



# ***CR 2005/108 - Income tax: treatment of payments received under the Great Barrier Reef Marine Park Structural Adjustment Package 2004: Full Business Restructure Assistance; Simplified Business Restructure Assistance; and Business Advice Assistance***

 This cover sheet is provided for information only. It does not form part of *CR 2005/108 - Income tax: treatment of payments received under the Great Barrier Reef Marine Park Structural Adjustment Package 2004: Full Business Restructure Assistance; Simplified Business Restructure Assistance; and Business Advice Assistance*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



## Class Ruling

Income tax: treatment of payments received under the Great Barrier Reef Marine Park Structural Adjustment Package 2004:

- Full Business Restructure Assistance;
- Simplified Business Restructure Assistance; and
- Business Advice Assistance

Contents	Para
<b>What this Class Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
<b>Ruling</b>	<b>36</b>
<b>Explanation</b>	<b>48</b>
<b>Detailed contents list</b>	<b>75</b>

### **Preamble**

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVA 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 law(s)**

2. The tax laws dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - subsection 6-5(1) of the ITAA 1997;
  - subsection 6-10(3) of the ITAA 1997;
  - section 8-1 of the ITAA 1997;

- section 15-10 of the ITAA 1997;
- Part 3-1 of the ITAA 1997
- section 102-25 of the ITAA 1997;
- subsection 110-45(3) of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 392-45 of the ITAA 1997;
- section 392-80 of the ITAA 1997;
- subsection 392-80(2) of the ITAA 1997;
- subsection 995-1(1) of the ITAA 1997;
- paragraph 26(g) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 27B(1A) of the ITAA 1936; and
- subsection 27B(3) of the ITAA 1936.

## **Class of persons**

3. The class of persons to which this Ruling applies is applicants who applied for and received payments under the Full Business Restructure Assistance, Simplified Business Restructure Assistance and/or Business Advice Assistance components of the Great Barrier Reef Marine Park Structural Adjustment Package 2004 (the Package).

## **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 actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 35.

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

- 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
- this Ruling may be withdrawn or modified.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration  
Attorney General's Department  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

## **Date of effect**

---

8. This Ruling applies from 1 July 2004. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## **Withdrawal**

---

9. This Ruling is withdrawn from 1 July 2006.

## **Arrangement**

---

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description are:

- Application for Class Ruling from the Department of the Environment and Heritage dated 7 October 2004;
- Great Barrier Reef Marine Park Structural Adjustment Package 2004 – amended information package and request for offer – October 2004; and
- Great Barrier Reef Marine Park Structural Adjustment Package 2004 – Amended Business Restructuring Assistance Guidelines – October 2004.

11. Rezoning of the Great Barrier Reef Marine Park (the GBRMP) came into effect from 1 July 2004. In accordance with the Australian Government's *Marine Protected Areas and Displaced Fishing Policy*, the Government is providing a structural adjustment package to ensure the fair and equitable treatment of those fishers, fishery related businesses, employees and communities that can demonstrate they have experienced or will experience negative impacts due to the rezoning.

12. The overall objectives of the Package are:

- to assist fishers, fishery related businesses, employees and communities adversely affected by the rezoning; and
- to manage in the most cost effective manner any displaced fishing effort that has unsustainable ecological or economic impacts.

13. Licensed fishing operations have two options under the Business Restructuring Assistance component of the Package:

- Full Business Restructuring Assistance; or
- Simplified Business Restructuring Assistance.

14. Other businesses do not have access to Simplified Restructuring Assistance.

15. A licensed fishing operation that holds only one primary commercial fishing boat licence may apply for both Business Exit (licence buy out) Assistance and Business Restructuring Assistance, but may only receive assistance under one of these components.

16. A licensed fishing operation that holds more than one primary commercial fishing boat licence is able to access both the Business Exit (licence buy out) Assistance component of the package and the Business Restructuring Assistance component of the package. In these circumstances:

- each licence offered under the Business Exit (licence buy out) component will be considered separately in accordance with the guidelines set out in the Great Barrier Reef Marine Park Structural Adjustment Package 2004 – Amended Business Restructuring Guidelines – October 2004; and
- an operator may receive Full Business Restructuring Assistance in relation to licences not offered and accepted under the Business Exit (licence buy out) component and to associated land based operations. An applicant may only receive assistance up to the maximum grant available, irrespective of the number of licences held by the applicant (that is the applicant may not make a separate application in respect of each licence held). This provision does not allow an applicant to access Simplified Business Restructuring Assistance.

17. Fishery related businesses may apply for Business Exit Assistance or Business Restructuring Assistance but may only receive assistance under one component. This Ruling only applies to the Business Restructuring Assistance.

### **Full Business Restructuring Assistance**

18. Full Business Restructuring Assistance of up to \$200,000 is available to eligible licensed fishing operations, lessees, and fishery related businesses to help them restructure their businesses so that they can manage the negative impacts they will experience as a result of the rezoning.

19. The amount of assistance available to a business is dependent on the extent of the impact of the rezoning and on the size and scale of the business. Case by case consideration will be given to applications above \$200,000, to a limit of \$500,000, where a clear business case can be made for doing so based on the scale of the impact of the rezoning on the business and on the scale of the business itself. As a general rule, a grant will not be greater than 100 per cent of the value of a business. Guidance on how to establish the value of licensed fishing operations and fishing related businesses is at Attachment 1 to the Great Barrier Reef Marine Park Structural Adjustment Package 2004 – Amended Business Restructuring Assistance Guidelines – October 2004.

20. Where a licensed fishing operation has sold one or more of the primary commercial fishing boat licences that it held through the Business Exit (licence buy out) Assistance component of the Package (the offer process), the extent of the impact of the rezoning will be considered to be the extent of the impact on the remaining part of the operation. The value of any licence(s) surrendered under the offer process and the associated assets will not be taken into account in assessing applications for this assistance.

21. A single restructuring assistance application from a group of eligible applicants will be accepted. In such circumstances, the guidelines will be applied as if each applicant is making an individual application, the sum of which may exceed the individual assistance threshold outlined in clause 1.12 of the Great Barrier Reef Marine Park Structural Adjustment Package 2004 – Amended Business Restructuring Assistance Guidelines – October 2004.

22. Projects or restructuring options could include (as examples only):

- introducing new fishing/processing systems or technology;
- improving business productivity;
- value adding activities;
- upgrading vessels or other capital items of the business;

- restructuring debt; and
- capital restructuring to improve productivity.

Applications may include a reasonable contribution to business planning costs.

23. Applicants will be required to complete a business plan that shows how the business will be restructured to enable it to manage the full impacts of the rezoning. Applicants should include a proposed payment schedule related to the milestones in the restructuring of the business. Payments will be acquitted against receipts for equipment/business purchases. Alternatively, with prior agreement with the Queensland Rural Adjustment Authority (QRAA), the applicant may submit quotes together with an authorisation to pay a preferred supplier that the QRAA will then pay directly for work to be undertaken on the applicant's behalf.

24. Eligibility criteria for licensed fishing operations:

- the applicant's commercial operations experienced negative impacts as a result of the rezoning;
- the applicant has a valid licence from the Queensland State Government Department of Primary Industries & Fisheries (DPI&F);
- the applicant is permitted to fish within the GBRMP;
- the applicant has current DPI& F fishery symbols, effort units and/or quota attached to their licence(s);
- the applicant has a current history of fishing in the GBRMP, either in those areas which will be closed to fishing through the rezoning, or adjacent to those zones; and
- the applicant meets or is likely to meet any DPI&F criteria for continuation in the fishery.

Licence lessees/temporary transferees must be able to demonstrate that the licence that they lease or held meets the eligibility criteria above.

25. Eligibility criteria for fishery related businesses – the fishery related business must:

- have been directly involved in the seafood wholesaling, retailing, or processing industry for the three years to 1 July 2004 and be able to demonstrate the impact of the rezoning on their business; or
- have been directly dependent on the commercial fishing industry for the three years to 1 July 2004 and be able to demonstrate the proportion of its income that is, or was derived from the direct supply of goods and services to the commercial fishing industry and be able to demonstrate the impact of the rezoning on their business; or

- have been directly involved in the supply of goods or services to the recreational fishing sector for the three years to 1 July 2004 and be able to demonstrate the proportion of its income that is, or was, related to fishing undertaken in areas that are now closed to recreational fishing and be able to demonstrate the impact of the rezoning on their business; or
- be able to demonstrate their situation has been caused by a combination of ii and iii above; or
- have been directly involved in the charter fishing industry for the three years to 1 July 2004 and be able to demonstrate the proportion of its income that is, or was, derived from areas of the GBRMP that are now not available for charter fishing and be able to demonstrate the impact of the rezoning on their business.

26. Applicants must demonstrate through their business plan how their business would have had good prospects of being viable if it were not for the rezoning; and will continue to have good long-term prospects of being viable if support is granted.

27. Applicants may satisfy the criteria above through:

- demonstrating access to supply of product, access to sufficient customer base, access to quota or effort units etc;
- providing a business valuation; and
- ensuring that the detail within their business plan reflects the scale of the business and the proposed restructuring.

28. Applicants must lodge an application between 15 September 2004 and 31 December 2005.

### **Simplified Business Restructuring Assistance**

29. A simplified payment option is available to licensed fishing operations. This option involves a one-off formula-based payment up to a maximum of \$50,000.

30. A licensed fishing operation that has sold one or more of the primary commercial fishing boat licences that it held through the Business Exit (licence buy out) Assistance component of the Package is not eligible for Simplified Business Restructuring Assistance.

31. A lessor of a licence that is temporarily transferred to another person/leased to another person is not eligible for the Simplified Business Restructuring Assistance.

# CR 2005/108

32. Payments will be based on the estimated gross value of production (GVP) of the licensed fishing operation from the area closed to fishing through the rezoning. The estimate will be based on the best available information held electronically by DPI&F on the applicant's GVP, using standard prices for fish species supplied by the DPI&F, for the three years to 30 June 2003 and the best available electronic information held by DPI&F on the location of fishing. This amount will be discounted by 70 per cent to arrive at the net final payment. The maximum payment is \$50,000. This maximum amount would be available where a fisher had cumulative GVP of \$166,666 or more over the three years within areas now closed to fishing.

33. Eligibility criteria for licensed fishing operations:

- i. the applicant's commercial operations experienced negative impacts as a result of the rezoning;
- ii. the applicant has a valid licence from DPI& F;
- iii. the applicant is permitted to fish within the GBRMP;
- iv. the applicant has current DPI& F fishery symbols, effort units and/or quota attached to their licence(s);
- v. the applicant has a current history of fishing in the GBRMP, either in those areas which will be closed to fishing through the rezoning, or adjacent to those zones; and
- vi. the applicant meets or is likely to meet any DPI&F criteria for continuation in the fishery.

34. Applicants must complete the appropriate application form seeking an estimate of the level of assistance they would be granted. A written estimate will be supplied to the applicant together with the necessary documents for the applicant to accept the proposed amount. Applicants must lodge an application between 15 September 2004 and 31 December 2005.

## **Business Advice Assistance**

35. Applicants can obtain independent professional advice in regards to taxation, legal and any other potential implications prior to deciding whether to apply for the Business Restructuring Assistance. Under the Business Advice Assistance component of the Package, up to \$1,000 may be payable to reimburse eligible applicants for costs associated with obtaining this business advice. Applicants must apply for this assistance and must submit receipts to the QRAA.

---

## **Ruling**

---

### **Full Business Restructuring Assistance**

#### ***Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

36. A payment received under the Full Business Restructuring Assistance component of the Package is not income according to ordinary concepts. The receipt is not assessable income under section 6-5 of the ITAA 1997.

#### ***Section 15-10 of the ITAA 1997 – bounty or subsidy***

37. A payment received under the Full Business Restructuring Assistance component of the Package is a bounty or subsidy that is received in relation to carrying on a business. The receipt is assessable income under section 15-10 of the ITAA 1997.

#### ***Capital gains tax***

38. A payment received under the Full Business Restructuring Assistance component of the Package is subject to the capital gains tax (CGT) provisions in Parts 3-1 and 3-3 of the ITAA 1997. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the business exit assistance is satisfied. Any capital gain made under CGT event C2 is reduced under section 118-20 of the ITAA 1997 to the extent that the amount paid is assessable under section 15-10 of the ITAA 1997.

39. There are no CGT consequences where an amount paid under the Full Business Restructuring Assistance component of the Package relates to the acquisition of a new CGT asset.

### **Simplified Business Restructuring Assistance**

#### ***Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

40. A payment received under the Simplified Business Restructuring Assistance component of the Package is not income according to ordinary concepts. The receipt is not assessable income under section 6-5 of the ITAA 1997.

#### ***Section 15-10 of the ITAA 1997 – bounty or subsidy***

41. A payment received under the Simplified Business Restructuring Assistance component of the package is a bounty or subsidy that is received in relation to carrying on a business. The receipt is assessable income under section 15-10 of the ITAA 1997.

## ***Capital gains tax***

42. Any capital gain made when an amount is paid under the Simplified Business Restructuring Assistance component of the Package is reduced under section 118-20 of the ITAA 1997 to the extent that the amount paid is assessable under section 15-10 of the ITAA 1997.

## **Business Advice Assistance**

### ***Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

43. A payment received under the Business Advice Assistance component of the Package is income according to ordinary concepts and is assessable income under section 6-5 of the ITAA 1997.

## ***Capital gains tax***

44. Any capital gain made when an amount is paid to the applicant under the Business Advice Assistance component of the Package is reduced under section 118-20 of the ITAA 1997 to the extent that the amount is assessable under section 6-5 of the ITAA 1997.

## **Primary production income**

45. For applicants that are eligible licensed fishing operations, Full Business Restructuring Assistance, Simplified Business Restructuring Assistance and Business Advice Assistance received are treated as 'assessable primary production income' for the purposes of calculating the 'averaging' concession available under section 392-80 of the ITAA 1997.

46. For eligible licence lessees that are carrying on a primary production business in fishing, Full Business Restructuring Assistance, Simplified Business Restructuring Assistance and Business Advice Assistance received are treated as 'assessable primary production income' for the purposes of calculating the 'averaging' concession available under section 392-80 of the ITAA 1997.

47. Payments received by other applicants under the Package are not treated as 'assessable primary production income' for the purposes of calculating the 'averaging' concession available under section 392-80 of the ITAA 1997.

## Explanation

### Full Business Restructuring Assistance

#### **Section 6-5 of the ITAA 1997 – income according to ordinary concepts**

48. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in assessable income if it is income according to ordinary concepts (ordinary income). However, as there is no definition of 'ordinary income' in income tax legislation it is necessary to apply principles developed by the courts to the facts of a particular case.

49. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.<sup>1</sup>

50. In *G P International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*<sup>2</sup> (*G P International Pipecoaters*), the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

In considering whether a grant under the *Industrial Research and Development Grants Act 1967* was income according to ordinary concepts, Mahoney J in *Reckitt & Colman Pty Ltd v. FC of T*<sup>3</sup> (*Reckitt & Colman*), said that the Court must examine the nature of the payment itself and the relationship of it to the activities, actual or potential of the recipient. A payment which is seen as provided for a purpose which is not part of the recipient's trade will not be income in nature (*Reckitt & Colman*). A subsidy to replenish or augment the recipient's capital is not income under ordinary concepts because it is not a product or incident of the recipient's income producing activity (*G P International Pipecoaters*).

51. The full Business Restructuring Assistance is available to eligible businesses that experience significant negative impacts as a result of the rezoning to assist with business restructuring to remain viable. The Business Restructuring Assistance is not a product or incident of any contract or agreement to supply goods or services in the applicant's trade (as a licensed fishing operation, licence lessee/temporary transferee or fishery related business respectively). Rather, the Business Restructuring Assistance is made for the purpose of assisting the applicant with restructuring costs (capital costs). The nature of the Business Restructuring Assistance and its

<sup>1</sup> *Scott v. FCT* (1966) 117 CLR 514 at 526; *Hayes v. FCT* (1956) 96 CLR 47 at 55; *Federal Coke Co Pty Ltd v. FCT* (1977) 7 ATR 519 at 539; 34 FLR 375 at 402.

<sup>2</sup> (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

<sup>3</sup> 74 ATC 4185; (1974) 4 ATR 501.

relationship to the applicant's business activities show that the Business Restructuring Assistance is capital in nature. The Business Restructuring Assistance is not income according to ordinary concepts and is not included in the taxpayer's assessable income under subsection 6-5(1) of the ITAA 1997.

### **Section 15-10 of the ITAA 1997 – bounty or subsidy**

52. Section 15-10 of the ITAA 1997 provides that an amount is included in assessable income if it is:

- a bounty or subsidy;
- received in relation to carrying on a business; and
- not assessable as ordinary income under section 6-5 of the ITAA 1997.

#### *Bounty or subsidy*

53. The terms 'bounty' and 'subsidy' are not defined in income tax legislation. The word 'subsidy', as noted by Windeyer J in *Placer Development Ltd v. Commonwealth of Australia*,<sup>4</sup> derives from the Latin 'subsidiium' meaning 'an aid or help'. The Macquarie Dictionary, 2001, rev, 3<sup>rd</sup> edn, defines subsidy as including 'a grant or contribution of money'. The ordinary meaning adopted by case law is 'aid provided by the Crown (government) to foster or further some undertaking or industry'.

54. Following the decisions in *Squatting Investments Co Ltd v. Federal Commissioner of Taxation*,<sup>5</sup> *Reckitt and Colman Pty Ltd v. FC of T*,<sup>6</sup> and *First Provincial Building Society Ltd v. Federal Commissioner of Taxation*<sup>7</sup> (First Provincial), it is now well accepted that a 'subsidy' or 'bounty' include a financial grant made by a government. A payment received under the Business Restructuring Assistance component of the Package is a 'subsidy' or 'bounty'.

#### *In relation to carrying on a business*

55. The meaning of the expression 'in relation to carrying on a business' was analysed in First Provincial by Hill J when considering former paragraph 26(g) of the ITAA 1936. In his opinion, the word 'in' means 'in the course of' and requires a direct relationship to exist between the bounty on the one hand and the carrying on of the taxpayer's business on the other. The words 'in relation to' extend this relationship which means that there may be a less direct relationship between the bounty and the carrying on of the business. However, the relationship must be to the 'carrying on' of the business in contrast to

<sup>4</sup> (1969) 121 CLR 353.

<sup>5</sup> (1953) 86 CLR 570; 10 ATD 126; (1953) 5 AITR 496.

<sup>6</sup> 74 ATC 4185; (1974) 4 ATR 501.

<sup>7</sup> (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207.

a relationship with the business itself. The expression 'carrying on of the business' looks to the activities of the business which are directed towards the gaining or producing of assessable income rather than merely to the business itself.

56. In First Provincial, the Full Federal Court held that, as the payment assisted the taxpayer to continue to carry on the taxpayer's business activities as a building society, it was made in relation to the carrying on of its business, although it lacked the necessary connection with the taxpayer's business activities to constitute ordinary income. The full Business Restructuring Assistance is received in relation to carrying on of a business as it assists the applicant to continue to carry on their business activities.

57. As a Business Restructuring Assistance payment is a bounty or subsidy that is received in relation to carrying on a business and is not assessable under section 6-5 of the ITAA 1997, the Business Restructuring Assistance payment is assessable income under section 15-10 of the ITAA 1997 in the income year in which it is received. Subsection 6-10(3) of the ITAA 1997 provides that a taxpayer is taken to have received an amount of income as soon as it is applied or dealt with in any way on their behalf or as they direct. Accordingly any reimbursement of expenditure or payments direct to suppliers becomes income of the taxpayer at that time.

### ***Capital gains tax***

58. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement to receive the full Business Restructuring Assistance is satisfied.

59. However, to the extent that the assistance relates to the acquisition of a new CGT asset, CGT event C2 does not happen.

### ***CGT event C2 happens to the entitlement to receive the business restructuring assistance***

60. CGT event C2 under section 104-25 of the ITAA 1997 happens for the applicant each time that the QRAA makes a reimbursement directly to the applicant or directly to the supplier on the applicant's behalf.

61. Any capital gain made when this CGT event happens is reduced under section 118-20 of the ITAA 1997 to the extent that the amount paid is assessable as a bounty or subsidy under section 15-10 of the ITAA 1997.

*Payment relates to acquisition of new CGT asset*

62. Where an applicant pays or incurs expenditure that involves the acquisition of a CGT asset and submits an invoice to the QRAA, there are no CGT consequences when the cost of the asset is reimbursed or paid on behalf of the applicant by the QRAA. As the amount is assessable as a bounty or subsidy under section 15-10 of the ITAA 1997, the cost base of the asset is not reduced by the amount of expenditure recouped by the applicant (for example subsection 110-45(3) of the ITAA 1997).

### **Simplified Business Restructuring Assistance**

#### ***Sections 6-5 and 15-10 of the ITAA 1997***

63. The explanation in paragraphs 48 to 57 with respect to whether the Full Business Restructuring Assistance is assessable income under sections 6-5 and 15-10 of the ITAA 1997 apply equally to the Simplified Business Restructuring Assistance.

#### ***Capital gains tax***

64. The principles set out in paragraphs 61 and 62 apply equally when the entitlement to receive the Simplified Business Restructuring Assistance is satisfied.

### **Business Advice Assistance**

#### ***Section 6-5 of the ITAA 1997 – income according to ordinary concepts***

65. The cost of seeking business advice prior to making a commitment to apply for either component of the Package is a deductible expense under section 8-1 of the ITAA 1997. However, the fact that the Business Advice Assistance reimburses the recipient taxpayer for what may be deductible expenses does not necessarily mean that the Business Advice Assistance is ordinary income.<sup>8</sup> It is necessary to examine the relationship between the payment and business activities of the recipient taxpayer.<sup>9</sup>

66. The Business Advice Assistance payment is for the purpose of assisting the applicant with the costs of seeking advice to assess the impact of the rezoning on the earning ability of the applicant's business and whether to apply for assistance under the Package. These costs can be accepted as part of the cost of trading operations. The Business Advice Assistance is given for a purpose that is an ordinary incident of part of an applicant's business activity. Accordingly, it is considered the Business Advice Assistance is income according to ordinary concepts and is included as assessable income under subsection 6-5(1) of the ITAA 1997.

<sup>8</sup> *FCI v. Rowe* (1997) 187 CLR 266; 35 ATR 432.

<sup>9</sup> *Reckitt & Colman Pty Ltd v. FC of T* 74 ATC 4185; (1974) 4 ATR 501.

**Capital gains tax**

67. Any capital gain made when an amount is paid under the Business Advice Assistance component of the Package is reduced under section 118-20 of the ITAA 1997 to the extent that the amount paid is assessable under section 6-5 of the ITAA 1997.

**Primary production income**

68. Subsection 392-80(2) of the ITAA 1997 provides that a taxpayer's 'assessable primary production income' for the current year is the amount of that taxpayer's basic assessable income for the current year that was derived from, or resulted from, their carrying on a primary production business.

69. Under subsection 995-1(1) of the ITAA 1997, a taxpayer carries on a 'primary production business' if they carry on a business of production resulting directly from a number of activities. Paragraph (d) of that definition restricts fishing activities to 'operations relating directly to taking or catching fish, turtles, dugong, bêche-de-mer, crustaceans, oysters or aquatic molluscs. For the purposes of this Ruling, the averaging concession would only be available for applicants that are carrying on a business of primary production as defined (for example eligible licensed fishing operations and licence lessees).

70. A taxpayer's basic assessable income for an income year is defined in subsection 392-45(2) of the ITAA 1997 as their assessable income for the income year less any amount included in their assessable income under either subsection 27B(1A) or 27B(3) of the ITAA 1936; and any net capital gains included in their assessable income under Division 102 of the ITAA 1997.

71. In order for income to be derived from, or result from, carrying on a primary production business, it is considered that there must be a causal connection between the income derived and the primary producer's trade or business.<sup>10</sup>

72. There is a causal connection between the Full Business Restructure Assistance received by an eligible fishing operation or a licence lessee and that applicant's fishing operation. The payment received arises from the applicant carrying on the fishing operation. Therefore, these payments are 'assessable primary production income' for the purposes of subsection 392-80(2) of the ITAA 1997.

73. There is also a causal connection between the Simplified Business Restructure Assistance received by an eligible fishing operations and that applicant's fishing operation. The payment received arises from the applicant carrying on the fishing operation. Therefore, the payment is 'assessable primary production income' for the purposes of subsection 392-80(2) of the ITAA 1997.

---

<sup>10</sup> See paragraphs 23 and 24 of Taxation Ruling IT 2228 and also AAT Case 6254; AAT Case X82 21 ATR 3708; 90 ATC 599.

74. The Business Advice Assistance is given for a purpose that is part of the taxpayer's trading activities. There is a causal connection between the payment and the licensed fishing operation's, or licence lessee's, trade or business. Therefore, the payment is 'assessable primary production income' for the purposes of subsection 392-80(2) of the ITAA 1997.

## Detailed contents list

---

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

	<b>Paragraph</b>
<b>What this Class Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
Full Business Restructuring Assistance	18
Simplified Business Restructuring Assistance	29
Business Advice Assistance	35
<b>Ruling</b>	<b>36</b>
Full Business Restructuring Assistance	36
<i>Section 6-5 of the ITAA 1997 – income according to ordinary concepts</i>	36
<i>Section 15-10 of the ITAA 1997 – bounty or subsidy</i>	37
<i>Capital gains tax</i>	38
Simplified Business Restructuring Assistance	40
<i>Section 6-5 of the ITAA 1997 – income according to ordinary concepts</i>	40
<i>Section 15-10 of the ITAA 1997 – bounty or subsidy</i>	41
<i>Capital gains tax</i>	42
Business Advice Assistance	43
<i>Section 6-5 of the ITAA 1997 – income according to ordinary concepts</i>	43
<i>Capital gains tax</i>	44
Primary production income	45
<b>Explanation</b>	<b>48</b>

Business Restructuring Assistance	48
<i>Section 6-5 of the ITAA 1997 – income according to ordinary concepts</i>	48
<i>Section 15-10 of the ITAA 1997 – bounty or subsidy</i>	52
<i>Bounty or subsidy</i>	53
<i>In relation to carrying on a business</i>	55
<i>Capital gains tax</i>	58
<i>CGT event C2 happens to the entitlement to receive the business restructuring assistance</i>	60
<i>Payment relates to acquisition of new CGT asset</i>	62
Simplified Business Restructuring Assistance	63
<i>Sections 6-5 and 15-10 of the ITAA 1997</i>	63
<i>Capital gains tax</i>	64
Business Advice Assistance	65
<i>Section 6-5 of the ITAA 1997 – income according to ordinary concepts</i>	65
<i>Capital gains tax</i>	67
Primary production income	68
<b>Detailed contents list</b>	<b>75</b>

**Commissioner of Taxation**

7 December 2005

<i>Previous draft:</i>	- ITAA 1997 15-10
Not previously issued as a draft	- ITAA 1997 Pt 3-1
	- ITAA 1997 Div 102
<i>Related Rulings/Determinations:</i>	- ITAA 1997 102-25
CR 2001/1; IT2228; TR 92/1;	- ITAA 1997 104-25
TR 97/16; TR 92/20	- ITAA 1997 110-45(3)
	- ITAA 1997 118-20
<i>Subject references:</i>	- ITAA 1997 Pt 3-3
- bounties & subsidies	- ITAA 1997 392-45
- capital gains tax	- ITAA 1997 392-45(2)
- capital receipts	- ITAA 1997 392-80
- government grants income	- ITAA 1997 392-80(2)
- income	- ITAA 1997 995-1(1)
- primary production income	- ITAA 1936 26(g)
	- ITAA 1936 27B(1A)
	- ITAA 1936 27B(3)
<i>Legislative references:</i>	- TAA 1953 Pt IVAAA
- ITAA 1997 6-5	- Copyright Act 1968
- ITAA 1997 6-5(1)	- Industrial Research and
- ITAA 1997 6-10(3)	Development Grants Act 1967
- ITAA 1997 8-1	

*Case references:*

- Federal Coke Company Pty Ltd v. Federal Commissioner of Taxation (1977) 7 ATR 176; 77 ATC 4035
- Federal Commissioner of Taxation v. Rowe (1997) 187 CLR 266; 97 ATC 4317; (1997) 35 ATR 432
- First Provincial Building Society Ltd v. Federal Commissioner of Taxation (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207
- G P International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47
- Placer Development Ltd. v. Commonwealth (1969) 121 CLR 353
- Reckitt & Colman Pty Ltd v. Federal Commissioner of Taxation (1974) 4 ATR 501; 74 ATC 4185
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514
- The Squatting Investment Co. Ltd. v. Federal Commissioner of Taxation (1953) 86 CLR 570

*Other references:*

- Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW

---

ATO references

- NO: 2005/17127  
ISSN: 1445-2014  
ATOlaw topic: Income Tax ~~ Assessable income ~~ compensation and ex gratia payments  
Income Tax ~~ Assessable income ~~ government payments  
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset  
Income Tax ~~ Assessable income ~~ carrying on a business