



CR 2005/79 - Income tax: capital gains: statutory licence rollover: water rights under the Water Management Act 2000 (NSW)

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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: capital gains: statutory
licence rollover: water rights under the
Water Management Act 2000 (NSW)

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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**, **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 104-25 (CGT event C2) of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 108-5 of the ITAA 1997;
 - section 108-7 of the ITAA 1997;
 - Subdivision 124-A of the ITAA 1997;
 - section 124-10 of the ITAA 1997;
 - Subdivision 124-C of the ITAA 1997; and
 - section 124-140 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies is persons holding entitlements identified in Column 1 of Schedule 11 of the *Water Management Act 2000* (NSW) (the Water Management Act) and Division 3 of Part 3 of the Water Management (General) Regulation 2004 (the 2004 Regulation).

4. The term 'entitlement' is defined in clause 2 of Schedule 10 of the Water Management Act and clause 3 of the 2004 Regulation.

Qualifications

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

6. 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 25.

7. 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

9. This Ruling applies to the year ended 30 June 2005 or substituted accounting period and to those future years in which entitlements covered in paragraph 3 of this Ruling are replaced under the Water Management Act or the 2004 Regulation.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents:

- (a) The Class Ruling Application authored by Arthur Andersen and dated 16 May 2002;
- (b) Correspondence from Ernst & Young dated between 8 October 2002 and 4 February 2005;

- (c) The *Water Act 1912* (NSW) (the Water Act), the *Rivers and Foreshores Improvement Act 1948* (NSW) (the 1948 Act), the *Irrigation Corporations Act 1994* (NSW) (the 1994 Act), and their regulations, prior to their amendment or repeal by the Water Management Act; and
- (d) The Water Management Act as amended to the date of release for this Ruling and its regulations in force at that date.

11. The arrangement is comprised of the Water Management Act as amended and its regulations, and the Water Act, the 1948 Act, the 1994 Act, and their regulations, prior to any amendment or repeal by the Water Management Act.

12. The Water Act, the 1948 Act and the 1994 Act provide for the granting and renewal of entitlements, such as licences, authorities and permits, relating to the use of water in NSW. In this Ruling, each particular entitlement is referred to as a 'relevant entitlement'.

13. The statutory regime for the management of water in NSW is being reformed under the Water Management Act, as amended, and its regulations. These measures are replacing the arrangements under the Water Act, the 1948 Act, the 1994 Act and their regulations.

14. Schedule 10 of the Water Management Act and Division 3 of Part 3 of the 2004 Regulation facilitate the alteration or conversion of relevant entitlements to access licences, supplementary water access licences, water management work approvals, water use approvals and activity approvals.

15. Under Schedule 10, relevant entitlements held under the Water Act, the 1948 Act and the 1994 Act are replaced by the corresponding licence and approvals under the Water Management Act.

16. Under subclause 3(1)(a) of Schedule 10 of the Water Management Act, a relevant entitlement is replaced with an access licence to the extent to which the relevant entitlement gives an entity a right to take a specified quantity of water. Under subclause 3(1)(b) of Schedule 10, a relevant entitlement is replaced with a water management work approval to the extent to which the relevant entitlement gives an entity a right to use a specified water management work approval. Under subclause 3(1)(c) of Schedule 10, a relevant entitlement is replaced with a water use approval to the extent to which the relevant entitlement gives an entity a right to use water on any land. Under subclause 3(1)(d) of Schedule 10, a relevant entitlement is replaced by an activity approval to the extent to which the relevant entitlement gives an entity a right to carry out a specified activity.

17. Division 3 of Part 3 of the 2004 Regulation also operates to replace some relevant entitlements with a supplementary water access licence in addition to an access licence in order to preserve additional existing rights to extra water.

18. The effect of Schedule 10 of the Water Management Act and Division 3 of Part 3 of the 2004 Regulation is that access licences, supplementary water access licences, water management work approvals, water use approvals and activity approvals replace the existing relevant entitlements and carry over the underlying rights of the entitlement holders.

19. To the extent that a relevant entitlement allows the taking of a specified quantity of water, it is replaced by an access licence for the same quantity of water.

20. To the extent that a relevant entitlement allows the use of a water management work approval, it is replaced by a water management work approval for the same work.

21. To the extent that a relevant entitlement allows the use of water for a specific purpose on land, it is replaced by a water use approval for the same purpose.

22. To the extent that a relevant entitlement allows a specified activity to be carried out, it is replaced by an activity approval in respect of the same activity.

23. The share components of supplementary water access licences are calculated with reference to water volumes previously taken.

24. The duration of each relevant entitlement is substantially preserved by clause 21 of Schedule 10 of the Water Management Act. Water allocations are also substantially preserved by clause 25 of Schedule 10 of the Water Management Act.

25. While the Water Management Act received Royal Assent on 8 December 2000, Schedule 10 was inserted at a later date by the Water Management Amendment Act 2004 and did not commence until 1 July 2004.

Ruling

26. The statutory licence rollover in section 124-140 of the ITAA 1997 applies when an entitlement in Column 1 of Schedule 11 of the Water Management Act or in Division 3 of Part 3 of the 2004 Regulation is replaced with the corresponding entitlement(s) under the Water Management Act or under Division 3 of Part 3 of the 2004 Regulation provided that the replacement entitlement(s) is received by the same person(s) who held the former entitlement in the same shares.

Explanation

Nature of the water entitlements

27. Each relevant entitlement is a statutory right. Each relevant entitlement is also a CGT asset within the terms of the definition in subsection 108-5(1) of the ITAA 1997.

28. The effect of Schedule 10 of the Water Management Act and Division 3 of Part 3 of the 2004 Regulation is that each relevant entitlement is cancelled or expires. CGT event C2 (subsection 104-25(1) of the ITAA 1997) happens on the ending of each entitlement.

29. The relevant entitlements are replaced with such access licences, supplementary water access licences, water management work approvals, water use approvals and activity approvals as are appropriate to carry over pre-existing rights. The new licences and approvals are also statutory rights that satisfy the definition of CGT asset (subsection 108-5(1) of the ITAA 1997).

Rollover relief

30. Each relevant entitlement is a statutory licence for the purposes of subsection 124-140(3) of the ITAA 1997. The definition also covers access licences, supplementary water access licences, water management work approvals, water use approvals and activity approvals that are issued under the Water Management Act and the 2004 Regulation.

31. The expiry or cancellation of each relevant entitlement satisfies paragraph 124-140(1)(a) of the ITAA 1997.

32. The new relevant entitlements issued under the Water Management Act and the 2004 Regulation are granted in respect of the same underlying activities on terms that are not substantially different provided each relevant entitlement is held in the same shares if there is more than one holder. Ownership of each expired or cancelled relevant entitlement is the main reason for its renewal under the Water Management Act and the 2004 Regulation.

Consequences of rollover

33. The consequences of rollover relief applying to the expired or cancelled relevant entitlement are set out in Subdivision 124-A of the ITAA 1997. Under subsection 124-10(2) of the ITAA 1997, any capital gain or loss that arises on the ending of the original relevant entitlement is disregarded.

34. Under subsection 124-10(4) of the ITAA 1997, the new relevant entitlement(s) is taken to have been acquired before 20 September 1985 if the original relevant entitlement was acquired before that date.

35. Under subsection 124-10(3) of the ITAA 1997, the first element of the cost base of each new relevant entitlement is an appropriate portion of the total cost base of the original relevant entitlement that is replaced.

36. Under subsection 124-140(2) of the ITAA 1997, the first element of the cost base of each new relevant entitlement includes any amount paid to get that entitlement.

Detailed contents list

37. Below is a detailed contents list for this Class Ruling:

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Subject references:

- capital gains tax
- CGT asset
- statutory licence roll-over

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1997 104-25
- ITAA 1997 104-25(1)
- ITAA 1997 108-5
- ITAA 1997 108-5(1)
- ITAA 1997 108-7
- ITAA 1997 Subdiv 124-A
- ITAA 1997 124-10
- ITAA 1997 124-10(2)
- ITAA 1997 124-10(3)

- ITAA 1997 124-10(4)
- ITAA 1997 Subdiv 124-C
- ITAA 1997 124-140
- ITAA 1997 124-140(1)(a)
- ITAA 1997 124-140(2)
- ITAA 1997 124-140(3)
- Copyright Act 1968
- Water Act 1912 (NSW)
- Water Management Act 2000 (NSW) Sch 10
- Water Management Act 2000 (NSW) Sch 11
- Water Management (General) Regulation 2004 (NSW) 3
- Water Management (General) Regulation 2004 (NSW) Pt 3 Div 3
- Rivers and Foreshores Improvement Act 1948 (NSW)
- Irrigation Corporations Act 1994 (NSW)

ATO references

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Income Tax ~~ Capital Gains Tax ~~ roll-overs - other