



CR 2007/29 - Income tax: capital gains - roll-over relief - acquisition of land for Traveston Crossing and Wyaralong Dams

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 November 2008*



Class Ruling

Income tax: capital gains – roll-over relief – acquisition of land for Traveston Crossing and Wyaralong Dams

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① 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.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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:

- paragraph 124-70(1)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997);
- paragraph 124-70(1)(aa) of the ITAA 1997; and
- paragraph 124-70(1)(c) of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is the owners of freehold land (land) impacted by the proposed Traveston Crossing and Wyaralong Dams (the Water Projects) referred to in paragraph 16 of this Ruling (affected landowners), who:

- sell their interest in land to *Queensland Water Infrastructure Pty Ltd* (QWI) following the receipt of a notice in the terms described at paragraph 21 of this Ruling (called a sale under notice); or
- have their interest in land compulsorily acquired.

Qualifications

4. This Ruling covers a single topic, being the satisfaction of the threshold conditions for the claim of compulsory acquisition rollover in subsection 124-70(1) for the disposal of an interest in land.

5. This Ruling does not cover the income tax and capital gains tax consequences of the creation or taking by compulsory acquisition process of a water storage or access easement, or the consequences of any additional payments received from QWI in relation to the sale under notice (such as allowances for disturbance costs and stamp duties to be incurred on the purchase of a replacement property).

6. This Ruling does not cover the income tax consequences where an amount is included in assessable income or allowed as a deduction because a balancing adjustment event occurs for a depreciating asset such as a fixture.

7. 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 15 to 25 of this Ruling.

8. 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.

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Date of effect

10. This Ruling applies from 1 July 2006 to 30 June 2010. However, the Ruling continues to apply after this period to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

11. 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.

12. 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)).

13. 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.

14. 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).

Scheme

15. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Application for Class Ruling dated 8 January 2007 from Allens Arthur Robinson (AAR) acting for Queensland Water Infrastructure Pty Ltd (QWI);
- Draft copy of the land purchase notice and covering letter to be provided to affected landowners;

- Land purchasing policies and drafts of Factsheets for the Water Projects that will be provided to affected landowners;
- Extracts from Ministerial Statements reported in Hansard on 26 May 2006, 10 October 2006, 1 November 2006, 20 February 2007;
- Queensland Government press releases of June and July 2006 announcing the proposed construction of the Water Projects;
- Correspondence from AAR to the Tax Office between 24 January 2007 and 21 March 2007; and
- Correspondence from AAR to the Tax Office dated 17 September 2008.

16. The Queensland Government made announcements in June and July 2006 of its plan to construct and operate a number of water facilities – the Water Projects.

17. The Queensland Government intends to complete the Water Projects as originally announced but the Water Projects cannot be implemented unless and until all environmental approvals are obtained. In anticipation of receiving approvals, the Queensland Government intends to purchase interests in land impacted by the Water Projects. However, at the time when sales under notice that are the subject of this Ruling are made, approvals for the Water Projects as required by the terms of the *Environmental Protection and Biodiversity Conservation Act 1999* may not have been obtained.

18. QWI was formed in June 2006 by the Queensland Government to:

- undertake investigation of the Water Projects;
- obtain approvals for the Water Projects; and
- construct and operate the Water Projects,

and any other water projects that may later be proposed. All of the shares in QWI are owned by the State of Queensland.

19. A corporation sole (the corporation sole) constituted under the *State Development and Public Works Organisation Act 1971* (QLD) (SDPWO Act) has the power to perform the functions and duties as described in that Act.

20. QWI has acquired, and will continue to acquire, interests in land from affected landowners with a view to developing the Water Projects. The means by which interests in land will be acquired by QWI (or in some instances, the corporation sole) are as described at paragraphs 22 to 24 of this Ruling.

21. QWI will send to affected landowners a notice (a land purchase notice), which will include the following:

- a land purchase plan which identifies the extent of the landowner's land that is required for the Water Project;
- an invitation to sell that land to QWI;
- a statement that, if a mutually acceptable agreement cannot be reached, QWI will request that the corporation sole initiate procedures for the compulsory acquisition of the land under the SDPWOA; and
- another statement that the proposed request for compulsory acquisition will not be made by QWI unless and until all environmental approvals are obtained for the Water Project.

22. Following the receipt of the land purchase notice, an affected landowner may agree to the requested sale of land (a sale under notice).

23. Otherwise, as described in the notice, the interest in land may be compulsorily acquired from the affected landowner under section 125 of the SDPWO Act. The corporation sole may exercise the power to compulsorily acquire land for works to be undertaken by a local body. The exercise of any power to compulsorily acquire the interest in the land would be regulated by the processes contained in the SDPWO Act and the *Acquisition of Land Act 1967* (Qld). No exercise of this power will be requested unless the environmental approvals referred to in paragraph 21 of this Ruling have been obtained.

24. If the power in section 125 of the SDPWO Act is exercised, the land will be compulsorily acquired:

- by the corporation sole; or
- by QWI, nominated by the corporation sole as the entity in which the acquired interest in the land will vest.

25. This Ruling **does not apply** to any voluntary sale of land by affected land owners to QWI, the Queensland Government or any other entity where a notice of the kind described in paragraph 21 of this Ruling has not been received prior to the sale.

Ruling

Subdivision 124-B roll-over

26. The threshold condition for CGT roll-over in paragraphs 124-70(1)(a), (aa) or (c) is satisfied where an affected landowner disposes of their interest in land to:

- QWI under an agreement entered into by the affected landowner after having received a land purchase notice;
- the corporation sole, where the title is compulsorily acquired on the exercise of the power of compulsory acquisition in section 125 of the SDPWO Act; or
- QWI, as the acquirer nominated by the corporation sole on the exercise of the power of compulsory acquisition in section 125 of the SDPWO Act.

Commissioner of Taxation

18 April 2007

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

27. The CGT roll-over under Subdivision 124-B is a replacement asset roll-over that can be chosen where an asset is compulsorily acquired, lost or destroyed. The types of event to which the roll-over can be applied are listed in subsection 124-70(1).

28. Under the scheme as described at paragraphs 15 to 25 of this Ruling, an affected owner's interest in land can vest in the corporation sole or QWI. Each of these events will satisfy one of the relevant qualifying conditions in subsection 124-70(1).

Sale under notice

29. A sale that follows the receipt of a land purchase notice will satisfy the qualifying condition in paragraph 124-70(1)(c). The affected landowner will 'dispose of' the interest, as they cease to be the owner and QWI becomes the owner: subsection 104-10(2) and definition of 'dispose of' in subsection 995-1(1). The disposal will satisfy the condition in subparagraph 124-70(1)(c)(i), as it takes place after a land purchase notice has been issued to the affected landowner.

30. The land purchase notice satisfies the conditions for roll-over in subparagraphs 124-70(1)(c)(ii) and (iii). There is an invitation to negotiate for sale, as required by subparagraph 124-70(1)(c)(ii). The advice about the basis on which QWI will make a request to the corporation sole to initiate procedures for the compulsory acquisition of the interest in land, when read together with the land purchasing policy and other documentation included with the notice, satisfies the condition in subparagraph 124-70(1)(c)(iii). The intention of QWI, to acquire the interest in land by compulsory acquisition if necessary, is expressed without qualification. The surrounding documentation reasonably shows that QWI has recourse to a power of compulsory acquisition. The further advice that no request will be made to the corporation sole until the environmental approvals are obtained does not qualify that intention.

31. The condition in subparagraph 124-70(1)(c)(iv) is satisfied as the SDPWO Act is a law of the State of Queensland as required by the condition in subsection 124-70(1A): subsection 995-1(1) definition of 'Australian law'.

Compulsory acquisition

32. An acquisition of an interest in land by either the corporation sole or QWI as a result of the exercise of the power of compulsory acquisition in the SDPWO Act will satisfy the qualifying conditions in subsection 124-70(1).

33. An acquisition by the corporation sole will satisfy the conditions in paragraph 124-70(1)(a) of the ITAA 1997. The corporation sole, a representative of the Crown having the power to exercise all of the powers, privileges, rights and remedies of the Crown, is an authority of the State of Queensland: section 9 of the SDPWO Act; definition of 'Australian government agency' in section 995-1 of the ITAA 1997.

34. Where title vests in QWI as nominated by the corporation sole, the acquisition will satisfy the conditions in paragraph 124-70(1)(aa). QWI will acquire the interest in land, and that acquisition is made under the statutory power of compulsory acquisition conferred on the corporation sole under the SDPWO Act.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Subject references:

- CGT
- CGT compulsory acquisitions
- CGT roll-over relief

Legislative references:

- ITAA 1997 104-10(2)
 - ITAA 1997 Subdiv 124-B
 - ITAA 1997 124-70(1)
 - ITAA 1997 124-70(1)(a)
 - ITAA 1997 124-70(1)(aa)
 - ITAA 1997 124-70(1)(c)
 - ITAA 1997 124-70(1)(c)(i)
 - ITAA 1997 124-70(1)(c)(ii)
 - ITAA 1997 124-70(1)(c)(iii)
 - ITAA 1997 124-70(1)(c)(iv)
 - ITAA 1997 124-70(1A)
 - ITAA 1997 995-1
 - ITAA 1997 995-1(1)
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
 - Environmental Protection and Biodiversity Conservation Act 1999
 - Acquisition of Land Act 1967 (Qld)
 - SDPWO Act 1971 (Qld)
 - SDPWO Act 1971 (Qld) 9
 - SDPWO Act 1971 (Qld) 125
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ATO references

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