


CR 2007/65 - Income tax: treatment of payments received under the Securing our Fishing Future package: * Fishing Community Assistance to assist recipients to commence a business

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Class Ruling

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

- Fishing Community Assistance to assist recipients to commence a business

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📌 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;
- Division 40 of the ITAA 1997;
- Part 3-1 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;
- paragraph 118-37(2)(a) of the ITAA 1997; and
- Part 3-3 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 applied for and received payments to commence a business under the Fishing Community Assistance component of the *Securing our Fishing Future* Package (Package). The Ruling does not apply to those exempt entities specified in section 11-5.

Qualifications

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

5. 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 13 to 28 of this Ruling.

6. 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

8. 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.

9. 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.

10. 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)).

11. 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.

12. 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

13. 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; and
- DAFF Securing our Fishing Future – Fishing Community Assistance Guidelines.

14. 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.

15. The Fishing Community Assistance component of the Package is to help communities that are vulnerable to the impacts of reductions in fishing activity associated with the Package by providing financial assistance to help stimulate sustainable new economic activity and employment opportunities in these communities.

16. DAFF makes a formal determination of the eligibility for Fishing Community Assistance and the level of assistance that may be granted.

17. There are 4 eligibility tests for Fishing Community Assistance:

- the applicant must be an eligible organisation;
- the applicant must have an Australian Business Number (ABN) or an Australian Company Number (ACN);
- the proposed activity must be an eligible activity type; and
- the proposed activity must be in an eligible activity location.

First eligibility test: eligible organisation

18. An applicant must be one of the following types of organisations:

- private enterprise businesses;
- cooperatives;
- local government bodies;
- community groups or councils;
- non-departmental government agencies; or
- non-profit organisations.

Second eligibility test: ABN or ACN

19. An applicant must have an ABN or an ACN. DAFF will not enter into a funding agreement with an applicant unless the applicant has an ABN or ACN.

Third eligibility test: eligible activity type

20. The applicant's proposed activity must stimulate economic activity or enhance employment opportunities. Appropriate uses of Fishing Community Assistance include:

- adding value to existing resources, products or business;
- establishing or expanding a business in response to demonstrated markets;
- creating sustainable new economic/employment opportunities;
- providing infrastructure that enhances economic opportunities;
- diversifying skills; and
- increasing the uptake of innovation, best practice or new technologies.

This Ruling only deals with Fishing Community Assistance that has been provided to an applicant to commence a business.

Fourth eligibility test: eligible activity location

21. The applicant's proposed activity must be located in a community that has been affected by the reduction in fishing activity associated with the Package.

22. Fishing Community Assistance funding may be considered for one or more stages of a multi-stage project including later stages of a project that has already commenced.

23. Fishing Community Assistance will fund projects of generally not more than \$500,000.

24. All applications in a funding round will be assessed and rated on a competitive basis according to:

- whether both the applicant and the proposed activity meet the eligibility requirements; and
- how the proposed activity meets the assessment criteria at clause 7.4 of the Fishing Community Assistance Guidelines, compared to all other applications received from eligible applicants.

25. Meeting the eligibility requirements and assessment criteria to a high degree does not guarantee that the application will be successful.

26. Successful applicants will enter into a funding agreement with the Commonwealth. The funding agreement sets out the terms and conditions of the funding, including a schedule of payments linked to agreed milestones, outcomes and timeframes.

27. Fishing Community Assistance will not be paid until a funding agreement has been executed and the DAFF receive a properly rendered tax invoice from the successful applicant for the amount of payment. Subsequent payments will not be made until the DAFF receive:

- an acquittal showing that any previous payments made under the Fishing Community Assistance have been fully expended;
- progress reports as identified in the funding agreement; and
- a properly rendered tax invoice for the amount of the payment.

28. Fishing Community Assistance consists of two rounds. Round one opened on 28 September 2006, and Round two opened on 12 February 2007.

Ruling

Section 6-5 – income according to ordinary concepts

29. A payment received under the Fishing Community Assistance component of the Package to commence a business is not income according to ordinary concepts. The receipt is not assessable income under section 6-5.

Section 15-10 – bounty or subsidy

30. A payment received under the Fishing Community Assistance component of the Package to commence a business 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.

Assessable recoupment

31. A payment under the Fishing Community Assistance component of the Package, made to, or on behalf of the applicant, for the purchase of a depreciating asset, for which deductions for decline in value are available under Division 40, is assessable income under the assessable recoupment provisions in Subdivision 20-A.

Capital gains tax

32. A payment received under the Fishing Community Assistance component of the Package to commence a business is subject to the capital gains tax (CGT) provisions in Parts 3-1 and 3-3.

33. CGT event C2 under section 104-25 happens to the entitlement to receive the Fishing Community Assistance when the entitlement is satisfied.

34. However any capital gain or capital loss made as a result of a payment under the Fishing Community Assistance component of the Package to develop an existing business is disregarded under paragraph 118-37(2)(a).

35. To the extent that an amount paid under the Fishing Community Assistance component of the Package to commence a business relates to the acquisition of a new CGT asset that is not a depreciating asset, the expenditure is excluded from the cost base (or reduced cost base) of the new CGT asset under subsection 110-45(3) or subsection 110-55(6).

36. Where a payment relates to a new asset that is a depreciating asset, the expenditure is not excluded from the CGT cost base (or reduced cost base) of the new asset under subsection 110-45(3) or subsection 110-55(6) to the extent to which it is an assessable recoupment under Subdivision 20-A.

Commissioner of Taxation

11 July 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.***

Section 6-5 – income according to ordinary concepts

37. 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.

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

39. In *G P International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,² the Full High Court stated:

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.

40. Fishing Community Assistance considered in this Ruling is available to commence a new business. The receipt of Fishing Community Assistance is not a normal incident of the applicant’s existing business or for a purpose for which that existing business is carried on. The payment is received in relation to establishing the capital structure of the new business and is of a capital nature.

41. Therefore, Fishing Community Assistance to commence a business is not income according to ordinary concepts and is not included in the taxpayer’s assessable income under subsection 6-5(1).

Section 15-10 – bounty or subsidy

42. 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.

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

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

Bounty or subsidy received in relation to carrying on a business

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*,³ derives from the Latin 'subsidium' meaning 'an aid or help'. The Macquarie Dictionary,⁴ 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*,⁵ *Reckitt & Colman Pty Ltd v. Federal Commissioner of Taxation*,⁶ and *First Provincial Building Society Ltd v. Federal Commissioner of Taxation*⁷ (*First Provincial*), it is now well accepted that a 'bounty' or 'subsidy' includes a financial grant made by a government. A payment received for the Fishing Community Assistance is a 'bounty' or 'subsidy'.

45. A bounty or subsidy will be '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.⁸

46. 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 a 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.⁹

³ (1969) 121 CLR 353.

⁴ 2001, rev. 3rd edn.

⁵ (1953) 86 CLR 570; 10 ATD 126; (1953) 5 AITR 496.

⁶ (1974) 4 ATR 501; 74 ATC 4185.

⁷ (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207.

⁸ (1995) 56 FCR 320 at 333 per Hill J.

⁹ (1995) 56 FCR 320 at 332 per Hill J.

47. Government payments to an entity as assistance to commence a business are not received in relation to carrying on a business. Therefore, Fishing Community Assistance to commence a business is not received in relation to the carrying on of a business, and is not included in the taxpayer's assessable income under section 15-10.

Assessable recoupment

48. Under section 20-20 of Subdivision 20-A, a receipt is an assessable recoupment if:

- it is not income under ordinary concepts or otherwise assessable;
- it is received as recoupment of a loss or outgoing (as defined by section 20-25); and
- the taxpayer can deduct an amount for the loss or outgoing in the current year or an earlier year under a provision listed in section 20-30.

49. A payment of Fishing Community Assistance that is made to, or on behalf of, the applicant, for the purchase of a depreciating asset is a recoupment of a loss or outgoing as defined by section 20-25.

50. Under Division 40, a taxpayer can deduct an amount for the cost of a depreciating asset that they hold based on the decline in value of the asset. The deduction is reduced to the extent that the depreciating asset is used for other than a taxable purpose.¹⁰ Division 40 applies to most depreciating assets,¹¹ including plant, and is a provision listed in section 20-30.

51. Therefore, a payment of Fishing Community Assistance that is made to, or on behalf of, the applicant, for the purchase of a depreciating asset, for which deductions for decline in value are available under Division 40, is an assessable recoupment under Subdivision 20-A.

52. Section 20-35 provides that the assessable recoupment is included in assessable income if the whole amount of the loss or outgoing can be deducted for the current year or in an earlier income year. The total amount assessed cannot exceed the amount of the loss or outgoing. If the recoupment is received before the income year of the deduction then the assessable recoupment is included in assessable income in the year in which the loss or outgoing is deductible.

¹⁰ Subsections 40-25(1) and 40-25(2).

¹¹ Depreciating assets that are excluded from the scope of Division 40 are: depreciating assets for which deductions are available under specific film provisions; depreciating assets that are capital works; and cars where the cents per kilometre method or the 12% of original value method for calculating car expenses.

53. Where the loss or outgoing is deductible under Division 40 over two or more income years, section 20-40 applies so that the total of assessable recoupments to be included in assessable income is limited to the total amount of the loss or outgoing that can be or has been deducted at that time. Any part of an assessable recoupment that is not included in assessable income in the year of receipt, because of this limit, is assessable in later income years to the extent that further amounts are deductible under Division 40 for the depreciating asset in the later income years.

Capital gains tax

Payment relates to satisfaction of an entitlement to receive assistance

54. CGT event C2 under section 104-25 happens to the entitlement to receive Fishing Community Assistance to commence a business when the entitlement is satisfied, that is, when the DAFF reimburses the applicant's expense or pays the expense on the applicant's behalf.

55. However, any capital gain or capital loss made as a result of a payment of Fishing Community Assistance is disregarded under paragraph 118-37(2)(a).

56. Paragraph 118-37(2)(a) provides a CGT exemption by disregarding a capital gain or capital loss that results from receipt of a payment as reimbursement or payment of expenses under a scheme established under legislation by an Australian government agency. The Fishing Community Assistance is paid under such a scheme.

Payment relates to acquisition of new CGT asset

57. To the extent to which a payment of Fishing Community Assistance to commence a business relates to the acquisition of a new CGT asset, it is a recoupment of the cost of acquiring that asset.

58. Expenditure that is recouped is excluded from the cost base of a CGT asset under subsection 110-40(3) or 110-45(3), and the reduced cost base under subsection 110-55(6), except where the recoupment is included in assessable income.

59. Where a payment is a recoupment of the applicant's expenditure to acquire a new CGT asset that is not a depreciating asset, the expenditure is excluded from the CGT cost base (or reduced cost base) of the asset acquired because the amount of the recoupment is not included in assessable income (subsection 110-45(3) and subsection 110-55(6)).

60. However, where a payment is a recoupment of the applicant's expenditure to acquire a depreciating asset, the expenditure is not excluded from the CGT cost base of the asset to the extent that the amount of the recoupment is included in assessable income under section 20-20.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Subject references:

- bounties & subsidies
- capital gains tax
- capital receipts
- government grants income
- income

Legislative references:

- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 11-5
- ITAA 1997 15-10
- ITAA 1997 Subdiv 20-A
- ITAA 1997 20-20
- ITAA 1997 20-25
- ITAA 1997 20-30
- ITAA 1997 20-35
- ITAA 1997 20-40
- ITAA 1997 Div 40
- ITAA 1997 40-25(1)
- ITAA 1997 40-25(2)
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25
- ITAA 1997 110-40(3)
- ITAA 1997 110-45(3)
- ITAA 1997 110-55(6)
- ITAA 1997 118-37(2)(a)
- ITAA 1997 Pt 3-3
- Copyright Act 1968

Case references:

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 7 ATR 519; 77 ATC 4255

- First Provincial Building Society Ltd v. Federal Commissioner of Taxation (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207
- G P International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47
- Placer Development Ltd. v. Commonwealth (1969) 121 CLR 353
- Reckitt & Colman Pty Ltd v. Federal Commissioner of Taxation (1974) 4 ATR 501; 74 ATC 4185
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514
- The Squatting Investment Co Ltd v. Federal Commissioner of Taxation (1953) 86 CLR 570; 10 ATD 126; (1953) 5 AITR 496

Other references:

- Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW
- Department of Agriculture, Fisheries and Forestry Securing our Fishing Future – Fishing Community Assistance Guidelines
<www.daff.gov.au/fishingfuture>

ATO references

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