


CR 2007/72 - Income tax: treatment of payments received under the Securing our Fishing Future package: * Assistance for Skippers and Crew

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Class Ruling

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

- Assistance for Skippers and Crew

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❗ 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:

- subsection 27A(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 27B of the ITAA 1936;
- section 27C of the ITAA 1936;
- section 27CB of the ITAA 1936;
- section 27F of the ITAA 1936;

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-25 of the ITAA 1997;
- section 15-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997; and
- subsection 118-37(2) of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is applicants who applied for and received payments under the Assistance for Skippers and Crew component of the *Securing our Fishing Future Package 2005* (the 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 23 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.

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Date of effect

8. This Ruling applies from 15 December 2006 to 30 June 2007. However, the Ruling continues to apply after 30 June 2007 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. 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.

10. If this 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)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the 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.

12. 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

13. The following description of the scheme is based on information provided by the applicant. The relevant documents or parts of documents incorporated into this description are:

- Guidelines for Assistance for Skippers and Crew; and
- Application form for Assistance for Skippers and Crew.

14. The *Securing our Fishing Future Package 2005*, 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.

15. The Australian Government's overall objectives of the structural adjustment package 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. These reductions in fishing capacity will contribute to the recovery of over-fished fisheries and assist their management on an ecologically sustainable basis.

16. The Australian Government Department of Agriculture, Fisheries and Forestry (the Department) is providing a one-off lump sum of \$5,000 for skippers and \$3,000 for individual crew members who lose employment as a direct result of a successful tender for Business Exit Assistance-Fishing Concession Voluntary Surrender. This assistance is being provided to help offset any costs that may be incurred with relocation and/or retraining for alternative employment.

17. To be eligible for Assistance for Skippers and Crew, an individual must:

- have been 'principally employed' as a skipper or crew member on a fishing boat associated with a successfully tendered fishing concession ('principally employed' means that this is the primary occupation of the applicant, and this occupation must have provided the main source of income and taken the majority of their working hours);
- have been employed prior to 23 November 2005 and the date that concession was surrendered;
- have paid all relevant taxes such as income tax, goods and services tax and payroll tax throughout their employment;
- have lost their employment as a skipper or crew member as a result of the surrender of a fishing concession through the Business Exit Assistance tender process, and have not received any financial or in-kind benefit from the surrender of that concession;
- agree to provide additional information to the Department upon request so that it can verify that the individual meets the eligibility criteria; and
- agree not to work as a skipper or crew member on any fishing vessel for five years for the same employer, or any organisation associated with that employer.

18. Fishing concession holders successful in the Business Exit Assistance tender will be forwarded statutory declarations by the Department that they should distribute to employees who may be eligible for Assistance for Skippers and Crew. Employees who feel they may be eligible for this assistance should contact the Department directly.

19. The one-off lump sum payment for skippers and crew members will not be included as income for the purposes of determining social security payments.

20. Skippers of a boat engaged in fishing operations generally fall into one of the following categories:

- (a) boat owners/owner operators who are holders of a fishing concession;
- (b) skippers who work for, and under the direction of, the boat owner/owner operator, who receive a set weekly wage, a guaranteed wage plus a share of the catch, a share of catch only or some other form of periodic remuneration; or
- (c) skippers who have entered into a true share fishing/joint venture arrangement with the boat owner/owner operator, that is, they are conducting a fishing enterprise in their own right, they are not simply part of the operations conducted by the owner of the boat and they are not subject to the supervision and control of the boat's owner.

21. The \$5,000 lump sum payment under the Package will not be available to skippers who fall within category (a) in paragraph 20 because they would have received financial or in-kind benefit from the direct surrender of the relevant fishing concession through Business Exit Assistance (fishing concession tender).

22. Crew members of a boat engaged in fishing operations may fall into one of two categories:

- (a) deck-hands, cooks, mechanics, engineers, spotters, divers etc who work for, and under the direction of, the owner/skipper of the boat, who receive a set weekly wage, a guaranteed wage plus a share of the catch, a share of catch only or some other form of periodic remuneration; or
- (b) parties to a true share fishing/joint venture arrangement, that is, they are conducting a fishing enterprise in their own right, they are not simply part of the operations conducted by the owner of the boat and they are not subject to the supervision and control of the boat's owner.

23. Crew members who fall within either category will be eligible for the \$3,000 lump sum payment under the Package.

Ruling

Employees

Eligible termination payment

24. A payment received by an employee, under the Assistance for Skippers and Crew component of the Package, satisfies the definition of an eligible termination payment (ETP) in subsection 27A(1) of the ITAA 1936.

25. Payments made where the termination of employment occurs before the employee turns age 65 will be bona fide redundancy payments under section 27F of the ITAA 1936 and will be exempt from tax under section 27CB of the ITAA 1936.

26. However, payments made where the termination of employment occurs on or after the employee turns age 65 are included in assessable income under section 27B and/or section 27C of the ITAA 1936 to the extent that the ETP is not rolled over.

27. Subsection 6-25(1) of the ITAA 1997 provides that sometimes more than one rule includes an amount in a taxpayer's assessable income. However, in such a case, the amount is included only once in the taxpayer's assessable income. Subsection 6-25(2) of the ITAA 1997 provides that unless the contrary intention appears, the provisions of the Act prevail over the rules about ordinary income. Accordingly, it is not necessary to consider whether a payment under the Assistance for Skippers and Crew component of the Package is assessable as ordinary income under section 6-5 of the ITAA 1997.

Capital gains tax

28. Any capital gain or capital loss made when a payment is received by an employee under the Assistance for Skippers and Crew component of the Package is disregarded under subsection 118-37(2) of the ITAA 1997.

Contractors

Eligible termination payment

29. A payment received by a contractor, under the Assistance for Skippers and Crew component of the Package, does not satisfy the definition of an ETP in subsection 27A(1) of the ITAA 1936.

Section 6-5 – income according to ordinary concepts

30. A payment received by a contractor, under the Assistance for Skippers and Crew component of the Package, is not income according to ordinary concepts. The receipt is not assessable as ordinary income under section 6-5 of the ITAA 1997.

Section 15-10 – bounty or subsidy

31. A payment received by a contractor, under the Assistance for Skippers and Crew component of the Package, is not a bounty or subsidy that is received in relation to carrying on a business. The receipt is not assessable income under section 15-10 of the ITAA 1997.

Capital gains tax

32. Any capital gain or capital loss made when a payment is received by a contractor under the Assistance for Skippers and Crew component of the Package is disregarded under subsection 118-37(2) of the ITAA 1997.

Commissioner of Taxation1 August 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.*

33. The tax consequences for applicants who are eligible to apply for and receive payments under the Assistance for Skippers and Crew component of the Package are different for those that are common law employees and those that are not. The issue of whether a payment under the Assistance for Skippers and Crew component of the Package satisfies the definition of an 'eligible termination payment' in subsection 27A(1) of the ITAA 1936 is only relevant where an applicant is a common law employee.¹

34. Taxation Ruling TR 2005/16, paragraphs 25 to 56, provides an analysis of the key indicators of whether an individual is an employee or independent contractor. The following table sets out whether an eligible applicant is a common law employee:

Skippers who work for, and under the direction of, the boat owner/owner operator, and receive a set weekly wage; guaranteed wages plus a share of the catch: a share of catch only; or some other form of periodic remuneration; (other than owner/skippers)	Common law employee
Skippers and crew members who have entered into a true share fishing/joint venture arrangement with the boat owner/owner operator, that is, they are conducting a fishing enterprise in their own right rather than simply operating in the business of the boat owner, are not subject to the supervision and control of the boat owner	Contractor
Deck-hands, cooks, mechanics, engineers, spotter, divers etc who work for, and under the direction of, the owner/skipper of the boat, and receive a set weekly wage; guaranteed wages plus a share of the catch; a share of catch only; or some other form of periodic remuneration	Common law employee

¹ See *Gibson v. Commissioner of Taxation (Cth)*, AAT Case 12,310 (1997) 97 ATC 2165; (1997) 37 ATR 1113.

Employees***Eligible termination payment***

35. An ETP is exhaustively defined in subsection 27A(1) of the ITAA 1936. There are a number of different payments that qualify as an ETP. One such payment is that made in consequence of termination of employment. Paragraph (a) of the definition of an ETP in subsection 27A(1) of the ITAA 1936 states in part:

eligible termination payment, in relation to a taxpayer, means:

- (a) any payment made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer other than a payment...

36. The phrase 'in consequence of' is not defined in the ITAA 1936. However, the words have been interpreted by the courts in several cases. The Commissioner has also issued Taxation Ruling TR 2003/13 which discusses the meaning of the phrase.

37. The Full Bench of the High Court considered the expression 'in consequence of' in *Reseck v. Federal Commissioner of Taxation*² (*Reseck*). Justice Gibbs stated:

Within the ordinary meaning of the words a lump sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination... It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment.

38. In looking at the phrase 'in consequence of', the Full Federal Court in *McIntosh v. Federal Commissioner of Taxation*³ (*McIntosh*) considered the decision in *Reseck*. Justice Brennan stated:

Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

In the same case, Justice Lockhart stated:

In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or antecedent of the payment. The phrase used in section 26(d) is not 'caused by' but 'in consequence of'. It has a wider connotation than causation and assumes a connection between the circumstances of retirement and the act of payment such that the payment can be said to be a 'following on' of the retirement.

² (1975) 49 ALJR 370; (1975) 6 ALR 642; (1975) 75 5ATR 538; (1975) 75 ATC 4213; (1975) 133 CLR 45.

³ (1979) 25 ALR 557; (1979) 10 ATR 13; (1979) 45 FLR 279; (1979) 79 ATC 4325.

39. The Commissioner in TR 2003/13 considered the phrase 'in consequence of' as interpreted by the Courts. Paragraph 5 of TR 2003/13 states:

...the Commissioner considers that a payment is made in respect of a taxpayer in consequence of the termination of the employment of the taxpayer if the payment 'follows as an effect or result of' the termination. In other words, but for the termination of employment, the payment would not have been made to the taxpayer.

40. The question of whether a payment is made in consequence of the termination of employment will be determined by the relevant facts and circumstances.

41. A payment under the Assistance for Skippers and Crew component of the Package is made to employees who:

- have been 'principally employed' as a skipper or crew member on a fishing boat associated with a successfully tendered fishing concession ('principally employed' means that this is the primary occupation of the applicant, and this occupation must have provided the main source of income and taken the majority of their working hours);
- have been employed prior to 23 November 2005 and the date that the relevant concession was surrendered; and
- have lost their employment as a skipper or crew member as a result of the surrender of a fishing concession through the Business Exit Assistance tender process, and have not received any financial or in-kind benefit from the surrender of that concession.

42. Such payments are made in consequence of the termination of employment as the payments would not have been made but for the termination of the employee's employment as a skipper or crew member on a fishing boat associated with a successfully tendered fishing concession.

43. Such payments are not simply reimbursement of expenditure because there is no requirement for employees receiving the payments to substantiate their expenses in respect of relocation and/or retraining for alternative employment. While part of the reason for the payment being provided is to help offset any costs that may be incurred seeking alternative employment, applying the decision in *Reseck* and *McIntosh* quoted above, the fact that part of the reason for the payment is the termination of employment is sufficient to make the entire payment an ETP.

44. The fact that the payment is not being made by the employer of the employee receiving the payment does not affect the nature of the payment as an ETP. Paragraph (a) of the ETP definition in subsection 27A(1) of the ITAA 1936 does not limit an ETP to payments made by a person's employer. The criterion to be met is that the payment is made in consequence of the termination of employment.

45. Accordingly, except for any amount determined to be a tax-free amount of a bona fide redundancy payment in accordance with subsection 27F(1) of the ITAA 1936, the ETP received by an employee will comprise the following components determined by reference to their period of service:

- pre-July 83 component; and/or
- untaxed element of the post-June 83 component.

46. The amount of the ETP can currently be rolled-over.

Bona fide redundancy

47. The payments under the Assistance for Skippers and Crew component of the Package may qualify for concessional treatment as bona fide redundancy payments in accordance with sections 27CB and 27F of the ITAA 1936.

48. A payment made to an employee is a bona fide redundancy payment if it satisfies all the criteria in subsection 27F(1) of the ITAA 1936, which states:

Where:

- (a) an eligible termination payment is made in relation to a taxpayer in consequence of the dismissal of the taxpayer from any employment at any time (in this section referred to as the 'termination time') by reason of the bona fide redundancy of the taxpayer;
- (aa) if the eligible termination payment is made on or after 1 July 1994 – the payment was not made to the taxpayer from an eligible superannuation fund;
- (b) the termination time was before:
 - (i) if there was a date before the sixty-fifth anniversary of the birth of the taxpayer on which the termination of the employment of the taxpayer would necessarily have occurred by reason of the taxpayer attaining a particular age or completing a particular period of service – that date; or
 - (ii) in any other case – the sixty-fifth anniversary of the birth of the taxpayer;
- (c) if the Commissioner, having regard to any connection between the employer and the taxpayer and to any other relevant circumstances, is satisfied that the employer and the taxpayer were not dealing with each other at arm's length in relation to the termination of the employment of the taxpayer – the amount of the eligible termination payment does not exceed the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer if the employer and the taxpayer had been dealing with each other at arm's length in relation to the termination of the employment of the taxpayer; and

- (d) there was, at the termination time, no agreement between the taxpayer and the employer, or the employer and another person, to employ the taxpayer after the termination time,

so much of the eligible termination payment as exceeds the amount (in this section referred to as the 'termination amount') of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer had he voluntarily retired from that employment at the termination time is a bona fide redundancy payment in relation to the taxpayer.

49. The Commissioner has stated his view on the meaning of 'redundancy' in paragraphs 41 to 42 of the Taxation Ruling TR 94/12, where it states:

41. Redundancy can be described as the situation where an employer no longer requires employees to carry out work of a particular kind or to carry out work of a particular kind at the same location. Bray CJ in *R v. The Industrial Commission of South Australia; ex parte Adelaide Milk Supply Co-operative Ltd & Ors* (1977) 44 SAIR 1202 at page 1205; (1977) 16 SASR 6 at page 8 defined redundancy as follows:

... a job becomes redundant when an employer no longer desires to have it performed by anyone. A dismissal for redundancy seems to be a dismissal, not on account of any act or default of the employee dismissed or any consideration peculiar to him, but because the employer no longer wishes the job the employee has been doing to be done by anyone.

42. Redundancy refers to a job becoming redundant and not to an employee becoming redundant (*Short v. F W Hercus Pty Ltd* (1993) 40 FCR 511; (1993) 46 IR 128; (1993) 35 AILR 151). An employee's job is considered to be redundant if:

- an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by any one;
- that decision is not due to the ordinary and customary turnover of labour;
- that decision led to the termination of the employee's employment; and
- that termination of employment is not on account of any personal act or default of the employee.

50. From the information provided it appears that the requirements of paragraphs 27F(1)(a), (aa), (c) and (d) of the ITAA 1936 will be met. Accordingly, whether a payment made under the Package will qualify as a bona fide redundancy payment will depend on the age of the employee at the time of the termination of their employment.

51. Where the termination of employment occurs before the employee turns age 65 a payment made under the Package will be a bona fide redundancy payment under section 27F of the ITAA 1936. Consequently, such a payment will be exempt from tax under section 27CB of the ITAA 1936.

52. However, where the termination of employment occurs on or after the day the employee turns age 65 a payment made under the Package will be an ETP. As a result, such a payment will be included in assessable income under section 27B and/or section 27C of the ITAA 1936 to the extent that the ETP is not rolled-over.

Capital gains tax

53. CGT event C2 under section 104-25 of the ITAA 1997 happens when an employee's entitlement to receive the Assistance for Skippers and Crew component of the Package is satisfied.

54. However, any capital gain or capital loss made when a payment is received by the employee under the Assistance for Skippers and Crew component of the Package is disregarded under subsection 118-37(2) of the ITAA 1997.

55. Subsection 118-37(2) of the ITAA 1997 provides a CGT exemption to disregard a capital gain or capital loss that results from a person receiving a payment as reimbursement of their expenses or their anticipated expenses, under a scheme established by an Australian government agency. The Assistance for Skippers and Crew component of the Package is provided under such an Australian government scheme.

Contractors

Section 6-5 – income according to ordinary concepts

56. 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 turn to the decisions of the courts.

57. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁴

⁴ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; *Federal Coke Co Pty Ltd v. Commissioner of Taxation (Cth)* (1977) 7 ATR 519 at 539; 34 FLR 375 at 402.

58. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (Cth)*⁵ (*GP 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.

59. In addition, the following points made in the following High Court cases on voluntary payments are also relevant:

- In *Federal Commissioner of Taxation v. Dixon*,⁶ the High Court considered the form of the receipt, that is, whether it is received as a lump sum or periodically, to be a relevant factor for consideration. The High Court found that the fact that the patriotic top up payments were regular and periodic was important, though not decisive, in concluding that those payments were assessable income.
- In *Scott v. Federal Commissioner of Taxation*,⁷ the High Court said that while the motives of the donor in that case do not determine the answer, they are a relevant circumstance for consideration. In that case, the High Court held that the payment was given to the taxpayer by the donor as a gift and was not assessable income of the taxpayer.
- In *Hayes v. Federal Commissioner of Taxation*,⁸ the High Court held that shares given to an accountant by a former employer was not assessable as income because 'it was impossible to point to any employment of personal exertion of which the receipt of the shares was in any real sense an incident, or which can fairly be said to have produced the receipt'.

⁵ (1990) 64 ALJR 392; (1990) 93 ALR 193; (1990) 90 ATC 4413; (1990) 21 ATR 1; (1990) 170 CLR 124.

⁶ (1952) 26 ALJ 505; [1953] ALR 17; (1952) 10 ATD 82; (1952) 86 CLR 540.

⁷ (1966) 40 ALJR 205; [1967] ALR 561; (1966) 14 ATD 286; (1966) 117 CLR 514; [1966] LB Co's Tax Serv 79.

⁸ (1956) 30 ALJ 96; (1956) 11 ATD 68; (1956) 96 CLR 47.

60. The Assistance for Skippers and Crew is not a periodic payment. The motive of the Australian government in providing the payment is to offset any costs that the taxpayer may incur in seeking alternative employment rather than to remunerate or recompense the taxpayer for any services rendered. It cannot be said that the assistance is made for an income producing activity of the taxpayer. Accordingly, the Assistance for Skippers and Crew paid to a contractor previously engaged by the owner of a commercial fishing concession is not income accordingly to ordinary concepts and is not assessable under subsection 6-5(1) of the ITAA 1997.

Section 15-10 – bounty or subsidy

61. Section 15-10 of the ITAA 1997 provides that the assessable income of a taxpayer includes bounties and subsidies that are received in relation to carrying on a business and that are otherwise not assessable as ordinary income. The basic tests contained in section 15-10 of the ITAA 1997 are 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

62. 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*,⁹ derives from the Latin '*subsidiū*' meaning 'an aid or help'. The Macquarie Dictionary, 2001, rev. 3rd edn, defines subsidy as including 'a grant or contribution of money'.

63. Following the decisions in *Squatting Investments Co Ltd v. Federal Commissioner of Taxation*,¹⁰ *Reckitt and Colman Pty Ltd v. Federal Commissioner of Taxation (Cth)*¹¹ and *First Provincial Building Society Ltd v. Federal Commissioner of Taxation*¹² (*First Provincial*), it is now well accepted that a 'subsidy' or 'bounty' includes a financial grant made by a government. A payment under the Assistance for Skippers and Crew component of the Package received by a contractor engaged by the owner of commercial fishing concessions would be a 'subsidy' or 'bounty'.

⁹ (1969) 43 ALJR 265; [1969] ALR 801; (1969) 121 CLR 353.

¹⁰ [1953] ALR 366; (1953) 26 ALR 658; (1953) 10 ATD 126; (1953) 86 CLR 570.

¹¹ (1974) 3 ALR 381; (1974) 74 ATC 4185; (1974) 4 ATR 501; (1974) 23 FLR 58.

¹² (1995) 128 ALR 118; (1995) 95 ATC 4145; (1995) 30 ATR 207; (1995) 56 FCR 320.

Received in relation to carrying on a business

64. 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 *First Provincial*:

The words 'in relation to' are words of wide import. They are capable of referring to any relationship between 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'.¹³

65. 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 *First Provincial*:

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'.¹⁴

66. A payment received by a contractor, under the Assistance for Skippers and Crew component, is not received in relation to carrying on the taxpayer's business as it is received in relation to the cessation of the taxpayer's business. Accordingly, the payment received by a contractor under the Assistance for Skippers and Crew component of the Package is not assessable under section 15-10 of the ITAA 1997.

Capital gains tax

67. CGT event C2 under section 104-25 of the ITAA 1997 happens when the entitlement of a contractor previously engaged by the owner of commercial fishing concessions to receive the Assistance for Skippers and Crew is satisfied.

68. However, any capital gain or capital loss made when a payment is received by the contractor under the Assistance for Skippers and Crew component of the Package is disregarded under subsection 118-37(2) of the ITAA 1997 (see paragraph 54 of this Ruling).

¹³ *First Provincial* (1995) 56 FCR 320 at 333 per Hill J.

¹⁴ *First Provincial* (1995) 56 FCR 320 at 332 per Hill J.

Appendix 2 – Detailed contents list

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

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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