


# ***CR 2023/35 - Tasmanian Irrigation Pty Ltd - water entitlements roll-over***

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Status: **legally binding**

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## Class Ruling

# Tasmanian Irrigation Pty Ltd – water entitlements roll-over

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### **📌 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 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 water entitlement holders in any of the 3 South East Irrigation Schemes who convert their water entitlements to the Greater South East Irrigation Scheme located in Tasmania.
2. Details of this scheme are set out in paragraphs 18 to 33 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

**Note:** By issuing this Ruling, the ATO is not endorsing this product or service. Potential purchasers or users or participants must form their own view about the product or service.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - held a water entitlement in ‘South East Stage One (Coal River)’, ‘South East Stage Two’ or ‘South East Stage Three (Sorell)’ (collectively Existing Water Entitlements) in the South East Irrigation Scheme issued by Tasmanian Irrigation Pty Ltd (Tasmanian Irrigation)
  - were registered on the Water Entitlements Register as at the date on which the offer to convert your Existing Water Entitlements was made by Tasmanian Irrigation (the offer date)

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- surrendered your Existing Water Entitlements in accordance with the offer to convert to the Greater South East Irrigation Scheme made by Tasmanian Irrigation on the offer date
- held your Existing Water Entitlements on capital account, that is, your water entitlements were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2022 to 30 June 2024.

## **Ruling**

### **CGT event C2 happens on disposal of your Existing Water Entitlements**

6. The surrender of any Existing Water Entitlements will give rise to a CGT event C2 pursuant to section 104-25 as your ownership of the entitlements comes to an end.

7. The time of CGT event C2 is the date you entered the contract with Tasmanian Irrigation to surrender your Existing Water Entitlement to convert to the new water entitlement in the Greater South East Irrigation Scheme (paragraph 104-25(2)(a)).

8. The capital proceeds from the CGT event C2 is the market value of the new water entitlements in the Greater South East Irrigation Scheme you receive.

9. You will make a capital gain from CGT event C2 happening if the market value of the new water entitlement was more than the cost base of the Existing Water Entitlement. If so, the capital gain is equal to the amount of the excess. You make a capital loss if the market value of the new water entitlement was less than the reduced cost base of the Existing Water Entitlement. If so, the capital loss is equal to the amount of the shortage (subsection 104-25(3)).

### **Availability of roll-over under Subdivision 124-R**

10. Where you surrender an Existing Water Entitlement which only consists of one water entitlement which is replaced with one or more different water entitlements, and you have not chosen a roll-over under subsection 124-1105(2) in relation to that single water entitlement, roll-over under Subdivision 124-R will automatically apply in relation to that single Existing Water Entitlement (section 124-1105(1)).

11. Where you surrender Existing Water Entitlements which consist of more than one water entitlement, you may choose to apply roll-over in relation to those Existing Water Entitlements (section 124-1105(2)).

### **Consequences if roll-over applies**

12. If roll-over applies, either automatically or if you choose it to apply, the capital gain or capital loss arising to you from the disposal of the Existing Water Entitlement is disregarded (section 124-1110).

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13. Where there is an automatic roll-over under subsection 124-1105(1), the first element of the cost base (or reduced cost base) of each new water entitlement is worked out in accordance with subsection 124-1120(1).

14. Where you choose to obtain the roll-over under subsection 124-1105(2), the first element of the cost base (or reduced cost base) of each new water entitlement is worked out in accordance with subsection 124-1120(2).

15. If roll-over applies, the acquisition date of the new water entitlement for the purpose of making a discount capital gain is the date you acquired your Existing Water Entitlement involved in the roll-over (table item 2 of subsection 115-30(1)).

### **Consequences if roll-over is not chosen**

16. If you do not choose roll-over, you must account for any capital gain or capital loss from CGT event C2 happening on the disposal of your Existing Water Entitlement in working out your net capital gain or net capital loss for the income year in which CGT event C2 happened (subsection 104-25(3)).

17. If you made a capital gain, you can treat the capital gain as a 'discount capital gain' provided the conditions in Subdivision 115-A are met. In particular, you must have acquired your Existing Water Entitlement at least 12 months before the date you entered into the contract with Tasmanian Irrigation to surrender the entitlement (section 115-25).

## **Scheme**

18. 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.

19. Tasmanian Irrigation (Australian Company Number 133 148 384) was established on 9 September 2008 as its former name Tasmanian Irrigation Development Board Pty Ltd.

20. Tasmanian Irrigation is wholly owned by the State of Tasmania, and it is governed by the *Irrigation Company Act 2011* (Tas).

21. Tasmanian Irrigation is the regulated water entity (RWE) for the Greater South East Irrigation District once proclaimed and is the current RWE for the 3 existing South East irrigation schemes.

22. As the RWE of irrigation districts, Tasmanian Irrigation has the power to issue water entitlements to irrigators within a water district pursuant to Part 9 of the *Water Management Act 1999* (Tas) and Part III of the *Irrigation Clauses Act 1973* (Tas).

### **Existing Water Entitlements**

23. The Existing Water Entitlements provide holders with a right to a water entitlement in the existing South East Irrigation Scheme, each of which were acquired on or after 20 September 1985.

24. An Existing Water Entitlement includes an irrigation right and delivery right. Irrigation rights confer entitlements to have an allocation of water made available for delivery within a region during the summer or winter delivery period of the irrigation season. The entitlement arising under irrigation rights is defined as a volume and denominated in megalitre units. Delivery rights confer entitlements to a share of the

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capacity of the scheme to deliver water within a zone during each delivery period of the irrigation season. The entitlement arising under delivery rights is defined as a flow rate and denominated in megalitre per day units.

### **Conversion of Existing Water Entitlements**

25. Tasmanian Irrigation is aiming to integrate the 3 existing South East Irrigation Schemes as well as extending the area and offering a significant increase in new water to the region. Irrigators in these existing schemes are being offered the opportunity to convert their Existing Water Entitlements to the Greater South East Irrigation Scheme.

26. The Greater South East Irrigation District encompasses the existing Sorrell Irrigation District, Coal River Irrigation Water District and the South East Irrigation Water District.

27. The intent of offering a conversion of these Existing Water Entitlements into entitlements within the Greater South East Irrigation Scheme is to increase the efficiency of delivery for participants in this scheme given that the Greater South East Irrigation Scheme will have an enhanced, but single, water source which will be more easily managed through homogenous water entitlements. Water entitlements within the Greater South East Irrigation Scheme may, depending where the water delivery point is located, have delivery rights known as 'zone delivery rights'.

28. The election to convert Existing Water Entitlements is made via a contractual commitment entered between the holder of that entitlement and Tasmanian Irrigation.

29. Clause 5 of the 'Water Entitlements Purchase Contract Greater South East Irrigation District' provides for Tasmanian Irrigation agreeing to grant new water entitlements in exchange for surrendering the Existing Water Entitlements and paying any additional amount required.

30. Existing Water Entitlements that have converted from an existing scheme will be surrendered in exchange for new water entitlements.

31. Where the Existing Water Entitlement is a South East Stage One (Coal River) entitlement, the holder will need to pay \$1,350 in addition to the surrender of the entitlement to acquire the new entitlement.

32. Tasmanian Irrigation has the absolute discretion as to accept the surrender of any Existing Water Entitlements. However, Tasmanian Irrigation cannot compel the surrender of Existing Water Entitlements where the same is not offered up by the entitlement holder.

33. The only consideration received for the disposal of the Existing Water Entitlement will be a new water entitlement or new water entitlements.

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**Commissioner of Taxation**

5 July 2023

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Status: **not legally binding**

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## Appendix – Explanation

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**ⓘ** *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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### **CGT event C2 happens on disposal of your Existing Water Entitlements**

34. Section 104-25 provides that CGT event C2 happens if a CGT asset you own ends in one of a number of ways, including its cancellation or surrender.

35. A CGT asset is defined in subsection 108-5(1) as any kind of property or a legal or equitable right that is not property.

36. Section 124-1105(4) provides that:

A **water entitlement** is a legal or equitable right that an entity owns that relates to water, including a right to:

- (a) receive water; or
- (b) take water from a water resource; or
- (c) have water delivered; or
- (d) deliver water;

and includes a right that must be owned by the entity in order to own a right covered by paragraph (a), (b), (c) or (d).

37. Tasmanian Irrigation is the RWE of irrigation districts and has the power to issue irrigation rights to irrigators. An agreement setting out the terms on which the rights are issued is signed between the Tasmanian Irrigation and the holder.

38. Irrigation rights stipulating annual allocation of water supply, delivery right and flow rate in the form of a contract between operators of the scheme and land holders meet the definition of water entitlements under subsection 124-1105(4) and the definition of a CGT asset under subsection 108-5(1).

39. Therefore, the surrender of Existing Water Entitlement will give rise to a CGT event C2 as your ownership of the original water entitlement comes to an end (paragraph 104-25(1)(d)).

### **When CGT event C2 happens**

40. CGT event C2 happens when you enter into the contract that results in the asset ending, or if there is no contract, when the asset ends (subsection 104-25(2)).

41. The offer to surrender Existing Water Entitlements and purchase new water entitlements is accepted by entering the Water Entitlements Purchase Contract Greater

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South East Irrigation District. Therefore, CGT event C2 happens when you enter into this contract.

42. A capital gain is made from CGT event C2 if the capital proceeds from the ending of a CGT asset exceed the asset's cost base. A capital loss is made if the capital proceeds from the ending of the CGT asset are less than the asset's reduced cost base (subsection 104-25(3)).

43. The capital proceeds from a CGT event include the market value of any property you have received or are entitled to receive, in respect of the event happening (paragraph 116-20(1)(b)).

44. If you surrender your Existing Water Entitlements, you will only receive replacement water entitlements from Tasmanian Irrigation. You will not receive any other consideration. Therefore, the capital proceeds from CGT event C2 happening will be the market value of the new water entitlements.

#### **Roll-over under Subdivision 124-R**

45. The consequences if roll-over applies or does not apply are covered in paragraphs 12 to 17 of this Ruling.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1997 104-25
  - ITAA 1997 104-25(1)(d)
  - ITAA 1997 104-25(2)
  - ITAA 1997 104-25(2)(a)
  - ITAA 1997 104-25(3)
  - ITAA 1997 108-5(1)
  - ITAA 1997 Subdiv 115A
  - ITAA 1997 115-25
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 Subdiv 124-R
  - ITAA 1997 124-1105(1)
  - ITAA 1997 124-1105(2)
  - ITAA 1997 124-1105(4)
  - ITAA 1997 124-1110
  - ITAA 1997 124-1120(1)
  - ITAA 1997 124-1120(2)
  - ITAA 1997 997-50
  - ITAA 1997 995-1(1)
  - Irrigation Company Act 2011 (Tas)
  - Water Management Act 1999 (Tas) Pt 9
  - Irrigation Clauses Act 1973 (Tas) Pt III
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### ATO references

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