


***CR 2007/92 - Income tax: assessable income:  
treatment of payments received under the Western  
Catchment Management Authority Enterprise Based  
Conservation Program***

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## Class Ruling

### Income tax: assessable income: treatment of payments received under the Western Catchment Management Authority Enterprise Based Conservation Program

Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
What this Ruling is about	1
Date of effect	8
Scheme	13
Ruling	32
<b>NOT LEGALLY BINDING SECTION:</b>	
Appendix 1:	
Explanation	41
Appendix 2:	
Detailed contents list	67

#### **❶ 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 provisions 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 considered in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 6-5(1) of the ITAA 1997;
- section 15-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- paragraph 118-20(1)(a) of the ITAA 1997; and
- paragraph 118-37(2)(a) of the ITAA 1997.

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

## **Class of entities**

3. The class of entities to which this Ruling applies is landholders who receive on-ground establishment works payments and/or an ongoing conservation management payment under the Western Catchment Management Authority's (WCMA) Enterprise Based Conservation Program (EBCP). The Ruling does not apply to government agencies, non-government organisations or groups whose income is otherwise exempt.

## **Qualifications**

4. The Commissioner makes the 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 31 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**

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8. This Ruling applies from 1 July 2007 to 30 June 2022. However, the Ruling continues to apply after 30 June 2022 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

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13. 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:

- Class Ruling requests from WCMA and further information provided by WCMA on 18 and 20 June 2007;
- EBCP Guidelines;
- sample Project Proposal Form provided on 13 June 2007;
- National Action Plan/National Heritage Trust (NAP/NHT) Activity Head Agreement provided on 2 August 2007; and
- Enterprise Based Conservation brochure – ‘Interested in being paid to manage land for conservation?’<sup>1</sup>

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<sup>1</sup> Western Catchment Management Authority, viewed 17 August 2007, [http://www.western.cma.nsw.gov.au/pdf/EBC\\_Brochure.pdf](http://www.western.cma.nsw.gov.au/pdf/EBC_Brochure.pdf)

14. The EBCP is an initiative of the Lachlan, Lower Murray Darling and Western Catchment Management Authorities and arose out of a need to achieve a target of 12% of lands managed for conservation within the Western Catchment region. The administration and facilitation of the EBCP is being implemented by the WCMA.

15. Enterprise Based Conservation incentives allow conservation to have a productive value and be a competitive enterprise to agriculture. The EBCP aims to encourage landholders to manage an area for conservation purposes. They will receive an economic return comparable to the value of the production that would have been generated from the previous land use. Biodiversity conservation is the 'primary product'. 'Secondary products' include reduced salinity, improved water quality and soil stability.

16. Enterprise Based Conservation funding is available in two linked forms of assistance:

- on-ground establishment works; and
- ongoing conservation management.

## **On-ground establishment works**

17. The on-ground establishment works component covers negotiated payments for establishment activities such as on-ground works to enable better management of the proposed conservation area. Negotiated payments can be up to 100% of the costs incurred on on-ground works for establishing conservation areas. Categories of on-ground works include:

- closing or moving artificial watering points. Grazing pressure is higher around watering points and can reduce the ground cover and species diversity in these areas. Closing or moving artificial watering points will assist in the management of grazing pressure within the conservation area. Relocating watering points associated with fencing off riverine corridors will also be considered; and
- fencing the conservation area to allow for management of total grazing pressure. This may include new electric or hinge fences to establish the conservation area (for example fencing off a portion of an existing large paddock to separate the conservation area from the remainder of the paddock). It can also include fencing along riverine corridors. Fencing along watercourses to restrict stock access provides a range of environmental benefits including reduced bank erosion, native plant regeneration, and it contributes to improved water quality and fish habitat.

**Ongoing conservation management**

18. The ongoing conservation management component is a lump sum payment to fund additional management of the areas for conservation outcomes for a minimum of 15 years. This lump sum is designed to help cover the costs of actively managing the conservation area and to provide income similar to that of forgone agriculture production to maintain the viability of the farm business enterprise. Examples of eligible activities include:

- exclusion of stock. This is a primary requirement of the EBCP;
- eradication of noxious and exotic weeds;
- eradication of feral animals/pests, including goats, pigs, rabbits and foxes;
- eradication of feral bees and removal of beehives (if feasible, as this is a costly exercise to undertake);
- conservation and management of habitat for native plants and animals. This includes retention of fallen timber, retention of trees/native vegetation and no stock fodder lopping;
- management of ground cover to maintain or enhance soil surface stability;
- woody weed control that is restricted to spot spraying and spot burning. Grubbing is also considered, but not allowed in riparian buffer areas. Spot burning is not allowed on slopes over 18 degrees. It does not include broad-scale measures such as chaining or blade ploughing. Activities are subject to approval of a Property Vegetation Plan (PVP) under the *Native Vegetation Act 2003*;
- erosion control/stabilisation of existing erosion; and
- management of fire risk.

The EBCP also requires the erection of a sign to indicate the area is being managed under Enterprise Based Conservation.

19. The successful applicant is required to undertake a monitoring and evaluation program and is required to include details of how they will achieve this in their Project Proposal Form, which forms part of the agreement with the WCMA. The WCMA suggests that the landholder considers rainfall recordings, photo-points, and keeping a diary on growth of flora and observance of endangered species in order to comply with the requirement for monitoring and evaluation of their activities.

20. Ongoing conservation management projects may take the following forms:

- an agreed area that is de-stocked and managed for conservation purposes. Provided agreed objectives are fulfilled, the landholder will receive payments for the environmental services delivered in the area managed for conservation; or
- an area that is an amalgamation of properties that is de-stocked and managed for conservation purposes, the landholders sharing a common conservation goal. Group proposals may allow a greater range of conservation outcomes to be achieved and are particularly encouraged.

21. Innovative projects that deliver conservation and enterprise viability outcomes are encouraged, as are projects that include eco-tourism as there are possible socio-economic benefits that can be derived for the broader community. Enterprise Based Conservation conditions for eco-tourism will exclude creation of access tracks for motorbikes and four-wheel driving. Existing tracks can be maintained, but no new tracks should be constructed.

## Eligibility

22. Eligible applicants are all stakeholders, including individuals, groups, non-government organisations, Local Government and State Government Agencies.<sup>2</sup> Where the applicant is not the owner/lessee of the land, specific permission will be required from the owner/lessee to implement the project. For the purposes of the Ruling all eligible applicants will be referred to as 'landholders'.

## Application and assessment process

23. Landholders were required to submit a Project Proposal before 30 March 2007. An assessment panel will review project proposals submitted and applications will be short-listed. Projects that are short-listed will be invited to nominate a bid for the ongoing conservation management of the area that is to be managed for the agreed outcomes. Bids will be assessed based on criteria including the current environmental quality of the site, the expected conservation and viability outcomes and the amount of the bid. Projects are funded in order from the highest rank down until available funds are fully subscribed.

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<sup>2</sup> Core functions of Government Agencies will not be funded however.

**Delivery mechanism**

24. A participating landholder will sign a contract (the NAP/NHT Activity Head Agreement) that states that the relevant Catchment Management Authority agrees to provide funding and that the applicant agrees to undertake the activities specified in the Project Proposal document. The contract specifies:

- the funding amount, including the payment schedule;
- the time for completion of the activities to be undertaken;
- any special conditions, such as the requirement that the recipient negotiates and signs a PVP agreement;<sup>3</sup> and
- the general conditions of the agreement, which include:
  - the applicant's obligations regarding performance, reporting requirements and inspection of records;
  - the Catchment Management Authority's obligations regarding payments; and
  - dispute resolution.

25. The landholder is encouraged to provide feedback about the impact of the grant on the long-term profitability and sustainability of their property. This may be collected by the WCMA or a relevant government authority and would be used to evaluate the success of the grant.

26. The landholder is also encouraged to develop a Business Investment Plan. The intent of this plan is to provide a strategy for generating an income stream to prolong payment for ongoing activities on the area to be managed for conservation and for agreed outcomes.

27. On signing the agreement, a covenant attaches to the property title. Should the landholder sell the property, the new owner will be obligated to continue the conservation management activities until the expiry of the agreement.

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<sup>3</sup> The primary purpose of the PVP agreement is to make a binding contract over the title of the land for 15 years. This ensures that if the landholder sells the property, the new owner is aware of the EBC covenant on the title and appropriate compensation can be negotiated between the former owner and the new owner. After 15 years, the PVP agreement expires and no longer holds any covenant over the property.



## **Payment schedule**

### ***On-ground establishment works payments***

28. This component of the program is made up of two payments:
- the first payment of 75% of the establishment costs plus GST is paid within two months of signing the contract and upon WCMA receiving an initial tax invoice from the applicant; and
  - the second and final payment of 25% of the establishment costs plus GST is paid on receipt of the final tax invoice from the applicant, and inspection of works by a Catchment Management Authority officer. On-ground works must be completed by 30 April 2008.

### ***Ongoing conservation management payment***

29. Due to government funding requirements, an advance payment of a single lump sum for ongoing conservation management for the minimum 15 year period will be made once the on-ground works have been completed, and prior to 30 June 2008.

30. On the early termination or suspension of the agreement the landholder must promptly pay back all Enterprise Based Conservation payments received under the agreement for works and conservation management activities that are not completed.

## **Circumstances where funding is not available**

31. Funding is not available under this scheme for normal property management or maintenance expenses.

# **Ruling**

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## **Exempt income**

32. Neither an ongoing conservation management payment nor on-ground establishment works payments received by a landholder under an EBCP agreement with the WCMA are exempt income.

## **Ongoing conservation management payment**

### ***Section 6-5 – income according to ordinary concepts***

33. A payment for ongoing conservation management received by a landholder under an EBCP agreement with the WCMA is income according to ordinary concepts and is assessable under section 6-5. The income is derived as the landholder undertakes the ongoing conservation management activities during the term of the contract.

***Capital gains tax***

34. CGT event C2 under section 104-25 happens to the entitlement to receive the ongoing conservation management payment when the entitlement is satisfied.

35. However, any capital gain made as a result of a payment of the ongoing conservation management payment will under paragraph 118-20(1)(a) be reduced by the payment that will be included in assessable income. The gain is reduced to zero where the gain is not more than that which is included in assessable income.

**On-ground establishment works payments*****Section 6-5 – income according to ordinary concepts***

36. A payment for eligible on-ground establishment works received by a landholder under an EBCP agreement with the WCMA is not income according to ordinary concepts and is not assessable under section 6-5.

***Section 15-10 – bounty or subsidy***

37. If the landholder is carrying on a business on the land, a payment received for eligible on-ground establishment works under an EBCP agreement with the WCMA is assessable as a bounty or subsidy under section 15-10.

38. If the landholder is not carrying on a business on the land, a payment received for eligible on-ground establishment works under an EBCP agreement with the WCMA is not assessable income under section 15-10.

***Capital gains tax***

39. CGT event C2 under section 104-25 happens to the entitlement to receive the on-ground establishment works payment when the entitlement is satisfied.

40. Any capital gain or capital loss made as a result of a payment of the on-ground establishment works payment is disregarded under paragraph 118-37(2)(a).

## Appendix 1 – Explanation

**①** *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.*

### Exempt income

41. An amount of ordinary or statutory income is 'exempt income' if it is made exempt by a provision of the tax law or another Commonwealth law. Ordinary income is also exempt income to the extent that the ITAA 1997 excludes it (expressly or by implication) from being assessable income. However an amount of statutory income is exempt income only if it is made exempt from income tax by a provision of the ITAA 1997 outside Division 6 or another Commonwealth law. Payments made by the WCMA in accordance with an agreement under the EBCP are not excluded from being assessable income either expressly or by implication.

### Ongoing conservation management payment

#### **Section 6-5 – income according to ordinary concepts**

42. 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 each case.

43. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.<sup>4</sup> In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*<sup>5</sup> (the *Pipecoaters* case), 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.

44. In *MIM Holdings Ltd v. Commissioner of Taxation* 97 ATC 4420; (1997) 36 ATR 108 (the *MIM* case), Northrop, Hill and Cooper JJ, relying on *Hayes v. FCT* (1956) 96 CLR 47 and *Reuter v. FC of T* 111 ALR 716; 93 ATC 4037 said that 'amounts paid in consideration of the performance of services will almost always be income'.

<sup>4</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 (the *Scott* case), *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 (the *Hayes* case), *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 7 ATR 519; 77 ATC 4255.

<sup>5</sup> (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

45. The question of whether an amount is a product of the taxpayer's services (that is, paid in consideration of the performance of the taxpayer's services) has been considered in a number of High Court decisions. The following guidance is afforded by those decisions:

- the whole of the circumstances must be considered;<sup>6</sup>
- a generally decisive consideration is whether the receipt is the product in a real sense of any employment of, or services rendered by the recipient, or of any business, or any revenue production activity carried on by the recipient;<sup>7</sup>
- other considerations that are relevant but not decisive include:
  - the motive of the donor (payer) in paying the amount;<sup>8</sup>
  - the regularity and periodicity of the payment,<sup>9</sup> however a payment in a lump sum does not require a conclusion that the payment is capital;<sup>10</sup> and
  - the recipient's expectation that an amount will be received.<sup>11</sup>

46. The EBCP guidelines state that the scheme is intended to allow conservation to have a productive value and be a competitive enterprise to agriculture. As part of the scheme the landholder is to receive an economic return comparable to the value of the production that would have been generated from the previous land use. The ongoing conservation management payment is the means by which this economic return is made available to the landholder.

47. The contract between the landholder and the WCMA specifies the rights and obligations of both the landholder and the WCMA under the EBCP and includes a schedule of milestones the landholder needs to meet to receive payment. Under the agreement the landholder agrees to provide conservation management services to the WCMA over the specified period for consideration. The ongoing conservation management payment is the product, in a real sense, of the services rendered by the landholder.

<sup>6</sup> *The Squatting Investment Company Ltd v. FC of T* (1953) 86 CLR 570 (the *Squatting* case) at CLR 627.

<sup>7</sup> The *Squatting* case at CLR 633; *Hayes* at CLR 56-57; *Scott* at CLR 527-528.

<sup>8</sup> The *Hayes* case at CLR 55.

<sup>9</sup> *FC of T v. Dixon* (1952) 86 CLR 540 (the *Dixon* case) at CLR 568.

<sup>10</sup> The *MIM* case at ATC 4430, applying *Pipecoaters*.

<sup>11</sup> The *Dixon* case, the *Squatting* case. This principle was also applied in *FC of T v. Blake* (1984) 15 ATR 1006, 84 ATC 4661.

48. Other factors such as the landholder's expectation to receive the payment in return for undertaking activities as set out in the contract (as described in paragraphs 18 and 19 of this Ruling) and the purpose of the WCMA in making the payment (to provide an incentive for the landholder to carry out the work) also support the conclusion that the ongoing conservation management payment is the product of the services rendered. The fact that the payment is made in a lump sum does not alter this conclusion as the timing of the payment is determined solely by a Government requirement that the funding be paid out before 30 June 2008.

49. The funds received are included in the taxpayer's income regardless of whether the taxpayer performs the services themselves or engages the services of a contractor. The authority for this statement is found in *JB Chandler Investment Co Ltd (in voluntary liquidation) and Another v. FC of T* (1993) 47 FCR 588; (1993) 93 ATC 5182; (1993) 27 ATR 340. In that case the Full Federal Court found that the entering into of an agreement by which a taxpayer is bound to render specific services is sufficient to stamp the consideration received in exchange for entering into the agreement as income. It is not essential that the taxpayer in fact actively render any service.

50. Although the conservation management activities are to be undertaken for a minimum period of 15 years under the agreement, the payment is made in a single lump sum. Accordingly, a question arises as to when the payment received under this agreement is assessable. Taxation Ruling TR 98/1 states that when accounting for income in respect of a year of income, a taxpayer must adopt the method that, in the circumstances of the case, is the most appropriate.<sup>12</sup> Where income results primarily from the services rendered, or work performed by the taxpayer personally, it is generally assessable on a receipts basis and the total amount received under the agreement is assessable in the income year that it is received.

51. However there are circumstances in which an advance payment is made where the amount received is not derived as income when it is received, but as it is earned. The High Court in *Arthur Murray (NSW) Pty Ltd v. Federal Commissioner of Taxation* 114 CLR 314; 14 ATD 98; (1965) 9 AITR 673 (the *Arthur Murray* case) referred to the significance of an amount not being income unless it had been earned. In that case the High Court decided that prepaid fees in relation to dancing lessons not yet delivered should not be treated as income derived at the time the fees were paid. The principles arising out of the *Arthur Murray* case may be summarised as follows:

- subject to any special statutory provision, the inquiry to be made in each case is whether the receipt would, according to established accounting and commercial principles, be regarded as income derived;

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<sup>12</sup> Under the 'receipts' method, income is derived when it is received, either actually or constructively, under subsection 6-5(4). Under the 'earnings' method, income is derived when it is earned.

- as a matter of business good sense, the recipient should treat each amount of fees received but not yet earned as subject to the contingency that the whole or some part of it may have in effect to be paid back; and
- nothing in the ITAA 1997 is contraindicated or ignored when a receipt of money as a prepayment under a contract for future services is said not to constitute by itself a derivation of assessable income.

52. The Administrative Appeals Tribunal (AAT) in *Case U7 87 ATC 127*; *Tribunal Case 20 18 ATR 3120 (Case U7)* considered that there was a close analogy between the taxpayer's situation and that of a prepayment under a contract for future services. The AAT applied the principles arising from the *Arthur Murray* case, notwithstanding that the taxpayer was not held to be contracting to render future services to the Commonwealth. In *Case U7* the taxpayer had received an advance of grant monies that it would become entitled to on making certain expenditure on agreed research and development activities. The taxpayer's entitlement to the grant was in direct proportion to the proper expenditure on that work and the AAT considered that the taxpayer, in the year in question, had not done all that was required of it to earn the full amount prepaid to it.

53. The decisions in both the *Arthur Murray* case and *Case U7* support the position taken in Taxation Ruling TR 2006/3 which states that 'an assessable [government payment to industry] that is an advance payment is derived by the recipient to the extent that the recipient has done everything necessary to be entitled to retain the amount received'.

54. The circumstances underlying the payment of the funding for ongoing conservation management are that:

- the lump sum payment is intended to provide payment for ongoing conservation management activities that the landholder is to provide on a regular basis for a minimum of 15 years;
- the landholder is required to repay all Enterprise Based Conservation payments received under the agreement for establishment works and conservation management activities that are not completed; and
- the amount is paid in a single lump sum advance specifically because the WCMA is required by Government to pay out the funding before 30 June 2008.

55. It is considered that the lump sum payment to the landholder for ongoing conservation management activities to be provided over the term of the contract is to be accounted for as it is earned over the period of the contract. This means that the landholder's income tax returns for each year covered by the agreement will include an amount for ongoing conservation management based on the activities undertaken in each year. If the landholder disposes of the land before the expiration of the agreement, it is considered that the balance of the advance payment not already accounted for as income is derived at the time of disposal as there is nothing more for the landholder to do to earn the income.

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

56. CGT event C2 under section 104-25 happens when the entitlement to receive the ongoing conservation management payment is satisfied, that is, when the payment is made to the applicant.

57. However, any capital gain made as a result of the payment of an ongoing conservation management payment is reduced under paragraph 118-20(1)(a).

58. Paragraph 118-20(1)(a) provides that any capital gain is reduced if, a provision of the Act outside Part 3-1 includes an amount (for any income year) in the assessable income because of the event. In this case the whole amount of the payment will be included in assessable income as and when it is earned (see paragraph 55 of this Ruling). Consequently, any capital gain resulting from CGT event C2 happening in relation to the ongoing conservation management payment will be reduced to zero in accordance with paragraph 118-20(2)(a).

### **On-ground establishment works payment**

#### ***Section 6-5 – income according to ordinary concepts***

59. Although the on-ground establishment works payments are payable under the same contract as the ongoing conservation management payment, they are not payments for the performance of services or payments for the replacement of profit that would otherwise have been made. On-ground establishment works payments are payments to be applied towards the costs of on-ground works such as fencing and the decommissioning of water access points. These costs are capital in nature. A subsidy that is intended to assist a recipient with capital costs is a receipt of a capital nature.<sup>13</sup> Accordingly, a payment for on-ground establishment works is not income according to ordinary concepts and is not assessable under section 6-5.

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<sup>13</sup> The *Pipecoaters* case.

**Section 15-10 – bounty or subsidy**

60. 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 under section 6-5.

61. 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. The Commonwealth*,<sup>14</sup> derives from the Latin ‘subsidium’ 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’.

62. For an on-ground establishment works payment to be considered assessable income under section 15-10, a relationship must exist between the payment and the carrying on of a business. Where the land, for which the payment is made, is being utilised for the carrying on of a business, such as the grazing and subsequent sale of livestock at market, the undertaking of the on-ground establishment works has the necessary connection with a business. The payment for these works is financial assistance to the business to improve the land and is therefore received in relation to carrying on the business and is assessable under section 15-10.

63. Where the taxpayer is not carrying on a business, the on-ground establishment payment does not constitute ordinary income or a bounty or subsidy and is not assessable income.

**Capital gains tax**

64. CGT event C2 under section 104-25 happens when the entitlement to receive the on-ground establishment works payment is satisfied, that is, when the payment is made by way of reimbursement directly to the applicant or payment of expenses on the applicant’s behalf.

65. However, any capital gain or capital loss made as a result of a payment of an on-ground establishment works payment is disregarded under paragraph 118-37(2)(a).

66. Paragraph 118-37(2)(a) provides that any capital gain or capital loss that results from receipt of a payment as reimbursement or payment of expenses under a scheme established under legislation by an Australian government agency is disregarded. The on-ground establishment works payment is paid under such a scheme.

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<sup>14</sup> *Placer Development v. Commonwealth* (1969) 121 CLR 353 at 373.



## Appendix 2 – Detailed contents list

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>13</b>
On-ground establishment works	17
Ongoing conservation management	18
Eligibility	22
Application and assessment process	23
Delivery mechanism	24
Payment schedule	28
<i>On-ground establishment works payments</i>	28
<i>Ongoing conservation management payment</i>	29
Circumstances where funding is not available	31
<b>Ruling</b>	<b>32</b>
Exempt income	32
Ongoing conservation management payment	33
<i>Section 6-5 – income according to ordinary concepts</i>	33
<i>Capital gains tax</i>	34
On-ground establishment works payments	36
<i>Section 6-5 – income according to ordinary concepts</i>	36
<i>Section 15-10 – bounty or subsidy</i>	37
<i>Capital gains tax</i>	39
<b>Appendix 1 – Explanation</b>	<b>41</b>
Exempt income	41
Ongoing conservation management payment	42
<i>Section 6-5 – income according to ordinary concepts</i>	42
<i>Capital gains tax</i>	56
On-ground establishment works payment	59
<i>Section 6-5 – income according to ordinary concepts</i>	59
<i>Section 15-10 – bounty or subsidy</i>	60
<i>Capital gains tax</i>	64
<b>Appendix 2 – Detailed contents list</b>	<b>67</b>

## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/3; TR 98/1

### *Subject references:*

- assessable income
- derivation
- grant
- ordinary income
- subsidy

### *Legislative references:*

- ITAA 1997
- ITAA 1997 Div 6
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
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NO: 2007/16929

ISSN: 1445-2014

ATOLaw topic: Income Tax ~~ Assessable income ~~ government payments

Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset