CR 2006/132 - Income tax: treatment of payments received under the Securing our Fishing Future package: Business Exit Assistance (Round 2) - Fishing Concession Voluntary Surrender Boat Scrapping Incentive Business Advice Assistance

Class Ruling

Income tax: treatment of payments received under the *Securing our Fishing Future* package:

- Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender
- Boat Scrapping Incentive
- Business Advice Assistance

Contents Para

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

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 8-1 of the ITAA 1997;

- section 15-10 of the ITAA 1997;
- Division 40 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- section 104-235 of the ITAA 1997;
- section 108-5 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-40 of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 118-24 of the ITAA 1997;
- Subdivision 124-C of the ITAA 1997;
- Division 152 of the ITAA 1997; and
- Division 392 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is Eligible Operators who applied for and received payments under the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender and/or Business Advice Assistance components of *Securing our Fishing Future* package.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 32 of this Ruling.

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

- this 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 Ruling may be withdrawn or modified.

Date of effect

8. This Ruling applies from 19 October 2006. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

12. This Ruling is withdrawn after 30 June 2008. This Ruling continues to apply after its withdrawal, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

13. The scheme 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 Agriculture, Fisheries and Forestry (DAFF) dated 30 January 2006 and supplementary correspondence from DAFF of 24 October 2006 and 17 November 2006;
- Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender Request for Tender (RFT) DAFF 75/06, released on 19 October 2006, made up of the following parts:
  - Clauses 1 to 13 contain the terms and conditions of the tender;
  - Schedules 1-13 which are specific to each fishery and provide details of the fishing concessions which are eligible to be tendered;
  - Attachment 1: An information sheet which must be submitted as part of the tender;
  - Attachment 2: A statutory declaration which must be submitted as part of the tender;
  - Attachment 3: The Agreement in relation to the items being surrendered which must be completed and executed by the Eligible Operator and submitted with the tender (The Agreement); and
  - Attachment 4: The Standard terms of the agreement;
- Business Exit Assistance (Round 2) - Second request for tender in relation to the voluntary surrender of fishing concessions RFT number DAFF 75/06 – Frequently Asked Questions; and
- Securing our Fishing Future Fact Sheet – Business Advice Assistance.

14. The *Securing our Fishing Future package* (Package), announced by the Australian Government on 23 November 2005, is a major structural adjustment package for the Australian fishing industry designed to reduce fishing capacity and better position the industry to be profitable and self-adjust in the future. The Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender is one of the components of the Package. The Package also includes a Business Advice Assistance component.

15. The Australian Government's overall objectives for the RFT process are to remove significant fishing capacity within and across Commonwealth fisheries and facilitate business exit in the fishing industry through the removal of Commonwealth fishing concessions.

16. The Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender is a voluntary tender process to encourage individual fishing businesses to exit the industry or rationalise their operations by offering to surrender one or more Eligible Fishing Concessions in Commonwealth fisheries. Certain Commonwealth fisheries are nominated as target fisheries.

17. Under clause 13 of the RFT DAFF 75/06, Fishing concessions means:

- a statutory fishing right or a fishing permit, as those are defined in the *Fisheries Management Act 1991*.

18. To participate in the tender process an entity must be an Eligible Operator and the tender must relate to one or more Eligible Fishing Concessions.

19. An Eligible Operator is the holder, at tender closing time, of an Eligible Fishing Concession. For Commonwealth fisheries covered by the RFT DAFF 75/06:

- the holder of a fishing permit is the person registered in the Australian Fisheries Management Authority (AFMA) Register as the holder of the fishing permit; and
- the holder of a statutory fishing right is the person registered in the AFMA Register as the holder or owner of the statutory fishing right.

20. Eligible Fishing Concessions for targeted and non targeted fisheries are prescribed in Schedules 1-13 of the RFT DAFF 75/06. The schedules also provide for limitations on what can be tendered. For example, Schedule 3, that relates to the Southern and Eastern Scalefish and Shark Fishery, requires that a tender that offers a quota statutory fishing right (SFR) must also offer a boat SFR.

21. A successful tender must be lodged in accordance with the requirements of the RFT DAFF 75/06. The tender offer price in item 3 of the Schedule to The Agreement reflects the total amount that the operator requires to surrender the offered Eligible Fishing Concessions listed in item 5 of the Schedule. In some cases, this may be equivalent to the amount required for an operator to exit the industry, less the money the operator is likely to receive for selling other parts of its business which cannot be tendered as part of the tender. The tender offer price does not include the $25,000 (exclusive of GST) boat scrapping incentive.

22. An Eligible Operator may link their tender with another Eligible Operator's tender if the two concession holders are related bodies corporate, in a partnership relationship or in a trust relationship. The DAFF will evaluate the linked tenders as if they were one tender with the result that all or none of the linked tenders will be successful. However, a separate Fishing Concession Voluntary Surrender payment will be made to each successful Eligible Operator in respect of their tender.

23. The submission of linked tenders is a different process to the submission of tenders in situations where Eligible Fishing Concessions are held jointly. Where Eligible Operators hold an Eligible Fishing Concession jointly, any tender in relation to that Eligible Fishing Concession must be submitted jointly.

24. Acceptance of the tender occurs only when the DAFF executes The Agreement submitted in accordance with the RFT DAFF 75/06. Payments are made within 14 days after the completion date.

25. Completion occurs when the surrender of the Offered Commonwealth Fishing Concession is registered, noted or recorded in the AFMA Register.

26. There are a number of requirements that Eligible Operators must meet prior to completion and before the Fishing Concession Voluntary Surrender payment will be made including the payment of all levies and charges relating to the Fishing Concession to be surrendered.

27. The Eligible Operator must also ensure that they own the Eligible Fishing Concession and that it is free from any third party interest. For example, an Eligible Operator may lease a fishing permit from a third party and therefore would be required to remove the lessor's interest in the fishing permit before completion date.

Business Exit Assistance (Round 2) – Boat Scrapping Incentive

28. An Eligible Operator may also include in the tender an offer to scrap one or more Nominated Boats for the Eligible Fishing Concessions. The operator's tender may only offer to scrap a boat if the boat:

- is owned by the operator;
- was owned by the operator for at least six months before the Closing Time;

- is a Nominated Boat for an Eligible Fishing Concession which the tender offers to surrender;
- was the Nominated Boat for an Eligible Fishing Concession which the tender offers to surrender (or an equivalent earlier Fishing Concession) for at least six months before the Closing Time; and
- is not required to be destroyed under an agreement with the DAFF which was entered into as a result of DAFF RFT 47/06 (unless the DAFF has waived its right to require the operator to destroy the boat under that agreement).

29. Where an offer by an Eligible Operator to surrender one or more Eligible Fishing Concessions is successful and the tender offers to scrap a boat, the DAFF (subject to the provisions of the RFT DAFF 75/06) will accept the offer to scrap the boat. An Eligible Operator cannot submit a tender which only offers to scrap a boat.

30. The DAFF will pay the Eligible Operator $25,000 (excluding GST) provided that within two months of Completion:

- the boat has been destroyed (so that the boat is rendered permanently incapable of seagoing use) in accordance with The Agreement;
- written evidence has been submitted that substantiates that the boat has been destroyed in accordance with The Agreement; and
- the boat is free of any third party interest and where that interest was held within 6 months of destruction, a letter or other evidence from the third party has been supplied stating that the interest has been removed and there is no objection to the destruction of the boat.

Business Exit Assistance (Round 2) – Business Advice Assistance

31. Included in the *Securing our Fishing Future* package is an amount up to $1,500 (including GST) available to Eligible Operators to offset the costs of obtaining professional business advice on their participation under the *Securing our Fishing Future* package (including the RFT DAFF 75/06).

32. Fishing concession holders must be eligible to participate in the tender to apply for this assistance and the advice must be related to the Business Exit Assistance (Round 2) tender. If an Eligible Operator received $1,500 (GST inclusive) for Business Advice Assistance in the first round of Business Exit Assistance, they are not entitled to receive Business Advice Assistance for the second round. However, if an Eligible Operator received less than $1,500 (GST inclusive) in the first round, they may apply for the balance in relation to the second round.

Ruling

Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender – business ceases or continues

Section 6-5 – income according to ordinary concepts

33. A payment received under Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender component of the Package is not income according to ordinary concepts. No part of the total receipts constitutes assessable income under section 6-5.

Section 15-10 – bounty or subsidy

34. A payment received under the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender component of the Package is not a bounty or subsidy that is received in relation to carrying on a business. No part of the total receipts constitutes assessable income under section 15-10.

Capital gains tax

35. A payment received under the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender component of the Package is subject to the capital gains tax (CGT) provisions in Parts 3-1 and 3-3. CGT event C2 under section 104-25 happens when an offer by an Eligible Operator is accepted by the DAFF and results in the surrender of each Eligible Fishing Concession.

36. An Eligible Fishing Concession that is used in carrying on a commercial fishing operation of an Eligible Operator is an active asset within the meaning of 'active asset' set out in subsection 152-40(1) for the purposes of the small business CGT concessions in Division 152.

Example

37. Fred is a sole trader. In 1980, he started a commercial fishing operation. In 1983, he was issued with a fishing licence with endorsements based on his catch history. In 1993, after entry into force of the fishery management plan, he was issued fishing concessions involving a boat fishing right and 12 effort units relating to the type of fishing gear the fishery uses in place of the fishing licence and endorsements. In 2000 he purchased 10 more units for the same type of fishing. The cost of each of these units was $10,000.

38. In 2006, Fred submits a tender which was accepted by the DAFF. As a result Fred surrendered his boat fishing right and all of the effort units. He received an amount as the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender component of the Package. The value attributed to each effort unit is $15,000. The value attributed to the boat fishing right is $70,000. The CGT consequences are:

> The original 12 effort units were received because Fred held a fishing licence with endorsements. The original licence with endorsements was acquired before 20 September 1985. Therefore the boat fishing right and the 12 effort units are taken to have been acquired before that date because they were created by splitting rights from the original pre-CGT licence and endorsements. The pre-CGT status of the boat fishing right and the 12 effort units are preserved through any renewals by the application of the statutory licence rollover in Subdivision 124-C. Any capital gains made from surrendering the boat fishing right and the 12 effort units are therefore disregarded.
>
> The capital gain made from surrendering each of the 10 effort units that were purchased after 20 September 1985 is worked out as follows:

Capital proceeds	$15,000
Less: cost base	<u>$10,000</u>
Capital gain	$ 5,000

> The total capital gain made on the surrender of the 10 additional effort units is $50,000. The capital gain can be reduced by the 50% general discount. As the effort units are active assets, the small business CGT concessions may also be available if the other requirements in Division 152 are met.

(This example, including the figures used, is only to illustrate the application of relevant taxation provisions and does not refer to any particular Commonwealth fishery.)

Business Exit Assistance (Round 2) – Boat Scrapping Incentive – business ceases or continues

Section 6-5 – income according to ordinary concepts

39. A payment of $25,000 received under Business Exit Assistance (Round 2) – Boat Scrapping Incentive component of the Package is not income according to ordinary concepts. No part of the total receipts constitutes assessable income under section 6-5.

Section 15-10 – bounty or subsidy

40. A payment of $25,000 received under the Business Exit Assistance (Round 2) – Boat Scrapping Incentive component of the Package is not a bounty or subsidy that is received in relation to carrying on a business. No part of the total receipts constitutes assessable income under section 15-10.

Capital allowances

41. A balancing adjustment event occurs for a Nominated Boat under paragraph 40-295(1)(a) when the boat is scrapped in accordance with clause 8 of Attachment 4 to The Agreement. The payment of $25,000 referred to under that clause will be included in the termination value of the boat under subsection 40-300(2) and is used to work out if an amount is to be included in assessable income or allowed as a deduction.

Capital gains tax

42. Any capital gain or capital loss arising from the payment of $25,000 under the Business Exit Assistance (Round 2) – Boat Scrapping Incentive component of the Package is disregarded under section 118-24 where the Nominated Boat was used solely for a taxable purpose. However a capital gain or capital loss may arise under CGT event K7 in section 104-235 where the boat was used wholly or partly for a purpose other than a taxable purpose.

43. The small business CGT concessions in Division 152 do not apply to a capital gain under CGT event K7 (subsection 152-10(1)).

Business Advice Assistance

Section 6-5 – income according to ordinary concepts

44. A payment received under the Business Exit Assistance (Round 2) – Business Advice Assistance component of the Package is income according to ordinary concepts and is assessable income under section 6-5.

Capital gains tax

45. Any capital gain made when an amount is paid under the Business Exit Assistance (Round 2) – Business Advice Assistance component of the Package is reduced under section 118-20 to the extent that the amount is assessable under section 6-5.

Primary production income

46. Payments received under the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender component may result in a net capital gain being included in assessable income under Division 102. The net capital gain is excluded from assessable primary production income for the purposes of Division 392 (Long-term averaging of primary producers' tax liability).

47. If an amount is included in assessable income or allowed as a deduction because a payment is received for scrapping a Nominated Boat that has been used to carry on a taxpayer's primary production business an amount will be included either in assessable primary production income or in primary production deductions for the purposes of Division 392.

48. Where a boat is partly used in carrying on a taxpayer's primary production business just before it is scrapped, a reasonable apportionment of the amount to reflect the primary production use is required.

49. Payments received under the Business Advice Assistance component are assessable primary production income for the purposes of Division 392.

Commissioner of Taxation
20 December 2006

Appendix 1 – Explanation

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.

Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender – business ceases or continues

Section 6-5 – income according to ordinary concepts

50. Subsection 6-5(1) 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.

51. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.[1]

52. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,[2] the Full High Court stated at CLR 138; ATR 7; ATC 4420:

> 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.

53. The receipt of the Fishing Concession Voluntary Surrender payment is for the surrender of one or more Eligible Fishing Concessions. The Eligible Fishing Concession is part of the profit yielding structure of the licensed fishing operation. Payment for the loss of a capital asset or an enduring part of a taxpayer's profit-yielding structure will be capital in nature.[3] The receipt of the Fishing Concession Voluntary Surrender payment is neither a normal incident of the applicant's business nor is it paid for a purpose for which the Eligible Operator's business was carried on.

54. Accordingly, payments received under the Fishing Concession Voluntary Surrender component of the Package are capital in nature and do not constitute assessable income under section 6-5.

---

[1] *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514, *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47, *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 7 ATR 519; 77 ATC 4255.
[2] (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.
[3] *Glenboig Union Fireclay Co Ltd v. IR Commrs* (1922) 12 TC 427.

Section 15-10 – bounty or subsidy

55. Section 15-10 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.

Bounty or subsidy received in relation to carrying on a business

56. 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*,[4] derives from the Latin ‘subsidium’ meaning ‘an aid or help’. The Macquarie Dictionary, 2001, rev. 3rd edn, defines subsidy as including ‘a grant or contribution of money’. The ordinary meaning adopted by case law is an aid provided by the Crown (government) to foster or further some undertaking or industry.

57. Following the decisions in *The Squatting Investment Co Ltd v. Federal Commissioner of Taxation,*[5] *Reckitt and Colman Pty Ltd v. Federal Commissioner of Taxation,*[6] and *First Provincial Building Society Ltd v. Federal Commissioner of Taxation*[7] (*First Provincial*), it is now well accepted that a ‘subsidy’ or ‘bounty’ includes a financial grant made by a government.

58. A bounty or subsidy will be ‘in relation’ to carrying on a business when there is a real connection between the payment and the business. The term ‘in relation’ includes within its scope payments that have a direct or indirect connection to the business. As stated by Hill J in the *First Provincial* case:

> The words ‘in relation to’ are words of wide import. They are capable of referring to any relationship between the two subject matters, in the present case the receipt of the bounty or subsidy, on the one hand, and the carrying on of the business, on the other … the degree of connection will be ‘a matter of judgment on the facts of each case’. …What is necessary, at the least, in the present context is that there be a real connection … the relationship need not be direct, it may also be indirect.[8]

[4] (1969) 121 CLR 353.
[5] (1953) 86 CLR 570.
[6] (1974) 4 ATR 501; 74 ATC 4185.
[7] (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207.
[8] *First Provincial* case (1995) 56 FCR 320 at 333.

59. A bounty or subsidy must be related to 'carrying on' the business not merely for commencing or ceasing a business. As stated by Hill J in the *First Provincial* case:

> the relationship must be to the 'carrying on' of the business. These words may perhaps be understood in opposition to a relationship with the actual business itself. They would make it clear, for example that a bounty received, merely in relation to the commencement of a business or the cessation of the business, would not be caught. The expression 'carrying on of a business' looks, in my opinion, to the activities of that business which are directed towards the gaining or producing of assessable income, rather than merely to the business itself.[9]

60. Therefore, Government payments to industry received by an entity as assistance either to cease a business or give or sell part of the profit yielding structure of the business are not in relation to the 'carrying on' of the business.

61. A payment received by the tenderer as consideration for the permanent surrender of one or more Eligible Fishing Concessions under the RFT is not a bounty or subsidy in relation to the carrying on of a business for the purposes of section 15-10. Accordingly, no part of the total receipts constitutes assessable income under section 15-10.

Capital gains tax

62. Each Eligible Fishing Concession is a CGT asset under section 108-5.

63. CGT event C2 under section 104-25 happens when an offer by an Eligible Operator is accepted by the DAFF and results in the surrender of an Eligible Fishing Concession.

64. A capital gain is made if the capital proceeds exceed the cost base of the Eligible Fishing Concession, and a capital loss is made if the capital proceeds are less than the reduced cost base of the concession (subsection 104-25(3)).

65. A lump sum payment received under the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender component of the Package comprises the capital proceeds for the surrendering of the Eligible Fishing Concessions. If this lump sum payment relates to more than one concession, the capital proceeds are apportioned between each concession under section 116-40. The capital proceeds are apportioned in such amounts as are reasonably attributable to each concession.

[9] *First Provincial* case (1995) 56 FCR 320 at 332.

66. Any capital gain or capital loss which results from the surrendering of an Eligible Fishing Concession acquired before 20 September 1985 (pre-CGT) is disregarded (subsection 104-25(5)). An eligible fishing concession that was received as a result of a renewal of a licence, permit or quota that was acquired before 20 September 1985 is also taken to have been acquired before that date where the requirements in Subdivision 124C are satisfied.

67. If an Eligible Fishing Concession was acquired before 20 September 1985 and an additional concession was acquired on or after that date, the additional concession is not a capital improvement to the original pre-CGT concession but is a separate CGT asset. The capital gain or loss on the surrender of the new concession is to be worked out separately.

68. A capital gain which results from the surrendering of an Eligible Fishing Concession acquired on or after 20 September 1985 (post-CGT) can be reduced by the general CGT discount if the relevant requirements of Subdivisions 115-A, 115-B and 115-C are met.

69. A capital gain can be reduced or deferred by the small business CGT concessions if the Eligible Fishing Concession is an active asset and the other requirements of Division 152 are met. The concessions available are:

- small business 15-year exemption;
- small business 50% active asset reduction;
- small business retirement exemption; and
- small business rollover.

70. An Eligible Fishing Concession that is used in carrying on a commercial fishing operation of an Eligible Operator is an active asset within the meaning of 'active asset' set out in subsection 152-40(1) for the purposes of the small business CGT concessions in Division 152.

Business Exit Assistance (Round 2) – Boat Scrapping Incentive – business ceases or continues

Section 6-5 – income according to ordinary concepts

71. A nominated boat is part of the profit yielding structure as it enables the Eligible Operator to take fish and earn income. The receipt of the Boat scrapping incentive payment is neither a normal incident of the Eligible Operator's business nor is it paid for a purpose for which the Eligible Operator's business was carried on. Accordingly, a payment received under the Business Exit Assistance (Round 2) – Boat Scrapping Incentive component of the Package is capital in nature and does not constitute assessable income under section 6-5.

Section 15-10 – bounty or subsidy

72. The Boat Scrapping Incentive payment is not received in relation to the 'carrying on' of the business as it is received in relation to the cessation or giving up part of the profit yielding structure of an Eligible Operator's business. Accordingly, it is not assessable under section 15-10.

Capital allowances

73. A Nominated Boat is a depreciating asset under section 40-30. Generally, an Eligible Operator who is the legal owner of the boat will be the holder under item 10 of the table in section 40-40. However, if the boat is a partnership asset, the holder is the partnership.

74. Subsection 40-295(1) states that a balancing adjustment event occurs for a depreciating asset if, among other things, you stop holding the asset.

75. A Nominated Boat ceases to exist once it is scrapped in accordance with clause 8.1 of The Agreement. Therefore the holder of the boat stops holding it at that time and a balancing adjustment event occurs for the asset under paragraph 40-295(1)(a).

76. The termination value of a depreciating asset is used to work out if an amount is to be included in assessable income or allowed as a deduction.

77. Section 40-300 provides that the termination value of a depreciating asset is worked out as at the time when a balancing adjustment event occurs. The termination value is, in certain circumstances, an amount specified in the table in subsection 40-300(2). Otherwise, the termination value is the amount taken to have been received under section 40-305.

78. Item 8 of the table in subsection 40-300(2) specifies that where a depreciating asset is lost or destroyed, the termination value is the amount or value received or receivable under an insurance policy or otherwise for the loss or destruction.

79. A Nominated Boat is destroyed when it is scrapped in accordance with clause 8.1 of The Agreement. The payment of $25,000 is paid by the DAFF specifically for the destruction of the boat. Therefore, the amount is included in the termination value of the scrapped boat because it is an amount received for the loss or destruction of the boat.

80. An amount may be included in assessable income or allowed as a deduction under section 40-285 if a balancing adjustment event occurs for a depreciating asset and deductions for decline in value have been worked out under Subdivision 40-B. If the termination value exceeds the adjustable value the excess will be included in assessable income. If the termination value is less than the adjustable value the difference is allowed as a deduction.

81. A depreciating asset's adjustable value at a particular time is its cost (first and second elements) less any decline in value up to that time (section 40-85).

82. An amount may also be included in assessable income if the Nominated Boat has been allocated to a pool under Subdivision 40-E (low-value pools) or Subdivision 328-D (Capital allowances for STS taxpayers).

83. Expenses incurred because of a balancing adjustment event, such as those incurred in scrapping the Nominated Boat, are included in the second element of cost of the boat under paragraph 40-190(2)(a). As a result these expenses will be taken into account in working out whether an amount will be included in assessable income or allowed as a deduction.

Capital gains tax

84. Any capital gain or capital loss arising from the payment of $25,000 under the Business Exit Assistance (Round 2) – Boat Scrapping Incentive component of the Package is disregarded under section 118-24 where the Nominated Boat was used solely for a taxable purpose. However a capital gain or capital loss may arise under CGT event K7 in section 104-235 where the boat was used other than for a taxable purpose.

85. The small business CGT concessions in Division 152 do not apply to a capital gain under CGT event K7 (subsection 152-10(1)). Essentially those concessions relate to the use of an asset in a small business and a capital gain from CGT event K7 arises from the use of an asset for a non-taxable purpose.

86. A capital gain which results from CGT event K7 can be reduced by the general CGT discount if the relevant requirements of Subdivisions 115-A, 115-B and 115-C are met.

Business Advice Assistance

Section 6-5 – income according to ordinary concepts

87. The cost of seeking business advice prior to submitting a tender to apply for Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender may be deductible under section 8-1.

88. However, the fact that the Business Advice Assistance reimburses the Eligible Operator for what may be deductible expenses does not necessarily mean that the Business Advice Assistance is ordinary income.[10]

---

[10] *Federal Commissioner of Taxation v. Rowe* (1997) 187 CLR 266; 35 ATR 432.

89. It is necessary to examine the relationship between the payment and business activities of the recipient taxpayer.[11] The Business Advice Assistance payment is for the purpose of assisting Eligible Operators with the costs of seeking advice to assess whether to participate in the tender.

90. 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 the 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).

91. An Eligible Operator derives the assessable income when the expenditure is reimbursed.

Capital gains tax

92. CGT event C2 under section 104-25 happens when the entitlement to receive the Business Advice Assistance is satisfied. This event happens at the time the DAFF makes the one-off payment to the Eligible Operator to end their right to the payment.

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

Primary production income

94. Subsection 392-80(2) 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.

95. So far as is relevant here, subsection 392-80(3) provides that primary production deductions are any amounts you can deduct for the current year, so far as they reasonably relate to a taxpayer's assessable primary production income for an income year.

96. A taxpayer's basic assessable income for an income year is defined in subsection 392-45(2) as their assessable income for the income year less, among other things, any net capital gains included in their assessable income under Division 102.

97. Therefore, if the Business Exit Assistance (Round 2) – Fishing Concession Voluntary Surrender payment results in a net capital gain being included in assessable income under Division 102, the net capital gain is excluded from assessable primary production income for the purposes of subsection 392-80(2).

[11] *Reckitt & Colman Pty Ltd v. Federal Commissioner of Taxation* (1974) 74 ATC 4185; 4 ATR 501.

98. In order for income to be derived from, or result from, carrying on a primary production business, there must be a causal connection between the income received and the primary producer's trade or business (see paragraphs 23 and 24 of Taxation Ruling IT 2228 and also *AAT Case 6254*, *AAT Case X82* 21 ATR 3708; 90 ATC 599). Generally, where income arises from the use of the assets of a primary production business and the particular use is a recognised incident of carrying on that sort of business, the income may be regarded as forming part of the proceeds of the business (see Taxation Ruling IT 225).

99. The Business Advice Assistance is given for a purpose that is part of the taxpayer's trading activities. There is a causal connection between these payments and the Eligible Operator's trade or business. Therefore, these payments are 'assessable primary production income' for the purposes of subsection 392-80(2).

100. Similarly, the use and disposal of a Nominated Boat is an incident of carrying on a primary production business of fishing. There is a causal connection between the payment received for the scrapping of the boat and the Eligible Operator's trade or business. Therefore, any income or deductions (under Division 40 or Subdivision 328-D) arising from the scrapping of the boat will be either assessable primary production income or primary production deductions for the purposes of subsections 392-80(2) and (3). Where a boat is used partly in a primary production business, an Eligible Operator needs to apportion the assessable income or deduction to reflect the primary production use.

Appendix 2 – Detailed contents list

101. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/3; IT 225; IT 2228

Subject references:

- balancing adjustment event
- bounties and subsidies
- capital gains tax
- ordinary income
- primary production income
- termination value

Legislative references:

- TAA 1953
- TAA 1953 357-75(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 8-1
- ITAA 1997 15-10
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-B
- ITAA 1997 40-30
- ITAA 1997 40-40
- ITAA 1997 40-85
- ITAA 1997 40-190(2)(a)
- ITAA 1997 40-285
- ITAA 1997 40-295(1)
- ITAA 1997 40-295(1)(a)
- ITAA 1997 40-300
- ITAA 1997 40-300(2)
- ITAA 1997 40-305
- ITAA 1997 Subdiv 40-E
- ITAA 1997 Pt 3-1
- ITAA 1997 Div 102
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-25(5)
- ITAA 1997 104-235
- ITAA 1997 108-5
- ITAA 1997 Subdiv 115-A
- ITAA 1997 Subdiv 115-B
- ITAA 1997 Subdiv 115-C
- ITAA 1997 116-40
- ITAA 1997 118-20
- ITAA 1997 118-24
- ITAA 1997 Pt 3-3
- ITAA 1997 Subdiv 124-C
- ITAA 1997 Div 152
- ITAA 1997 152-10(1)
- ITAA 1997 152-40(1)
- ITAA 1997 Subdiv 328-D
- ITAA 1997 Div 392
- ITAA 1997 392-45(2)
- ITAA 1997 392-80(2)
- ITAA 1997 392-80(3)
- Copyright Act 1968
- Fisheries Management Act 1991

Case references:

- AAT Case 6254, AAT Case X82 21 ATR 3708; 90 ATC 599
- C of T (NSW) v. Meeks (1915) 19 CLR 568
- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 7 ATR 519; 77 ATC 4255
- Federal Commissioner of Taxation v. Rowe (1997) 187 CLR 266; 35 ATR 432
- Glenboig Union Fireclay Co Ltd v. IR Commrs (1922) 12 TC 427
- GP 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
- First Provincial Building Society Ltd v. Federal Commissioner of Taxation (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207

Other references:

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

ATO references

NO:	2006/25458
ISSN:	1445-2014

ATOlaw topic:	Income Tax ~~ Capital allowances ~~ balancing adjustments - balancing adjustment event Income Tax ~~ Capital allowances ~~ balancing adjustments - termination value Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset Income Tax ~~ Assessable income ~~ government payments