


TR 2006/3A1 - Addendum - Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business

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Addendum

Taxation Ruling

Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business

This Addendum amends Taxation Ruling TR 2006/3 to reflect the Commissioner's view of the outcome in *Re Berghofer and Federal Commissioner of Taxation* [2008] AATA 1138.

TR 2006/3 is amended as follows:

1. Paragraph 4

Insert after the fifth dot point:

- assist with improving the viability, sustainability and profitability of a business adversely affected by legislative changes;

2. Paragraph 19

Insert at the end of the paragraph:

This will be the case even if eligibility for the GPI is dependent upon legislative changes having an adverse effect upon a business.

3. Paragraph 83

Insert at the end of the first sentence the footnote:

^{11A} In *Berghofer v. FCT* [2008] AATA 1138 at 30, the Tribunal held that, because an amount was provided on the precondition of an adverse effect on a business, it was not a bounty or subsidy. It stated that this notion was recognised in paragraph 83 of this Ruling with emphasis on the words 'except where the payment is for agreeing to give up or sell part of the profit yielding structure'. However, a payment for giving up or selling part of the profit yielding structure will fall outside section 15-10 because it is not received in relation to carrying on a business as stated in paragraph 20 of this Ruling. It is not because it is not a bounty or subsidy. The Commissioner considers that such an amount may be a bounty or subsidy even if provided on the precondition of an adverse effect (see explanation at paragraphs 93-98 of this Ruling). Such an amount may also be received in relation to carrying on a business.

4. Paragraph 96

Omit the last sentence; substitute:

A reference to 'bounty or subsidy' includes a grant that encourages business or trade⁴² and also a grant to address a detrimental effect on a business or trade.^{42A}

5. References

Insert:

- *Re Berghofer and Federal Commissioner of Taxation* [2008] AATA 1138; 2008 ATC 10-066; (2008) 73 ATR 964
- *Softex Industries Pty Ltd v. FCT* [2002] AATA 1232

This Addendum applies with effect from today.

Commissioner of Taxation

17 March 2010

ATO references

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⁴² *Reckitts* case (1974) 74 ATC 4185 at 4191 per Mahoney J.

^{42A} *Softex Industries Pty Ltd v. FCT* [2002] AATA 1232 at [29] per SL Beddoe SM.