

CR 2021/18 - Eton Irrigation Cooperative Ltd - receipt of membership



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Class Ruling

Eton Irrigation Cooperative Ltd – receipt of membership

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for residents of Australia who received membership in Eton Irrigation Cooperative Ltd (Eton Irrigation Cooperative) when the Eton Irrigation Scheme transitioned to a local management arrangement on 4 December 2020.
2. Full details of this transition are set out in paragraphs 13 to 34 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - are a resident of Australia (within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936))
 - are not a ‘temporary resident’ as defined in subsection 995-1(1)
 - received shares in Eton Irrigation Scheme Limited (EIS Ltd) on 31 March 2020, and
 - received membership in Eton Irrigation Cooperative on 4 December 2020.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 13 to 34 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2021.

Ruling

Receipt of share in Eton Irrigation Scheme Limited

7. Your receipt of an ordinary share in EIS Ltd on 31 March 2020 is not assessable as ordinary income under section 6-5 or statutory income under section 6-10.

8. Pursuant to subsection 110-25(2), the first element of the cost base of the share in EIS Ltd that you received on 31 March 2020 is nil.

Cancellation of share in Eton Irrigation Scheme Limited

9. CGT event C2 happened to your share in EIS Ltd when your share was cancelled upon EIS Ltd converting to Eton Irrigation Cooperative on 4 December 2020 (section 104-25).

10. The capital proceeds from the cancellation of your share in EIS Ltd were nil (subsection 116-20(1)). Accordingly, no capital gain or capital loss was made from CGT event C2 happening to your EIS Ltd share (subsection 104-25(3)).

Receipt of membership in Eton Irrigation Cooperative

11. Your receipt of membership in Eton Irrigation Cooperative on 4 December 2020 is not assessable as ordinary income under section 6-5 or statutory income under section 6-10.

12. Pursuant to subsection 110-25(2), the first element of the cost base of your membership in Eton Irrigation Cooperative you received on 4 December 2020 is nil.

Scheme

13. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

14. The Eton Irrigation Scheme is the system used to supply water under water allocations to irrigators who purchase irrigation services in the Eton water supply scheme.

15. SunWater Limited (SunWater) is a Queensland Government-owned corporation which is a bulk-water infrastructure developer and manager, owning and operating a number of channel irrigation schemes throughout Queensland.

16. In 2012, the Queensland Government established a project to consider the transition of channel irrigation schemes, including the Eton Irrigation Scheme, to local management arrangements.
17. Chapter 4A of the *Water Act 2000* (Qld) provides for the transfer of the business, assets and liabilities of SunWater in relation to the Eton Irrigation Scheme to an irrigation entity owned by the irrigators of the scheme. The arrangement is known as a transfer to a 'local management arrangement' or 'local management'.
18. Irrigators of the Eton Irrigation Scheme carry on horticultural businesses and the acquisition of water through the Eton Irrigation Scheme forms part of the ordinary course of their business.
19. The irrigators of the Eton Irrigation Scheme are entitled to water allocations in accordance with the provisions of the *Water Act 2000* (Qld).

Irrigation offer and transition to local management

20. On 30 September 2019, all eligible irrigators of the Eton Irrigation Scheme were invited to consider a proposal to transition the Eton Irrigation Scheme to local management (Irrigation Offer).
21. Eligible irrigators were the registered holders of a water allocation delivered via the Eton Irrigation Scheme on 19 September 2019 who had a channel and pipeline contract with SunWater for their water allocation and were located in Australia.
22. The Irrigation Offer set out detailed information about the local management proposal including the proposed conversion of EIS Ltd to Eton Irrigation Cooperative, governance, operation and management arrangements.
23. The Irrigation Offer asked all eligible irrigators of the Eton Irrigation Scheme to decide whether they supported the local management proposal to transfer the Eton Irrigation Scheme from SunWater to Eton Irrigation Cooperative. The Irrigation Offer offered all eligible irrigators to apply for a share in EIS Ltd which subsequently would become membership in Eton Irrigation Cooperative.
24. There was no consideration payable by eligible irrigators of the Eton Irrigation Scheme to accept the Irrigation Offer, or to receive a share in EIS Ltd, or to become a member of Eton Irrigation Cooperative.
25. The Irrigation Offer set out that a member of Eton Irrigation Cooperative would have the opportunity to directly contribute towards the management of the Eton Irrigation Scheme based on the rights associated with their membership.
26. In order for the transition to local management to proceed, a minimum percentage of irrigators with a water allocation in the Eton Irrigation Scheme needed to accept the Irrigation Offer. The Irrigation Offer closed on 25 November 2019 and the requisite minimum percentage of irrigators accepting the offer was achieved.

Eton Irrigation Scheme Limited and Eton Irrigation Cooperative

27. EIS Ltd was a public company limited by shares and established for the purposes of transitioning the Eton Irrigation Scheme to local management.
28. EIS Ltd was owned and operated by the Queensland Government until the transfer of the Eton Irrigation Scheme to local management commenced on 31 March 2020. As of 31 March 2020, EIS Ltd was operated by the Board of Eton Irrigation Cooperative.
29. The following occurred on 31 March 2020:

- the business, assets and liabilities of the Eton Irrigation Scheme were transferred from SunWater to EIS Ltd, and
 - each eligible irrigator who accepted the Irrigation Offer and held a water entitlement on 31 March 2020 was issued with a share in EIS Ltd.
30. EIS Ltd operated in accordance with its constitution which:
- ensured the assets and income of EIS Ltd were applied solely in furtherance of its objects of carrying out the activities for the transition of the Eton Irrigation Scheme to local management, and for the period after the transition to local management to conduct the primary activities as set out in Eton Irrigation Cooperative Rules (Article 5)
 - prohibited EIS Ltd from paying dividends (Article 11)
 - restricted eligibility to being a shareholder after transition to local management to the same eligibility to membership of Eton Irrigation Cooperative (Article 6)
 - prohibited EIS Ltd from making distributions on dissolution or winding up to shareholders; any surplus assets must instead be transferred for no consideration to a like-minded entity with the objects consistent with the objects of EIS Ltd (Article 61).
31. On 4 December 2020, the transition of the Eton Irrigation Scheme to local management was completed when EIS Ltd converted to Eton Irrigation Cooperative with the following occurring:
- all shares in EIS Ltd were cancelled
 - after fulfilling the requirements under the *Cooperatives Act 1997* (Qld) (Cooperatives Act), EIS Ltd was
 - taken to be incorporated under the Cooperatives Act, and
 - registered as a non-trading cooperative without share capital named Eton Irrigation Cooperative.
32. On 4 December 2020, each irrigator who held a share in EIS Ltd automatically received membership in Eton Irrigation Cooperative in exchange for the cancellation of their share in EIS Ltd.
33. Eton Irrigation Cooperative operates in accordance with the Rules of Eton Irrigation Cooperative, which set out that:
- As per Rule 6(a)(i), the primary activities of Eton Irrigation Cooperative are
 - owning, operating and maintaining the Eton Irrigation Scheme
 - providing irrigation services and water transportation services to customers
 - facilitating the purchase, sale, transfer or lease of water allocations distributed under Eton Irrigation Cooperative's water distribution operations licence for the Eton Irrigation Scheme
 - planning and providing for the renewal and refurbishment of the Eton Irrigation Scheme infrastructure, plant and equipment to meet anticipated future requirements, and
 - doing all such other lawful things as are incidental or conducive to (and for the purpose of) the attainment of the above activities.

- The assets and income of Eton Irrigation Cooperative are applied solely in furtherance of its primary activities and no portion will be distributed directly or indirectly to its members except as bona fide compensation for services rendered or expenses incurred on behalf of Eton Irrigation Cooperative (Rules 17 and 59).
- To establish membership, a member must be the holder of a water allocation and be a party to a supply contract (Rule 6(a)(ii)).
- Eton Irrigation Cooperative is prohibited from making distributions on dissolution or winding up to its members. Any surplus assets must instead be transferred for no consideration to a like-minded entity with the primary activities similar to Eton Irrigation Cooperative (Rule 62).

Membership in Eton Irrigation Cooperative

34. Membership in Eton Irrigation Cooperative:

- carries no entitlement to a distribution of the assets or income of Eton Irrigation Cooperative
- carries no entitlement to a distribution on the dissolution or winding up of Eton Irrigation Cooperative
- is not transferrable
- carries no entitlement to consideration if a member ceases to hold their membership interest
- carries limited liability
- is not compulsory for eligible irrigators of the Eton Irrigation Scheme.

Appendix – Explanation

① *This Explanation 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.*

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Income tax

35. Subsection 6-1(1) provides that a taxpayer's assessable income consists of ordinary income and statutory income.

Ordinary income

36. Subsection 6-5(1) provides that your assessable income includes income according to ordinary concepts, which is called 'ordinary income'.

37. Ordinary income is not defined in the income tax legislation. In order to determine whether your receipt of a share in EIS Ltd which was automatically converted to membership in Eton Irrigation Cooperative (collectively, referred to as the 'receipt under the Irrigation Offer') is ordinary income, it is necessary to consider how the courts have determined when a receipt is ordinary income.

38. The High Court's decision in *GP International*¹ provides a useful exposition of when non-recurrent receipts may be ordinary income. The High Court stated:

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. The factors relevant to the ascertainment of the character of a receipt of money are not necessarily the same as the factors relevant to the ascertainment of the character of its payment.

39. In the present case, the elements of periodicity, regularity and recurrence are not present in your receipt under the Irrigation Offer. There is no right or thing disposed of by

¹ *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25 (*GP International*).

you in exchange for the receipt of your share. These facts weigh against a conclusion that the receipt is ordinary income.

40. The High Court in *GP International* noted that the scope of the transaction, venture or business in respect of which the receipt is received and the recipient's purpose in engaging in that transaction will be relevant in the circumstances of that case. The High Court went on to analyse the contract under which the taxpayer had received the receipt as critical in determining the scope of the taxpayer's business and the taxpayer's purpose in engaging in the transaction. After analysing the contract, the High Court concluded that the establishment payments were received by *GP International* as part of the remuneration it earned in the carrying on of its business.

41. The question in the present case is whether the scope of your business and your purpose in entering the transaction is such that the receipt under the Irrigation Offer is earned in the course of carrying on your business.

42. You carry on a horticultural business and the receipt under the Irrigation Offer would not ordinarily be seen as a return within the scope of such a business. In addition, there is no requirement for membership in Eton Irrigation Cooperative in order to carry on your business, nor is membership required for you to be eligible to hold water allocation rights and enter water supply arrangements that are necessary to carry on the activities of your business.

43. The receipt under the Irrigation Offer does not have the requisite connection or link to your right to your water allocation, water supply or ownership of land, being things that are necessary to carry on the activities of your business.

44. In these circumstances, it is considered that your receipt under the Irrigation Offer cannot be directly linked to your ongoing income-earning horticultural activities.

45. The High Court in *Myer Emporium*² dealt with gains from a transaction that was isolated and extraordinary in terms of the normal business operation of the taxpayer. In *Myer Emporium*, the High Court held that the amount was ordinary income rather than a capital receipt. Despite being an isolated transaction, it was in the ordinary course of the taxpayer's business and the receipt was held to be ordinary income on the basis of the taxpayer's profit-making purpose.

46. Taxation Ruling TR 92/3 *Income tax: whether profits on isolated transactions are income* provides guidance on determining whether profits from an isolated transaction are income and therefore assessable as ordinary income under section 6-5. Paragraph 15 of TR 92/3 provides that a profit from an isolated transaction is generally income when both of the following elements are present:

- the intention or purpose of the taxpayer in entering into the transaction was to make a profit or gain, and
- the transaction was entered into, and the profit was made, in the course of carrying on a business or in carrying out a business operation or commercial transaction.

47. In accordance with the reasoning in *Myer Emporium*, your intention would need to be ascertained at the time you received your share in EIS Ltd on 31 March 2020 and membership in Eton Irrigation Cooperative on 4 December 2020.

48. By accepting the Irrigation Offer, you displayed an intention to participate in the ongoing management of the Eton Irrigation Scheme in accordance with the rights and obligations of membership in Eton Irrigation Cooperative.

² *Commissioner of Taxation v Myer Emporium Ltd* [1987] HCA 18 (*Myer Emporium*).

49. You are not entitled to any distribution of assets or income of Eton Irrigation Cooperative or any distribution on the dissolution or winding up of Eton Irrigation Cooperative. Membership in Eton Irrigation Cooperative is not transferrable.

50. As you will not be entitled to any distribution of assets, income or cash consideration as a result of having, or ceasing, membership in Eton Irrigation Cooperative there is no evidence that you had an intention or motive to make a profit or gain from becoming a member of Eton Irrigation Cooperative.

51. Your receipt under the Irrigation Offer is considered to be a receipt on capital account. There is not a sufficient nexus between the receipt and your business activities to consider the receipt under the Irrigation Offer to be on income account.

52. Accordingly, the receipt under the Irrigation Offer is not included in your assessable income as ordinary income under section 6-5.

Statutory income

53. Your assessable income also includes some amounts that are *not* ordinary income (subsection 6-10(1)). Amounts that are *not* ordinary income, but are included in your assessable income by provisions about assessable income, are called 'statutory income' (subsection 6-10(2)).

54. These amounts are included by provisions about assessable income. For a summary list of these provisions, see section 10-5, which includes in assessable income:

- bounties and subsidies (section 15-10), and
- non-cash business benefit (section 21A of the ITAA 1936).

Bounties and subsidies

55. Section 15-10 includes in assessable income a bounty or subsidy that:

- you receive in relation to carrying on a business, and
- is not assessable as ordinary income under section 6-5.

56. A bounty or subsidy will be 'in relation to carrying on a business' where 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 Building Society*³:

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.

...

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.

57. In the present case, the transfer of the Eton Irrigation Scheme to local management was implemented as a result of the requisite percentage of eligible irrigators accepting the

³ *First Provincial Building Society Ltd v Commissioner of Taxation* [1995] FCA 87.

Irrigation Offer. However, there is no requirement for an eligible irrigator to be a member of Eton Irrigation Cooperative in order to carry on the activities of their business. Every eligible irrigator is entitled to their water allocation and water supply regardless of whether or not they are a member of Eton Irrigation Cooperative.

58. Therefore, there is no real connection between your receipt under the Irrigation Offer and the activities of your horticultural business from which assessable income is derived.

59. Accordingly, your receipt under the Irrigation Offer is not considered to be a bounty or subsidy assessable under section 15-10.

Non-cash business benefits

60. According to section 21A of the ITAA 1936, in determining the income derived by a taxpayer, a non-cash business benefit that is not convertible to cash will be treated as if it were convertible to cash (subsection 21A(1) of the ITAA 1936). If a non-cash business benefit (whether or not convertible to cash) is income derived by a taxpayer:

- the benefit will be brought into account at its arm's length value reduced by the recipient's contribution (if any), and
- if the benefit is not convertible to cash – in determining the arm's length value of the benefit, any conditions that would prevent or restrict the conversion of the benefit to cash will be disregarded (subsection 21A(2) of the ITAA 1936).

61. For section 21A of the ITAA 1936 to apply to the receipt under the Irrigation Offer, there must be a 'non-cash business benefit' and 'income derived' by you.

62. The phrases 'non-cash business benefit' and 'income derived by a taxpayer' are defined in subsection paragraph 21A(5) of the ITAA 1936 as:

... **income derived by a taxpayer** means income derived by a taxpayer in carrying on a business for the purpose of gaining or producing assessable income.

non-cash business benefit means property or services provided after 31 August 1988:

- (a) wholly or partly in respect of a business relationship; or
- (b) wholly or partly for or in relation directly or indirectly to a business relationship.

63. In the present case, your receipt under the Irrigation Offer is not considered ordinary income derived by you as explained in paragraphs 36 to 52 of this Ruling. Therefore, your receipt under the Irrigation Offer is not considered a non-cash business benefit received by you under section 21A of the ITAA 1936.

Capital gains tax

Receipt of share in Eton Irrigation Scheme Limited

64. Section 110-25 provides the general rules about the cost base of a CGT asset. The cost base of a CGT asset consists of five elements (subsection 110-25(1)). Subsection 110-25(2) provides that the first element of the cost base of a CGT asset is the total of:

- the money paid, or required to be paid, in respect of acquiring it, and
- the market value of any other property given, or required to be given, in respect of acquiring it (worked out as at the time of the acquisition).

65. Division 112 contains modifications to the general rules about the cost base and reduced cost base of a CGT asset. Section 112-20 contains the market value substitution rule. Paragraph 112-20(1)(a) provides that if you did not incur any expenditure to acquire a CGT asset from another entity, the first element of the cost base and reduced cost base of the asset is its market value. However, subsection 112-20(3) provides situations in which the market value substitution rule in subsection 112-20(1) does not apply.

66. There are some situations in which the market value substitution rule does not apply including where a share in a company or a right to acquire a share in a company is issued or allotted to the acquirer and the acquirer did not pay or give anything for it (table item 5 of subsection 112-20(3)).

67. In accepting the Irrigation Offer, you were not required to provide consideration of any kind for the receipt of your EIS Ltd share. In these circumstances, the market value substitution rule does not apply to your receipt of a share in EIS Ltd.

68. Accordingly, the first element of the cost base of a share in EIS Ltd at the time you received it on 31 March 2020 is nil.

Cancellation of your Eton Irrigation Scheme Limited share

69. CGT event C2 happens when ownership of an intangible CGT asset ends by, among other things, being cancelled or surrendered (subsection 104-25(1)). CGT event C2 happened when your share in EIS Ltd was cancelled upon EIS Ltd converting to Eton Irrigation Cooperative on 4 December 2020 (subsection 104-25(2)).

70. Subsection 116-20(1) provides that the capital proceeds from a CGT event are the total of:

- the money you have received, or are entitled to receive, in respect of the event happening, and
- the market value of any other property you have received, or are entitled to receive, in respect of the event happening (worked out as at the time of the event).

71. In consideration for the cancellation of your share in EIS Ltd, you received property in the form of a membership interest in Eton Irrigation Cooperative.

72. 'Market value' is defined in Subdivision 960-S. The Commissioner has set out principles that taxpayers should adopt in determining market value in an ATO Guide titled *Market valuation for tax purposes*.

73. In the present case:

- Eton Irrigation Cooperative is a non-trading cooperative without share capital operating on a 'not-for-profit' basis. The Rules of Eton Irrigation Cooperative require any surplus funds to be retained in the business, and the transfer of any remaining funds to an entity with a like purpose in the event of dissolution or winding up.
- Membership in Eton Irrigation Cooperative carries no entitlement to distributions of profit or capital, is not transferrable and carries no entitlement to any distribution on its dissolution or winding up.

74. Accordingly, in the present case, the market value of the membership interest in Eton Irrigation Cooperative that you received on 4 December 2020 is nil.

75. The capital proceeds from the cancellation of your share in EIS Ltd were nil.

76. Accordingly, you did not make a capital gain or capital loss on the cancellation of your EIS Ltd share (subsection 104-25(3)).

Receipt of membership in Eton Irrigation Cooperative

77. As set out in paragraph 65 of this Ruling, section 110-25 provides the general rules about the cost base of a CGT asset. The first element of the cost base of a CGT asset is the total of:

- the money paid, or required to be paid, in respect of acquiring it, and
- the market value of any other property given, or required to be given, in respect of acquiring it (worked out as at the time of the acquisition).

78. As set out paragraphs 71 to 75 of this Ruling, the market value of your membership interest in Eton Irrigation Cooperative is nil. The first element of cost of your membership interest in Eton Irrigation Cooperative received on 4 December 2020 is nil.

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TR 92/3

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 21A
- ITAA 1936 21A(1)
- ITAA 1936 21A(2)
- ITAA 1936 21A(5)
- ITAA 1997 6-1(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 6-10(1)
- ITAA 1997 6-10(2)
- ITAA 1997 10-5
- ITAA 1997 15-10
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 110-25
- ITAA 1997 110-25(1)
- ITAA 1997 110-25(2)
- ITAA 1997 Div 112
- ITAA 1997 112-20

- ITAA 1997 112-20(1)
- ITAA 1997 112-20(1)(a)
- ITAA 1997 112-20(3)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 960-S
- ITAA 1997 995-1(1)
- TAA 1953
- Cooperatives Act 1997 (QLD)
- Water Act 2000 (QLD) Chapter 4A

Case references:

- Commissioner of Taxation v Myer Emporium Ltd [1987] HCA 18; 163 CLR 199; 87 ATC 4363; 18 ATR 693
- First Provincial Building Society Ltd v Commissioner of Taxation [1995] FCA 87; 56 FCR 320; 95 ATC 4145; 30 ATR 207; 128 ALR 118
- GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; 170 CLR 124; 64 ALJR 392; 90 ATC 4413; 21 ATR 1

Other references:

- Market valuation for tax purposes

ATO references

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