


PR 2018/8 - Income tax: tax consequences for a Solar Gardener in an Enova Solar Garden Project

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Product Ruling

Income tax: tax consequences for a Solar Gardener in an Enova Solar Garden Project

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

No guarantee of commercial success

The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities who participate in the scheme to which this Product Ruling relates.
2. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. In this Product Ruling, terms defined in the documents listed at paragraph 18 have been capitalised.
3. In this Product Ruling the scheme involves participation in an Enova Solar Garden Project (an Enova Project), as a Solar Gardener, by a customer of Enova Energy Pty Ltd (Enova Retail), including the receipt of a credit on the cost of electricity supplied to the Solar Gardener over the term of the Enova Project in consideration for a payment made at the commencement.
4. This Product Ruling does not address:
 - the taxation consequences of any expenditure incurred in relation to an Enova Project, other than the Solar Garden Option Payment
 - the taxation consequences for the Incoming Party upon the Solar Gardener's decision to discontinue as a party to the Solar Gardener Agreement (see paragraph 21(f) of this Product Ruling)
 - the taxation consequences of an assignment of the Solar Gardener's rights under the Solar Gardener Agreement
 - the extent to which a commercial Solar Gardener must, for the purposes of section 108-20, use the property nominated by them in accordance with paragraph 21(b)(i) of this Product Ruling as their main residence in order for their rights under the Solar Gardener Agreement to be used or kept 'mainly' for personal use or enjoyment (see paragraph 44 of this Product Ruling)
 - the taxation consequences to arise upon distribution to the Solar Gardener of any proceeds of sale of the Solar Garden Panel under the circumstances set out in paragraph 21(j) of this Product Ruling, and

- what a fair and reasonable method or level of apportionment (as required) would be in the circumstances addressed at paragraph 33 of this Product Ruling.

Class of entities

5. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. In this Product Ruling, those entities that can rely on the Ruling section are referred to as a Solar Gardener or, where the context requires, a 'private Solar Gardener' or a 'commercial Solar Gardener'.

6. For the purposes of this Product Ruling:

- a private Solar Gardener consists of a person that does not use the property nominated by them in accordance with paragraph 21(b)(i) of this Product Ruling for a purpose other than as their main residence, and
- a commercial Solar Gardener consists of a person (natural or incorporated) that uses the property nominated by them in accordance with paragraph 21(b)(i) of this Product Ruling for an assessable income producing purpose.

7. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that:

- as customers of Enova Retail, have electricity supplied to a property nominated by them under the Standard Retail Terms, and
- pay the Solar Garden Option Payment and, as a Solar Gardener, enter into an Enova Project as described in paragraphs 18 to 22 of this Product Ruling on or after the date this Product Ruling is made and on or before 30 June 2021.

8. The class of entities that can rely on this Product Ruling does **not** include entities that:

- are non-residents for Australian taxation purposes, or
- pay the Solar Garden Option Payment and enter into an Enova Project as described in paragraphs 18 to 22 of this Product Ruling before the date of this Product Ruling or after 30 June 2021.

Superannuation Industry (Supervision) Act 1993

9. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this scheme may contravene the provisions of SISA.

Qualifications

10. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 18 to 22 of this Product Ruling.

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

- this Product 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 Product Ruling may be withdrawn or modified.

Date of effect

12. This Product Ruling applies prospectively from 15 August 2018, the date it is published. It therefore applies only to the specified class of entities that enter into the scheme from 15 August 2018 until 30 June 2021, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

13. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

14. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of the Ruling and, to that extent, this Product Ruling will have no effect.

15. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

16. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Ruling

17. Subject to paragraph 4 of this Product Ruling and the assumptions in paragraph 22 of this Ruling:

- (a) The Electricity Supply Credit provided to the Solar Gardener pursuant to the Solar Gardener Agreement will not be assessable income of the Solar Gardener under section 6-5 or section 6-10.
- (b) The Solar Garden Option Payment incurred by a private Solar Gardener will not be deductible under section 8-1.
- (c) The Solar Garden Option Payment incurred by a commercial Solar Gardener will be deductible under section 8-1 to the extent that the property to which Enova Retail is supplying electricity under the terms of the Solar Gardener Agreement is used for an assessable income producing purpose (and is not used as the Solar Gardener's main residence). This deduction is allowable in the income year incurred, subject to the application of paragraph 17(d) of this Product Ruling.
- (d) Unless the Solar Garden Option Payment is less than \$1,000, section 82KZMF of the *Income Tax Assessment Act 1936* (ITAA 1936) will apply to set the amount and timing of the deduction for the Solar Garden Option Payment incurred by a commercial Solar Gardener under an Enova Project that is allowable as a deduction under section 8-1.
- (e) The Solar Gardener's legally enforceable rights under the Solar Gardener Agreement are, in their totality, a CGT asset under subsection 108-5(1).
- (f) The Solar Gardener's ownership of the contractual rights under the Solar Gardener Agreement comes to an end by reasons of those rights being discharged or satisfied upon either the expiry of the Term of the Solar Gardener Agreement, the agreement's earlier termination, or the Solar Gardener's decision to discontinue as a party to the agreement. A CGT event C2 will happen under section 104-25 at this time.

- (g) Where the CGT event referred to in paragraph 17(f) of this Product Ruling happens in respect of a private Solar Gardener
- (i) any capital loss made by the Solar Gardener will be disregarded under subsection 108-20(1), and
 - (ii) if the first element of the cost base of the Solar Gardener's contractual rights under the Solar Gardener Agreement will be \$10,000 or less, any capital gain made by the Solar Gardener will be disregarded under subsection 118-10(3).
- (h) The Solar Gardener's capital proceeds from the CGT event referred to in paragraph 17(f) of this Product Ruling will, pursuant to subsection 116-30(1), be the market value of their contractual rights under the Solar Gardener Agreement as at the time of the event.
- (i) The cost base or reduced cost base of the Solar Gardener's contractual rights under the Solar Gardener Agreement will include the Solar Garden Option Payment made by the Solar Gardener (pursuant to subsections 110-25(2) and 110-55(2)), to the extent the Solar Garden Option Payment has not and cannot be deducted under section 8-1 (subsections 110-45(2) and 110-55(4)).
- (j) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to the Solar Gardener in respect of their entry into an Enova Project.

Scheme

18. The scheme that is the subject of this Product Ruling is identified and described in the following:

- application for a Product Ruling as constituted by information and documents received on 31 January 2018, 9 February 2018, 26 February 2018, 9 April 2018 and 2 July 2018
- draft Enova Solar Garden Project – Site Owner Agreement, received on 2 July 2018 (Site Owner Agreement)
- draft Enova Solar Garden Project – Solar Gardener Agreement, received on 2 July 2018 (Solar Gardener Agreement), and

- Enova Energy Market Retail Contract – Terms and Conditions dated August 2017 (Standard Retail Terms).

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

19. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Solar Gardener or any associate of a Solar Gardener, will be a party to, which are a part of the scheme.

20. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

21. Following is a summary of the scheme:

- (a) A customer being supplied electricity in accordance with the Standard Retail Terms by Enova Retail, a wholly-owned subsidiary of Enova Community Energy Ltd (ECE), may, by making a payment (the Solar Garden Option Payment) to another wholly-owned subsidiary of ECE (referred to as 'Enova' for the purposes of this Product Ruling), participate in an Enova Project via entry into a Solar Gardener Agreement (as a Solar Gardener) with Enova Retail and Enova.
- (b) In consideration for the Solar Garden Option Payment made by the Solar Gardener to Enova, Enova Retail will, pursuant to the Solar Gardener Agreement
 - (i) continue, during the Term of the Solar Gardener Agreement, to supply electricity to the Solar Gardener
 - from the Grid
 - under the Standard Retail Terms, and
 - to any property nominated by the Solar Gardener (and within the licensed supply area of Enova Retail), and
 - (ii) amend the Standard Retail Terms to the extent that it shall provide to the Solar Gardener a credit on the cost of electricity supplied to the Solar Gardener (the Electricity Supply Credit) during the Term of the Solar Gardener Agreement.

- (c) As part of an Enova Project, Enova and Enova Retail will also enter into a Site Owner Agreement with the owner of a Site (the Site Owner) which Enova Retail considers suitable for the purposes of the Enova Project.
- (d) Pursuant to the terms of the Site Owner Agreement
- (i) the Site Owner will acknowledge
 - Enova Retail's intention to enter into Solar Gardener Agreements, and
 - that, on the Solar Gardener's entry into the Solar Gardener Agreement, Enova shall (if it has not already done so) arrange for it to acquire a specified number of Solar Panels which Enova has identified as suitable (collectively referred to as the Solar Garden Panel)
 - (ii) subject to paragraph 20(i) of this Product Ruling, Enova and the Site Owner will agree that the Solar Garden Panel shall remain in the ownership of Enova alone
 - (iii) the Site Owner shall allow the Solar Garden Panel
 - to be installed at the Site in accordance with the Site Owner Agreement (if not already done so), and
 - to remain installed, to be maintained and to generate electricity during the Term of the Site Owner Agreement
 - (iv) Enova Retail shall provide services for and in respect of the installation, operation, maintenance and (as necessary) replacement of the Solar Garden Panel for the purposes of enabling it to generate and supply electricity (Installation, Operation and Maintenance Services) during the Term of the Site Owner Agreement at no cost to Enova or the Site Owner. In return, Enova will supply all the electricity which is generated by the Solar Garden Panel during the term of the Site Owner Agreement (Solar Garden Panel Electricity) to Enova Retail at no cost
 - (v) Enova Retail will resupply the Solar Garden Panel Electricity

- at a reduced rate under amended Standard Retail Terms to the Site Owner for use at the Site by either the Site Owner or to another person as notified to Enova Retail by the Site Owner (the Notified Person), and
 - to the extent that the Solar Garden Panel Electricity is not consumed in such use, to the Grid at market rates
- (vi) the costs of distributing Solar Fund Panel Electricity to Enova Retail, the Site Owner (or the Notified Person) and the Grid shall be borne by Enova Retail, and
- (vii) during the term of the Site Owner Agreement the Site Owner shall not transfer title to the Site without the proposed transferees having entered into an agreement with Enova and Enova Retail on the same terms as the Site Owner Agreement.
- (e) The Electricity Supply Credit referred to in paragraph 21(b)(ii) of this Product Ruling is an amount which will be equal in value (in respect of the Solar Garden Panel Electricity for any particular period) to
- (i) the payments made or to be made by the Site Owner (or the Notified Person) to Enova Retail for the Solar Garden Panel Electricity in that period, plus
 - (ii) the proceeds from the sale of any surplus Solar Garden Panel Electricity by Enova Retail to the Grid in that period, less
 - (iii) the cost to Enova Retail of the Installation, Operation and Maintenance Services to that time,
- but cannot exceed the cost to the Solar Gardener of electricity supplied to the Solar Gardener to that time (that is, since amendment of the Standard Retail Terms per paragraph 21(b)(ii) of this Product Ruling).
- (f) The Solar Gardener may discontinue as a party to the Solar Gardener Agreement and substitute another person (natural or incorporated), referred to as the Incoming Party, in its stead. On and from receipt of Enova Retail's agreement to this, the Solar Gardener will discontinue as a party to the agreement and shall have no entitlement to refund of the Solar Garden Option Payment.

- (g) The Solar Gardener Agreement will terminate on the expiry of its Term, being at the earlier of twenty years from the Commencement Date and any time at which a Termination Notice or Discontinuation Notice is given pursuant to and in accordance with the Site Owner Agreement.
- (h) Unless the Site Owner Agreement is terminated by a 'non-defaulting party' due to circumstances contemplated by the Site Owner Agreement, the Site Owner Agreement will terminate on the expiry of its Term, being at the earlier of twenty years from the Installation Date and any time at which either the Site Owner or Enova Retail gives a Termination Notice under the circumstances contemplated by the Site Owner Agreement, or the Site Owner gives a Discontinuation Notice under the circumstances contemplated by the Site Owner Agreement.
- (i) Subject to paragraph 20(j) of this Product Ruling, unless the Site Owner or Enova Retail gives a Termination Notice or the Site Owner gives a Discontinuation Notice, all title in the Solar Garden Panels located at the Site shall be deemed for all purposes to be vested in the Site Owner at the expiry of the Term of the Site Owner Agreement.
- (j) Where the Site Owner gives a Termination or Discontinuation Notice, Enova Retail will do all things reasonably required of it to
 - (i) require the Site Owner to purchase the Solar Garden Panel at a price which, in Enova Retail's opinion, represents the then current value of the Solar Garden Panel, and
 - (ii) allow the distribution of the proceeds of sale (after deduction of the reasonable costs of sale) to the Solar Gardener.

Assumptions

22. This Product Ruling is made on the basis of the following necessary assumptions:

- (a) The cost of electricity supplied to the property nominated by a commercial Solar Gardener in accordance with paragraph 21(b)(i) of this Product Ruling is deductible under section 8-1 to the extent that that property is used for an assessable income producing purpose.

- (b) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 18 of this Ruling.
- (c) All dealings by the Solar Gardener, the Site Owner, Enova Retail, and Enova under the scheme will be at arm's length.

Commissioner of Taxation

15 August 2018

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.*

Electricity Supply Credit not assessable to Solar Gardener

23. Under Division 6, assessable income consists of both ordinary income and statutory income to the extent the ordinary or statutory income is not exempt income or non-assessable non-exempt income.

24. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. The assessable income of an Australian resident includes the ordinary income they derived directly or indirectly from all sources during the income year (subsection 6-5(2)).

25. Subsection 6-5(4) provides that in working out whether an amount of ordinary income has been derived, and (if so) when, it will be taken to be received as soon as it has been applied or dealt with in any way on behalf of or as directed by the taxpayer.

26. Statutory income is an amount which is not ordinary income but which is included in assessable income by statutory provision (subsection 6-10(2)). Subsection 6-10(3) provides that an amount that would otherwise be statutory income of a taxpayer but for the fact that it is not received becomes statutory income of the taxpayer as soon as it is applied or dealt with in any way on behalf of or as directed by the taxpayer.

27. Any reduction in expenditure to be incurred by the Solar Gardener in respect of electricity to be used at the relevant property, as a result of having been provided the Electricity Supply Credit pursuant to the Solar Gardener Agreement, will not be an amount paid or credited to the Solar Gardener, nor an amount which is applied or dealt with on behalf of the Solar Gardener or as the Solar Gardener directs.

28. As the Electricity Supply Credit will not be received by, or credited to the Solar Gardener (either directly or as deemed by subsection 6-5(4) or subsection 6-10(3)), it will not constitute ordinary or statutory income derived by the Solar Gardener and will not be subject to tax pursuant to Division 6.

Deductibility of Solar Garden Option Payment under section 8-1

29. A loss or outgoing is deductible under section 8-1 if its essential character is that of expenditure that has a sufficient connection with the operations or activities which more directly gain or produce a taxpayer's assessable income, provided that the expenditure is not of a capital, private or domestic nature.

30. In consideration for the Solar Garden Option Payment incurred by a Solar Gardener, the Standard Retail Terms pursuant to which Enova Retail is supplying electricity to the Solar Gardener's nominated property will be amended to the extent that Enova Retail will provide the Electricity Supply Credit during the Term of the Solar Gardener Agreement.

31. When incurred by a private Solar Gardener such that the Electricity Supply Credit provided relates to the cost of electricity supplied to a property not used for any purpose other than the Solar Gardener's main residence, the Solar Garden Option Payment will not have a sufficient connection with the gaining of any assessable income to be deductible under section 8-1 and, in any event, will be of a private or domestic nature.

32. When incurred by a commercial Solar Gardener such that the Electricity Supply Credit provided relates to the cost of electricity supplied to a property used solely for an assessable income producing purpose, where the cost of electricity itself is a fully deductible expense of the Solar Gardener (as assumed at paragraph 22(a) of this Product Ruling), the Solar Garden Option Payment will have a sufficient connection with the gaining of assessable income to be deductible under section 8-1 in full, and will not be of a capital, private or domestic nature.

33. When incurred by a commercial Solar Gardener such that the Electricity Supply Credit provided relates to the cost of electricity supplied to a property used partly for an assessable income producing purpose (as well as their main residence), where the cost of electricity itself is a partially deductible expense of the Solar Gardener (as assumed at paragraph 22(a) of this Product Ruling), the Solar Garden Option Payment will have a sufficient connection with the gaining of assessable income to be deductible under section 8-1 in part (that is, to the extent that it will not be of a private or domestic nature).

Sections 82KZME and 82KZMF – prepaid expenditure and 'tax shelter' style arrangements

34. The rules in sections 82KZME and 82KZMF of the ITAA 1936 apply, subject to the exceptions in section 82KZME, where expenditure is incurred in relation to a 'tax shelter' style arrangement for the doing of a thing under an agreement that is not to be wholly done within the expenditure year, and where certain requirements for that agreement are met.

35. The Solar Garden Option Payment incurred by a commercial Solar Gardener under an Enova Project is made in return for the Enova Supply Credit applied on the cost of electricity supplied to the commercial Solar Gardener's nominated property for the Term of the Solar Gardener Agreement and is to be taken, for the purposes of Subdivision H of Division 3 of Part III of the ITAA 1936, to be expenditure incurred under an agreement in return for the doing of a thing under the agreement for the Term of the Solar Gardener Agreement.

36. For the purposes of section 82KZME of the ITAA 1936, 'agreements' are broadly defined to include an entire arrangement of which a contract may form part. Under subsection 82KZME(4) of the ITAA 1936, the relevant 'agreement' is all the contractual arrangements and activities associated with the participation in the Enova Project.

37. Section 82KZMF of the ITAA 1936 will have application and apportion over the relevant period the Solar Garden Option Payment incurred by a commercial Solar Gardener which is allowable as a deduction under section 8-1 where the Solar Garden Option Payment is not excluded expenditure (that is, less than \$1,000). Each of the requirements for the agreement under subsection 82KZME(3) of the ITAA 1936 are met and none of the other exceptions contained in subsections 82KZME(5), (6), (8) or (9) of the ITAA 1936 apply to exclude the Solar Garden Option Payment incurred from the operation of section 82KZMF of the ITAA 1936.

38. For each year of income during which part of the 'eligible service period' for the Solar Garden Option Payment occurs, the commercial Solar Gardener can deduct an amount using the following formula set out in paragraph 82KZMF(1)(b) of the ITAA 1936:

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

39. Pursuant to subsection 82KZL(1) of the ITAA 1936, the eligible service period in relation to the Solar Garden Option Payment will be capped at ten years.

Application of the CGT provisions to the Solar Gardener

40. Under subsection 108-5(1) a CGT asset is any kind of property or a legal or equitable right that is not property. The rights of the Solar Gardener under the Solar Gardener Agreement (including the right to the Electricity Supply Credit) are legally enforceable rights and therefore, in their totality, a CGT asset according to the definition in subsection 108-5(1).

41. Where the Term of the Solar Gardener Agreement expires, the Solar Gardener Agreement is terminated pursuant to its terms, or the Solar Gardener decides to discontinue as a party to the Solar Gardener Agreement, the Solar Gardener's ownership of the contractual rights under the Solar Gardener Agreement will be discharged or satisfied. This discharge or satisfaction of the contractual rights will give rise to a CGT event C2 (paragraph 104-25(1)(b)).

42. The Solar Gardener will make a capital gain from this CGT event if the capital proceeds from the ending of the Solar Gardener's ownership of the asset are more than the asset's cost base or, alternatively, a capital loss from this CGT event if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

43. Pursuant to subsection 108-20(1), any capital loss made from a personal use asset is disregarded. Under subsection 118-10(3), any capital gain made from a personal use asset is disregarded if the first element of the asset's cost base is \$10,000 or less.

44. Section 108-20 defines a personal use asset as a CGT asset that is used or kept mainly for the personal use or enjoyment of the taxpayer having made the capital loss, or their associate, and does not include a collectable or land, a stratum unit or a building.

45. The Federal Court in *Favaro v. FC of T* 96 ATC 4975; (1996) 34 ATR 1 considered the term 'personal use' in the definition of personal use asset (as referred to in former section 160B of the ITAA 1936) and stated:

... the expression 'personal use' is used in s 160B of the ITAA in contradistinction to use for business or profit making purposes.

46. The word 'contradistinction' means distinction by contrast or opposition (*The Australian Oxford Dictionary*, 1999, Oxford University Press, Melbourne). Therefore, an asset that is not used for business or profit making purposes is, by default, used or kept mainly for personal use and enjoyment. The two categories are mutually exclusive.

47. It follows that the contractual rights under the Solar Gardener Agreement of a private Solar Gardener, which will not be used for business or profit making purposes, will be a personal use asset. Therefore, any capital loss made by a private Solar Gardener from the CGT event C2 referred to in paragraph 41 of this Product Ruling will be disregarded under subsection 108-20(1), and any capital gain made by a private Solar Gardener from that event will be disregarded under subsection 118-10(3) where the first element of the cost base of the asset will be \$10,000 or less.

48. Generally, where no capital proceeds are received from a CGT event the market value substitution rule under subsection 116-30(1) will apply to include the market value of the CGT asset that is the subject of the event (as at the time of the event) as the amount received. The market value of the Solar Gardener's contractual rights under the Solar Gardener Agreement is to be worked out as if the event had not occurred and was never proposed to occur (subsection 116-30(3A)).

49. As the Solar Gardener will not receive any capital proceeds from the ending of their contractual rights, the Solar Gardener will be taken to have received the market value of those rights as at the time of the ending pursuant to the market value substitution rule under subsection 116-30(1).

50. Subsections 110-45(2) and 110-55(4) prevent expenditure that has or can be deducted under section 8-1 from forming part of a CGT asset's cost base and reduced cost respectively. Therefore, to the extent that a commercial Solar Gardener may claim a deduction under section 8-1 for the Solar Garden Option Payment they will incur as part of an Enova Project (in accordance with this Product Ruling), that expenditure will not be included in the determination of the cost base and reduced cost base of their contractual rights under the Solar Gardener Agreement.

Part IVA – anti-avoidance

51. Provided that the scheme ruled on is entered into and carried out in the manner described in the scheme documentation and in the Scheme section of this Product Ruling, it is accepted that Part IVA of the ITAA 1936 will not apply.

Appendix 2 – Detailed contents list

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References

Legislative references:

- ITAA 1936
- ITAA 1936 Div 3 Pt III
- ITAA 1936 160B
- ITAA 1936 Subdivision H
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(5)
- ITAA 1936 82KZME(6)
- ITAA 1936 82KZME(8)
- ITAA 1936 82KZME(9)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)(b)
- ITAA 1936 Part IVA
- ITAA 1997
- ITAA 1997 Div 6
- ITAA 1997 6-5
- ITAA 1997 6-5(2)
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 6-10(2)
- ITAA 1997 6-10(3)
- ITAA 1997 8-1
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- ITAA 1997 108-20
- ITAA 1997 108-20(1)
- ITAA 1997 110-25(2)
- ITAA 1997 110-45(2)
- ITAA 1997 110-55(2)
- ITAA 1997 110-55(4)
- ITAA 1997 116-30(1)
- ITAA 1997 116-30(3A)
- ITAA 1997 118-10(3)
- SISA 1993
- TAA 1953

Case references:

Favaro v. FC of T 96 ATC 4975;
(1996) 34 ATR 1

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*The Australian Oxford
Dictionary*, 1999, Oxford
University Press, Melbourne

ATO references

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ATOlaw topic: Income tax ~~ Assessable income ~~ Other types of
income ~~ Other
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT
events C1 to C3 - end of a CGT asset
Income tax ~~ Deductions ~~ Prepaid expenditure

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