


# ***CR 2020/15 - Sydney Metro - disturbance payments in respect of the construction of the Sydney Metro West***

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## Class Ruling

# Sydney Metro – disturbance payments in respect of the construction of the Sydney Metro West

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
<b>Ruling</b>	<b>7</b>
<b>Scheme</b>	<b>20</b>
<b>Appendix – Explanation</b>	<b>34</b>

### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of disturbance payments to be made by Sydney Metro in connection with the construction of the Sydney Metro West (the Project).
2. Full details of the disturbance payments are set out in paragraphs 20 to 33 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you (an 'affected entity') if you held a freehold interest, leasehold interest or sub-leasehold interest in, licence over, or right to occupy, land that is:
  - used for commercial or retail (not residential) purposes, and
  - acquired, or will be acquired, by Sydney Metro for the purpose of, or in connection with, the construction of the Project

and where you

- do not carry on a business of trading in freehold interests, leases, sub-leases, licences over, or rights to occupy, land
- do not enter into a contract with Sydney Metro to sell, or otherwise cease to own, your freehold interest, leasehold interest or sub-leasehold interest in, licence over or right to occupy, land with a purpose of making a profit or gain
- are not an exempt entity specified in section 11-5, and
- received a disturbance payment from Sydney Metro in respect of the acquisition of your freehold interest, leasehold interest, sub-leasehold interest in, licence over or right to occupy, land.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 20 to 33 of this Ruling.

**Note:** Division 230 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies to entities that enter into the scheme from 1 January 2020 to 31 December 2024.

## **Ruling**

### **Assessable recoupment**

7. A disturbance payment, being a grant (within the definition of a 'recoupment' in subsection 20-25(1)), and to the extent that it is not ordinary income or statutory income because of another provision of the income tax legislation<sup>1</sup>, will be an assessable recoupment under subsection 20-20(3).

8. A part of the disturbance payment will be included in your assessable income under section 20-40 for several income years. The amount of assessable income in an income year will be equal to the amount you can deduct (in that same income year) under Division 40 for the decline in value of any depreciating asset acquired with the disturbance payment.

9. Any part of the disturbance payment that is compensation for loss of profits is not an assessable recoupment under section 20-20. It will form part of your ordinary income, which is included in your assessable income under section 6-5.

### **CGT consequences**

#### ***The right to receive a disturbance payment***

10. The right to receive a disturbance payment is subject to the CGT provisions in Parts 3-1 and 3-3.

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<sup>1</sup> Subsection 20-20(1).

11. Your right to receive a disturbance payment will be a CGT asset.<sup>2</sup>
12. Where Sydney Metro acquires interests in, or rights over, land by means of negotiation, you will have acquired the right to receive a disturbance payment when you enter into a deed or other contract with Sydney Metro that gives rise to a contractual right to receive a specific amount.<sup>3</sup>
13. Where Sydney Metro acquires interests in, or rights over, land by means of compulsory acquisition, you will have acquired the right to receive a disturbance payment when Sydney Metro creates in you the legal right to receive a specific amount.<sup>4</sup> This will happen on the date of publication of an acquisition notice in the NSW Gazette, pursuant to sections 19 and 20 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

### **CGT event C2**

14. CGT event C2 will happen to the right to receive a disturbance payment when you receive the disturbance payment.<sup>5</sup> This is because your right to receive the disturbance payment will end by the right being discharged or satisfied.<sup>6</sup>
15. CGT event C2 happens when you receive the disturbance payment.<sup>7</sup>
16. The capital proceeds will consist of the amount of the disturbance payment.<sup>8</sup>
17. The capital gain from CGT event C2 happening is equal to the amount by which the capital proceeds (the disturbance payment) exceed the cost base of the right.<sup>9</sup>
18. The cost base of the right will only include any incidental costs incurred by you to acquire the right to receive a disturbance payment, or that relate to CGT event C2 happening to the right.<sup>10</sup> This includes remuneration for the services of a surveyor, valuer, accountant, agent, consultant or legal adviser. However, any such expenditure will not form part of the cost base of the right to the extent of any amount received by you as recoupment of it.<sup>11</sup> This includes, but is not limited to, receiving an amount as part of the disturbance payment to cover such expenditure.

### **Anti-overlap rule**

19. A capital gain that you make from CGT event C2, in respect of the right to receive a disturbance payment, is reduced to the extent that any part of the disturbance payment is included, either in the income year the disturbance payment is received or any subsequent income year, in your assessable income under section 6-5 or section 20-40.<sup>12</sup>

<sup>2</sup> Subsection 108-5(1).

<sup>3</sup> Event number D1 in the table in subsection 109-5(2).

<sup>4</sup> Event number D1 in the table in subsection 109-5(2).

<sup>5</sup> Subsection 104-25(1).

<sup>6</sup> Paragraph 104-25(1)(b).

<sup>7</sup> Paragraph 104-25(2)(b).

<sup>8</sup> Paragraph 116-20(1)(a).

<sup>9</sup> Subsection 104-25(3).

<sup>10</sup> Subsection 110-25(3) and section 110-35.

<sup>11</sup> Subsection 110-45(3).

<sup>12</sup> Subsection 118-20(1).

## Scheme

20. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

### Sydney Metro West

21. Sydney Metro will be undertaking the construction of the Project, which will consist of a metro railway line connecting Parramatta and the Sydney central business district.

22. Sydney Metro is constituted as a corporation and is declared to be a NSW Government agency under section 38 of the *Transport Administration Act 1988* (NSW).

### Acquisition of land

23. In order to complete the Project, Sydney Metro will need to acquire various parcels of land. This will involve the acquisition of an estate in fee simple (commonly referred to as the freehold) in each affected parcel of land.

24. Where land is occupied by an entity holding a leasehold interest or sub-leasehold interest in, licence over or right to occupy the land, Sydney Metro will then have to acquire or extinguish those interests in, or rights over, land.

25. Sydney Metro will first endeavour to negotiate the acquisition or extinguishment of the interests in, or rights over, land. If negotiations are successfully concluded, Sydney Metro will enter into a deed or other contract with the affected entity that sets out the terms of the acquisition or extinguishment.

26. Where a negotiated outcome cannot be reached, Sydney Metro will exercise its power of compulsory acquisition under section 38C of, and item 11 of Schedule 1 to, the *Transport Administration Act 1988* (NSW).

27. The amount of money which Sydney Metro must pay to an affected entity when it exercises its power of compulsory acquisition is governed by the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW). An acquisition notice must be published in the NSW Gazette pursuant to section 19 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), and the land described in the notice is vested in Sydney Metro on the date of publication pursuant to section 20 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

28. Whether interests in, or rights over, land are acquired or extinguished by means of negotiation or compulsory acquisition, Sydney Metro will pay the affected entity an amount consisting of at least:

- the market value of the interest in, or right over, land, and
- compensation for anticipated costs to the affected entity of relocating to new premises (a disturbance payment).

29. This Ruling only considers the income tax consequences of a disturbance payment for an affected entity (as explained in paragraph 4 of this Ruling).

### Calculation of disturbance payments

30. The disturbance payment will be calculated as an estimate of the expenses that the affected entity will incur in relocating to new premises. The affected entity will be required to provide substantiation and quotes for the various expenses that they may incur in

relocating. There is no obligation to either actually incur these expenses or repay any part of the disturbance payment that is not expended.

31. These expenses include legal and consulting fees, removal fees, the costs of fitting out and furnishing new premises, and increased rent. It may also include compensation for loss of profits as a result of relocating.

32. If interests in, or rights over, land are acquired or extinguished by means of negotiation between Sydney Metro and the affected entity, the amount of the disturbance payment will also be negotiated between them.

33. If interests in, or rights over, land are acquired by means of Sydney Metro exercising its power of compulsory acquisition, the amount of the disturbance payment that Sydney Metro will pay to the affected entity will be calculated by reference to the criteria in paragraph 55(d) and section 59 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

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**Commissioner of Taxation**

25 March 2020

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**Appendix – Explanation**

**ⓘ** *This Explanation 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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Assessable recoupment	34
CGT event C2 and anti-overlap rule	42

**Assessable recoupment**

34. To be an assessable recoupment, an amount cannot be ordinary income or statutory income because of a provision outside Subdivision 20-A.<sup>13</sup>

35. Under subsection 20-20(3), an amount you have received as recoupment of a loss or outgoing (except by way of insurance or indemnity) is an assessable recoupment if you:

- can deduct an amount for the loss or outgoing for the current year, or
- have deducted or can deduct an amount for the loss or outgoing for an earlier income year.

under a provision listed in section 20-30.

36. Subsection 20-25(1) provides that:

Recoupment of a loss or outgoing includes:

- (a) any kind of recoupment, reimbursement, refund, insurance, indemnity or recovery, however described, and
- (b) a grant in respect of the loss or outgoing.

37. Under subsection 20-20(1), a disturbance payment will not be ordinary income (other than any part of it that is compensation for loss of profits) or statutory income because of a provision outside Subdivision 20-A.

38. The disturbance payment is a grant in respect of various outgoings within the meaning of paragraph 20-25(1)(b). Therefore, it will be an amount received by you as 'recoupment' of those outgoings for the purposes of Division 20.

39. A part of the disturbance payment will be an assessable recoupment under subsection 20-20(3). This is because some of the expenses (or outgoings) that you may incur in relocating to new premises – specifically in relation to fitting out and furnishing the new premises – can be deducted in the income year in which those outgoings are incurred and in subsequent income years, under Division 40 (which is a provision listed in section 20-30) for the decline in value of any depreciating assets acquired with the disturbance payment.

<sup>13</sup> Subsection 20-20(1).

40. Where an outgoing is deductible under Division 40 over two or more income years, section 20-40 applies. The amount that is assessable for an income year is to be worked out according to the following method statement<sup>14</sup>:

Step 1	Add up all the assessable recoupments of the loss or outgoing that you have received (in the current year or earlier). The result is the 'total assessable recoupment'.
Step 2	Add up the amounts (if any) included in your assessable income for earlier income years, in respect of the loss or outgoing, by section 20-40. The result is the 'recoupment already assessed'. (If no amount was included, the recoupment already assessed is nil.)
Step 3	Subtract the recoupment already assessed from the total assessable recoupment. The result is the 'unassessed recoupment'.
Step 4	Add up each amount that you can deduct for the loss or outgoing for the current year, or you have deducted or can deduct for the loss or outgoing for an earlier income year. The result is the 'total deductions for the loss or outgoing'.
Step 5	Subtract the recoupment already assessed from the total deductions for the loss or outgoing. The result is the 'outstanding deductions'.
Step 6	The unassessed recoupment is included in your assessable income, unless it is greater than the outstanding deductions. In that case, the amount of the outstanding deductions is included instead.

41. Where a Division 40 deduction is limited to only a proportion of the outgoing in acquiring a depreciating asset because only part of the depreciating asset was used for a taxable purpose (defined in subsection 40-25(7) to include the purpose of producing assessable income), section 20-50 modifies how section 20-40 applies.

### **CGT event C2 and anti-overlap rule**

42. The capital gain from CGT event C2 will be reduced to the extent that any part of the disturbance payment is included, either in the income year the disturbance payment is received or any subsequent income year, in your assessable income under section 6-5 or section 20-40.<sup>15</sup>

43. In respect of section 20-40, this means that the capital gain must be reduced by the part of the disturbance payment that was used by you to acquire any depreciating asset, to the extent that the depreciating asset is used for a taxable purpose (defined in subsection 40-25(7) to include the purpose of producing assessable income). This will require you to forecast the future use of a depreciating asset, and seek an amendment of your assessment (within the time limits set by section 170 of the *Income Tax Assessment Act 1936*) for the income year in which the disturbance payment is received if the actual use of the depreciating asset in a subsequent income year is different from the forecast.

44. The capital gain is reduced by the amount included in your assessable income if the capital gain exceeds that assessable amount.<sup>16</sup>

45. If the capital gain is less than the amount included in your assessable income, the capital gain can only be reduced to zero.<sup>17</sup>

<sup>14</sup> Subsection 20-40(2).

<sup>15</sup> Subsection 118-20(1).

<sup>16</sup> Subsection 118-20(3).

<sup>17</sup> Subsection 118-20(2).

## References

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- ITAA 1936 170
- ITAA 1997 6-5
- ITAA 1997 11-5
- ITAA 1997 Subdiv 20-A
- ITAA 1997 20-20
- ITAA 1997 20-20(1)
- ITAA 1997 20-20(3)
- ITAA 1997 20-25(1)
- ITAA 1997 20-25(1)(b)
- ITAA 1997 20-30
- ITAA 1997 20-40
- ITAA 1997 20-40(2)
- ITAA 1997 20-50
- ITAA 1997 Div 40
- ITAA 1997 40-25(7)
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 108-5(1)
- ITAA 1997 109-5(2)
- ITAA 1997 Div 104
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- ITAA 1997 104-25(1)(b)
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- ITAA 1997 104-25(3)
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- ITAA 1997 110-25(3)
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- ITAA 1997 Div 116
- ITAA 1997 116-20(1)(a)
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- ITAA 1997 118-20(1)
- ITAA 1997 118-20(2)
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- ITAA 1997 Div 230
- TAA 1953
- Transport Administration Act 1988 (NSW)
- Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

ATO references

NO: 1-KFZPHYM

ISSN: 2205-5517

BSL: PGI

ATOlaw topics: Income tax ~~ Assessable income ~~ Other types of income ~~  
Compensation and ex gratia payments  
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events C1 to C3 –  
end of a CGT asset  
Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base

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