


CR 2013/29 - Income tax: Victorian Department of Sustainability and Environment - Bushbroker Scheme (Method 2)

 This cover sheet is provided for information only. It does not form part of *CR 2013/29 - Income tax: Victorian Department of Sustainability and Environment - Bushbroker Scheme (Method 2)*



Class Ruling

Income tax: Victorian Department of Sustainability and Environment – Bushbroker Scheme (Method 2)

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	40
Appendix 1 – Explanation	57
Appendix 2 – Detailed contents list	106

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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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;
- section 15-15 of the ITAA 1997;
- section 104-10 of the ITAA 1997;
- paragraph 104-25(1)(a) of the ITAA 1997;
- section 108-5 of the ITAA 1997;
- section 110-25 of the ITAA 1997;

- subsection 110-45(2) of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997; and
- section 116-20 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 are the:
 - (a) owners of land (Landowners) who:
 - are the registered proprietors of a fee simple estate over land in the State of Victoria with existing native vegetation;
 - generate native vegetation credits (Credits) by transferring some or all of their land to the Crown (or another entity controlled by the Crown); and
 - hold the land on capital account; and
 - (b) owners of land in the State of Victoria who will use Credits to remove native vegetation on their land (Permit Holders).

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 9 to 39 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.

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

Commonwealth Copyright Administration
Copyright and Classification Policy Branch
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

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

Date of effect

8. This Ruling applies from 1 July 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. 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 from Victorian Department of Sustainability and Environment dated 10 August 2012; and
- Victorian Department of Sustainability and Environment BushBroker Information sheet no. 6 *Transferring freehold land to the Crown*.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Overview

10. The BushBroker scheme (BushBroker) is a scheme established by the Department of Sustainability and Environment of the State of Victoria (DSE) to improve the quality and amount of native vegetation in Victoria.

11. At present BushBroker is not a statutory scheme, but rather is administered through a variety of private agreements between parties involved in the scheme.

12. The scheme involves Landowners who own land with native vegetation generating Credits. Landowners may then sell these Credits on the open market.

13. Landowners may generate Credits in two ways:

- (a) they may perform management actions relating to the native vegetation present on their land (the First Method); or
- (b) they may transfer some or all of their land to the Crown (or another entity controlled by the Crown) (the Second Method).

14. Market demand for Credits is driven by other land owners, generally property developers, who wish to remove native vegetation from their own land. Planning authorities typically require such land owners to purchase Credits before clearing this vegetation. Once vegetation has been cleared, the Credits expire.

15. Landowners who are interested in transferring their land to DSE first make contact with a local DSE Biodiversity Manager (Manager). The Manager assesses whether the land is suitable for inclusion in the Crown's Parks and Reserve System. If the Manager considers that the land is suitable to be transferred to the Crown, the Manager will refer the land to DSE's Forests and Parks division for assessment.

16. The Landowner also organizes a habitat hectares assessment of their land by an assessor who has been trained and deemed competent by DSE. A habitat hectares assessment is a measure of the quality and quantity of native vegetation on the land, and is made in accordance with DSE's *Vegetation Quality Assessment Manual – Guidelines for applying the habitat hectares scoring method* (2004).

17. A 'habitat hectare' is defined to be 'a site based measure of quality and quantity of native vegetation that is assessed in the context of the relevant native vegetation zone'. The outcome of the habitat hectare assessment is a habitat score: a 'score assigned to a habitat zone that indicates the quality of native vegetation relative to the Ecological Vegetation Class ... benchmark'.

18. Upon receiving a referral from the Manager, the Forests and Parks Division of DSE will undertake a comprehensive assessment of the lands suitability for inclusion in the Parks and Reserves system. This assessment will consider the type and quality of native vegetation present on the land, as well as whether the land will appropriately complement existing reserves.

19. Generally, the assessment of the land also includes discussions with Parks Victoria regarding any management actions which will be required to improve or maintain the native vegetation on the land. Parks Victoria is a statutory body established under section 4 of the *Parks Victoria Act 1988* (Vic). Under section 7 of the *Parks Victoria Act 1988* (Vic), the functions of Parks Victoria include providing services to the State for, or with respect to, the management of parks and reserves.

20. In certain cases, Parks Victoria may require that the Landowner provide a financial contribution to the management actions (Financial Contribution). The Financial Contribution is paid to '...help with any actions required to improve the land (eg. removal of rubbish)'

21. Once the Forests and Parks Division concludes that the land is suitable for inclusion in the Parks and Reserves System, it will request that a BushBroker officer calculate the number of Credits to be received in consideration for the land. The number of Credits allocated will depend on the biodiversity value of the site, and will be based on the habitat hectare assessment commissioned by the Landowner.

22. Finally, the Minister for Environment and Climate Change (the Victorian Government Minister responsible for DSE) must endorse the transfer to the Crown.

23. Upon obtaining the Minister's endorsement, DSE will write to the Landowner confirming the number of Credits they will receive for transferring their land. They will also advise whether Parks Victoria will require a financial contribution to the management actions.

24. If the Landowner is satisfied with DSE's proposal, they will complete and return an Offer to Transfer Land (Offer). The Offer provides that the Landowner offers to transfer the land to the Crown in consideration for a specified number of Credits. The Landowner will return a signed Offer to DSE, together with an executed Land Transfer Form.

25. The land transfer is then lodged for registration with the Lands Title Office. After registration, the Lands Title Office will notify the Landowner that the land has been transferred. The Landowner will relay this information to DSE. DSE will then record the Landowner as the holder of the Credits in the BushBroker Register (a database of all Credits and their holders).

26. Once the Landowner has been recorded as the holder of the Credits, they may commence negotiations with Permit Holders to sell the Credits.

Expenses associated with the land transfer

27. Landowners may incur a range of expenses prior to entering into the land transfer (Initial Costs). These expenses are likely to include the following:

- environmental consultants fees (including fees for the habitat hectares assessment);
- legal and conveyancing costs;
- taxation advisory fees; and
- Lands Title Office registration fees.

28. In addition, Parks Victoria may require the Landowner to provide a Financial Contribution.

Disposal of Credits by Landowner to Permit Holder

29. Permit Holders wishing to clear native vegetation on their land will generally be advised by the relevant planning authority (the Responsible Authority) that they will need to purchase Credits before the Responsible Authority will authorise the clearing. Once informed of this obligation Permit Holders will contact DSE for assistance in locating suitable Credits.

30. In order to locate suitable Credits, the Permit Holder will lodge an offset search request with DSE. This request will include information such as the clearing site's location, land tenure, vegetation type, quality and quantity of vegetation the Permit Holder intends to clear.

31. A BushBroker project officer assesses the offset search request and matches it to potentially suitable Landowners and Credits. Permit Holders are then placed in contact with these Landowners so that they can negotiate a purchase price. All price negotiations take place directly between Permit Holders and Landowners.

32. Prior to purchasing the Credits, the Permit Holder will prepare a draft offset plan which is lodged with the Responsible Authority. It outlines the native vegetation currently present on their site, as well as details of Credits the Permit Holder proposes to purchase. The Responsible Authority then advises the Permit Holder whether the Credits are a suitable replacement for the native vegetation proposed to be cleared. Permit Holders will only proceed to purchase the Credits once the Responsible Authority confirms their suitability.

33. DSE plays no role in assessing whether the Credits are a suitable replacement for the native vegetation proposed to be cleared, and is not in any way involved in assessing the merits of the Permit Holder's planning application.

34. Once a Landowner and a Permit Holder have agreed on a sale price for the Credits they advise DSE. DSE then prepares a BushBroker Credit Agreement (Credit Agreement) to affect the Credit sale. The Credit Agreement is executed by the Landowner, the Permit Holder and DSE. After it has been executed, DSE updates the BushBroker Register to record the Permit Holder as the new holder of the Credits.

Content of the Credit Agreement

35. Under clause 4.2 of the Credit Agreement, the Permit Holder is obliged to pay the Purchase Price to DSE 'for the value of Credits purchased'. The Landowner is obliged under clause 5 of the Credit Agreement to 'sell [the Credits] at the Agreed Price to the purchaser, via the [BushBroker] Register'.

36. Under clause 3 of the Credit Agreement, DSE is obliged to pay the Purchase Price to the Landowner within 30 days of receiving payment from the Permit Holder. It is further obliged to assign the Credits to the Permit Holder on receipt of full payment of the Purchase Price.

Use of Credits by Permit Holders

37. Once they have been recorded as the holder of Credits, Permit Holders may utilise the Credits. The Credits are utilised by being specified in an offset plan as an offset for the clearing of native vegetation.

38. The Permit Holder notifies DSE in writing once the Credits have been approved by the Responsible Authority as an acceptable offset. The obligation to provide this notification is specified in clause 4.3 of the Credit Agreement.

39. Upon receiving this notification, DSE will remove the Credits from the BushBroker Register.

Ruling

1. Transfer of land from the Landowner to the Crown

40. The receipt of Credits pursuant to a transfer of land does not form part of the assessable income of the Landowner under sections 6-5, 15-10 or 15-15.

Capital Gains Tax

41. CGT event A1 happens when the Landowner disposes of their land to the Crown (subsection 104-10(1)).

42. The Landowner will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of the land are more than its cost base. The Landowner will make a capital loss if those capital proceeds are less than the land's reduced cost base.
43. The time at which CGT event A1 happens will be the date that the change of ownership occurs.
44. The capital proceeds from the disposal of the land is the market value of the Credits received or entitled to be received for the disposal (section 116-20).
45. The cost base or reduced cost base of the land will include the Initial Costs and any Financial Contribution.
46. The Initial Costs and Financial Contribution incurred by the Landowner will not be deductible under section 8-1.
47. If the land was acquired before 20 September 1985, any capital gain or capital loss made by the Landowner from the disposal of the land will be disregarded (subsection 104-10(5)).
48. A Landowner who makes a capital gain that is not disregarded will be eligible to treat the gain as a discount capital gain provided they acquired the land at least 12 months before its disposal and the other requirements of Subdivision 115-A are satisfied (section 115-5).

2. Sale of Credits

Capital Gains Tax

49. A Credit constitutes a CGT asset as defined under section 108-5.
50. CGT event A1 happens when the Landowner disposes of the Credits (subsection 104-10(1)).

Capital proceeds

51. The capital proceeds from the disposal of the Credits is the money or the market value of property the Landowner receives or is entitled to receive in respect of the disposal (section 116-20).
52. The Purchase Price paid by the Permit Holder is the capital proceeds received by the Landowner for the sale of the Credits.

Cost base

53. The first element of the cost base of a Credit consists of the market value of the property given in respect of acquiring the Credit (section 110-25). This is the market value of the land transferred by the Landowner to the Crown divided by the number of Credits received.

Discount capital gain

54. A Landowner who makes a capital gain will be eligible to treat the gain as a discount capital gain provided they acquired the Credit at least 12 months before its disposal and the other requirements of Subdivision 115-A are satisfied (section 115-5).

Tax Consequences for Permit Holders

55. A Permit Holder in the business of developing land for resale at a profit can include the cost of the Credits in the cost of the land and claim a deduction under section 8-1 at the time expenditure to acquire the Credits is incurred. The cost base and reduced cost base of the Credits does not include expenditure that a Permit Holder has deducted or can deduct (subsection 110-45(2)).

56. If the Permit Holder holds the land on capital account, the first element of the cost base of a Credit will be the money paid by the Permit Holder to acquire the Credit. CGT event C2 will happen at the time the Credits that they own are removed from the BushBroker Register (paragraph 104-25(1)(a)).

Commissioner of Taxation**8 May 2013**

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.*

1. Transfer of land from the Landowner to the Crown

57. 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.

58. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1, 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 *Dickenson v. Federal Commissioner of Taxation* (1958) 98 CLR 460 the taxpayer, who owned a service station, entered into an arrangement with the Shell Company whereby the taxpayer agreed to only sell the Shell Company's petroleum products for a period of ten years. The arrangement was carried out by executing five interdependent documents. Two of these documents were personal covenants of which the taxpayer was paid two separate lump sums. Kitto J held that:

...a lump sum payment for a restriction of a garage and its proprietor to one brand of petroleum products for a period of ten years, ... seems in the nature of a sale price for a substantial and enduring detraction from pre-existing rights. The restriction does not strike my mind as an obligation undertaken incidentally to the carrying on of the business. Rather does it take a substantial piece out of the ordinary scope of the business activities to which otherwise the appellant might apply himself and for which he might use his premises to adapt some words of the Master of the Rolls.

60. Where a Landowner enters into an agreement to transfer land to the Crown, the Landowner agrees to sell part of their land in return for Credits.

61. Further, the class of entities to whom this Ruling applies is limited to Landowners who hold their land on capital account.

62. Thus, where a Landowner enters into an agreement to transfer land to the Crown which results in the sale of part of their land, the Credits issued are considered to be capital in nature, and accordingly will not constitute assessable income of the Landowner under section 6-5.

Section 15-15

63. Section 15-15 provides that a profit:

- from the carrying on or carrying out of a profit-making undertaking or plan;
- that is not assessable as ordinary income under section 6-5,

can only be included in a taxpayer's assessable income where the profit arises in respect of the sale of property acquired before 20 September 1985.

64. The Credits issued to a Landowner are for the sale of part of their land.

65. Where the land was acquired before 20 September 1985, section 15-15 will not apply as the land was not acquired from the carrying on or carrying out of a profit-making undertaking or plan.

66. Where the land was acquired on or after 20 September 1985, section 15-15 has no application.

Section 15-10 – bounty or subsidy

67. 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.

68. 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* (1969) 121 CLR 353, 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 'aid provided by the Crown (government) to foster or further some undertaking or industry', which includes the payment of a financial grant.

69. In the present case, the Landowner receives Credits in return for the sale of their land and does not receive any financial payments from the government. As such, no amount is assessable under section 15-10.

Capital Gains Tax

70. CGT event A1 happens when the Landowner disposes of their land to the Crown (subsection 104-10(2)).

71. The time of the event is

- (a) when they enter into the contract for the disposal; or
- (b) if there is no contract – when the change in ownership occurs.

72. As the disposal did not arise under a contract, the time at which CGT event A1 happens will be when the ownership of the land changes (ie. the date of settlement of the sale).

73. The Landowner will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of the land are more than its cost base. The Landowner will make a capital loss if those capital proceeds are less than the land's reduced cost base.

Capital proceeds

74. Section 116-20 defines capital proceeds as the total of:

- the money you have received, or are entitled to receive, in respect of the event happening; and
- the market value of any other property you have received or are entitled to receive, in respect of the event happening (worked out as at the time of the event).

75. The Landowner receives no money in respect of the happening of CGT event A1 but receives Credits.

76. The Credits are property and their market value is included as capital proceeds.

77. As property is not defined in the income tax legislation, the ordinary meaning of the word must be used.

78. The CCH *Macquarie Concise Dictionary of Modern Law* defines property as '1. Ownership, 2. Anything capable of being owned'.

79. In *National Provincial Bank Ltd v. Ainsworth* [1965] AC 1175 Wilberforce J provided the following tests:

Before a right or interest can be admitted into the category of property or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.

80. In the present case, the Credits are defined as 'the unextinguished value assigned by the Register to a defined part of the Subject Land ... which may be relied on as evidence of the provision of Offset and available for trade, subject to the rules of the Register.'

81. The Credits are identifiable by third parties as they are recorded on the BushBroker Register.

82. The Credits are also available for sale from the date that DSE records the Landowner as being the holder of the Credits.

Cost base

83. The cost base is defined in section 110-25 and consists of 5 elements:

- the money paid or required to be paid in respect of acquiring the asset and the market value of any other property given or required to be given in respect of acquiring the asset;
- incidental costs incurred to acquire a CGT asset or that relate to a CGT event;
- the costs of owning the asset;
- capital expenditure incurred for the purpose or the expected effect of increasing or preserving the asset's value; and
- capital expenditure incurred to establish, preserve or defend your title to the asset.

84. Accordingly, the cost base of the land will include the Initial Costs incurred by the Landowner and any Financial Contribution required to be paid.

85. No deduction is allowable for the Initial Costs or the Financial Contribution as they are capital expenses incurred to assist with the sale of the land.

Pre-CGT asset

86. If the land was acquired before 20 September 1985, under subsection 104-10(5) any capital gain or capital loss made by the Landowner from the disposal of the land will be disregarded.

Discount capital gain

87. Where the Landowner acquired the land on or after 20 September 1985, any capital gain made by the Landowner may be treated as a discount capital gain provided they acquired the land at least 12 months before its disposal and the other requirements in Subdivision 115-A are satisfied.

2. Sale of Credits

88. As the class of entities to whom this Ruling applies excludes Landowners holding Credits on revenue account, the Ruling only applies to Landowners holding Credits on capital account. Thus as the Credits are held on capital account any profit made by a Landowner on sale of their Credits will not be assessable income of the Landowner under section 6-5.

89. As stated in paragraph 63 of this Ruling, section 15-15 provides that a profit:

- from the carrying on or carrying out of a profit-making undertaking or plan,
- that is not assessable as ordinary income under section 6-5,

can only be included in a taxpayer's assessable income where the profit arises in respect of the sale of property acquired before 20 September 1985.

90. As the Credits a Landowner is issued are acquired after 19 September 1985, any profit that arises on the sale of Credits will not be assessable income of the Landowner under section 15-15.

Capital Gains Tax

91. Subsection 108-5(1) defines a CGT asset as:

- any kind of property; or
- a legal or equitable right that is not property.

92. Credits fall within the definition of CGT asset under paragraph 108-5(1)(a).

93. CGT event A1 happens on the disposal of a CGT asset. Under section 104-10, a CGT asset is disposed of when there is a change of ownership, whether because of some act or event or by operation of law.

94. On the sale of Credits, the Landowner will dispose of a CGT asset at the time the Landowner enters into the sale contract. Under subsection 104-10(4), the Landowner will make a capital gain if the capital proceeds from the sale are more than the cost base of the Credits. If the capital proceeds are less than the reduced cost base of the Credits, the Landowner will make a capital loss.

Capital proceeds

95. Subsection 116-20(1) provides that the capital proceeds from a CGT event are the total of:

- the money you have received, or are entitled to receive, in respect of the event happening; and

- the market value of any other property you have received or are entitled to receive, in respect of the event happening (worked out at the time of the event).

96. The capital proceeds from the disposal of the Credits is the money or the market value of property that the Landowner receives or is entitled to receive in respect of the disposal (subsection 116-20(1)). The money that the Landowner receives or is entitled to receive for the sale of the Credits is the Purchase Price paid by the Permit Holder.

Cost base

97. Subsection 110-25(2) provides that the first element of the cost base of a CGT asset is the total of:

- the money you paid, or are required to pay in respect of acquiring the CGT asset; and
- the market value (worked out at the time of the acquisition) of any other property you gave, or are required to give, in respect of acquiring the CGT asset.

98. The first element of the cost base of a Credit consists of the market value of the property given in respect of acquiring the Credit (section 110-25). This is the market value of the land transferred by the Landowner to the Crown divided by the number of Credits received.

Tax Consequences for Permit Holders

99. Trading stock is defined in section 70-10 as including among other things '...anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a business'.

100. Where a taxpayer is in the business of developing land for resale at a profit the land forms part of their trading stock (*Federal Commissioner of Taxation v. St Hubert's Island Pty Ltd (in liq)* (1978) 138 CLR 210; 78 ATC 4104; (1978) 8 ATR 452).

101. In *Federal Commissioner of Taxation v. Kurts Development Ltd* (1998) 86 FCR 337; (1998) 39 ATR 493; 98 ATC 4877 infrastructure costs and external costs including costs of gaining approval from the local authority were allocated to the value of trading stock.

102. The cost of obtaining the Credits is a cost that the Permit Holder incurs in order to be able to clear their land. As such, it forms part of the cost of that land and is deductible at the time it is incurred. The cost base and reduced cost base of a Credit does not include expenditure that a Permit Holder has deducted or can deduct (subsection 110-45(2)).

103. CGT event C2 happens if your ownership of an intangible CGT asset ends by the asset being cancelled (paragraph 104-25(1)(a)). Accordingly, CGT event C2 will happen at the time the Credits that the Permit Holder owns are removed from the BushBroker Register.

104. The Permit Holder will make a capital gain if the capital proceeds from the cancellation of their Credits are more than the cost base of the Credits. If the capital proceeds are less than the reduced cost base of the Credits, the Permit Holder will make a capital loss (subsection 104-25(3)).

105. Where a Permit Holder holds the land on capital account, the first element of the cost base of a Credit will be the money paid by the Permit Holder to acquire the Credit. As the Permit Holder receives no money or property for the cancellation of their Credits, the capital proceeds will be the market value of the Credits at the time of cancellation (subsection 116-30(1)).

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Overview	10
Expenses associated with the land transfer	27
Disposal of Credits by Landowner to Permit Holder	29
Content of the Credit Agreement	35
Use of Credits by Permit Holders	37
Ruling	40
1. Transfer of land from the Landowner to the Crown	40
<i>Capital Gains Tax</i>	41
2. Sale of Credits	49
<i>Capital Gains Tax</i>	49
<i>Capital proceeds</i>	51
<i>Cost base</i>	53
<i>Discount capital gain</i>	54
<i>Tax Consequences for Permit Holders</i>	55
Appendix 1 – Explanation	57
1. Transfer of land from the Landowner to the Crown	57
<i>Section 15-15</i>	63
<i>Section 15-10 – bounty or subsidy</i>	67
<i>Capital Gains Tax</i>	70
<i>Capital proceeds</i>	74
<i>Cost base</i>	83
<i>Pre-CGT asset</i>	86
<i>Discount capital gain</i>	87
2. Sale of Credits	88
<i>Capital Gains Tax</i>	91

CR 2013/29

<i>Capital proceeds</i>	95
<i>Cost base</i>	97
<i>Tax Consequences for Permit Holders</i>	99
Appendix 2 – Detailed contents list	106

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital gains tax
- CGT assets
- CGT capital proceeds
- CGT cost base
- CGT events
- trading stock

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 8-1
- ITAA 1997 15-10
- ITAA 1997 15-15
- ITAA 1997 70-10
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(4)
- ITAA 1997 104-10(5)
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5
- ITAA 1997 108-5(1)
- ITAA 1997 108-5(1)(a)
- ITAA 1997 110-25
- ITAA 1997 110-25(2)

- ITAA 1997 110-45(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-5
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1997 116-30(1)
- TAA 1953
- Copyright Act 1968
- Parks Victoria Act 1988 (Vic)

Case references:

- Dickenson v. Federal Commissioner of Taxation (1958) 98 CLR 460
- Federal Commissioner of Taxation v. Kurts Development Ltd (1998) 86 FCR 337; (1998) 39 ATR 493; 98 ATC 4877
- Federal Commissioner of Taxation v. St Hubert's Island Pty Ltd (in liq) (1978) 138 CLR 210; 78 ATC 4104; (1978) 8 ATR 452
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- National Provincial Bank Ltd v. Ainsworth [1965] AC 1175
- Placer Development Ltd v. Commonwealth of Australia (1969) 121 CLR 353

ATO references

NO: 1-4MNSJTR

ISSN: 1445-2014

ATOLaw topic: Income Tax ~~ Assessable income ~~ other payments
 Income Tax ~~ Capital Gains Tax ~~ capital proceeds
 Income Tax ~~ Capital Gains Tax ~~ CGT assets
 Income Tax ~~ Capital Gains Tax ~~ CGT event A1 – disposal of a CGT asset
 Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 – end of a CGT asset
 Income Tax ~~ Deductions ~~ capital outlay
 Income Tax ~~ Trading stock and work in progress