


CR 2001/25 - Income tax: Amount received from the Victorian Farmers Federation to assist with the cost of construction of stock over/underpasses

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Class Ruling

Income tax: Amount received from the Victorian Farmers Federation to assist with the cost of construction of stock over/underpasses

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	10
Ruling	13
Explanations	14
Detailed contents list	24

Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling relates.

Tax laws

2. The tax laws dealt with in this Ruling are:
- Section 6-5 of the *Income Tax Assessment Act 1997*;
 - Section 15-10 of the *Income Tax Assessment Act 1997*;
 - Division 42 of the *Income Tax Assessment Act 1997*;
 - Division 43 of the *Income Tax Assessment Act 1997*.

Class of persons

3. The class of persons to whom this Ruling applies is the applicants that receive an amount from the Victorian Farmers Federation (VFF) to assist with the cost of construction of stock over/underpasses.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 10 to 12 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling has effect from 1 July 2000. It applies in respect of the tax laws ruled upon to all persons within the specified class who enter into the specified arrangement on or before 30 June 2004.

9. However, the Ruling does not apply to a taxpayer to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of the issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Arrangement

10. The Victorian government has made funds available from its Regional Infrastructure Development Fund to the VFF for distribution to certain farmers to assist in the cost of constructing stock over/underpasses to roads and railway lines. This is part of a road safety initiative to improve both the safety of farming families and their employees and the safety of roads for the motoring public.

11. The funding will be applied on a dollar for dollar basis up to a maximum of \$20,000 for each over/underpass.

12. Construction costs would include the cost of laneway construction (including the cost of fencing materials and material for the laneway surfaces) back to the boundary fence, electricity connection, pumps, plumbing/drainage, signage, construction, road resurfacing and guard rails.

Ruling

13. The amount received is assessable income in the year of receipt as a subsidy under section 15-10 of the *Income Tax Assessment Act 1997* (ITAA 1997). Deductions for the expenditure incurred may be available under Division 42 (Depreciation of plant) or Division 43 (Deductions for capital works) of the ITAA 1997.

Explanations

Treatment of amount received

14. Section 15-10 includes in assessable income bounties and subsidies that are received in relation to carrying on a business and that are otherwise not assessable as ordinary income under section 6-5 ITAA 97.

15. It is considered that the amount received by the applicant from the VFF is not income according to ordinary concepts. The funding is made available as part of a government safety initiative with benefits for farmers moving livestock and for other road users.

16. The word “subsidy”, as noted by Windeyer J in *Placer Development Ltd v Commonwealth of Australia* (1969) 121 CLR 353; [1969] ALR 801 derives from the Latin *subsidiū* meaning “an aid or help”. The *Macquarie Dictionary*, 3rd edn, defines subsidy as including a grant or contribution of money. It is considered that the amount received by the farmers to assist in the cost of constructing over/underpasses is a subsidy within the meaning of section 15-10.

17. Hill J in *First Provincial Building Society v FCT* 95 ATC 4145; 30 ATR 207 considered the meaning of the words “received in relation to carrying on a business” contained in paragraph 26(g) of the *Income Tax Assessment Act 1936* (which was rewritten as section 15-10). He stated that the receipt of the subsidy must relate to the activities of the business which are directed to the gaining or producing of assessable income.

18. In his media release of 22 June 2000, the Minister for the Department of State and Regional Development (Victoria) stated that the activities of farmers in moving stock across and along public roads

in carrying on their business necessitates the construction of over/underpasses to separate livestock and vehicles on country roads. The funding received to assist in the cost of construction of over/underpasses is therefore directly linked to the activities of the farming business and falls within section 15-10.

Treatment of expenditure

19. The expenditure incurred on the construction of the over/underpasses and associated items of plant is capital in nature.

20. Structural improvements that are constructed on land used for agricultural or pastoral operations satisfy the definition of plant in paragraph 42-18(1)(c) ITAA 97. The majority, if not all, of the expenditure incurred by the farmer will be for items of plant or structural improvements treated as plant.

21. Deductions for depreciation are available under Division 42 to the owner or quasi-owner of an item of plant to the extent that it is used in producing assessable income. If a farmer is granted rights over land by the relevant government agency to construct an over/underpass, the farmer is the quasi-owner of the over/underpass. The farmer will, therefore, be the owner or the quasi-owner of items of plant and be able to claim a deduction for depreciation.

22. The depreciation deduction available will need to be calculated by reference to the cost and effective life of the individual item of plant. Accelerated depreciation will be available if the taxpayer is a small business taxpayer under Subdivision 960-Q ITAA 1997 and satisfies the conditions in Subdivision 42-K.

23. Division 43 allows deductions to the owner or quasi-owner of certain capital works to the extent that they are used in producing assessable income. Deductions may therefore be available under that Division for expenditure on structural improvements other than plant that do not qualify for deduction under Division 42.

Detailed contents list

24. Below is a detailed contents list for this Class Ruling:

	Paragraph
What this Class Ruling is about	1
Tax laws	2
Class of persons	3
Qualifications	4

Date of effect	8
Arrangement	10
Ruling	13
Explanations	14
Treatment of amount received	14
Treatment of expenditure	19
Detailed contents list	24

Commissioner of Taxation

27 June 2001

Previous draft:

Not previously issued in draft form

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 97/16*Subject references:*

- agricultural and pastoral operations
- bounties & subsidies
- capital works
- depreciation
- overpasses
- plant
- quasi-ownership
- structural improvements
- underpasses

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 15-10
- ITAA 1997 Div 42
- ITAA 1997 42-18(1)(c)
- ITAA 1997 Subdiv 42-K
- ITAA 1997 Div 43
- ITAA 1997 Div 960-Q

Case references:

- *First Provincial Building Society v FCT* 95 ATC 4145; 30 ATR 207
- *Placer Development Ltd v Commonwealth of Australia* (1969) 121 CLR 353; [1969] ALR 801

ATO References

NO T2001/010303

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FOI number: I 1024100

ISSN: 1445 2014