# *TD 93/D17 (Withdrawn) - Income tax: what are the taxation consequences of a long-term diversion-from-stream licence purchased by a primary producer and subsequently transferred, in whole or in part, either permanently or temporarily for valuable consideration?*

# Draft Taxation Determination

## Income tax: what are the taxation consequences of a long-term diversion-from-stream licence purchased by a primary producer and subsequently transferred, in whole or in part, either permanently or temporarily for valuable consideration?

1. The taxation consequences differ and will depend upon whether there is:

(a) a permanent transfer of a long term diversion-from-stream licence in whole or in part; or
(b) a temporary transfer of a long term diversion-from-stream licence in whole or in part.

2. Where there is a permanent transfer of a long term diversion-from-stream licence in whole or in part, the capital gains and capital loss provisions of Part IIIA of the *Income Tax Assessment Act 1936* apply if the licence is acquired after 19 September 1985. The long-term diversion-from-stream licence is an asset as defined under section 160A. The cost of purchase of the long term diversion-from-stream licence is not deductible because it is capital in nature. (See Examples 1 and 2).

3. Where there is a temporary transfer of a long term diversion-from-stream licence in whole or in part, the income from the sale by the transferor is assessable under subsection 25(1) and the cost of purchase by the transferee is deductible under subsection 51(1).

4. The income from the temporary transfer of a long term diversion-from-stream licence in whole or in part, is an ordinary incident of the carrying on of a business of primary production (FC of T v. Cooling, 90 ATC 4472 at p.4484, (1990) 21 ATR 13 at p.26). The cost of the temporary transfer of the long term diversion-from-stream licence is on revenue account as the benefit obtained is not enduring and relates to the process by which the primary producer operates to obtain regular returns by means of regular outlays (Sun Newspapers Ltd. & Anor v. FC of T (1936) 61 CLR 337; (1938) 5 ATD 87). (See Examples 3 and 4).

5. Where there is a temporary transfer of a long term diversion-from-stream licence in whole or in part, the income from the sale by the transferor and cost of purchase by the transferee is to be treated as income from primary production and a primary production deduction respectively. (See Examples 3 and 4).

*Example:*

1. *Farmer Tim, a primary producer, purchases for $10,000 on 1 July 1993, a fifteen year diversion-from-stream licence entitling him annually to 100 megalitres of water from the Rural Water Corporation of Victoria. On 30 June 1994, the licence is subsequently transferred permanently in whole to Farmer Joe for $20,000. Farmer Tim has disposed of an asset and must include a capital gain of $10,000 ($20,000 less $10,000) in his assessable income for the year ended 30 June 1994. Farmer Joe has acquired an asset and is not entitled to a deduction of $20,000.*

2. *Farmer Tim, a primary producer, purchases for $10,000 on 1 July 1993, a fifteen year diversion-from-stream licence entitling him annually to 100 megalitres of water from the Rural Water Corporation of Victoria. On 30 June 1994, Farmer Tim permanently transfers 50 megalitres of his water entitlement to Farmer Joe for $10,000. Farmer Tim has disposed of part of an asset and must include a capital gain of $5,000 ($10,000 less $5,000) in his assessable income for the year ended 30 June 1994. Farmer Joe has acquired an asset and is not entitled to a deduction of $10,000.*

3. *Farmer Tim, a primary producer, purchases for $10,000 on 1 July 1993, a fifteen year diversion-from-stream licence entitling him annually to 100 megalitres of water from the Rural Water Corporation of Victoria. On 30 June 1994, Farmer Tim temporarily transfers 100 megalitres of his water entitlement for the current season to Farmer Joe for $20,000. Farmer Tim must include $20,000 in his assessable income under subsection 25(1) for the year ended 30 June 1994. Farmer Tim must treat the $20,000 assessable income as primary production income. Farmer Joe is entitled to a deduction under subsection 51(1) of $20,000 for the year ended 30 June 1994. Farmer Joe must treat the $20,000 deduction as a primary production deduction.*

4. *Farmer Tim, a primary producer, purchases for $10,000 on 1 July 1993, a fifteen year diversion-from-stream licence entitling him annually to 100 megalitres of water from the Rural Water Corporation of Victoria. On 30 June 1994, Farmer Tim temporarily transfers 50 megalitres of his water entitlement for the current season to Farmer Joe for $10,000. Farmer Tim must include $10,000 in his assessable income under subsection 25(1) for the year ended 30 June 1994. Farmer Tim must treat the $10,000 assessable income as primary production income. Farmer Joe is entitled to a deduction under subsection 51(1) of $10,000 for the year ended 30 June 1994. Farmer Joe must treat the $10,000 deduction as a primary production deduction.*

**Commissioner of Taxation**
04/02/93

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