



CR 2005/106 - Income tax: treatment of payments received under the Great Barrier Reef Marine Park Structural Adjustment Package 2004: Business Exit (licence buy out) Assistance; and Business Advice Assistance

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



Class Ruling

Income tax: treatment of payments received under the Great Barrier Reef Marine Park Structural Adjustment Package 2004:

- Business Exit (licence buy out) Assistance; and
- Business Advice Assistance

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Preamble

*The number, subject heading, **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 laws' 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);
- subsection 6-5(1) of the ITAA 1997;
- section 8-1 of the ITAA 1997;
- section 15-10 of the ITAA 1997;
- section 40-285 of the ITAA 1997;
- paragraph 40-295(1)(a) of the ITAA 1997;
- subsection 40-300(2) of the ITAA 1997;
- section 40-305 of the ITAA 1997;

- Part 3-1 of the ITAA 1997;
- section 104-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- section 108-5 of the ITAA 1997;
- Division 110 of the ITAA 1997;
- subsection 110-45(1B) of the ITAA 1997;
- Division 112 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- Subdivision 115-B of the ITAA 1997;
- Subdivision 115-C of the ITAA 1997;
- section 116-40 of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- Part 3-3 of the ITAA 1997;
- Subdivision 124-C of the ITAA 1997;
- Division 152 of the ITAA 1997;
- section 392-45 of the ITAA 1997;
- section 392-80 of the ITAA 1997;
- subsection 27B(1A) of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- subsection 27B(3) of the ITAA 1936.

Class of persons

3. The class of persons to which this Ruling applies is applicants who applied for and received payments under the Business Exit (licence buy out) Assistance and/or the Business Advice Assistance components of the Great Barrier Reef Marine Park Structural Adjustment Package 2004 (the Package).

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 carried out in accordance with the arrangement described in paragraphs 10 to 20.

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. This Ruling applies from 1 July 2004. 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 1 July 2006.

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 are:

- Application for Class Ruling from the Department of the Environment and Heritage dated 7 October 2004;
- Great Barrier Reef Marine Park Structural Adjustment Package 2004 – amended information package and request for offer – October 2004; and
- Business Exit Licence Buyout – Instructions for Completion of Offer Documentation.

11. Rezoning of the Great Barrier Reef Marine Park (GBRMP) came into effect from 1 July 2004. In accordance with the Australian Government's *Marine Protected Areas and Displaced Fishing policy*, the Government is providing a structural adjustment package to ensure the fair and equitable treatment of those fishers, fishery related businesses, employees and communities that can demonstrate they have experienced, or will experience, negative impacts due to the rezoning.

12. The overall objectives of the Package are:

- to assist fishers, fishery related businesses, employees and communities adversely affected by the rezoning; and
- to manage in the most cost effective manner any displaced fishing effort that has unsustainable ecological or economic impacts.

Business Exit (licence buy out) Assistance

13. The Business Exit (licence buy out) Assistance component of the Package will be undertaken through a competitive offer process. The offer process is voluntary. To participate in the licence buy out process, an applicant must:

- have a valid licence from the Queensland Department of Primary Industries and Fisheries (DPI&F);
- be permitted to fish within the Great Barrier Reef Marine Park;
- have current DPI&F fishery symbols, effort units and/or quota attached to their licence(s);
- have a current history of fishing in the GBRMP, either in those areas which will be closed to fishing through the rezoning from 1 July 2004 or adjacent to those zones; and
- meet or be likely to meet any DPI&F criteria for continuation in the fishery (for example, for the commercial net and inshore line, DPI&F has determined that only operators with a certain level of catch history will be able to continue to access the fishery in future).

14. Package funds for the Business Exit (licence buy out) Assistance are not used for the acquisition of capital equipment (for example, primary and tender fishing vessels, fishing apparatus and other related equipment on the vessel). The licence holder is free to sell such items on the open market. Subject to the judgment of the applicant, loss of capital value of the equipment due to the rezoning may be included in the offer price. However, this component is not able to be dissected out of an accepted offer.

15. A licensed fishing operation that holds only one primary commercial fishing boat licence may apply for both Business Exit (licence buy out) Assistance and Business Restructuring Assistance, but may only receive assistance under one of these components. This Ruling only applies to the Business Exit (licence buy out) Assistance.

16. A licensed fishing operation that holds more than one primary commercial fishing boat licence is able to access both the Business Exit (licence buy out) Assistance and the Business Restructuring Assistance components of the Package. In these circumstances:

- a separate offer for the Business Exit (licence buy out) Assistance must be made in relation to each eligible primary commercial fishing boat licence. (Each offer will be a formal offer, which may be accepted, and subsequently become a contract. The offer is intended to be binding on the applicant should it be accepted); and
- a licensed fishing operation may receive Full Business Restructuring Assistance in relation to licences not offered and accepted under the Business Exit (licence buy out) Assistance and to associated land based operations.

17. All offers will be ranked on the amount of Gross Value of Production (GVP), quota or effort units being removed for the price sought. The offers will be assessed by comparing the offer price to the GVP, quota or effort units offered, catch and effort history within the GBRMP as held electronically by the DPI&F.

18. Offers will be ranked up to a cut off point by the decision maker based on the amount of GVP, quota or effort units that are required to be removed from each fishery in order to neutralise the impact of displaced effort on the sustainability of the fishery and the economic impact of other fisheries.

19. Any payments under the Business Exit (licence buy out) Assistance are made subject to a successful offer and the disposal to the Queensland Rural Adjustment Authority (QRAA) by the applicant of:

- the entire licence package (current primary commercial fishing boat licence or transferable authority, tender commercial fishing boat licence(s), all associated fishery symbols and, where appropriate, quota or effort units); and
- any nets that the operation should not have in their possession upon the surrendering of the licence package.

However, licensed fishers in the commercial reef line fishery may offer only the Reef Quota (RQ) symbol and/or Spanish Mackerel (SM) symbol and quota for sale without the disposal to the QRAA of the entire licence package. The symbols provide the endorsement to fish in a particular fishery and/or take a particular species.

Business Advice Assistance

20. Applicants can obtain independent professional advice for taxation, legal, and any other potential implications before deciding whether to apply for the Business Exit (licence buy out) Assistance. Under the Business Advice Assistance component of the Package, up to \$1,000 may be payable to reimburse eligible applicants for costs associated with obtaining this business advice. Applicants must apply for this assistance and submit receipts to the QRAA.

Ruling

Business Exit (licence buy out) Assistance – surrender of entire licence package – licensed fishing operations with only one primary commercial fishing boat licence – business ceased

Section 6-5 of the ITAA 1997 – income according to ordinary concepts

21. A payment received under the Business Exit (licence buy out) Assistance component of the Package is not income according to ordinary concepts. No part of the total receipts constitutes assessable income under section 6-5 of the ITAA 1997.

Section 15-10 of the ITAA 1997 – bounty or subsidy

22. A payment received under the Business Exit (licence buy out) Assistance component of the Package is not a bounty or subsidy that is received in relation to carrying on a business. No part of the total receipts constitutes assessable income under section 15-10 of the ITAA 1997.

Capital allowances

23. Under paragraph 40-295(1)(a) of the ITAA 1997 a balancing adjustment event occurs for the nets when they are surrendered upon the surrendering of the licence package.

24. No part of a payment received under the Business Exit (licence buy out) Assistance component of the Package represents the termination value of the nets under the balancing adjustment event.

Capital gains tax

25. A payment received under the Business Exit (licence buy out) Assistance component of the Package is subject to the capital gains tax (CGT) provisions in Parts 3-1 and 3-3 of the ITAA 1997. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the business exit assistance is satisfied. To the extent that the assistance relates to the disposal of an underlying CGT asset (each licence, authority, fishery symbol, quota and effort unit) to the QRAA, CGT event A1 under section 104-10 of the ITAA 1997 happens.

Business Exit (licence buy out) Assistance – surrender of each licence package – licensed fishing operations with more than one primary commercial fishing boat licence – business continues***Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

26. A payment received under the Business Exit (licence buy out) Assistance component of the Package is not income according to ordinary concepts. No part of the total receipts constitutes assessable income under section 6-5 of the ITAA 1997.

Section 15-10 of the ITAA 1997 – bounty or subsidy

27. A payment received under the Business Exit (licence buy out) Assistance component of the Package is not a bounty or subsidy that is received in relation to carrying on a business. No part of the total receipts constitutes assessable income under section 15-10 of the ITAA 1997.

Capital allowances

28. Under paragraph 40-295(1)(a) of the ITAA 1997 a balancing adjustment event occurs for the nets when they are surrendered upon the surrendering of the licence package.

29. No part of a payment received under the Business Exit (licence buy out) Assistance component of the Package represents the termination value of the nets under the balancing adjustment event.

Capital gains tax

30. A payment received under the Business Exit (licence buy out) Assistance component of the Package is subject to the CGT provisions in Parts 3-1 and 3-3 of the ITAA 1997. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the business exit assistance is satisfied. To the extent that the assistance relates to the disposal of an underlying CGT asset (each licence, authority, fishery symbol, quota and effort unit) to the QRAA, CGT event A1 under section 104-10 of the ITAA 1997 happens.

Business Exit (licence buy out) Assistance – commercial reef line fishery – surrender of RQ or SM symbols and quota without surrendering the entire licence package – taxpayer's business continues

Section 6-5 of the ITAA 1997 – income according to ordinary concepts

31. A payment received under the Business Exit (licence buy out) Assistance component of the Package for the surrender of RQ or SM symbols and quota is not income according to ordinary concepts. No part of the total receipts constitutes assessable income under section 6-5 of the ITAA 1997.

Section 15-10 of the ITAA 1997 – bounty or subsidy

32. A payment received under the Business Exit (licence buy out) Assistance component of the Package for the surrender of RQ or SM symbols and quota is not a bounty or subsidy that is received in relation to carrying on a business. No part of the total receipts constitutes assessable income under section 15-10 of the ITAA 1997.

Capital gains tax

33. A payment received under the Business Exit (licence buy out) Assistance component of the Package for the surrender of RQ or SM symbols and quota is subject to the CGT provisions in Parts 3-1 and 3-3 of the ITAA 1997. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the business exit assistance is satisfied. To the extent that the assistance relates to the disposal of an underlying CGT asset (each RQ and SM symbols and quota) to the QRAA, CGT event A1 under section 104-10 of the ITAA 1997 happens.

Business Advice Assistance

Section 6-5 of the ITAA 1997 – income according to ordinary concepts

34. A payment received under the Business Advice Assistance component of the Package is income according to ordinary concepts and is assessable income under section 6-5 of the ITAA 1997.

Capital gains tax

35. Any capital gain made when an amount is paid to the applicant under the Business Advice Assistance component of the Package is reduced under section 118-20 of the ITAA 1997 to the extent that the amount is assessable under section 6-5 of the ITAA 1997.

Primary production income

36. Payments received under the Business Exit (licence buy out) Assistance either for the surrender of each entire licence package, or the surrender of RQ or SM symbols and quota without surrendering the entire licence package, are not treated as 'assessable primary production income' for the purposes of calculating the 'averaging' concession available under section 392-80 of the ITAA 1997.

37. Payments received under the Business Advice Assistance component are treated as 'assessable primary production' income for the purposes of calculating the 'averaging' concession available under section 392-80 of the ITAA 1997.

Explanation**Business Exit (licence buy out) Assistance – surrender of an entire licence package or each licence package – business ceases or continues*****Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

38. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in assessable income if it is income according to ordinary concepts (ordinary income). However, as there is no definition of 'ordinary income' in income tax legislation, it is necessary to apply principles developed by the courts to the facts of a particular case.

39. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.¹

40. In *G P International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*² (GP International Pipecoaters), the Full High Court stated at CLR 138; ATR 7; ATC 4420:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

¹ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 7 ATR 519; 77 ATC 4255.

² (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

41. The receipt of the Business Exit (licence buy out) Assistance payment is compensation for the surrender and transfer of each entire licence package: that is, the current primary commercial fishing boat licence, all associated fishery symbols and, where appropriate, quota and effort units. Each entire licence package is part of the profit yielding structure of the licensed fishing operation. At common law, a compensation receipt generally takes the character of the item it replaces.³ Compensation for the loss of a capital asset or an enduring part of a taxpayer's profit-yielding structure will be capital in nature.⁴ The receipt of the Business Exit (licence buy out) Assistance payment is neither a normal incident of the applicant's business nor is it paid for a purpose for which the applicant's business was carried on. Accordingly, payments received under the Business Exit (licence buy out) Assistance component of the package are capital in nature and do not constitute assessable income under section 6-5 of the ITAA 1997.

Section 15-10 of the ITAA 1997 – bounty or subsidy

42. Section 15-10 of the ITAA 1997 provides that an amount is included in assessable income if it is:

- a bounty or subsidy;
- received in relation to carrying on a business; and
- not assessable as ordinary income under section 6-5 of the ITAA 1997.

Bounty or subsidy

43. The terms 'bounty' and 'subsidy' are not defined in income tax legislation. The word 'subsidy', as noted by Windeyer J in *Placer Development Ltd v. Commonwealth*,⁵ derives from the Latin 'subsidiū' meaning 'an aid or help'. The Macquarie Dictionary, 2001, rev. 3rd edn, defines subsidy as including 'a grant or contribution of money'. The ordinary meaning adopted by case law is an aid provided by the Crown (government) to foster or further some undertaking or industry.

44. Following the decisions in *The Squatting Investment Co Ltd v. Federal Commissioner of Taxation*,⁶ *Reckitt and Colman Pty Ltd v. Federal Commissioner of Taxation*,⁷ and *First Provincial Building Society Ltd v. Commissioner of Taxation*⁸ (First Provincial), it is now well accepted that a 'subsidy' or 'bounty' include a financial grant made by a government. A payment received for Business Exit (licence buy out) Assistance is a 'subsidy' or 'bounty'.

³ *C of T (NSW) v. Meeks* (1915) 19 CLR 568, per Griffith CJ at 580.

⁴ *Glenboig Union Fireclay Co Ltd v. IR Commrs* (1922) 12 TC 427.

⁵ (1969) 121 CLR 353.

⁶ (1953) 86 CLR 570.

⁷ (1974) 4 ATR 501; 74 ATC 4185.

⁸ (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207.

Received in relation to carrying on a business

45. The meaning of the expression 'in relation to carrying on a business' was analysed in First Provincial by Hill J when considering the former paragraph 26(g) of the ITAA 1936. In his opinion the word 'in' means 'in the course of' and requires a direct relationship to exist between the bounty on the one hand, and the carrying on of the taxpayer's business on the other. The words 'in relation to' extend this relationship which means that there may be a less direct relationship between the bounty and the 'carrying on of the business'. However, the relationship must be to the 'carrying on of the business' in contrast to a relationship with the business itself. The expression 'carrying on of the business' looks to the activities of the business which are directed towards the gaining or producing of assessable income rather than merely to the business itself. Hill J said that the expression makes it clear that a bounty received merely in relation to the commencement of a business or the cessation of the business would not be caught.

46. Where the licensed fishing operation has only one primary commercial boat fishing licence, the Business Exit (licence buy out) Assistance payment for the surrender of the entire licence package is not received in relation to carrying on the applicant's business as it is received in relation to the cessation of the applicant's business. Accordingly, it is not assessable under section 15-10 of the ITAA 1997.

47. A payment received for giving up or selling part of the profit yielding structure of the business is not received in relation to carrying on a business. Where a licensed fishing operation has more than one primary commercial fishing boat licence and surrenders one or more of those licence packages while continuing to operate with the remaining licences, the payment received under the Business Exit (licence buy out) Assistance component of the Package is not in relation to carrying on the taxpayer's business but rather for giving up part of the taxpayer's profit yielding structure. Accordingly, a Business Exit (licence buy out) Assistance payment to a business for the surrender of a licence package that is part of the profit yielding structure of the business is not assessable under section 15-10 of the ITAA 1997.

Capital allowances

48. Under paragraph 40-295(1)(a) of the ITAA 1997 a balancing adjustment event occurs for the nets when they are surrendered upon the surrendering of the licence package.

49. A balancing adjustment for the nets is worked out under section 40-285 of the ITAA 1997 by comparing the termination value of the nets and their adjustable value just before the event occurred.

50. The termination value of a depreciating asset is worked out as at the time when a balancing adjustment event occurs for the asset. The termination value of a depreciating asset is, in certain circumstances, an amount specified in the table in subsection 40-300(2) of the ITAA 1997. Otherwise, it is the amount taken to have been received under section 40-305 of the ITAA 1997.

51. Surrendering of any nets that an operation should not have in their possession upon the surrendering of the licence package is one of the conditions to receive a payment under the Business Exit (licence buy out) Assistance component of the Package. However, the payment is specifically made to purchase the entire licence package and not for the acquisition of capital equipment. No nets or other depreciating assets are included as part of the entire licence package.

52. Therefore, no part of a payment under the Business Exit (licence buy out) Assistance component of the Package is made for the nets or any other depreciating assets under a balancing adjustment event. No amount of the payment is reasonably attributable to the assets and, as a result, no part of the payment represents the termination value of the assets.

Capital gains tax

53. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the Business Exit Assistance is satisfied.

54. However, to the extent that the assistance relates to the disposal of an underlying CGT asset (each licence, authority, fishery symbol, quota and effort unit) to the QRAA, CGT event A1 under section 104-10 of the ITAA 1997 happens. Taxation Ruling TR 95/35 (Treatment of Compensation Receipts) is the basis for applying the underlying asset approach. In this situation CGT event C2 does not happen.

CGT event A1 happens to licensing rights

55. Each licence, authority, fishery symbol, quota and effort unit (licensing rights) is a CGT asset under section 108-5 of the ITAA 1997.

56. CGT event A1 under section 104-10 of the ITAA 1997 happens when a licensed fishing operator's offer is accepted and results in the disposal of all licensing rights to the QRAA.

57. A capital gain is made if the capital proceeds exceed the cost base of a licensing right, and a capital loss is made if the capital proceeds are less than the reduced cost base of the right.

58. A lump sum payment received under the Business Exit (licence buy out) Assistance component comprises the capital proceeds for the surrendering of the licensing rights. Since this lump sum payment relates to more than one right, the capital proceeds are apportioned between each right under section 116-40 of the ITAA 1997. The capital proceeds are apportioned in such amounts as are reasonably attributable to each right.

59. Any capital gain or capital loss which results from the surrendering of a licensing right acquired before 20 September 1985 (pre-CGT) is disregarded.

60. If an original licensing right was acquired before 20 September 1985 and a new licensing right was acquired on or after that date, the new right is not a capital improvement to the original pre-CGT right. The capital gain or loss on the surrendering of the new right is to be worked out separately.

61. **Example:** Aaron acquired a primary commercial fishing licence before 20 September 1985. In 2003, he was allocated 10 quotas relating to the fish symbols listed on his licence. Two months after the quota allocation, Aaron bought an additional 5 quotas for \$10,000 each. In 2004, Aaron surrenders the entire licence package and receives \$250,000 as the Business Exit (licence buy out) Assistance component of the Package. The value attributed to each quota is \$15,000.

The CGT consequences are:

Any capital gain arising from the primary licence, which was acquired before 20 September 1985, is disregarded.

The original 10 quotas were received because Aaron held a primary fishing licence. The original licence was acquired before 20 September 1985 therefore the symbols and quotas are taken to have been acquired before that date because they were created by splitting rights from the original pre-CGT licence. The pre-CGT status of the original licence, symbols and quotas are preserved through any renewals by the application of the statutory licence rollover in Subdivision 124-C of the ITAA 1997. Any capital gains made from surrendering the original licence, symbols and quotas are therefore disregarded.

The capital gain made from surrendering each of the 5 quotas that were subsequently purchased is worked out as follows:

Capital proceeds	\$15,000
Less: cost base	<u>\$10,000</u>
Capital gain	\$5,000

The total capital gain made on the disposal of the 5 additional quotas is \$25,000.

62. A capital gain can be reduced by the general CGT discount if the relevant requirements of Subdivisions 115-A, 115-B and 115-C of the ITAA 1997 are met.

63. A capital gain can be reduced or deferred by the small business CGT concessions if the licensing rights are active assets and the other requirements of Division 152 of the ITAA 1997 are met. The concessions available are:

- small business 15-year exemption;
- small business 50% active asset reduction;
- small business retirement exemption; and
- small business rollover.

64. Each of the licensing rights referred to in paragraph 55 that are used in carrying on a commercial fishing operation is an active asset for the purposes of the small business CGT concessions.

CGT event C2 happens to the entitlement to receive the business exit assistance

65. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the business exit assistance is satisfied. This event happens at the time that the QRAA makes the one-off payment to the applicant to end their right to assistance.

66. A capital gain is made if the capital proceeds exceed the cost base of the entitlement and a capital loss is made if the capital proceeds are less than the reduced cost base.

67. The capital proceeds from the CGT event that happens to the entitlement is that part of the business exit assistance received that does not relate to the licensing rights where the CGT consequences are worked out under CGT event A1 (refer paragraphs 55 to 63).

68. The cost base of the entitlement is calculated under Divisions 110 and 112 of the ITAA 1997. It includes the costs of applying for the business exit assistance. The market value of the entitlement is not included as part of the cost base because the market valuation rules do not apply to the acquisition of the entitlement from the QRAA. The cost base is reduced by any amount that is a deductible expense (for example subsection 110-45(1B) of the ITAA 1997).

69. A capital gain cannot be reduced by the general CGT discount as the capital gain does not result from a CGT event happening to a CGT asset that was acquired by the applicant at least 12 months before the CGT event happened.

70. A capital gain may be reduced or deferred by the small business CGT concessions. Refer to paragraph 63.

Business Exit (licence buy out) Assistance – commercial reef line fishery – surrender of RQ or SM symbols and quota without surrendering the entire licence package – business continues to operate

Section 6-5 of the ITAA 1997 – income according to ordinary concepts

71. The surrender of quota in these circumstances is different to the selling of quota in the ordinary course of business, which may be assessable under section 6-5 of the ITAA 1997. Where the sale/surrender of quota is a consequence of the reorganisation of the taxpayer's business following changes in government policy, sale/surrender of the quota would be capital in nature.⁹ In this case, the receipt of the Business Exit (licence buy out) Assistance is neither a normal incident of the applicant's business nor was it paid for a purpose for which the applicant's business was carried on.

72. By surrendering the RQ or SM symbols and quota the applicant is permanently deprived of the opportunity to fish or take fish (carry on its business) in the affected areas in respect of these symbols and quota. The RQ or SM symbols and quota form part of the profit-yielding structure of the applicant as they enable the applicant to fish in a particular fishery or to take certain fish and earn income.

73. Where a business continues to operate, a receipt for agreeing to give up part of the profit earning structure is on capital account.¹⁰ A receipt under the Business Exit (licence buy out) Assistance scheme for the surrender of the RQ or SM symbols and quota does not constitute ordinary income for the purposes of section 6-5 of the ITAA 1997.

Section 15-10 of the ITAA 1997 – bounty or subsidy

74. The payment received for the surrender of the RQ or SM symbols and quota attached to a licence is not ordinary income where those assets are part of the profit earning structure of the business. The payment is a bounty or subsidy being a government payment paid to foster an undertaking. However, the payment is not assessable under section 15-10 of the ITAA 1997 as it is not received in relation to carrying on a business and is received for giving up part of the profit yielding structure of the business [refer to paragraph 47].

⁹ *FCT v. Merv Brown Pty Ltd* 85 ATC 4080; 16 ATR 218.

¹⁰ *Dickenson v. Federal Commissioner of Taxation* (1958) 98 CLR 460 at 483; *Allied Mills Industries Pty Ltd v. Commissioner of Taxation* (1988) 20 FCR 288 at 312; (1988) 20 ATR 457 at 464; 89 ATC 4365 at 4371-4372.

Capital gains tax

75. The principles set out in paragraphs 53 to 70 apply equally to the payment received for the independent disposal of the applicant's RQ or SM symbols and quota to the QRAA or when the entitlement to receive the business exit assistance is satisfied.

76. In addition to those principles, if only some of these licensing rights are disposed of, the cost base of each of those rights is calculated under Divisions 110 and 112 of the ITAA 1997. If any part of the acquisition cost needs to be apportioned between the rights, this apportionment is made on a reasonable basis.

Business Advice Assistance***Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

77. The cost of seeking business advice prior to making a commitment to apply for either component of the Package is a deductible expense under section 8-1 of the ITAA 1997. However, the fact that the Business Advice Assistance reimburses the recipient taxpayer for what may be deductible expenses does not necessarily mean that the Business Advice Assistance is ordinary income.¹¹ It is necessary to examine the relationship between the payment and business activities of the recipient taxpayer (Reckitt & Colman).

78. The Business Advice Assistance payment is for the purpose of assisting the applicant with the costs of seeking advice to assess the impact of the rezoning on the earning ability of the applicant's business and whether to apply for assistance under the Great Barrier Reef Marine Park Structural Adjustment Package 2004. These costs can be accepted as part of the cost of trading operations. The Business Advice Assistance is given for a purpose that is an ordinary incident of part of the applicant's business activity. Accordingly, it is considered the Business Advice Assistance is income according to ordinary concepts and is included as assessable income under subsection 6-5(1) of the ITAA 1997.

79. An applicant derives the assessable income when the QRAA reimburses the expenditure.

Capital gains tax

80. Any capital gain made when an amount is paid to the applicant under the Business Advice Assistance component of the Package is reduced under section 118-20 of the ITAA 1997 to the extent that the amount paid is assessable under section 6-5 of the ITAA 1997.

¹¹ *Federal Commissioner of Taxation v. Rowe* (1997) 187 CLR 266; 97 ATC 4317; (1997) 35 ATR 432.

Primary production income

81. Subsection 392-80(2) of the ITAA 1997 provides that a taxpayer's 'assessable primary production income' for the current year is the amount of that taxpayer's basic assessable income for the current year that was derived from, or resulted from, their carrying on a primary production business.

82. A taxpayer's basic assessable income for an income year is defined in subsection 392-45(2) of the ITAA 1997 as their assessable income for the income year less any amount included in their assessable income under either subsection 27B(1A) or 27B(3) of the ITAA 1936; and any net capital gains included in their assessable income under Division 102 of the ITAA 1997.

83. The Business Exit (licence buy out) Assistance received in respect of the surrender of the entire licence package, or in respect of the surrender of the RQ or SM symbols and quota is excluded from 'assessable primary production income' for the purposes of subsection 392-80(2) of the ITAA 1997.

84. In order for income to be derived from, or result from, carrying on a primary production business, it is considered that there must be a causal connection between the income received and the primary producer's trade or business.¹²

85. The Business Advice Assistance is given for a purpose that is part of the taxpayer's trading activities. There is a causal connection between these payments and the licensed fishing operator's trade or business. Therefore, these payments are 'assessable primary production income' for the purposes of subsection 392-80(2) of the ITAA 1997.

Detailed contents list

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¹² See paragraphs 23 and 24 of Taxation Ruling IT 2228 and also AAT Case 6254; AAT Case X82 21 ATR 3708; 90 ATC 599.

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Not previously issued as a draft	- ITAA 1997 40-300(2)
	- ITAA 1997 40-305
<i>Related Rulings/Determinations:</i>	- ITAA 1997 Pt 3-1
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	- ITAA 1997 104-25
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- balancing adjustment event	- ITAA 1997 Div 110
- bounties and subsidies	- ITAA 1997 110-45(1B)
- Capital Gains Tax	- ITAA 1997 Div 112
- ordinary income	- ITAA 1997 Subdiv 115-A
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