

Cover sheet for: TR 2006/3A3 - Addendum

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Addendum

Taxation Ruling

Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2006/3 to provide further examples of government payments made.

TR 2006/3 is amended as follows:

1. Paragraph 4

After the ninth dot point, insert new dot point:

- fund the building or construction of depreciating assets;

2. Paragraph 5

Before the first dot point, insert new dot point:

- when a business is considered to have commenced, as that is a question of fact;

3. Paragraph 15

(a) After the paragraph, insert new paragraph 15A:

15A. GPI paid with the intention of funding the cost of building or constructing a capital asset, but contingent on the performance of a contract to build or construct the asset, will generally be assessable under section 6-5 because the GPI will be derived in the course of carrying on a business of building or constructing the asset. While this will generally be the case where the entity is a company, it will be a question of scale and degree for other entities.^{2A} The building or construction of the asset may alternatively be outside the course of business yet be the result of a transaction entered into with the purpose of making a profit.

(b) At the end of the second sentence in new paragraph 15A, insert footnote 2A:

^{2A} This ruling does not consider whether Part IVA of the ITAA 1936 would apply to arrangements implemented for the sole or dominant purpose of separating the business-like activity of building or constructing an asset from the related entity or group that legally receives a GPI.

4. Paragraph 19

In the first sentence after 'section 15-10', insert 'if the GPI is not ordinary income under section 6-5'.

5. Paragraph 54

(a) After the paragraph, insert new paragraphs 54A, 54B and 54C and heading:

Example 8A – Payment to fund the cost of constructing new assets

54A. To support investment in renewable energy, the government offers a GPI with the intention of reimbursing part of the cost of constructing renewable energy plants. A corporate group which carries on an energy generation business undertakes preliminary work in respect of securing a GPI from the government. A special purpose vehicle (SPV) is then created within the group to receive the GPI and perform the relevant construction activities required under a contract with the government to receive the GPI. Before construction begins, the GPI is paid as a lump sum into a bank account to which the government and the SPV are joint signatories. Under the contract, upon the SPV satisfying each of a series of construction milestones for the construction of the plant, the government undertakes to allow the SPV to drawdown an instalment of the GPI funds. After construction is completed the SPV will either use the plant in the course of an electricity generation business of its own or lease the plant to a related party for use in the course of the related party's energy generation business.

54B. The GPI instalments are derived by the SPV for performance of the obligations under the contract relating to the construction of the plant. The instalments are therefore received in the course of a business of constructing the plant and are therefore assessable under section 6-5 in the income years in which the instalments are derived. Alternatively, the GPI instalments may be considered to have been derived from an isolated transaction entered into with an intention to profit.^{10A}

54C. If the GPI is not ordinary income of the SPV, it is assessable under section 15-10 in the income year in which it is received.

(b) At the end of new paragraph 54B, insert footnote 10A:

^{10A} *Federal Commissioner of Taxation v. Myer Emporium Ltd* (1987) 163 CLR 199. Refer to Commissioner's guidelines in Taxation Ruling TR 92/3 *Income tax: whether profits on isolated transactions are income.*

6. Paragraph 139

Omit 'as the GPI'; substitute 'if the GPI'.

7. Paragraph 155

After:

Example 8 – Payment to reimburse capital cost of restructure 51

Insert:

Example 8A – Payment to fund the cost of constructing new assets 54

This Addendum applies to years of income commencing both before and after its date of issue.

Commissioner of Taxation

14 November 2018

ATO references

NO: 1-AST1OA6
ISSN: 2205-6211
BSL: PGI

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