

# ***GIR/primary-production-payg-appendix -***



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# GST Primary Production Issues Register - Section 2 - Pay as you go (PAYG) and income tax

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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## **1 Australian business number (ABN)**

### **1.1 Verification/Quotation**

| Issue Number          | Issue  | Updated  |
|-----------------------|--|----------|
| <a href="#">1.1.1</a> | Am I responsible for ensuring that a supplier's quoted ABN is correct? | 09/04/01 |

### **1.2 Registration**

| Issue Number          | Issue  | Updated  |
|-----------------------|--|----------|
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|                       |  |          |
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| <a href="#">1.2.3</a> | If a vendor client has applied for an Australian Business Number (ABN) but has not yet received it, can a letter be issued to the client to confirm that an ABN application has been lodged? | 09/04/01 |

## 2 Financial instruments

### 3 Entities

#### 3.1 Trusts

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## 4 Government grants and payments

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|  |  |  |
|--|--|--|
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|  |   |  |
|--|---|--|
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### 4.3 Deregulation

| Issue Number          | Issue   | Updated  |
|-----------------------|---|----------|
| <a href="#">4.3.1</a> | <p>(a) (i) What happens to the quotas once the regulations are removed?</p> <p>(a) (ii) After deregulation by the States quotas will no longer exist. Does this mean that they have zero value and holders can realise a capital loss?</p> <p>(b) (i) Do quotas have to be sold to realise any capital loss?</p> <p>(b) (ii) Is the capital loss attributable to the 1999/2000 income year or the 2000/2001 income year?</p> <p>(c) (i) Do State Governments actually have to resume the quotas at "nil" value for a capital loss to exist?</p> <p>(c) (ii) Is such a capital loss allowable for taxation purposes?</p> | 20/11/00 |

### 4.4 Relief payments

| Issue Number          | Issue                                     | Updated  |
|-----------------------|---|----------|
| <a href="#">4.4.1</a> | Exceptional Circumstances Relief Payments | 04/10/01 |

### 4.5 Sugar

| Issue Number          | Issue                              | Updated  |
|-----------------------|------------------------------------|----------|
| <a href="#">4.5.1</a> | Sugar Industry Assistance Package. | 04/10/01 |

## 5 Livestock

| Issue Number          | Issue  | Updated  |
|-----------------------|--|----------|
| <a href="#">5.1.1</a> | For PAYG purposes how is the income from the forced disposal of livestock treated? | 09/04/01 |

## 6 Agents

### 6.1 For Principals

| Issue Number          | Issue  | Updated  |
|-----------------------|--|----------|
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### 7.1 Instalment Options

| Issue Number          | Issue  | Updated  |
|-----------------------|--|----------|
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### 20.1 Farm Management Deposits

| Issue Number           | Issue   | Updated  |
|------------------------|---|----------|
| <a href="#">20.1.1</a> | What rate of withholding will apply to withdrawals from Farm Management Deposits (FMD)? | 02/08/00 |

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| Issue Number           | Issue   | Updated  |
|------------------------|---|----------|
| <a href="#">20.2.1</a> | Does expenditure on the construction of netting for the purposes of exclusion of flying foxes, mitigating the need for lethal control, qualify as a deduction under section 387-A of the ITAA 1997? | 15/06/01 |
| <a href="#">20.2.2</a> | Effluent Dams and their Income Tax Deductibility  | 04/10/01 |

### 20.3 Class Rulings

| Issue Number           | Issue                             | Updated  |
|------------------------|-----------------------------------|----------|
| <a href="#">20.3.1</a> | Class Rulings for Industry Bodies | 04/10/01 |

### 20.4 Honoraria

| Issue Number           | Issue   | Updated  |
|------------------------|---|----------|
| <a href="#">20.4.1</a> | What is the income tax treatment of honoraria?    | 15/08/02 |
| <a href="#">20.4.2</a> | Is an honorarium defined for Income Tax purposes? | 15/08/02 |

# 1 Australian business number (ABN)

## 1.1 Verification/Quotation

### 1.1.1 Responsibility to check ABN legitimacy

#### Question

Am I responsible for ensuring that a supplier's quoted ABN is correct?

#### Answer

You may accept a quoted ABN provided you have no reason to suspect its validity.

However, if you have reason to suspect that the quoted ABN might not be genuine or that it does not belong to the supplier who quoted it, you should make further enquiries.

Circumstances that may alert you to the need to make further enquiries include:

- Wrong configuration. An ABN has 11 digits. An entity may quote a 14 digit number. This would be their ABN plus a GST Branch Registration number. In both cases there are no letters.
- Sequential numbers, repeating numbers or unusual number patterns. You can check the mathematical validity of the number by referring to the fact sheet [Format of the Australian Business Number](#).
- Invoice details do not match the details of the person you believed was supplying you or the type of supplies you are receiving.
- You will be able to check an ABN by using the Australian Business Register, which provides details of the names and addresses of suppliers holding valid ABNs. To use the register, please telephone **13 72 26**.

If the ABN quoted on the invoice is not valid or the details do not match the supplier, you should withhold 48.5 per cent of the payment.

For further details please refer to [Question 16 of ABN Questions and Answers](#)

## 1.2 Registration

### 1.2.1 Hobby farmer declaration

#### Question

How does a supplier declare to a recipient that they are a hobby farmer and therefore are not required to have an ABN?

#### Answer

An ABN must be quoted to a recipient before they make any payment for a supply otherwise PAYG withholding provisions will apply. Normally an ABN will be quoted on the supplier's invoice.

If a supply is made in the supplier's private capacity, or as their hobby they will not be required to have an ABN. The supplier can give the recipient of the supply a written statement which states a reason why the supplier is not required to have an ABN.

A form is available for this purpose - [Statement by a supplier \(Reason for not quoting an ABN to an enterprise\)](#)

### 1.2.2 Branch registration

#### Question

Is an entity which is registered for GST, eligible to register a GST branch when the 'current annual turnover' of that branch is less than the \$50,000 threshold figure?

#### Answer

Yes, an entity may register a GST branch irrespective of whether the 'current annual turnover' of that branch is less than \$50,000 provided the requirements of subsection 54-5 of the **A New Tax System (Goods and Services Tax) Act 1999 (GST Act)** are satisfied.

#### Explanation

There is no requirement in the provisions of section 54-5 of the GST Act for a GST branch to meet any turnover threshold figure.

Under subdivision 54-A of the GST Act a branch may register if the provisions of section 54-5 of the GST Act are met.

Section 54-5 of the GST Act provides:

##### *54-5 Registration of GST branches*

- (1) The Commissioner must\* register a branch of a\* registered entity if:
  - (a) the registered entity applies, in the \*approved form, for registration of the branch; and
  - (b) the Commissioner is satisfied that the branch maintains an independent system of accounting, and can be separately identified by reference to:
    - (i) the nature of the activities carried on through the branch; or
    - (ii) the location of the branch; and
  - (c) the Commissioner is satisfied that the registered entity is \*carrying on an \*enterprise through the branch, or intends to carry on an enterprise through the branch, from a particular date specified in the application.

A branch that is so registered is a **GST branch**.

- (2) A branch of a \*registered entity can be registered as a \*GST branch without all or any of the other branches of the entity being so registered.
- (3) However, a branch of a \*registered entity cannot be registered as a \*GST branch if the registered entity is a \*member of a \*GST group.

### 1.2.3 Responsibility to check ABN legitimacy

#### Question

If a vendor client has applied for an Australian Business Number (ABN) but has not yet received it, can a letter be issued to the client to confirm that an ABN application has been lodged?

#### Answer

No.

#### Explanation:



The no ABN withholding provisions contained in section 12-190 of Part 2-5, Schedule 1 of the *Taxation Administration Act 1953* (TAA) provide that an entity (the payer) must withhold an amount from a payment it makes to another entity if:

- (a) the payment is for a supply<sup>1</sup> that the other entity has made, or proposes to make, to the payer in the course or furtherance of an enterprise carried on in Australia by the other entity, and
- (b) none of the exceptions in this section apply.

The primary exception is that the no ABN withholding event does apply to a payment if a supplier or their agent quotes their ABN on an invoice, or some other document relating to the supply.

Where a supplier has not quoted an ABN before the payment is made, and no other exceptions apply, the payer would have an obligation to withhold an amount equal to 48.5% of that payment.

However, the Commissioner of Taxation on June 26, 2000 announced that the ATO would be issuing a 'safety net' letter to everyone who had lodged an ABN application by the 30th June 2000 and had not received an ABN.

The letter stated that the ATO had received the application and provided a variation of the no ABN quotation withholding rate to zero (0) %. The safety net letter was not an amnesty for those who had not lodged an application.

It also advised applicants who were registering for GST that they could issue tax invoices with the ABN being quoted as 'ABN pending'. These would be accepted as tax invoices.

On the back of the letter was a personalised notice that showed the name and address of the applicant. The notice was signed by Michael Carmody. It stated:

*"The abovenamed supplier has made application for registration for the New Tax System. In accordance with my powers under the Taxation Administration Act 1953, I have varied the withholding rate that would normally apply to any payment for a supply where an Australian Business Number (ABN) is not quoted from 48.5% to 0%.*

*Accordingly, you should not withhold any amount from payments to this supplier in the period up to and including 31 July 2000, provided that the supplier has completed the declaration below.*

*You should make a copy of this notice and retain it for 5 years with your other taxation records."*

At the bottom of notice was a declaration to be signed by the supplier. The declaration stated that the entity should provide their ABN to all of the businesses they give the notice to, as soon as possible after the ABN is received.

Where an organisation had received a safety net letter, the no ABN withholding rate had been varied to nil. Therefore, there was no requirement on the part of the payer to withhold 48.5% of the payment.

ABN Applications received after 30 June 2000 will not be issued with a safety net letter and will not be subject to the variation provisions contained in the letter. Where a supplier has not quoted an ABN on an invoice or some other document relating to that supply before the payment is made, and no other exceptions apply, the payer would have an obligation to withhold an amount equal to 48.5% of that payment.

1. For definition, see section 995-1 of the *Income Tax Assessment Act 1997*

## 2 Financial instruments

## 3 Entities

### 3.1 Trusts

#### 3.1.1 Discretionary Trust Disbursements

##### Question

How will beneficiaries of discretionary trusts account for their share of trust income when calculating their Pay-As-You-Go Instalments for the 2000/01 year?

##### Answer

A beneficiary is required to include **their share** of any instalment income earned by the trust for the instalment quarter, in **their own** instalment income amount for that quarter. In addition, a beneficiary must include income for each trust in which they are a beneficiary.

The amount to include for each trust is worked out by the using the formula set out below:

$$\frac{\text{Your assessable income from the trust for the last income year}}{\text{Trust's instalment income for the last income year}} \times \text{Trust's instalment income for the current period}$$

The trustee of the trust should provide the beneficiaries with the amount to include in their own instalment income or the information that will allow the beneficiaries to work out that amount.

The beneficiaries would then apply their own instalment rate to their instalment income to calculate the PAYG instalment for that period.

If the beneficiary's assessable income from the trust for the last income year was nil, then the formula cannot be applied. In this instance, the beneficiary must include in their instalment income an amount that is fair and reasonable. This amount should be calculated by examining the beneficiary's interest in the trust, the trust's instalment income for the current period and any other relevant circumstances.

Note that for beneficiaries whose Activity Statement has no figure preprinted at T2 on the back, there is no need to provide details of instalment income.

### 3.2 Groups

#### 3.21 and 3.2.2 Group ABN quoting

##### Question

Is entity A, a member of a GST group, required to withhold an amount under section 12-190 of Schedule 1 of the Taxation Administration Act 1953 (TAA) from a payment it makes to entity B, another member within the same GST group, where entity B fails to quote its ABN?

##### Facts:

Entity A and entity B are members of a GST group. Entity B makes supplies to entity A in the course or furtherance of an enterprise that entity B carries on in Australia. The exceptions listed in section 12-190 of the TAA do not apply to this transaction.

### *Answer*

Yes. Entity A is required to withhold an amount under section 12-190 of Schedule 1 of the TAA from a payment it makes to entity B, where entity B fails to quote its ABN.

### *Explanation*

Under section 12-190 of Schedule 1 of the TAA, an entity (the payer) must withhold an amount from a payment it makes to another entity (the supplier) if:

- a. the payment is for a supply that the supplier has made, or proposes to make, to the payer in the course or furtherance of an enterprise carried on in Australia by the supplier; and
- b. none of the exceptions apply.

GST groups are not recognised for PAYG purposes. As such, section 12-190 of Schedule 1 of the TAA applies to intra-group payments. Therefore, entity A is required to withhold an amount from a payment it makes to entity B where entity B fails to quote its ABN.

### *Note*

The requirement to quote an ABN for the purposes of section 12-190 of Schedule 1 (TAA) will be satisfied where every member of a GST group keeps a register of ABNs that lists the ABN of each other member of the GST group that makes supplies to it; and is able to link every transaction with the correct ABN.

## 4 Government grants and payments

### 4.1 Farm Help

#### 4.1.1 What is the income tax effect of the dairy structural adjustment program?

##### Question

What is the Income Tax effect of the Dairy Structural Adjustment Program?

##### Answer

Please refer to the following Fact Sheet on the Dairy Structural Adjustment Program:  
Dairy Structural Adjustment Program "Acquisition and Disposal of a Payment Right Unit"

#### 4.1.2 - Farm Help/ Farm Restart Scheme (PAYG & Income Tax).

##### Questions:

##### 1. Income Support Payment

- 1.1 Will the Farm Help income support payment be assessable income to the recipient?
- 1.2 Is the Farm Help income support payment included in the instalment income of the recipient for PAYG instalments purposes?
- 1.3 Will the beneficiary rebate apply to the Farm Help income support payments?
- 1.4 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

##### 2. Re-establishment Grant

- 2.1 Will the Farm Help re-establishment grant be assessable income to the recipient?
- 2.2 Will there be Capital Gains Tax implications on the receipt of the Farm Help re-establishment grant?
- 2.3 Is the Farm Help re-establishment grant included in the instalment income of the recipient for PAYG instalments purposes?

##### Background

##### Program Name Change

The *Farm Household Support Amendment Act 2000* changed the program name of the Farm Family Restart Scheme to the Farm Help Supporting Families Through Change program, which required the word "restart" in the relevant legislation to be replaced with the words "farm help". Consequently the following refers to payments made under the Farm Help program. The payments made under the Farm Help Program are made by Centrelink under the *Farm Household Support Act 1992*.

##### Description of Program

The AAA - Farm Help - Supporting Families through Change program is one of a number of programs developed as a part of the Commonwealth Government's Agriculture - Advancing Australia (AAA) package. The scheme aims to provide:

- financial assistance to farmers and their families who are experiencing financial hardship and who cannot borrow further against their assets;

- tailored assistance to farm families to adjust and make decisions about their future in the industry;
- access to skills retraining for an alternative career; and
- access to professional advice on the future viability of their business and on employment opportunities if they choose to exit the industry.

This assistance allows farmers the choice of leaving the industry before their assets are severely depleted.

### **Types of benefits payable**

Farm Help has four key components:

- Income support payable for a maximum of 12 months at the Newstart Allowance rate with a partner component. Farmers who receive income support will be required to obtain professional advice on the farm's financial viability with three months of commencing payments.
- A re-establishment grant of up to \$45,000 which is payable when an eligible farmer leaves the farming industry. The grants are only available to farmers who applied for Farm Help before they sell their farm and before 30 November 2003. Farmers will generally then have 12 months to sell their farm subject to an assets test. Re-establishment grants are subject to an assets test on the sale of the farm. The grant will reduce by \$2 for every \$3 in assets in excess of \$100,000. Any income support paid to farmers by Centrelink will also be deducted from the re-establishment grant.
- An obligation to obtain professional advice on the future viability of the business, and career counselling where appropriate. Farm families will receive up to \$3,000 (excluding GST) to obtain advice, and to help with any costs associated with obtaining advice such as travel or childcare. With the assistance of their Centrelink Farm Help contact, farmers and their families can undertake a 'Pathways Plan' which identifies their goals and how they may be achieved. The 'Pathways Plan' is compulsory for businesses assessed as nonviable.
- A retraining grant of \$3,500 is available to farmers and/or their partner who receive a re-establishment grant under the Farm Help program. Only one retraining grant is available for each re-establishment grant paid.

Farmers who have been on Farm Help Income Support for less than six months, and withdraw, are eligible to rejoin the program to complete their 12 months. Those who withdraw after six months cannot rejoin.

*Answers and explanation:*

### **1. Income support payment**

*Question 1.1:*

Will the farm help income support payment be assessable income to the recipient?

Answer:

The payment is generally assessable income to the recipient, however the portion if any, of the payment made for rental assistance, or remote area allowance would not be assessable and is treated as exempt income.

Explanation:

Sub-section 6-5(2) *Income Tax Assessment Act 1997* (ITAA97) specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The income support is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the income support payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA97.

Section 6-20 ITAA97 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision. As the payment is being made under *the Farm Household Support Act 1992* (FHSA), section 53-10 Item 3 ITAA97 exempts the supplementary amount of the income support payment. Section 53-15 ITAA97 defines the supplementary amount as being so much of the payment, which is included by way of rental assistance and remote area allowance.

*Question 1.2:*

Is the Farm Help income support payment included in the instalment income of the recipient for PAYG instalments purposes?

Answer:

- No, Farm Help income support payments are not included in the instalment income of the recipient for PAYG purposes.

Explanation:

As the Farm Help income support payment is a withholding payment under section 12-110 of Schedule 1 (TAA), the payment is specifically excluded from the instalment income of the recipient by subsection 45-120(3) of Schedule 1 (TAA).

*Question 1.3:*

Will the beneficiary rebate apply to the Farm Help income support payments?

Answer:

The beneficiary rebate will apply to the payments.

Explanation:

Amounts paid by way of exceptional circumstances relief payment or farm help income support under the *FHSA* are considered rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936* (ITAA36). Where a rebatable benefit is received, a beneficiary rebate calculated in accordance with the regulations is allowable (ss 160AAA(3) ITAA36).

*Question 1.4:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

Answer:

The payment would not be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The Farm Help income support payments are a welfare payment made to farmers suffering financial hardship. A farmer is defined in section 3 FHSA as a person who:

- has a right or interest in the land used for the purposes of a farm enterprise; and
- contributes a significant part of his or her labour and capital to the farm enterprise; and
- derives a significant part of his or her income from the farm enterprise.

Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392 of the ITAA97.

## **2. Re-establishment grant**

*Question 2.1:*

Will the Farm Help re-establishment grant be assessable income to the recipient?

Answer:

The re-establishment grant is not assessable income to the recipient.

Explanation:

It is considered that the grant would not be assessable under 6-5 ITAA97, as the grant does not have the characteristics of ordinary income.

The payment is not received as part of the proceeds of the farming business, but rather, it is a once-off payment which is payable when an eligible farmer leaves the farming industry. It is considered that the payment is a capital receipt to the recipient.

Bounties and subsidies received in relation to carrying on a business which are not assessable as ordinary income, such as receipts of a capital nature, can be included in assessable income by section 15-10 ITAA97. As the payment is made to a farmer to leave the industry, it is considered that the payment is not received in relation to carrying on a business and therefore is not assessable under section 15-10 ITAA97.

*Question 2.2:*

Will there be capital gains tax implications on the receipt of the Farm Help re-establishment grant?

Answer:

There are no capital gain implications in receiving a re-establishment grant.

Explanation:

Section 118-37 ITAA97 states that a capital gain or loss, that is made from a CGT event relating directly to a re-establishment grant under section 52A of the *Farm Household*

*Support Act 1992*, is to be disregarded. The Farm Help re-establishment grant is paid under section 52A of the *Farm Household Support Act 1992*. Therefore any capital gain or loss from the CGT event will be disregarded.

**Question 2.3:**

Is the Farm Help re-establishment grant included in the instalment income of the recipient for PAYG instalments purposes?

**Answer:**

The Farm Help re-establishment grant is not included in the instalment income of the recipient.

**Explanation:**

Instalment income for a period generally includes gross ordinary income derived during that period, provided that the ordinary income is also included in assessable income for the income year to which the period belongs (section 45-120 of the TAA). As the payment of the Farm Help re-establishment grant does not represent ordinary income, this amount will not be included in the instalment income of the recipient.

For certain entities, amounts representing statutory income are also included in assessable income if it is reasonably attributed to that period and is assessable income of the year that is or includes that period. These entities include eligible Approved Deposit Funds, eligible superannuation funds and pooled superannuation trusts. Statutory income would include a net capital gain. However, as the receipt of the Farm Help re-establishment grant has no capital gains implications, this payment does not result in an amount of statutory income being included in assessable income.

Therefore, regardless of the type of entity in receipt of the payment, the Farm Help re-establishment grant would not be included in the instalment income of the recipient.

## **4.2 Flood assistance**

### **4.2.1 Flood assistance (PAYG & income tax)**

**Questions:**

**1. Income Support**

1.1 Will the income support payments be assessable income to the recipient?

1.2 Will Income support payments paid as part of the flood assistance package be included in the instalment income of the recipient for PAYG instalments purposes?

1.3 Will the beneficiary rebate apply to the income support payments?

1.4 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

**2. Interest rate subsidy**

2.1 Will the interest rate subsidy be assessable?

2.2 Is the interest rate subsidy included in the instalment income of the recipient for PAYG instalments purposes?

2.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?



2.4 Are there any Capital Gains Tax Implications of receiving the interest rate subsidy?

### *3. Replanting grant*

3.1 Will the replanting grant be assessable?

3.2 Is the replanting grant included in the instalment income of the recipient for PAYG instalments purposes?

3.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

3.4 Are there any Capital Gains Tax Implications of receiving the replanting grant?

### *4. Small business grant*

4.1 Will the small business grant be assessable?

4.2 Is the small business grant included in the instalment income of the recipient for PAYG instalments purposes?

4.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

4.4 Are there any Capital Gains Tax Implications of receiving the interest rate subsidy?

### *5. Fodder/Pasture grant for dairy farmers*

5.1 Will the fodder/pasture grant be assessable to the recipient?

5.2 Is the fodder/pasture grant included in instalment income of the recipient for PAYG instalments purposes?

5.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

5.4 Are there any Capital Gains Tax Implications of receiving the interest rate subsidy?

### *Background*

The Government announced a four-part Federal assistance package on 5th December 2000 for the flood-ravaged cropping zones of New South Wales and contiguous areas in southern Queensland.

#### **Description of Flood Assistance Package**

The package includes:

- income support payments to assist farmers and their families;
- interest rate subsidies of up to \$100,000 on existing business loans as at 4th December 2000;
- cash grants of up to \$60,000 for replanting crops: and
- grants of up to \$10,000 to small and medium businesses to help them meet the cost of flood repairs.

The full details of the Flood Assistance Package payments are available from the [Format of the Australian Business Number](#)

*Answers and explanation:*

*1. Income support*

*Description of payment*

The income support payments will be paid fortnightly at a rate equivalent to the maximum rate of Newstart Allowance and Rent Assistance if applicable.

The payment will be subject to an income and assets test similar to that applied under the Newstart Allowance guidelines, however, farm assets will be excluded from the assets test.

*Question 1.1:*

*Will the income support payments be assessable income to the recipient?*

Answer:

The payment is generally assessable income to the recipient, however the portion, if any, of the payment made for rent assistance or remote area allowance would not be assessable and is treated as exempt income.

Explanation:

Subsection 6-5(2) *Income Tax Assessment Act 1997* (ITAA97) specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The income support is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the income support payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA97.

Section 6-20 ITAA97 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision. As the payment is being made under the FHSA, section 53-10 Item 3 ITAA97 exempts the supplementary amount of the income support payment. Section 53-15 ITAA97 defines the supplementary amount as being so much of the payment, which is included by way of rental assistance and remote area allowance.

*Question 1.2:*

*Will Income support payments paid as part of the flood assistance package be included in the instalment income of the recipient for PAYG instalments purposes?*

Answer:

Income support payments paid as part of the flood assistance package represent ordinary income and would generally be included in the instalment income of the recipient for PAYG instalments purposes.

The exceptions are where:

- a portion of the payment represents rental assistance or remote area allowance, which represent exempt income. This portion of the payment is not included in the assessable income of the income year to which the period belongs, and would therefore not be included in the instalment income of the recipient.

- the income support payment is made to an individual. In this circumstance, the payment represents a withholding payment under section 12-110 of Schedule 1, the *Taxation Administration Act 1953* (TAA) and is specifically excluded from instalment income (subsection 45-120(3) of the TAA). This is regardless of whether an amount has actually been withheld.

Explanation:

Instalment income for a period generally includes gross ordinary income derived during that period, provided that the ordinary income is also included in assessable income for the income year to which the period belongs (section 45-120 of the TAA).

As the payment represents ordinary income, it will generally be included in the instalment income of the recipient to the extent that the income is included in assessable income for the income year to which the period belongs. The Income support payment paid as part of the flood relief package (excluding the portion of the payment representing rental assistance or remote area allowance) would generally be included in the instalment income of the recipient. However, if the recipient is an individual, the payment will not be included in the individual's instalment income, as it is a withholding payment under section 12-110 of the TAA.

*Question 1.3:*

Will the beneficiary rebate apply to the income support payments?

Answer:

The beneficiary rebate will apply to the payments.

Explanation:

Amounts paid by way of exceptional circumstances relief payment or farm help income support under the FHSA are considered rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936* (ITAA36). Where a rebatable benefit is received, a beneficiary rebate calculated in accordance with the regulations is allowable (subsection 160AAA(3) ITAA36).

*Question 1.4:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

Answer:

It is considered that the payment would not be treated as income from primary production.

*Explanation:*

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The income support payments are a welfare payment made to farmers suffering financial hardship. A farmer is defined in section 3 FHSA as a person who:

- has a right or interest in the land used for the purposes of a farm enterprise; and
- contributes a significant part of his or her labour and capital to the farm enterprise; and
- derives a significant part of his or her income from the farm enterprise.

Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392 of the ITAA97.

## *2. Interest Rate Subsidy*

### *Description of payment*

Interest rate subsidies of up to \$100,000 are available on debts existing at the 4th December 2000 that have been or are being used for business purposes in relation to the farm enterprise.

This support will help farmers access funds needed to ensure that the longer-term viability of the farm enterprise is assured.

### *Question 2.1:*

Will the interest rate subsidy be assessable?

### Answer:

The receipt of the subsidy would be treated as a receipt of assessable income.

### Explanation:

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 ITAA97).

The interest rate subsidy is being paid to assist continuing farmers to service their farm debts, because widespread flooding has destroyed much of their crops and therefore their incomes will be greatly reduced. The subsidy will be calculated according to actual interest payable on farm debt.

As the subsidy assists continuing farmers to pay the interest payments on farm debt and there is a close relationship between the interest payments and the carrying on of a business on the farm, it is considered that the receipt of the subsidy is in relation to the carrying on of a business. Therefore the subsidy will be assessable as per section 15-10 ITAA97, if the subsidy is not assessable as ordinary income as per section 6-5 ITAA97.

If the subsidy is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 (ITAA97).

### *Question 2.2:*

Is the interest rate subsidy included in the instalment income of the recipient for PAYG instalments purposes?

Answer:

The interest rate subsidy is considered to be ordinary income and is therefore generally included in the instalment income of the recipient.

Explanation:

"Instalment income" is defined in section 45-120 of the TAA to include ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA97 as having the meaning given by section 6-5 ITAA97. Section 45-120 of the TAA also includes certain other statutory income in instalment income (notably the statutory incomes of approved deposit funds, eligible superannuation funds, and pooled superannuation trusts).

For most PAYG instalment payers, income assessable under section 15-10 ITAA97 is not included in the instalment income of the recipient.

However if the subsidy is assessable under section 6-5 ITAA97, the income is ordinary income and would generally be included in the instalment income of the recipient.

Therefore, it is important to determine whether or not the payment is ordinary income.

Given the frequency of adverse natural events which affect farmers and that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal *Case 22/94 ATC 225*.

In that case, the taxpayer was a member of a cane-farming partnership, which purchased a farm with the help of a \$293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained \$33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan, which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5 ITAA97). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 ITAA97.

As the interest rate subsidy is paid to aid the farm enterprise service farm debt, it is considered that the interest rate subsidy is ordinary income and is generally included in instalment income of the recipient for the purposes of PAYG. The exception is where the recipient is an individual. In this circumstance, the payment represents a withholding payment under section 12-110 of the TAA and is specifically excluded from instalment income (subsection 45-120(3) of the TAA). This is regardless of whether an amount has actually been withheld.

*Question 2.3:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97- Long-term averaging of primary producers' tax liability?

Answer:

It is considered that the payment would be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The payment is based on the actual interest paid on farm debt, it is considered that the payments are derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered to be income from primary production for the purposes of Division 392 ITAA97.

*Question 2.4:*

Are there any Capital Gains Tax Implications of receiving the interest rate subsidy?

Answer:

No, there are no capital gains implications.

### *3. Replanting Grant*

*Description of payment*

A replanting grant is available for eligible cropping enterprises of up to a maximum of \$60,000, for crop growers to support the business in assisting with replanting either the summer and/or winter crops.

To be eligible the farm enterprise must:

- under normal circumstances, derive at least 50% of its income from growing crops;
- have lost at least 50% of its winter and/or summer crop to rain or flooding as a result of the floods in November 2000; and
- be able to demonstrate that there is no reasonable capacity to fund crop planting from other income sources, either on-farm or off-farm - It is accepted that farmers applying for this grant who have been granted the

Income Support payment will automatically meet this requirement. Farmers who have not qualified for Income Support may still be eligible, and

- demonstrate a cumulative net loss over either 1999 and 2000, or for the 99/00 and 00/01 financial years in their cropping operation; and
- show that 2/3 of variable costs are related to cropping; and
- not have received an NDRA concessional interest loan for this event for the purposes of replanting (NDRA loans for other purposes would not affect eligibility).
- Grants will be capped at a per hectare rate according to the type of crop being planted.

The following table represents the per hectare cap for replanting grants:

| Crop                    | \$/hectare |
|-------------------------|------------|
| Wheat and other cereals | \$120      |
| Sorghum                 | \$120      |
| Canola                  | \$200      |
| Chickpeas               | \$230      |
| Cotton                  | \$400      |

Capping of the replanting of those crops not reflected in this table (where these are identified as eligible for assistance by the Governments decision ie. Horticultural crops) will be based on the minimum cap in the tab

ie. Applicants would be expected (but not required) to replant a similar type of crop to that lost (in terms of the per hectare cost of replanting). Where there is significant change, reimbursement will be based on the lower of either the actual cost of replanting or the reasonable cost of replanting the crop lost.

Farm enterprises will be paid the grant on the basis of invoices or receipts proving expenditure on replanting the crop (reimbursement). It is necessary for applicants to demonstrate actual costs to qualify for a replanting grant. Grant payments will usually be made in one payment.

There can be only one claim per farm enterprise or individual.

#### *Question 3.1:*

Will the replanting grant be assessable?

#### Answer:

The receipt of the grant would be treated as a receipt of assessable income.

#### Explanation:

The assessable income of a taxpayer includes a bounty or subsidy that is received in relation to carrying on a business and the bounty or subsidy is not assessable as ordinary income (section 15-10 ITAA97).

The replanting grant is a subsidy being paid to assist continuing farmers to replant crops destroyed by widespread flooding. The grant will be calculated according to actual costs incurred subject to certain maximum amounts.

As the grant assists continuing farmers to pay for the replanting of crops destroyed by the floods and there is a close relationship between the planting of crops and the carrying on of a business on the farm, it is considered that the receipt of the grant is in relation to the carrying on of a business. Therefore the grant will be assessable as per section 15-10 ITAA97, if the grant is not assessable as ordinary income as per section 6-5 ITAA97.

If the grant is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 ITAA97.

*Question 3.2:*

Is the replanting grant included in the instalment income of the recipient for PAYG instalments purposes?

Answer:

Where the payment of the replanting grant is considered to be ordinary income (see above), it would be included in the instalment income of the recipient.

Explanation:

"Instalment income" is defined in section 45-120 of the TAA to include ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA97 as having the meaning given by section 6-5 ITAA97. Section 45-120 of the TAA also includes certain other statutory income in instalment income (notably the statutory incomes of approved deposit funds, eligible superannuation funds, and pooled superannuation trusts).

For most PAYG instalment payers, income assessable under section 15-10 ITAA97 is not included in instalment income of the recipient.

However if the grant is assessable under section 6-5 ITAA97, the income is ordinary income and is generally included in the instalment income of the recipient.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal Case 22/94 ATC 225.

In that case, the taxpayer was a member of a cane-farming partnership, which purchased a farm with the help of a \$293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained \$33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.



It was held that the assistance under the SIA Scheme was a conditional loan, which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5 ITAA97). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 ITAA97.

As the replanting grant is paid to aid the farm enterprise replant crops destroyed by flooding, it is considered that the replanting grant is ordinary income and therefore generally included in the instalment income of the recipient for the purposes of PAYG. The exception is where the recipient is an individual. In this circumstance, the payment represents a withholding payment under section 12-110 of the TAA and is specifically excluded from instalment income (subsection 45-120(3) of the TAA). This is regardless of whether an amount has actually been withheld.

#### *Question 3.3:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

#### Answer:

It is considered that the payment would be treated as income from primary production.

#### Explanation:

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The payment is based on the actual expenses of replanting destroyed crops (subject to maximum amounts), it is considered that the payments are derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered to be income from primary production for the purposes of Division 392 of the ITAA97.

#### *Question 3.4:*

Are there any capital gains tax Implications of receiving the replanting grant?

#### Answer:

No, there are no capital gains implications.

#### *4. Small business grant*

##### **Description of payment**

A small business grant is available for eligible businesses of up to a maximum of \$10,000, to reimburse the costs associated with restoring the business premises and/or business equipment after flood inundation.

A small business is defined as one, which has less than 199 employees. Generally, a farm enterprise will not be eligible for this grant. Business, which is part of a national chain (apart from franchises), will not be eligible.

Where equipment has been bogged, costs associated with releasing the equipment may be claimed under this program.

Businesses will not be eligible if they have received NDRA assistance for this event and for this purpose.

The grant is based on actual expenditure with the business required to produce receipts of costs incurred.

##### *Question 4.1:*

Will the small business grant be assessable?

##### Answer:

The receipt of the grant would be treated as a receipt of assessable income.

##### Explanation:

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 ITAA97).

The small business grant is being paid to assist small business (Centrelink believes that generally farm enterprises will not be eligible for the grant) restore business premises and/or business equipment after flood inundation. The grant will be calculated according to actual expenditure incurred by the small business.

As the grant is paid to small businesses to be able to recommence trading operations and there is a close relationship between the repairs to premises and equipment and the carrying on of a business, it is considered that the grant is a subsidy received in relation to the carrying on of a business. Therefore the grant will be assessable as per section 15-10 ITAA97, if the grant is not assessable as ordinary income as per section 6-5 ITAA97.

If the grant is provided as an ordinary incident of carrying on a primary production business, the grant could be considered income according to ordinary concepts under section 6-5 ITAA97.

It is unnecessary here to determine whether the grant is assessable under section 6-5 or 15-10 ITAA97, it is sufficient to conclude that the subsidy is assessable.

##### *Question 4.2:*

Is the small business grant included in the instalment income of the recipient for PAYG instalments purposes?

Answer:

Where the small business grant is considered to be ordinary income, it is included in the instalment income of the recipient if the recipient is continuing to carry on the business.

Explanation:

"Instalment income" is defined in section 45-120 of the TAA to include ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA97 as having the meaning given by section 6-5 ITAA97. Section 45-120 of the TAA also includes certain other statutory income in instalment income (notably the statutory incomes of ADF's, eligible superannuation funds, and pooled superannuation trusts).

For most PAYG instalment payers, income assessable under section 15-10 ITAA97 is not included in the instalment income of the recipient.

However if the grant is assessable under section 6-5 (ITAA97), the income is ordinary income and would generally be included in the instalment income of the recipient.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal Case 22/94 ATC 225.

In that case, the taxpayer was a member of a cane-farming partnership, which purchased a farm with the help of a \$293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained \$33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan, which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5 ITAA97). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 ITAA97.

As the small business grant is paid to reimburse the costs associated with restoring the business premises and/or business equipment after flood inundation, it is considered that

the grant is ordinary income and therefore is generally included in the instalment income of the recipient for the purposes of PAYG if the recipient is continuing to carry on the business. The exception is where the recipient is an individual. In this circumstance, the payment represents a withholding payment under *section* 12-110 of the TAA and is specifically excluded from instalment income (subsection 45-120(3) of the TAA). This is regardless of whether an amount has actually been withheld.

*Question 4.3:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97- Long-term averaging of primary producers' tax liability?

Answer:

It is considered that the payment would be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

Centrelink believes that generally farm enterprises will not be eligible for this grant.

Where a primary producer is able to obtain the grant, as the payment is based on the actual expenditure needed to restore business assets, it is considered that the payments are derived from, or resulted from, carrying on a primary production business. Therefore the payment is considered to be income from primary production for the purposes of Division 392 of the ITAA97.

*Question 4.4:*

Are there any capital gains tax Implications of receiving the interest rate subsidy?

Answer:

No, there are no capital gains implications.

In addition to the above four flood relief measures, there is also a Fodder/Pasture Grant for Dairy Farmers affected by the flooding in New South Wales or southern Queensland areas.

The full details of the Fodder/Pasture Grant for Dairy Farmers payments as per the [Centrelink](#) website.

## *5. Fodder/Pasture Grant for dairy farmers*

### *Description of payment*

A fodder/pasture grant is now available for eligible dairy farm enterprises of up to a maximum of \$15,000, to reimburse the costs associated with purchasing fodder/stock feed, or to replant improved pasture damaged by the rain or flooding.

An eligible dairy farm enterprise is defined as one which derives the majority of their income from dairying and which has suffered loss or damage to improved pasture, fodder or stock feed due to the November 2000, or January to March 2001 floods. To be eligible,

the dairy farming enterprise (or the affected area) must be located in a declared area, and that declaration must relate to rainfall or flooding caused during November 2000 or January to March 2001. Natural Disaster Relief Arrangements (NDRA) declared areas must be in central and northern New South Wales (NSW) or may be southern Queensland areas that are contiguous with a NSW declared area. Farm enterprises will not be eligible if they have received NDRA assistance for this event and for this purpose or if they can recover the loss by way of insurance.

The grant is based on actual expenditure with the farm enterprise required to produce receipts of costs incurred. Grants used for the replacement of pasture would be capped at a rate of \$200/hectare.

*Question 5.1:*

Will the fodder/pasture grant be assessable to the recipient?

Answer:

The receipt of the grant would be treated as a receipt of assessable income.

Explanation:

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 ITAA97).

The grant is being paid to assist continuing dairy farmers feed stock or replant improved pasture damaged by the flooding. The grant will be calculated according to actual expenses paid subject to maximum amounts.

As there is a close relationship between expenditure on fodder and improved pasture and the carrying on of a business on the farm, it is considered that the receipt of the grant is in relation to the carrying on of a business. Therefore the subsidy will be assessable as per section 15-10 ITAA97, if the subsidy is not assessable as ordinary income as per section 6-5 ITAA97.

If the subsidy is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 ITAA97.

*Question 5.2:*

Is the fodder/pasture grant included in instalment income of the recipient for PAYG instalments purposes?

Answer:

Where the fodder/pasture grant represents ordinary income, it would be included in instalment income of the recipient.

Explanation:

"Instalment income" is defined in section 45-120 of the TAA to include ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA97 as having the meaning given by section 6-5 ITAA97. Section 45-120 of the TAA also includes

certain other statutory income in instalment income (notably the statutory incomes of ADF's, eligible superannuation funds, and pooled superannuation trusts).

For most PAYG instalment payers, income assessable under section 15-10 ITAA97 is not included in the instalment income of the recipient.

However if the grant is assessable under section 6-5 ITAA97, the income is ordinary income and would generally be included in the instalment income of the recipient.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal case 92 ATC 225.

In that case, the taxpayer was a member of a cane-farming partnership, which purchased a farm with the help of a \$293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained \$33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan, which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5 ITAA97). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 ITAA97.

As the fodder/pasture grant is paid to aid the farm enterprise feed stock or replant improved pasture, it is considered that the grant is ordinary income and therefore is generally included in the instalment income of the recipient for the purposes of PAYG. The exception is where the recipient is an individual. In this circumstance, the payment represents a withholding payment under section 12-110 of the TAA and is specifically excluded from instalment income (subsection 45-120(3) of the TAA). This is regardless of whether an amount has actually been withheld.

#### *Question 5.3:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97- Long-term averaging of primary producers' tax liability?

Answer:

It is considered that the payment would be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

As the payment is based on the actual expenditure made in providing fodder to the dairy herd or to replant improved pasture (subject to maximum amounts), it is considered that the payments are derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered to be income from primary production for the purposes of Division 392 of the ITAA97.

*Question 5.4:*

Are there any Capital Gains Tax Implications of receiving the interest rate subsidy?

Answer:

No, there are no capital gains implications.

### **4.3 Deregulation**

#### **4.3.1 Capital loss on quotas**

The legislation deregulating the dairy industry in Western Australia, Queensland and New South Wales has the effect of cancelling the existing quotas.

Accordingly, for cancelled quotas acquired after 19 September 1985, a capital loss equal to the cost base of the quota is made. No additional action is necessary to realise the capital loss. However, for quotas acquired before 20 September 1985 no capital loss is available.

If any compensation becomes payable for the cancellation of quotas the capital loss will be reduced by the amount of the compensation. The Dairy Structural Adjustment Program (DSAP) amounts and the Dairy Exit Payment (DEP) amounts (see background) are not compensation for the cancellation of the quotas.

Capital losses made from the cancellation of the quotas, as a result of the deregulation of the dairy industry, are made in the 2000/2001 income year because the quotas are cancelled in that year.

Capital losses can only reduce current and future capital gains. There is no time limit by which the capital losses must be offset.

*Questions & Decision:*

- (a) (i) What happens to the quotas once the regulations are removed?

Decision:

Once the regulations are removed the quotas are cancelled.

Question:

- (a) (ii) After deregulation by the States quotas will no longer exist. Does this mean that they have zero value and holders can realise a capital loss?

Decision:

For cancelled quotas acquired after 19 September 1985, a capital loss equal to the cost base of the quota is made. However, for quotas acquired before 20 September 1985 no capital loss is available.

Question:

- (b) (i) Do quotas have to be sold to realise any capital loss?

Decision:

No. The cancellation of a quota will give rise to a capital loss.

Question:

- (b) (ii) Is the capital loss attributable to the 1999/2000 income year or the 2000/2001 income year?

Decision:

The capital loss is attributable to the 2000/2001 income year because the quotas are cancelled in that year.

Question:

- (c) (i) Do State Governments actually have to resume the quotas at "nil" value for a capital loss to exist?

Decision:

No. However, any compensation payable for the cancellation of a quota will reduce the capital loss by the amount of the compensation. (The DSAP amounts and the DEP amounts are not compensation for the cancellation of the quotas).

Question:

- (c) (ii) Is such a capital loss allowable for taxation purposes?

Decision:

Capital losses can only reduce current and future capital gains. There is no time limit by which the capital losses must be offset.

*Background:*



- The dairy industry regulatory environment was divided into two broad categories based on whether milk is used as liquid milk for human consumption (market milk) or in the manufacture of dairy products (manufacturing milk). Manufacturing milk arrangements were underpinned by Commonwealth legislation that provided for the operation of the Domestic Market Support (DMS) scheme. The DMS scheme ended on 1 July 2000.
- Market milk arrangements were underpinned by State legislation and provided a guaranteed producer price for milk used as market milk that was about double the producer price for manufacturing milk. The mechanisms for guaranteeing this premium varied between each State and Territory. Quota arrangements operated in New South Wales, Queensland and Western Australia while Victoria, South Australia and Tasmania operated different schemes which provided for equitable sourcing and payment for market milk.
- The Commonwealth has facilitated the provision of a \$1.74 billion package to assist farmers to make the transition to a deregulated environment which is to be funded via a retail levy of 11 cents/litre and which provides for 2 types of payments to farmers as follows:
  - Dairy Structural Adjustment Program (DSAP) payments - these are quarterly payments to be received over an 8 year period. They have been based on farmers 1998-99 milk deliveries and calculated at the rate of 46.23 cents per litre for market milk and an average 8.96 cents per litre for manufacturing milk;
  - Dairy Exit Payments (DEP) - available for farmers who choose to leave agriculture.
- The *Dairy Industry Adjustment Act 2000* (Cth) (DIAA) provides for the following treatment of the 2 types of payments:
  - DSAP payments - treated as subsidies and therefore assessable under s 15-10 of the *Income Tax Assessment Act 1997* (ITAA97);
  - DEP - the DIAA amended the CGT provisions in the ITAA 1997 (section 118-37) to provide that any capital gain or capital loss made in relation directly to a DEP is disregarded.
- The Commonwealth package was conditional on all States and Territories agreeing to remove their regulated farm gate pricing arrangements. This has now been done via the repeal of legislation in each State.

## **4.4 Relief payments**

### **4.4.1 Exceptional Circumstances Relief Payments**

#### **Questions:**

1. Will the Exceptional Circumstances Relief Payment (relief payment) be assessable income to the recipient?
2. Will the exceptional circumstances relief payment be included in the instalment income of the recipient?
3. Will the beneficiary rebate apply to the Exceptional Circumstances Relief Payment?
4. Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

### *Background:*

#### Description of Program

The Exceptional Circumstances Relief Payment (ECRP) is delivered by Centrelink on behalf of the Department of Agriculture, Fisheries and Forestry - Australia. The payment provides assistance to farmers living in 'exceptional circumstances' affected area who are having difficulty meeting family and personal living expenses.

To qualify for Exceptional Circumstances Relief Payment, a person must:

- be a farmer,
- be over 18 years old,
- be an Australian resident and living in Australia, and
- hold a current Exceptional Circumstances certificate issued by the State Rural Adjustment Scheme Authority, which identifies that the farm enterprise is in an 'exceptional circumstances' affected area.

#### Description of Payment

Exceptional Circumstances Relief Payment is paid fortnightly at a rate equivalent to Newstart Allowance and, where applicable, Partner Allowance.

Payment is subject to the same income and assets tests applying to Newstart Allowance. However, the farm assets, including the farmer's superannuation and life insurance, are exempt from the assets test. Proceeds from the forced disposal of livestock due to exceptional circumstances are excluded from the income test. In this case, farmers will be required to deposit the proceeds from the forced sale in either a Farm Management Deposit or a deposit with a term of at least three months with a bank, building society, credit union or other institution that receives money on deposit.

### *Answer and explanation:*

*1. Will the Exceptional Circumstances Relief Payment (relief payment) be assessable income to the recipient?*

#### Answer:

The payment is generally assessable income to the recipient, however the portion, if any, of the payment made for rent assistance or remote area allowance would not be assessable and is treated as exempt income.

#### Explanation:

Sub-section 6-5(2) *Income Tax Assessment Act 1997* (ITAA 1997) specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The relief payment is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the relief payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA 1997.

Section 6-20 ITAA 1997 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision. As the payment is being made under the *Farm Household Support Act 1992* (FHSA), section 53-10 Item 3 ITAA 1997 exempts the supplementary amount of the income support payment. Section 53-15 ITAA 1997 defines the supplementary amount as being so much of the payment which is included by way of rental assistance and remote area allowance.

*2. Will the exceptional circumstances relief payment be included in the instalment income of the recipient?*

Instalment income generally includes ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. However, instalment income excludes withholding payments (except those for non-quotation of a TFN or ABN). An entity must withhold an amount from a payment it makes to an individual under section 12-110 of Schedule 1, TAA if the payment is specified in section 53-10 of the ITAA 1997. Please note that this only applies to the portion of the amount excluding the supplementary amount (rent assistance or remote area allowance paid to an individual),

Hence, if the payment is made to an individual, the exceptional circumstances relief payment (including the supplementary amount) would not be included in the instalment income of the recipient. If the payment is made to another entity, the payment would be included in the instalment income of the recipient (excluding any supplementary amount).

*3. Will the beneficiary rebate apply to the Exceptional Circumstances Relief Payment?*

Answer:

The beneficiary rebate will apply to the payments.

Explanation:

Amounts paid by way of exceptional circumstances relief under the *FHSA* are considered rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936* (ITAA36). Where a rebatable benefit is received, a beneficiary rebate calculated in accordance with the regulations is allowable (subsection 160AAA(3)).

*4. Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?*

Answer:

The payment would not be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The Exceptional Circumstances Relief Payment is a welfare payment made to farmers suffering financial hardship. Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392.

## **4.5 Sugar**

### **4.5.1 Sugar Industry Assistance Package**

#### **Questions:**

#### **1. Interest Rate Subsidy (on loans used for planting cane crops)**

1.1 Will the interest rate subsidy be assessable?

1.2 Is the receipt of the subsidy considered instalment income for the purposes of the Pay As You Go (PAYG) instalments system?

1.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

1.4 Are there any Capital Gains Tax implications from receiving the interest rate subsidy?

#### **2. Interest Rate Subsidy (loans associated with the business of producing cane)**

2.1 Will the interest rate subsidy be assessable?

2.2 Is the receipt of the subsidy considered instalment income for the purposes of the Pay As You Go (PAYG) instalments system?

2.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

2.4 Are there any Capital Gains Tax implications from receiving the interest rate subsidy?

#### **3. Income support payment**

3.1 Will the income support payment under the Sugar Industry Assistance Package be assessable income to the recipient?

3.2 Will the income support payment under the Sugar Industry Assistance package be included in the instalment income of the recipient?

3.3 Will the beneficiary rebate apply to the income support payments?

3.4 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

#### **4. Vouchers to access financial counselling services**

4.1 Will the provision of the voucher be considered assessable income to the recipient?

### **Background:**

#### **Description of Program**

The package includes:

- Interest subsidies on loans of up to \$50,000 used to plant cane crops in the 2000/01 and 2001/02 seasons;
- Interest subsidies on new and existing loans of up to \$100,000 associated with the business of producing cane;
- Income support payments from 1 September 2000 to assist cane farmers and their families; and
- Vouchers of up to \$1,000 per farmer to access financial counselling services, where these services are not already provided.

Applicants will need to be an eligible cane grower. That is, the applicant must:

- have been a cane grower for at least 2 years immediately prior to lodging the claim;
- have a right or interest in the land used for the purposes of a sugar industry enterprise;
- and meet two of the following criteria:
- contribute the majority of his/her labour to the cane farm enterprise;
- contribute the majority of his/her capital to the cane farm enterprise; and
- derive the majority of their income from cane farming.

*Answers and Explanation:*

*1. Interest Rate Subsidy (on loans used for planting cane crops) -*

Description of payment

The interest rate subsidies are available on loans of up to \$50,000 to be used to meet expenses necessary for replanting crops in 2000/01 and 2001/02.

The support will help cane growers access funds needed to either plant or replace diseased cane.

*Question 1.1:*

Will the interest rate subsidy be assessable?

Answer:

The receipt of the subsidy would be treated as a receipt of assessable income.

Explanation:

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 *Income Tax assessment Act 1997* (ITAA 1997)).

The interest rate subsidy is paid to assist continuing farmers to plant or replace diseased cane crops.

As the subsidy assists cane farmers to pay the interest payments on loans made to plant sugar cane, and there is a close relationship between the interest payments and the carrying on of a business on the farm, it is considered that the receipt of the subsidy is in relation to the carrying on of a business. Therefore the subsidy will be assessable as per section 15-10 ITAA 1997, if the subsidy is not assessable as ordinary income as per section 6-5 ITAA 1997.

If the subsidy is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 ITAA 1997.

It is considered that the subsidy is assessable under sections 6-5 ITAA 1997 [see reasons to answer question 2, immediately below].

**Question 1.2:**

Is the receipt of the subsidy considered instalment income for the purposes of the Pay As You Go (PAYG) instalments system?

**Answer:**

Yes, it would be included in the instalment income of the recipient.

**Explanation:**

"Instalment income" is defined in section 45-120 of Schedule 1 *Taxation Administration Act 1953* (TAA) to mean ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA 1997 as having the meaning given by section 6-5 ITAA 1997.

For most farm enterprises, income assessable under section 15-10 ITAA 1997 is not considered instalment income.

However if the subsidy is assessable under section 6-5 ITAA 1997, the income is ordinary income and would be considered instalment income.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and given that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal case 92 ATC 225.

In that case, the taxpayer was a member of a cane-farming partnership which purchased a farm with the help of a \$293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained \$33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD 98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 ITAA 1997.

As the interest rate subsidy is paid to assist farmers plant cane in their cane farming business, it is considered that the interest rate subsidy is ordinary income and therefore is included in the instalment income of the recipient for the purposes of PAYG.

*Question 1.3:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

Answer:

It is considered that the payment would be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The payment is based on the interest paid on loans used to plant cane crops. It is considered that the payments are derived from, or resulted from, carrying on a primary production business of cane farming. Therefore the payments are considered to be income from primary production for the purposes of Division 392.

*Question 1.4:*

Are there any Capital Gains Tax implications from receiving the interest rate subsidy?

Answer:

No, Capital Gains Tax will not apply.

*2. Interest Rate Subsidy (loans associated with the business of producing cane) -*

*Description of payment*

The general interest rate subsidies are available on new loans or restructuring of existing loans up to a maximum of \$100,000, for cane growers to support the business of growing cane.

The purpose of the loan cannot include new capital purchases, but past capital expenses will be acceptable as part of restructuring existing loans.

The subsidies will be paid up-front (each year for next two years) directly to the loan account of the customer.

There can be only one claim per farm enterprise or individual.

The interest rate subsidy is subject to an off-farm assets test (limit \$189,500 excluding bona fide superannuation and life insurance policies)

*Question 2.1:*

Will the interest rate subsidy be assessable?

Answer:

The receipt of the subsidy would be treated as a receipt of assessable income.

Explanation:

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 ITAA 1997).

The interest rate subsidy is being paid to assist cane growers in their business of growing cane.

As the subsidy assists cane farmers to pay the interest payments on loans made as part of the cane growing business, and there is a close relationship between the interest payments and the carrying on of a business on the farm, it is considered that the receipt of the subsidy is in relation to the carrying on of a business. Therefore the subsidy will be assessable as per section 15-10 ITAA 1997, if the subsidy is not assessable as ordinary income as per section 6-5 ITAA 1997.

If the subsidy is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 ITAA 1997.

It is considered that the subsidy is assessable under sections 6-5 ITAA 1997 [see answer to question 2, immediately below].

*Question 2.2:*

Is the receipt of the subsidy considered instalment income for the purposes of the Pay As You Go (PAYG) instalments system?

Answer:

Yes, it would be included in the instalment income of the recipient.

Explanation:

"Instalment income" is defined in section 45-120 of Schedule 1 TAA to mean ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA 1997 as having the meaning given by section 6-5 ITAA 1997.

For most farm enterprises, income assessable under section 15-10 ITAA 1997 is not considered instalment income.

However if the subsidy is assessable under section 6-5 ITAA 1997, the income is ordinary income and would be considered instalment income.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and given that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal case 92 ATC 225.

In that case, the taxpayer was a member of a cane-farming partnership which purchased a farm with the help of a \$293,000 loan from the Queensland Industry Development



Corporation (QIDC). The partnership also obtained \$33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD 98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 of the Income Tax Assessment Act 1997 assessable income

As the interest rate subsidy is paid to assist farmers carry on a business of cane farming, it is considered that the interest rate subsidy is ordinary income as per section 6-5 ITAA 1997 and would therefore be included in the instalment income of the recipient for the purposes of PAYG.

#### *Question 2.3:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

#### Answer:

It is considered that the payment would be treated as income from primary production.

#### Explanation:

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The payment is based on the interest paid on loans used in carrying on a business of cane farming. As such, it is considered that the payments are derived from, or resulted from, carrying on a primary production business of cane farming. Therefore the payments are considered to be income from primary production for the purposes of Division 392.

#### *Question 2.4:*

Are there any Capital Gains Tax implications from receiving the interest rate subsidy?

Answer:

No, Capital Gains Tax will not apply.

**3. Income Support Payment -**

Description of the payment

The income support payment will be paid fortnightly at a rate equivalent to the maximum rate of Newstart Allowance and Rent Assistance if applicable.

The payment will be subject to an income and assets test similar to that applied under the Newstart Allowance guidelines, however, farm assets will be excluded from the assets test.

Income will include an estimate of the 2000/2001 farming income and all off-farm income.

**Question 3.1:**

Will the income support payment under the Sugar Industry Assistance Package be assessable income to the recipient?

Answer:

The payment is assessable income to the recipient.

Explanation:

Sub-section 6-5(2) *Income Tax Assessment Act 1997* ITAA 1997 specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The income support is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the income support payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA 1997.

Section 6-20 ITAA 1997 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision.

Where a payment is made under *the Farm Household Support Act 1992 (FHSA)*, section 53-10 Item 3 ITAA 1997 exempts the supplementary amount of the income support payment. Section 53-15 ITAA 1997 defines the supplementary amount as being so much of the payment which is included by way of rental assistance and remote area allowance.

However the Sugar Industry Assistance Package income support payment is not made under the FHSA but rather it is made under ministerial grants using guidelines akin to the exceptional circumstances relief payments or farm help income support payments under the FHSA. Therefore the supplementary amount will not be exempted and remains assessable income.

**Question 3.2:**

Will the income support payment under the Sugar Industry Assistance package be included in the instalment income of the recipient?

Answer:

As noted above, the income support payment under the Sugar Industry package represents ordinary income of the recipient. This payment would therefore be included in the instalment income of the recipient.

*Question 3.3:*

Will the beneficiary rebate apply to the income support payments?

Answer:

The beneficiary rebate will not apply to the payments.

Explanation:

The payment is not included in the definition of rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936 (ITAA36)*. Therefore a beneficiary rebate is not allowable on the payment (subsection 160AAA(3)).

*Question 3.4:*

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

Answer:

The payment would not be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392.

*4. Vouchers to access financial counselling services -*

Description of payment

All eligible cane growers accessing the Sugar Industry Package, who do not have ready access to financial counselling services will be eligible to receive a \$1,000 voucher to assist in accessing these services.

*Question 4.1:*

Will the provision of the voucher be considered assessable income to the recipient?

Answer:

Where the counselling services are directly related to the cane farming business, the provision of the voucher would represent assessable income to the recipient. However, where the financial counselling relates to the personal financial circumstances of the recipient, it would not be considered assessable income to the recipient.

## 5 Livestock

### 5.1 Disposal

#### ***5.1.1 For PAYG purposes how, is the income from the forced disposal of livestock treated?***

*Question*

For PAYG purposes how is the income from the forced disposal of livestock treated?

*Answer*

Income from the forced disposal of livestock can be returned over 5 years (under section 385-15 of the *Income Tax Assessment Act 1997*). Where this is the case only one fifth of the total profit from the sale is included in instalment income for the income year in which the disposal takes place. The remaining four fifths is statutory income and is not included in the instalment income. The tax on this statutory income will be collected on assessment over the remaining four years.

## 6 Agents

### 6.1 For principals

#### **6.1.1 Where Subdivision 153-B is operating, what is the effect on instalment income of both parties for PAYG and BAS implications?**

##### *Question*

- (a) Where an agent acts as a Principal under Subdivision 153-B, does the agent collect and remit GST?
- (b) Does an agent have to include this in their GST Turnover Threshold?
- (c) Where Subdivision 153-B is operating, what is the effect on instalment income of both parties for PAYG and BAS implications?

Note: The answers provided below depend, in part, on the views of the Australian Taxation Office as set out in Draft Ruling [GSTR 2000/D20](#). Accordingly, the answer provided may be subject to change if the Draft Ruling is not adopted in full as a final ruling.

##### *Question*

- (a) Where an agent acts as a Principal under Subdivision 153-B, does the agent collect and remit GST?

##### *Decision*

Yes.

##### *Reason for Decision*

Section 153-50 provides that entities may enter into an arrangement under which an agent will be treated as a separate supplier and/or acquirer. That is, the agent will be treated as a principal in its own right.

To enter this arrangement there must be a written agreement under which:

- the agent arranges to make supplies and/or acquisitions to or from third parties on behalf of the principal;
- the kinds of supplies and/or acquisitions to which the arrangement applies are specified;
- the agent is treated for the purposes of GST law as a principal in making supplies or acquisitions;
- the agent will issue all tax invoices and adjustment notes relating to those supplies to third parties in the agent's name and the principal will not issue such documents; and
- both parties must be registered.

The effect of entering into these arrangements is that the principal and the agent treat the supply of goods or services that the principal makes to third parties through the agent as two separate supplies, and that they are treated as acting between themselves as principal to principal for GST purposes.

A taxable supply made to a third party is taken to be a taxable supply made by the agent. In addition, the principal is taken to have made a taxable supply to the agent.

### *Question*

- (b) Does an agent have to include this in their GST Turnover Threshold ?

### *Decision*

No.

### *Reason for Decision*

Paragraph 92 of Goods and Services [Tax Draft Ruling GSTR 2000/D20](#), Goods and services tax: agency relationships and the application of the GST law, provides:

"Section 188-24 allows an agent the option of calculating their turnover as if the arrangement was not entered into. If the agent chooses not to use this basis of calculation, their turnover is calculated by using the value of the supplies they are taken to make under the arrangement as per sections 153-55 and 153-60."

Where the option available under section 188-24, of the GST Act, is exercised, provided the value of the taxable supply you make as an agent is the same amount as the creditable acquisition you make as an agent, there will be no net effect.

### *Question*

- (c) Where s153-B is operating, what is the effect on instalment income of both parties for PAYG and BAS implications?

### *Decision*

Subdivision 153B of the GST Act, does not alter the treatment for PAYG instalment purposes.

A Subdivision 153B of the GST Act agreement does not alter the fact that the sale proceeds are derived by the principal not the agent.

The full amount of the sale price (excluding any GST component) is included in the instalment income of the principal (unless the sale is of a capital item).

The principal's agent only includes in their instalment income any commission or fee (excluding any GST component) that they are entitled to. This is because for income tax purposes, the sale money is not income of the agent; it is income of the principal.

An agreement under subdivision 153-B does not create a supply between the principal and the agent for PAYG withholding purposes - Section 12-190 of the *Taxation Administration Act 1953* (TAA). Whilst it would be rare for a principal not to quote an ABN to the agent under this arrangement, if this happened to be the case the agent should not withhold given that section 12-190, of the TAA, does not recognise that a supply has been made.

## 7. Procedures

### 7.1 Instalment options

#### 7.1.1 Instalment options after the first quarter of an income year

*Question:*

Can a primary producer become eligible to pay a PAYG instalment amount (PAYG option 1) or a GST instalment amount (GST option 3) after the first quarter of an income year?

*Answer:*

In most cases no.

*Explanation:*

#### *PAYG income tax instalments*

A taxpayer's eligibility to pay a PAYG instalment amount is tested on the last day of the first quarter for which the taxpayer has a liability for quarterly PAYG income tax instalments.

For a taxpayer who has a liability for PAYG income tax instalments in the first quarter (July to September) of an income year this means that they must meet the eligibility requirements on 30 September to be eligible to choose the instalment amount method for reporting and paying their PAYG income tax instalments for the income year.

In some cases a taxpayer's liability for quarterly PAYG income tax instalments will start in a later quarter of an income year. This will be the case where the Commissioner has given a taxpayer an instalment rate, and brought them into the PAYG instalments system, in a quarter that is not the first quarter of the income year.

Where a taxpayer's liability for quarterly PAYG income tax instalments starts in a later quarter of an income year, the taxpayer must meet the eligibility requirements on the last day of that quarter to be eligible to choose the instalment amount method for reporting and paying their PAYG income tax instalments.

#### *Example*

A taxpayer is notified of an instalment rate on October 10 which means the taxpayer has a liability to pay a quarterly PAYG instalment for the second quarter (October to December) of the income year. The taxpayer must meet the eligibility requirements on 31 December to be able to choose to use the instalment amount method for reporting and paying their PAYG income tax instalments for the income year.

A taxpayer who meets the eligibility requirements at the end of their first quarter may choose to use the instalment method for reporting and paying their PAYG income tax instalments for the income year.

A primary producer who chooses to use the instalment amount method will pay two rather than four instalments in an income year if, on the last day of their first quarter for that income year, they also meet the requirements for being a two instalment payer.

A taxpayer who does not meet the eligibility requirements on the last day of their first quarter but meets the requirements later in the income year will not be eligible to use the instalment amount method for PAYG income tax instalments until the following income year.

## **GST**

A taxpayer's eligibility to pay GST by instalments is generally tested when lodging its BAS relating to the first quarter (July to September) in a financial year.

For the vast majority of taxpayers this means that they must meet the eligibility requirements before lodging a BAS for the first quarter to be eligible to choose the instalment amount method for reporting and paying their GST.

New businesses however will become eligible to choose the instalment amount method when they have lodged a BAS for two quarters and paid GST to the ATO in the second quarter. This means that a new business's eligibility to pay GST instalments will be tested when lodging its BAS for the third quarter for which it is required to lodge a BAS.

A primary producer who chooses to use the instalment amount method will pay two rather than four instalments in an income year if, on or before 28 October (or in the case of a new business on or before the due date to lodge its BAS for its third quarter) they also meet the requirements for being a two instalment payer.

A taxpayer who does not meet the eligibility requirements on or before 28 October (or in the case of a new business on or before the due date to lodge its BAS for its third quarter) but meets the requirements later in the income year will not be eligible to use the instalment amount method for GST until the following income year.



## 8. Capital gains tax

### 8.1 Assets

#### **8.1.1 Capital Gains Tax upon the sale of assets which have been held for less than six months.**

##### *Question:*

What is the income tax treatment of capital gains or losses on the sale of assets which have been held for less than 12 months?

Are capital losses carried forward or written off?

##### *Answer and Explanation:*

A capital gain on the sale of an asset held for less than 12 months is added to other capital gains you have made during the year. This amount is then reduced by any capital losses you have made during the year and by any unapplied capital losses from prior years.

For a capital gain made after 21 September 1999, the small business CGT concessions are available. If the conditions are satisfied the capital gain may be reduced or totally disregarded.

The net amount remaining after the application of losses and the small business concessions is included in your assessable income.

A capital loss can only be used to reduce a capital gain and not other income. Capital losses not used can generally be carried forward to a later income year and applied against capital gains in that year.

For further information please refer to:

##### **Booklets:**

- *Guide to Capital Gains Tax* (NAT 4151\_5.2001)
- *Capital Gains Tax Concessions for Small Business* (NAT 3359\_6.2000)

##### **Other resources**

- Tax Reform website: <http://www.taxreform.ato.gov.au>
- Call Centre: **13 72 86**

## 20 Sundry

### 20.1 Farm management deposits

#### **20.1.1 What rate of withholding will apply to withdrawals from Farm management deposits (FMD)?**

##### *Question*

What rate of withholding will apply to withdrawals from Farm management deposits (FMD)?

##### *Answer*

From 1 July 2000, withholding tax will no longer apply to withdrawals from FMD accounts provided the deposit holders quote a Tax File Number (TFN) or Australian Business Number (ABN) to their financial institution. Deposit holders who do not provide a TFN or ABN will be initially taxed at the highest marginal rate of 48.5%.

### 20.2 Construction costs

#### **20.2.1 Does expenditure on the construction of netting for the purposes of exclusion of flying foxes, mitigating the need for lethal control, qualify as a deduction under Subdivision 387-A of the ITAA 1997?**

##### *Question:*

Does expenditure on the construction of netting for the purposes of exclusion of flying foxes, mitigating the need for lethal control, qualify as a deduction under Subdivision 387-A of the ITAA 1997?

##### *Answer:*

No

##### *Explanation:*

The cost of netting that is erected to exclude flying foxes is not deductible under Subdivision 387-A of the *Income Tax Assessment Act 1997* (ITAA 97). Subdivision 387-A ITAA 97 relates to Landcare. Specifically sections 387-55 and 387-60 ITAA 97 state:

*'Section 387-55 Deduction for expenditure on Landcare operations.*

- (1) You can deduct capital expenditure you incur at a particular time on a Landcare operation for;
- (a) land in Australia you use at the time of carrying on a business of primary production business; or
  - (b) rural land in Australia you use at the time for carrying on a business for the purpose of producing assessable income from the use of that land (except a business of mining or quarrying'.

#### **Section 387-60 Meaning of *Landcare operation* for land**

- (1) *Landcare operation* for land means:
- (a) erecting a fence (including an extension, alteration or addition to a fence) to separate different land classes on the land in accordance with an approved management plan for the land: or

- (b) erecting a fence (including an extension, alteration or addition to a fence) on the land primarily and principally for the purpose of excluding animals from an area affected by land degradation;
  - (i) to prevent or limit extension or worsening of land degradation in the area; and
  - (ii) to help reclaim the area; or
- (c) constructing a levee, or a similar improvement with a similar use, on the land; or
- (d) constructing surface or subsurface drainage works on the land, if the construction is primarily and principally for the purpose of controlling salinity or assisting in drainage control; or
- (e) an operation primarily and principally for the purpose of:
  - (i) eradicating or exterminating from the land animals that are pests; or
  - (ii) eradicating, exterminating or destroying plant growth detrimental to the land; or
  - (iii) preventing or fighting land degradation (except by erecting fences on the land); or
- (f) an extension of an operation described in paragraph (a),(b),(c),(d) or (e).

(2) Paragraph (1) (d) does not apply to an operation draining swamp or low lying land.'

Of the various Landcare operations listed in section 387-60 ITAA 97, subparagraph 387-60(1)(e)(i) ITAA 97 is probably the most relevant to netting. This subparagraph requires that pests be either eradicated or exterminated. According to the Macquarie Dictionary 'eradicate' means to remove or destroy utterly. 'Exterminate' means to get rid of by destroying or to destroy totally.

The netting is used as a preventative measure to protect crops from flying foxes and mitigates the need for more lethal methods of control. But the netting does not eradicate or exterminate pests. Therefore the cost of netting is not deductible under subdivision 387-A ITAA 97.

However, if the netting is used in a business of primary production, then the depreciation expenses of the netting may be claimed under subdivision 42-A ITAA 1997.

## **20.2.2 Effluent dams and their income tax deductibility**

### **20.3 Class rulings**

#### **20.3.1 Class rulings for industry bodies**

*Question:*

Can an industry organisation request a Class Ruling on behalf of its members?

(A) *Income tax*

*Answer:*

Yes, an Industry Organisation would be able to apply for a Class Ruling on behalf of its members.

*Explanation:*

Practice Statement PS 2001/4 provides the Commissioner's guidelines on the different types of written advice given by the ATO.

The Statement includes:

## **Class Rulings**

39. The ATO has developed a new type of public ruling - namely, Class Rulings. Class Rulings will enable the Commissioner to provide legally binding advice in response to a request from an entity seeking advice about the application of the tax law to a large number of persons in relation to a particular arrangement. This will obviate the need for a private ruling to be sought by or on behalf of every person who may be affected by the arrangement.

40. Class Rulings are a type of public ruling and are therefore legally binding on the Commissioner to the extent provided by section 170BA of the ITAA 1936.

The Statement then continues:

92. If an entity is seeking advice about the application of the tax law to a large number of persons in relation to a particular arrangement, the advice can be provided in the form of a public ruling. The following are examples of situations where such a ruling may be given:

- a. Advice sought by an employer about the tax consequences of an employee share acquisition plan for individual employees.
- b. Advice sought by a company about the tax consequences for its shareholders of a restructure of the company, a split or consolidation of its shares, any other proposed transaction of the company affecting the tax affairs of its shareholders, and advice sought by a public company about the application of the scrip for scrip roll-over provisions to its shareholders.
- c. Advice to a Commonwealth, State or Territory Government or one of their Government authorities about a proposed transaction; for example, an industry restructure which has taxation consequences for participants in that industry.

## **20.4 Honoraria**

### **20.4.1 Income tax treatment of honoraria**

#### *Question*

What is the income tax treatment of honoraria?

#### *Answer*

In order to clearly determine how a particular honorarium would be treated for income tax purposes, it would be necessary for the full facts surrounding both the payment and the recipient to be considered. The Tax Office view in regards to amounts, classified as honoraria, received by a volunteer worker to cover costs such as travelling, food and clothing, is provided in ATO Interpretative Decision (ATO ID) 2002/206.

That decision determined that the amounts received were assessable to the recipient because, although they were not earned, expected or relied upon, they did have an element of periodicity or regularity. It was considered that the recipient received the amounts to cover estimated expenses incurred, and as such it was an allowance under paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936), and, therefore, assessable under section 6-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) as statutory income.

Paragraph 26(e) of the ITAA 1936 provides that the value of all allowances, gratuities, compensation, benefits etc given or granted in respect of employment or services rendered, are included in assessable income.

This decision reinforced the Commissioner's guidelines as set out in Taxation Ruling TR 92/15, which, at paragraph 2, states that a payment is an allowance when a person is paid a predetermined amount to cover an estimated expense. It is paid regardless of whether the recipient incurs the expected expense. The recipient has the discretion whether or not to expend the allowance. If a volunteer worker receives an allowance, with

no regard to expenses actually incurred and with no requirement to repay unspent monies, the Tax Office will generally treat the payment as assessable income.

The contrary position, however, was taken in Case Z16 92 ATC 183, where B M Forrest (Deputy President) held that an honorarium of \$100 paid annually to an elected officer of a Friendly Society was not assessable as ordinary income, and consequently car expenses claimed as a deduction against such income was not an allowable deduction. In this case, it was determined that the payment did not bear any relationship to the time and energy the recipient expended on the voluntary work, or to the quantum of expenses incurred. The activities of the recipient bore no relevance to any income producing vocation or calling. Therefore, the honorarium could not be regarded as a reward for the recipient's employment or calling.

It would, therefore, seem reasonable to conclude that in cases where the honorarium is paid to the recipient to recompense quantifiable costs incurred in providing the services, that honorarium would be considered to be assessable income. However, in circumstances where the honorarium is paid purely as a way of acknowledging, rewarding or thanking the recipient for work undertaken, on an ad hoc basis, there are more solid grounds for arguing that the amount received is simply a gratuity or gift and, therefore, not assessable to the recipient.

In summary

- where the amounts received represent an estimate of expenses and are paid irrespective of whether the expense is in fact incurred, the amounts will be assessable and the expenses may be claimed as allowable deductions, and
- where the amounts received are a reimbursement of actual expenses incurred, the amounts will not be assessable income and the expenses may not be claimed.

It should be made clear that this opinion is only general in nature, and should not be taken as binding on the Commissioner. If an individual client or taxpayer is in receipt of an honorarium, and is in doubt as to the tax treatment, they should be encouraged to apply for a Private Ruling from the Commissioner.

#### **20.4.2 Definition of honoraria**

##### *Question*

Is an honorarium defined for income tax purposes?

##### *Answer*

There is no definition in the income tax legislation of the term 'honorarium'. It is, therefore, necessary to consider the term's common usage. The definition provided by the Macquarie Dictionary is:

'1. An honorary reward, as in recognition of professional services on which no price may be set. 2. A fee for services rendered by a professional person.'

Consequently, for taxation purposes a honorarium would be considered to be an ex gratia, voluntary gift or payment, made on grounds personal to the recipient. It would generally be bestowed on the recipient for professional services rendered without payment, and be gratuitous in its nature. It would not be motivated by commercial considerations and would generally have little or no relevance to the income producing activities of the recipient. As an honorarium is prima facie a gift, it would not normally constitute income of the recipient.

However, it must be made clear, that the mere labelling of a payment as an honorarium would not make that payment a bona fide honorarium for income tax purposes.

# Appendix A

## Dairy Structural Adjustment Program

### ***Acquisition and disposal of a payment right unit***

#### *Background*

The Dairy Structural Adjustment Program ("DSAP") Scheme was introduced to assist dairy farm enterprises to restructure their business following the deregulation of the dairy industry on 1 July 2000. Under the DSAP scheme, an entity meeting the eligibility criteria in respect of a dairy farm enterprise is granted the right to receive regular quarterly payments. A right to receive payments is known as a DSAP payment right.

Each DSAP payment right consists of a number of "units". Each unit has a face value of \$32 and the registered owner of a unit is entitled to a \$1 payment each quarter over an 8 year period. These units can be transferred or sold among primary producers.

#### ***Are the quarterly payments assessable income?***

Under section 75 of the *Dairy Industry Adjustment Act 2000* ("DIAA 2000") the payments received by the entity to whom a payment right has been granted are to be taken to be subsidies under section 15-10 of the *Income Tax Assessment Act 1997* and are included in assessable income of that entity.

A subsequent owner of units is considered to have acquired an annuity in terms of section 27H of the *Income Tax Assessment Act 1936*. Regular payments arising from the annuity are assessable income. Where the annuity was purchased, a deduction is allowed in relation to the undeducted purchase price of the annuity.

#### ***Are the quarterly payments income from primary production?***

The payments received by the entity to whom a payment right has been granted arise from ownership of the eligible dairy farm enterprise. These payments are considered income from primary production but only while the dairy farm enterprise continues to be carried on.

A subsequent owner of units has acquired an annuity. A subsequent owner has not been granted a payment right in respect of an eligible dairy farm enterprise. In this case, the payments are not regarded as income from the carrying on of a business of primary production.

#### ***What are the tax consequences of disposing of a payment right unit?***

A payment right unit is an asset for capital gains tax purposes. An entity that disposes of a payment right unit makes a capital gain equal to the amount of the capital proceeds from the disposal less the cost base of the unit disposed of.

Generally, the capital proceeds are the amount received for the disposal of the units. Where units expire at the end of the eight year period the capital proceeds are likely to be nil. However, where an entity transfers units before expiry for no capital proceeds (or for capital proceeds in a non-arm's length transaction that are less or more than the assigned unit's market value), the capital proceeds are taken to be the market value of the units transferred. The market value of the units would be based upon the present value of the remaining income stream attached to the units.

For an entity to whom the grant was made, the cost base of the units is nil, except for any incidental costs. This means that the full amount of the capital proceeds (less incidental costs) would be included in assessable income as a capital gain in the year of transfer. This entity would normally be considered to have acquired the units 28 days after having received the Notice of Decision, in accordance with section 18 of the DSAP Scheme.

Where an entity disposes of the dairy farm enterprise and all its assets (including the units) and the sale price for the dairy farm enterprise does not specifically refer to an amount for the units, an apportionment of the full consideration received for the dairy farm enterprise needs to be made for the units.

Generally capital gains and capital losses can be offset against each other. In addition, a capital gain made by individuals or certain trusts on assignment of a unit held for at least 12 months would qualify for the 50% capital gains tax discount. However, the small business capital gains tax concessions would not apply because the payment right (as a form of financial instrument) would not be an active asset.

### ***What are the tax consequences of acquiring a payment right unit?***

An entity that purchases a payment right unit has acquired an asset for capital gains tax purposes. The amount given to acquire the units is the first element of the cost base. However, where a deduction has been allowed for the purchase price of the units (eg; the undeducted purchase price), the cost base of the units is reduced by the amount which has been allowed as a deduction. Therefore, in many cases, the cost base (and any potential capital loss upon expiry of the units) would be reduced to nil.

Where an entity does not pay an amount to acquire the units (eg; a gift), the entity is taken to have acquired the units at their market value at the time of acquisition. As no deduction is available for an undeducted purchase price of an annuity in these circumstances, there would be no reduction in the cost base when calculating any capital gain.

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#### ***Example 1***

*Maids-A-Milken Pty Ltd was granted a payment right by the Dairy Adjustment Authority of \$32,000. This payment right consisted of 1000 units with a face value of \$32. Each unit entitles the holder to 4 quarterly payments of \$1 over 8 years.*

*Each payment received is a grant or subsidy and is included in assessable income in the year of receipt. For capital gains purposes, the cost base of the payment right is nil. If Maids-A-Milken does not sell any units, the units will expire when the last payment is made by the Dairy Adjustment Authority. Maids-A-Milken will have received the full value of the units as assessable income and nothing on disposal. Therefore, no capital gain or loss would arise.*

*On the other hand, should Maids-A-Milken decide to dispose of any or all of the units, a capital gain would arise. However, Maids-A-Milken may be entitled to offset this capital gain against existing capital losses.*

#### ***Example 2***

*Daphne sells her dairy farm to Mario. Mario intends to carry on the dairy business previously conducted by Daphne. Mario purchases all the assets of the farm, including a payment right granted to Daphne by the Dairy Adjustment Authority. The sale contract does not apportion any value to individual assets, although the contract specifically includes the payment right that Daphne had been granted.*

*An apportionment of the total price paid by Mario to acquire the farm needs to be made to determine the purchase price for the units. The amount apportioned to the units should be so much of the total price as is reasonably attributable to the units and would be related to the market value of the units.*

### **Example 3**

*Clyde was granted a payment right to the value of \$100,000 by the Dairy Adjustment Authority in respect of an eligible dairy business he conducted. Clyde receives his payments for two years and then sells all of the units to Farmer Brown for \$60,000.*

*Clyde is assessed on the income received during the two years as income from primary production. In addition, the \$60,000 received for the disposal of the units is a capital gain (assuming no incidental costs). This capital gain can be offset against capital losses. He may also be entitled to a 50% discount on the capital gain.*

*Farmer Brown has purchased an annuity for \$60,000. The payments will be included in Farmer Brown's assessable income upon receipt (\$12,500 per annum) but a deduction will be available for the undeducted purchase price of the annuity (\$10,000 per annum). Upon expiry of the units the cost base (\$60,000) is reduced by the amount previously allowed as a deduction (\$60,000). This reduces the cost base to nil. Because Farmer Brown receives nothing upon expiry of the payment right, he makes neither a capital gain nor a capital loss.*

### **Example 4**

*Dave is a sharefarmer. He has been granted a payment right in respect of an eligible dairy farm enterprise. The land owner, Belinda, has also been granted a payment right. To fund improvements to the farm, Dave agrees to transfer some or all of his units to Belinda. Dave receives no consideration for the transfer of the units.*

*Dave has disposed of a valuable asset for no or inadequate consideration. He is treated as disposing of the units for market value, which would be the present value of the income stream attached to the units. As the cost base is nil, Dave will be subject to a capital gain which would be included in his assessable income in the year of disposal.*

*Belinda has acquired an annuity. The annuity payments are included in her assessable income in the income year they are received. As Belinda paid no purchase price to acquire the annuity, the undeducted purchase price of the annuity is nil. Accordingly, no allowable deduction would be available for the annuity payments.*

*However, Belinda has also acquired a capital gains tax asset. As Belinda did not purchase the units, she is taken to have acquired them at their market value at the time of acquisition. This is the cost base of the units. If Belinda keeps the units until they expire, a capital loss would arise as the cost base of the units would not have been reduced by an amount for the undeducted purchase price of the annuity attached to the units.*

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