



CR 2007/101 - Income tax: treatment of payments received under the Securing our Fishing Future package: Onshore Business Exit Assistance 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 *31 October 2007*



Class Ruling

Income tax: treatment of payments received under the Securing our Fishing Future package:

- Onshore Business Exit Assistance
- Business Advice Assistance

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	9
Scheme	14
Ruling	36
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	52
Appendix 2:	
<i>Detailed contents list</i>	92

ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 15-10 of the ITAA 1997;
 - Subdivision 20-A of the ITAA 1997;
 - Part 3-1 of the ITAA 1997;
 - Division 102 of the ITAA 1997;

- section 104-10 of the ITAA 1997;
- section 104-20 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- subsection 110-45(3) of the ITAA 1997;
- subsection 110-55(6) of the ITAA 1997;
- section 116-40 of the ITAA 1997;
- Part 3-3 of the ITAA 1997; and
- Division 392 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is applicants who have applied for and have received or were entitled to receive payments under the Onshore Business Exit Assistance and/or Business Advice Assistance components of the *Securing our Fishing Future* package.

4. This Ruling does not apply to any entity that received a payment of Onshore Business Exit Assistance instead of the applicant entity. That circumstance may occur because the applicant entity was a company that had ceased to exist when the payment was made. This Ruling applies only to the applicant entity.

Qualifications

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

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 14 to 35 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 from 1 July 2006 to 30 June 2010. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

10. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

14. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Application for Class Ruling from the Department of Agriculture, Fisheries and Forestry (DAFF) dated 30 January 2006 and supplementary correspondence from DAFF dated 24 October 2006;
- DAFF Securing our Fishing Future – Onshore Business Assistance Guidelines; and
- further information provided by Ernst & Young by email on 3 July 2007.

15. The *Securing our Fishing Future* package (the Package), announced by the Australian Government on 23 November 2005, is a major structural adjustment package for the Australian fishing industry designed to reduce fishing capacity and better position the industry to be profitable and self-adjust in the future. Onshore Business Assistance is one of the components of the Package. Onshore Business Assistance consists of:

- Onshore Business Exit Assistance; and
- Onshore Business Development Assistance.

16. This Ruling deals with Onshore Business Exit Assistance and related Business Advice Assistance. Onshore Business Development Assistance and related Business Advice Assistance are dealt with in Class Ruling CR 2007/49 Income tax: treatment of payments received under the Securing our Fishing Future package: Onshore Business Development Assistance and Business Advice Assistance.

17. Onshore Business Exit Assistance is a competitive grants program that is targeted towards helping those businesses with the least capacity to adjust to the changes in the industry to exit the onshore sector. Priority is given to those businesses that are considered most in need of assistance.

18. Onshore Business Exit Assistance is given to eligible existing businesses who consider the reduction of fishing activity is a good reason to rationalise or exit their onshore operation.

19. DAFF makes a formal determination of the eligibility of an applicant for Onshore Business Exit Assistance and the level of assistance that is granted.

20. To qualify for Onshore Business Exit Assistance the applicant must be:

- an onshore business that has experienced significant negative impacts or has been made unviable as a consequence of the reductions in fishing activity; or

- a business that leased a fishing concession that can demonstrate it is unable to obtain a replacement for the leased concession lost as a direct result of it being surrendered in the Concession Buyback.

21. Owners of a business that was created or acquired after the announcement of the Package on 23 November 2005 are ineligible for Onshore Business Exit Assistance. However, a person who became legally bound to acquire or develop a business prior to 23 November 2005 (which came into effect after 23 November 2005) is still eligible for Onshore Business Exit Assistance.

22. Eligible onshore businesses must satisfy 3 eligibility tests outlined in paragraphs 23 to 25 of this Ruling. The business must be:

- directly impacted;
- otherwise viable; and
- significantly impacted.

23. To be eligible for Onshore Business Exit Assistance a business must have:

- been directly involved in the wholesaling, retailing, exporting or processing of seafood from Commonwealth-managed fisheries on 23 November 2005; or
- been directly dependent on the Commonwealth fishing sector on 23 November 2005, and be able to demonstrate the proportion of its income that is, or was derived from the supply of goods and services to the Commonwealth fishing sector.

24. To be eligible for Onshore Business Exit Assistance a business must have had good prospects of being viable if it were not for the reductions in fishing activity. Appendix 2 to the Securing our Fishing Future – Onshore Business Assistance Guidelines contains information about how to demonstrate business viability.

25. To be eligible for Onshore Business Exit Assistance a business needs to demonstrate that it has been, or will be significantly impacted by the reductions in fishing activity. Applicants must reasonably demonstrate how the reductions in fishing activity have either:

- reduced the business's final surplus¹ by more than a third; or

¹ 'Final surplus' is defined in Appendix 3 of the DAFF Securing our Fishing Future – Onshore Business Assistance Guidelines as total operating income less total operating expenses (excluding depreciation and interest), less plant replacement and servicing and repayment of debt.

- made the entire operation unviable by making its total earnings before depreciation, interest and tax less than their financial commitments (including interest and principal repayments) and plant replacement.

26. Successful applicants are eligible for Onshore Business Exit Assistance amounting to the equivalent of three years of final surplus that was lost because of the reductions in fishing activity, up to a maximum of \$100,000. Assistance in excess of the equivalent of three years of lost financial surplus may also be granted on a case by case basis to applicants whose businesses are generally managed as non-profit businesses. Guidance on how to calculate lost final surplus is at Appendix 2 to the Securing our Fishing Future – Onshore Business Assistance Guidelines.

27. Fishing concession lessees that are eligible for Onshore Business Exit Assistance are eligible for a grant amounting to the equivalent of three years of final surplus that was lost because of the reductions in fishing activity up to a maximum of \$50,000. Guidance on how to calculate lost final surplus is at Appendix 2 to the Securing our Fishing Future – Onshore Business Assistance Guidelines.

28. Onshore Business Exit Assistance is not designed to help applicants partially exit the sector. Onshore Business Exit Assistance is only paid to applicants who completely exit the onshore sector.

29. Appropriate uses of Onshore Business Exit Assistance include:

- diversification out of the onshore sector so that the business is reliant upon other sectors;
- a total change to another sector; or
- the recipient's retirement from the sector.

30. Onshore Business Exit Assistance applicants must develop a proposal that outlines their plan to exit the onshore sector.

31. Successful applicants, apart from those applicants referred to in paragraph 32 of this Ruling, will enter into a funding agreement with the Commonwealth. The funding agreement will primarily deal with a timeline and process for the applicant's exit from the onshore sector.

32. Some successful applicants for the Onshore Business Exit Assistance may no longer exist at the time of payment of the Assistance, for example the entity that operated the onshore business has been dissolved. In this case the Commonwealth will make payments to the principal(s) of the relevant business entity. The Commonwealth will not enter into a funding agreement with these applicants, but rather require a Statutory Declaration from the principal(s) of the relevant business entity, including a direction to pay form providing details of relevant payee(s) for the Onshore Business Exit Assistance.

33. Applicants must have lodged an application by the closing date. Onshore Business Exit Assistance consisted of two rounds. Applications for Round 1 closed on 12 January 2007 and Round 2 closed on 25 May 2007. (Late lodgements may be accepted in extenuating circumstances.)

Business Advice Assistance

34. Business Advice Assistance is available to help cover the costs of obtaining independent professional advice in preparing an Onshore Business Exit Assistance application. Under the Business Advice Assistance component of the package, up to \$1,500 may be payable to reimburse eligible applicants, or payable directly to the provider of the business advice, to meet the costs of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application. Applicants must apply separately for the Business Advice Assistance and must submit fully itemised tax invoices to DAFF.

35. Business Advice Assistance is only paid to an applicant who has submitted an application for Onshore Business Exit Assistance and is deemed eligible by DAFF or the decision maker. Business Advice Assistance is not paid if the applicant has not applied for Onshore Business Exit Assistance.

Ruling

Onshore Business Exit Assistance

Section 6-5 – income according to ordinary concepts

36. A payment received by an applicant under the Onshore Business Exit Assistance component of the Package is not income according to ordinary concepts. The receipt is not assessable income under section 6-5.

Section 15-10 – bounty or subsidy

37. A payment received by an applicant under the Onshore Business Exit Assistance component of the Package is not a bounty or subsidy that is received in relation to carrying on a business. The receipt is not assessable income under section 15-10.

Capital gains tax

38. A payment that an applicant received or is entitled to receive under the Onshore Business Exit Assistance component of the Package is subject to the capital gains tax (CGT) provisions in Parts 3-1 and 3-3.

39. To the extent to which the Onshore Business Exit Assistance relates to the loss of the goodwill of the business, the Assistance represents capital proceeds for CGT event C1 under section 104-20 that happens when the goodwill comes to an end.

40. To the extent to which the Onshore Business Exit Assistance relates to a loss on disposal of another CGT asset of the business, the Assistance represents additional capital proceeds for CGT event A1 under section 104-10 that happened on disposal of the asset.

41. To the extent to which the Onshore Business Exit Assistance relates to the reduction in value of a CGT asset that has not been disposed of, the Assistance represents a recoupment of an amount of expenditure in relation to the asset. Recouped expenditure does not form part of the cost base of the asset.

42. To the extent to which the Onshore Business Exit Assistance does not relate to the loss of goodwill or the ending, disposal or reduction in value of another CGT asset of the business, the Assistance is capital proceeds for CGT event C2 under section 104-25 happening to the entitlement to receive the Assistance. This CGT event happens when the applicant for the assistance receives the payment of Onshore Business Exit Assistance.

43. The Onshore Business Exit Assistance is apportioned on a reasonable basis under section 116-40 between the various CGT events and any other related components.

44. The capital proceeds are not reduced if the applicant does not actually receive the Onshore Business Exit Assistance that it is entitled to receive because it no longer exists² when the payment is made.

Business Advice Assistance

Section 6-5 – income according to ordinary concepts

45. A payment received by an applicant under the Business Advice Assistance component of the Package to meet the costs of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application is not income according to ordinary concepts. The receipt is not assessable income under section 6-5.

² A reference to an entity that no longer exists is a reference to a company that has been deregistered under Part 5A.1 of the *Corporations Act 2001*.

Section 15-10 – bounty or subsidy

46. A payment received by an applicant under the Business Advice Assistance component of the Package to meet the costs of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application is not a bounty or subsidy that is received in relation to carrying on a business. The receipt is not assessable income under section 15-10.

Subdivision 20-A – assessable recoupment

47. Reimbursement of the cost of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application is not an assessable recoupment under Subdivision 20-A.

Capital gains tax

48. A payment of Business Advice Assistance represents a recoupment of expenditure incurred in applying for Onshore Business Exit Assistance.

49. The expenditure that is recouped does not form part of the cost base or reduced cost base of any CGT asset because the amount of the recoupment is not included in assessable income (subsection 110-45(3) and subsection 110-55(6)).

Primary production income

50. For eligible concession lessees that are carrying on a primary production business, payments received under the Onshore Business Exit Assistance and Business Advice Assistance components of the Package may result in a net capital gain being included in assessable income under Division 102. The net capital gain is excluded from assessable primary production income for the purposes of Division 392 (long-term averaging of primary producers' tax liability).

51. Therefore payments received under the Onshore Business Exit Assistance and Business Advice Assistance components of the Package by other applicants are not 'assessable primary production income' for the purposes of working out the 'averaging' adjustment required under Division 392.

Commissioner of Taxation31 October 2007

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.***

Onshore Business Exit Assistance

Section 6-5 – income according to ordinary concepts

52. Subsection 6-5(1) 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.

53. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.³

54. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,⁴ 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.

55. The fact that a payment received under the Onshore Business Exit Assistance component of the Package is calculated by reference to three years of lost final surplus of the applicant’s business does not mean that the payment is income. In *Commissioner of Taxes (Vic) v. Phillips, Dixon & Evatt JJ* referred to the treatment of a sum as income because it is computed by reference to loss of income as involving ‘an erroneous method of reasoning’.⁵

56. The receipt of the Onshore Business Exit Assistance is payment for exiting the onshore sector. Exiting the onshore sector requires the surrender of all or part of the entity’s profit yielding structure. The receipt of a payment under the Onshore Business Exit Assistance component of the Package 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.

57. An amount received for going out of business has been held to be a capital receipt.⁶

³ *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.

⁴ (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

⁵ (1936) 55 CLR 144 at 156.

⁶ *Californian Oil Products Ltd (in liq) v. FCT* (1934) 52 CLR 28.

58. The receipt of a payment by an applicant under the Onshore Business Exit Assistance component of the Package is capital in nature and is not assessable as ordinary income under section 6-5.

Section 15-10 – bounty or subsidy

59. Section 15-10 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.

Bounty or subsidy received in relation to carrying on a business

60. 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 of Australia*,⁷ derives from the Latin 'subsidium' 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 aid provided by the Crown (government) to foster or further some undertaking or industry.

61. Following the decisions in *The Squatting Investments Co Ltd v. Federal Commissioner of Taxation*,⁸ *Reckitt and Colman Pty Ltd v. Federal Commissioner of Taxation*⁹ and *First Provincial Building Society Ltd v. Federal Commissioner of Taxation*¹⁰ (*First Provincial*), it is now well accepted that a 'bounty' or 'subsidy' includes a financial grant made by a government. Accordingly, a payment received for the Onshore Business Exit Assistance is a 'bounty' or 'subsidy'.

62. A bounty or subsidy is 'in relation to' carrying on a business when there is a real connection between the payment and the business. The term 'in relation to' includes within its scope payments that have a direct or indirect connection to the business. As stated by Hill J in *First Provincial*:

The words 'in relation to' are words of wide import. They are capable of referring to any relationship between the two subject matters, in the present case the receipt of the bounty or subsidy, on the one hand, and the carrying on of the business, on the other ... the degree of connection will be 'a matter of judgment on the facts of each case'. ... What is necessary, at the least, in the present context is that there be a real connection ... the relationship need not be direct, it may also be indirect.¹¹

⁷ (1969) 121 CLR 353.

⁸ (1953) 86 CLR 570.

⁹ (1974) 4 ATR 501; 74 ATC 4185.

¹⁰ (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207.

¹¹ *First Provincial* (1995) 56 FCR 320 at 333.

63. A bounty or subsidy must be related to 'carrying on' the business not merely for commencing or ceasing a business. As stated by Hill J in *First Provincial*:

... the relationship must be to the 'carrying on' of the business. These words may perhaps be understood in opposition to a relationship with the actual business itself. They would make it clear, for example that a bounty received, merely in relation to the commencement of a business or the cessation of the business, would not be caught. The expression 'carrying on of the business' looks, in my opinion, to the activities of that business which are directed towards the gaining or producing of assessable income, rather than merely to the business itself.¹²

64. Government payments to industry received by an applicant as assistance either to cease a business or give or sell part of the profit yielding structure of the business are not in relation to the 'carrying on' of the business.

65. The Onshore Business Exit Assistance component of the Package is not a bounty or subsidy received in relation to the carrying on of a business, as it is received in relation to the cessation of an eligible business. Accordingly, the receipt by an applicant is not included in assessable income under section 15-10.

Capital gains tax

66. The entitlement to receive the Onshore Business Exit Assistance is a CGT asset under section 108-5. However, a 'look-through' approach is adopted in relation to the entitlement to receive the Onshore Business Exit Assistance where an underlying CGT asset of the business is the asset to which the assistance most directly relates. Under this approach, the underlying assets of the business are the relevant assets. Taxation Ruling TR 95/35 which deals with the treatment of compensation receipts is the basis for applying the underlying asset approach for the purpose of identifying the relevant asset.

67. To the extent to which the Onshore Business Exit Assistance relates to the goodwill of the business, the goodwill is the relevant asset.

68. As goodwill has no existence except in relation to a business, the goodwill of a business is lost or destroyed when the business ceases. The part of the Onshore Business Exit Assistance that relates to the loss of the goodwill of the business represents the capital proceeds for CGT event C1 happening to the goodwill (section 104-20). This CGT event happens when the goodwill comes to an end (that is, when the business ceases).

69. Taxation Ruling TR 1999/16 explains how the CGT provisions apply to goodwill.

¹² *First Provincial* (1995) 56 FCR 320 at 332

70. To the extent to which the Onshore Business Exit Assistance relates to any other underlying CGT asset of the business, that asset is the relevant asset. That part of the assistance represents:

- additional capital proceeds where the asset has ended or been disposed of at the time the application for assistance is made; or
- a recoupment of acquisition costs of the asset where the relevant asset has been reduced in value but has not ended or been disposed of at the time the application for assistance is made and the amount recouped will not form part of the cost base of the asset.

71. To the extent to which the Onshore Business Exit Assistance does not relate to the loss of goodwill or the ending, disposal or reduction in value of another CGT asset of the business, the Assistance is capital proceeds for CGT event C2 under section 104-25 happening to the entitlement to receive the Assistance. This CGT event happens when the entitlement is satisfied, that is, when the applicant for the Onshore Business Exit Assistance receives the payment of the Assistance.

72. The Onshore Business Exit Assistance payment is apportioned on a reasonable basis under section 116-40 between the various CGT events and any other related components, for example, recoupment of expenditure that would otherwise form part of the cost base of a CGT asset.

73. A capital gain is made by a successful applicant for Onshore Business Exit Assistance if the capital proceeds exceed the cost base of the CGT asset and a capital loss is made if the capital proceeds are less than the reduced cost base.

74. The capital proceeds are the amount of Onshore Business Exit Assistance the applicant receives or is entitled to receive in respect of the CGT event happening.

75. The capital proceeds are not reduced if the applicant does not actually receive the Onshore Business Exit Assistance which it is entitled to receive because it has ceased to exist when the payment of the assistance is made. An entity that is a company ceases to exist when it is deregistered under Part 5A.1 of the *Corporations Act 2001*. The fact that an entity has ceased to carry on business or that its Australian Business Number (ABN) has been cancelled does not mean that the entity has ceased to exist.

76. The cost base of the CGT asset is calculated under Divisions 110 and 112. The cost base is reduced by any amount that is a deductible expense (for example, subsection 110-45(1B)).

77. A capital gain or capital loss which results from a CGT event happening to a CGT asset acquired before 20 September 1985 is disregarded.

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

79. A capital gain can be reduced or deferred by the small business CGT concessions if the asset is an active asset and the requirements of Division 152 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.

Business Advice Assistance

Section 6-5 – income according to ordinary concepts

80. The Business Advice Assistance to meet the costs of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application is not received in the normal course of business operations, nor is it paid for a purpose for which a recipient's business was carried on.

81. Accordingly, a payment by an applicant received under the Business Advice Assistance component of the Package is capital in nature and does not constitute assessable income under section 6-5. It is not income according to ordinary concepts.

Section 15-10 – bounty or subsidy

82. Business Advice Assistance to meet the costs of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application is not received in relation to the 'carrying on' of the business as it is received in relation to the cessation of an eligible business. Accordingly, it is not assessable under section 15-10.

Subdivision 20-A – assessable recoupment

83. Under Subdivision 20-A, a taxpayer's assessable income may include an amount received as a recoupment of a loss or outgoing if an amount is deductible for the loss or outgoing under a provision listed in section 20-30.

84. A reimbursement of the costs of obtaining advice directly related to the preparation of an Onshore Business Exit Assistance application is not an assessable recoupment as a relevant deduction is not available for those costs.

Capital gains tax

85. Expenditure on professional services of preparation of an application for Onshore Business Exit Assistance is an incidental cost incurred in relation to the relevant CGT asset.

86. The payment of Business Advice Assistance by way of a reimbursement directly to the applicant or payment of expenses on the applicant's behalf is a recoupment of this expenditure. This recoupment is not assessable income.

87. To the extent that the expenditure is recouped, it does not form part of the cost base or reduced cost base of any CGT asset (subsection 110-45(3) and subsection 110-55(6)).

Primary production income

88. Subsection 392-80(2) 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.

89. Under subsection 995-1(1), a taxpayer carries on a 'primary production business' if they carry on a business involving certain activities. Paragraph (d) of that definition restricts fishing activities to 'operations relating directly to taking or catching fish, turtles, dugong, bêche-de-mer, crustaceans or aquatic molluscs'. Averaging is only available to applicants that are carrying on a business of primary production as defined (for example fishing concession lessees).

90. A taxpayer's basic assessable income for an income year is defined in subsection 392-45(2) as excluding, among other things, any net capital gain included in their assessable income under Division 102.

91. If the Onshore Business Exit Assistance and Business Advice Assistance results in a net capital gain being included in assessable income under Division 102, the net capital gain is excluded from assessable primary production income for the purposes of subsection 392-80(2).

Appendix 2 – Detailed contents list

92. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	5
Date of effect	9
Scheme	14
Business Advice Assistance	34
Ruling	36
Onshore Business Exit Assistance	36
<i>Section 6-5 – income according to ordinary concepts</i>	36
<i>Section 15-10 – bounty or subsidy</i>	37
<i>Capital gains tax</i>	38
Business Advice Assistance	45
<i>Section 6-5 – income according to ordinary concepts</i>	45
<i>Section 15-10 – bounty or subsidy</i>	46
<i>Subdivision 20-A – assessable recoupment</i>	47
<i>Capital gains tax</i>	48
Primary production income	50
Appendix 1 – Explanation	52
Onshore Business Exit Assistance	52
<i>Section 6-5 – income according to ordinary concepts</i>	52
<i>Section 15-10 – bounty or subsidy</i>	59
<i>Bounty or subsidy received in relation to carrying on a business</i>	60
<i>Capital gains tax</i>	66
Business Advice Assistance	80
<i>Section 6-5 – income according to ordinary concepts</i>	80
<i>Section 15-10 – bounty or subsidy</i>	82
<i>Subdivision 20-A – assessable recoupment</i>	83
<i>Capital gains tax</i>	85
Primary production income	88
Appendix 2 – Detailed contents list	92

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 95/35; TR 1999/16;
CR 2007/49

Subject references:

- bounties and subsidies
- capital gains tax
- income vs capital
- ordinary income
- primary production income

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 15-10
- ITAA 1997 Subdiv 20-A
- ITAA 1997 20-30
- ITAA 1997 Pt 3-1
- ITAA 1997 Div 102
- ITAA 1997 104-10
- ITAA 1997 104-20
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 Div 110
- ITAA 1997 110-45(1B)
- ITAA 1997 110-45(3)
- ITAA 1997 110-55(6)
- ITAA 1997 Div 112
- ITAA 1997 Subdiv 115-A
- ITAA 1997 Subdiv 115-B
- ITAA 1997 Subdiv 115-C
- ITAA 1997 116-40
- ITAA 1997 Pt 3-3
- ITAA 1997 Div 152
- ITAA 1997 Div 392
- ITAA 1997 392-45(2)
- ITAA 1997 392-80(2)
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 5A.1
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 -
disposal of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to
C3 - end of a CGT asset
Income Tax ~~ Assessable income ~~ government
payments