceases at a future date.

55. Where the part of the compensation receipt that relates to the goodwill exceeds the total unindexed acquisition costs of the goodwill, there are no CGT consequences in respect of the excess.

Receipts attributable to other intangible assets

56. If a Recipient receives a compensation receipt from the State which is attributable to other intangible assets of the business the consequences are as follows:

- If an intangible asset is abandoned, surrendered, forfeited or otherwise cancelled at this time, the CGT consequences are as per paragraphs 46 to 47 of this Class Ruling; and
- If an intangible asset suffers permanent damage, but continues to be used in a Recipient's business, the CGT consequences are as per paragraphs 59 to 60 of this Class Ruling.

Receipts not attributable to other intangible assets

57. If an intangible asset has not been abandoned, surrendered, forfeited or otherwise cancelled in the above manner or suffered permanent damage, no amount of compensation should be allocated to it.

To the extent that the receipt is attributable to the loss in value of plant and equipment and the uniform capital allowance provisions in Div 40 do not apply

58. Subsections 110-40(3) and 110-45(3) of the ITAA 1997 provide that expenditure does not form part of any element of the cost base for any amount received as recoupment of it except if the amount is included in assessable income. 'Recoupment' is defined in section 20-25 to include any kind of recoupment, reimbursement, refund, insurance, indemnity or recovery of the respective loss or outgoing. It applies to any amount received in respect of a loss or outgoing that

has been incurred. The taxpayer is taken to receive the amount as recoupment of the loss or outgoing.

59. We consider that an amount of compensation attributable to an underlying asset which has not yet been disposed of represents a recoupment of part or all of the total acquisition costs which would otherwise form part of the cost base or reduced cost base of the underlying asset. Accordingly the amount of recoupment received does not form part of the cost base or reduced cost base of the relevant asset.

60. If the amount of recoupment exceeds the total acquisition costs at the time of the compensation, the effect of subsections 110-40(3) and 110-45(3) of the ITAA 1997 is to reduce the costs to zero. The excess of the recoupment over the costs in these circumstances does not represent a taxable capital gain derived from the disposal of that asset. There are no CGT consequences in respect of any excess. It follows that the whole consideration received on a later actual disposal of that asset by the taxpayer will be a taxable capital gain (unless the taxpayer incurs additional expenditure which forms part of the cost base of that asset).

61. Section 118-24 of the ITAA 1997 provides that no capital gain or capital loss will arise from any CGT event happening to a depreciating asset that is the equivalent of a balancing adjustment event except as provided by CGT event K7.

If a compensation receipt cannot be apportioned

62. To the extent to which a Recipient is unable to allocate the compensation receipt to relevant assets, the amount will be treated as a lump sum compensation receipt.

63. The lump sum will be treated as capital proceeds for the satisfaction of the Recipient's right to seek compensation from the State.

64. A Recipient's right to seek compensation from the State is a CGT asset under subsection 108-5(1) of the ITAA 1997.

65. The Recipient's right to seek compensation is acquired at the time that the State determines to accept the Recipient's application for Business Exit Assistance. This right is satisfied or surrendered in terms of CGT event C2 on the date of execution of the Deed in favour of the State.

66. The cost base of a Recipient's right to seek compensation is determined under the cost base rules of Subdivision 110-A of the ITAA 1997.

67. In calculating the net capital gain for the income year, the Recipient may be able to offset the capital gain against other capital losses. As the right to seek compensation has not been owned for at least 12 months the CGT discount will not apply and indexation is not available. The small business CGT concessions may be available if the Recipient satisfies the requirements of Division 152 of the ITAA 1997.

Is the reimbursement of a redundancy payment assessable income?

68. A reimbursement of a redundancy payment to employees made by a State to a Recipient which is attributable to the whole or partial cessation of a Recipient's business activities is not assessable income under section 6-5 of the ITAA 1997.

Assessable recoupments: partial cessation of business

69. Section 20-20 of the ITAA 1997 includes assessable recoupments of deductible losses and outgoings in assessable income.

70. The reimbursement of a redundancy payment falls within section 20-20 of the ITAA 1997 as an assessable recoupment of a deductible loss or outgoing under section 8-1 of the ITAA 1997.

71. Section 8-1 allows a deduction provided the occasion of a business loss or outgoing is to be found in the business operations directed towards the gaining or producing of assessable income, unless it is of a capital nature.

72. The redundancy payment is deductible under section 8-1 of the ITAA 1997 as the occasion of the outgoings is to be found in the carrying on of the taxpayers business.

73. Section 20-35 of the ITAA 1997 provides that an assessable recoupment is included in assessable income if

- the whole of the loss or outgoing is deductible for the current income year; or
- the whole of the loss or outgoing is deductible or has been claimed as a deduction for an earlier income year.

Accordingly, this will have a neutral tax affect for the Recipient since that assessable income will be offset by deductions under section 8-1 of the ITAA 1997 of identical amounts.

Alternatively

74. If the redundancy payment is a direct result of closing down part of the business then the expenditure is of a capital nature and is precluded as a deduction under section 8-1.

75. As section 20-20 of the ITAA 1997 only includes assessable recoupments of deductible losses and outgoings in assessable income no part of the reimbursement will be included as assessable income.

Assessable recoupments: whole cessation of business

76. Section 20-20 of the ITAA 1997 includes assessable recoupments of deductible losses and outgoings in assessable income.

77. The reimbursement of a redundancy payment falls within section 20-20 of the ITAA 1997 as an assessable recoupment of a deductible loss or outgoing under section 40-880 of the ITAA 1997.

78. Section 40-880 of the ITAA 1997 provides for the deductibility of seven categories of business related capital expenditure over five income years. One of these categories is capital expenditure that a taxpayer incurs on costs to stop carrying on their business (paragraph 40-880(1)(g) of the ITAA 1997).

79. The relevant redundancy payments are incurred by a Recipient as a result of obligations under awards, or certified, industrial or workplace agreements, to make such payments to employees who are made redundant as a result of the Recipient ceasing business. Those payments are made in ceasing their business. Such a payment is capital in nature.

80. A redundancy payment made by a Recipient to an employee of their business is prima facie deductible under paragraph 40-880(1)(g) of the ITAA 1997 to the extent that the business was carried on for a taxable purpose, provided the employee's entitlement to that redundancy payment arises as a result of the termination of the employee's employment for the purpose of completely ceasing the Recipient's business.

81. Subsection 40-880(3) of the ITAA 1997 provides that no deduction is allowed under section 40-880 of the ITAA 1997 for an amount of capital expenditure a taxpayer incurs to the extent that it comes within any of the seven exclusions in subsection 40-880(3) of the ITAA 1997. However, to the extent that the redundancy payment forms part of the cost base of an underlying asset, such as the employment contract, there is no deduction allowed under section 40-880 of the ITAA 1997 due to the application of paragraph 40-880(3)(f) of the ITAA 1997.

82. To the extent that each relevant redundancy payment is capital expenditure incurred to stop carrying on a business that was carried on for a taxable purpose and is not excluded under subsection 40-880(3) of the ITAA 1997, then 20% of the amount is deductible to a Recipient under subsection 40-880(2) of the ITAA 1997 for the income year in which the expenditure is incurred and each of the next four income years, without any apportionment required for an expenditure incurred part way through a year.

83. Section 20-40 of the ITAA 1997 provides that an assessable recoupment is only included in assessable income:

- only so far as it has not already been included for an earlier income year; and
- only to the extent of your total deductions to date for the loss or outgoing.

Accordingly, this will have a neutral tax affect for the Recipient since that assessable income will be offset by deductions under section 40-880 of the ITAA 1997 of identical amounts over the five year period referred to in the previous paragraph.

Is a reimbursement of accountant's fees assessable income?

84. A reimbursement of approved accountant's costs for preparing the application for Business Exit Assistance by a State to a Recipient is not assessable income under section 6-5 of the ITAA 1997.

85. Section 20-20 of the ITAA 1997 includes assessable recoupments of deductible losses and outgoings in assessable income.

86. The reimbursement of accountant's fees does not fall within section 20-20 of the ITAA 1997 as assessable income. It is not an assessable recoupment of a deductible loss or outgoing under section 40-880 of the ITAA 1997 or any other provision of the ITAA 1997.

87. The accountant's fees incurred by a Recipient are incurred for the purpose of preparing an application for a Business Exit Assistance receipt. A successful application will result in the receipt of a Business Exit Assistance receipt in return for, among other things, the Recipient agreeing to cease the whole of or part of a business. Such an outgoing is incurred by a Recipient in ceasing their business and is capital in nature. However, that outgoing is not incurred by the recipient 'to stop carrying on [the Recipient's] business', that is, *for the purpose of* ceasing that business. Therefore, the relevant accountant's fees are not deductible under paragraph 40-880(1)(g) of the ITTA 1997.

Detailed contents list

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Previous draft:

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