


CR 2008/40 - Income tax: treatment of payments received under the Western Port Commercial Netting Licence Surrender and Relocation Program

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Class Ruling

Income tax: treatment of payments received under the Western Port Commercial Netting Licence Surrender and Relocation Program

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❶ This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions considered in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 15-10 of the ITAA 1997;
- Subdivision 20-A of the ITAA 1997;
- Division 40 of the ITAA 1997;
- section 102-20 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- section 104-235 of the ITAA 1997;

- subsection 110-40(3) of the ITAA 1997;
- subsection 110-45(3) of the ITAA 1997;
- subsection 110-55(6) of the ITAA 1997;
- subsection 116-20(1) of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 118-24 of the ITAA 1997;
- paragraph 118-37(2)(a) of the ITAA 1997;
- Division 152 of the ITAA 1997; and
- Division 392 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is licence holders who apply for and receive payments under the *Western Port Commercial Netting Licence Surrender and Relocation Program*.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 31 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 October 2007 to 30 June 2008. However, the Ruling continues to apply after this date to all entities within the specified class who enter into the specified scheme during the term of the Ruling.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- application for Class Ruling from the Department of Primary Industries (Victoria) dated 12 September 2007;
- Rural Finance Corporation: Western Port Commercial Netting Licence Surrender and Relocation (WPCNLSR) Program Information Booklet dated August 2007;
- responses to requests for further information dated 28 November and 21 December 2007.

14. In November 2006 the Victorian Government announced its intention to close commercial netting in Western Port. There are 48 licences on issue that permit holders to undertake both net and line fishing for a variety of species in both Western Port and Port Phillip Bay.

15. The Victorian Government has a policy to remove commercial netting in Western Port and implement the WPCNLSR Program for affected fishers.

16. The objective of the WPCNLSR Program is to:

- Obtain surrender of eligible fishery access licences from holders who wish to exit the entire fishery (licence surrender); or
- Assist eligible fishers to relocate out of the Western Port fishery to fish (using commercial fishing equipment) in Port Philip Bay (fishing relocation).

Any fisher who chooses to take the package to relocate will not be precluded from long line fishing in Western Port.

17. Licence holders, whose business operations are naturally and directly affected by the policies described in paragraphs 14 to 16 of this Ruling, may seek to participate in the program.

18. Assistance packages for licence holders will be based on historical fishing activity (7 years from 1999/2000 to 2005/06) undertaken pursuant to the entitlement (licence) held by the licence holder.

19. Licence holders deemed to be substantially impacted (with at least 30 per cent of total fish value being caught in Western Port for the 3 years 2003/04 to 2005/06) may apply to be offered a licence surrender package under the program.

20. Licence holders that have some fishing effort recorded in Western Port, but less than 30 per cent of total fish value being caught in Western Port for the 3 years 2003/04 to 2005/06, may apply to be offered a fishing relocation package to offset business practice change.

21. The fishing relocation package will be based on fish value derived from fishing activities specifically in Western Port undertaken pursuant to the entitlement (licence) held by the licence holder.

22. Licence holders who are offered but reject a licence surrender package may still seek a fishing relocation package if they decide to remain in the fishery. In these instances the level of fishing activity required, as described in paragraph 20 of this Ruling, will not apply.

23. No other Western Port/Port Philip Bay Fishery access licence holders will be offered licence surrender or fishing relocation assistance under the program unless they can demonstrate a natural and direct impact on their business operations arising from the policies described in paragraphs 14 to 16 of this Ruling.

Licence surrender package

24. The licence surrender package includes six components:

- (i) An amount for the surrender of the fishing licence. The amount applicable will be determined by the Valuer-General of Victoria.
- (ii) An income support payment which will be determined by using the average gross value of total fish caught by the licence holder over the highest 4 years for the period 1999/2000 – 2005/06, and multiplying this by a factor of 5.
- (iii) An allowance of \$50,000 to compensate for the redundancy and loss in value of the fishing vessel and equipment. These assets will remain the property of the licence holder.
- (iv) A reimbursement up to \$3,000 per eligible licence for costs associated with financial advice sought in association with a licence surrender offer. The reimbursement will cover advice as to whether to accept or reject the offer. The applicant will be reimbursed on presentation of a receipt.
- (v) A grant of \$5,000 for re-training expenses for the licence holder. These payments are made to licence holders who surrender their licence and exit the fishery. The licence holder is not required to provide proof of training.
- (vi) An amount determined by the Program Administrator, on behalf of the Government, that represents a reasonable amount to compensate the licence holder for financial loss as a natural and direct consequence of the policy described in paragraphs 15 and 16 of this Ruling which is not covered by the above.

This amount compensates for the redundancy and loss in value of specialised equipment, and storage, transport and marketing related equipment and structures for which the licence holder can provide evidence that the resale value is less than the 'depreciated value'.

25. A licence holder accepting a licence surrender package offer will be required to sign a Deed of Release not to re-enter the Western Port/Port Philip Bay fishery as a licence holder for a period of 5 years from the date of signing.

Fishing relocation package

26. The fishing relocation package is based on the following rules:

- Financial assistance will recognise the loss of income earned from Western Port and provide financial adjustment for a licence holder to relocate fishing activity.
- Licence holders that have some fishing effort recorded in Western Port, but less than 30 per cent of total fish value being caught in Western Port for the 3 years 2003/04 to 2005/06, may apply to be offered a fishing relocation package to offset business practice change. The relocation package will also be made available to licence holders who have been offered, and have not accepted, a licence surrender package.
- A fishing relocation package is calculated using the average gross value of fish caught by the licence holder in Western Port, as determined by the Department of Primary Industries over the highest 4 years for the period 1999/2000 – 2005/06, and multiplying this by a factor of 2.

27. The Program Administrator will be the Rural Finance Corporation of Victoria (Rural Finance). Rural Finance is experienced in fishing industry adjustment schemes. It will require an application form to be completed that provides information necessary to establish the appropriate level of assistance.

28. Applications may be lodged as early as 1 October 2007. The last date for lodgement of an application is 30 November 2007.

29. To be eligible to participate in the licence surrender program, a fisher must hold a licence as at 1 October 2007 and continue to hold it at the time the offer is made.

30. The Program Administrator, upon instructions from the Government, reserves the right to accept or reject applications to participate in the program.

31. The Program Administrator will assess assistance and determine an offer, which applicants may accept or reject.

Ruling

1. Licence surrender package

Amounts for the surrender of the fishing licence

Section 6-5 – income according to ordinary concepts

32. An amount received for the surrender of the fishing licence is not income according to ordinary concepts. The receipt is not assessable income under section 6-5.

Section 15-10 – bounty or subsidy received in relation to carrying on a business

33. An amount received for the surrender of the fishing licence is not a bounty or subsidy that is received in relation to carrying on a business. Therefore, the receipt is not assessable income under section 15-10.

Capital gains tax

34. The amount received for the surrender of the fishing licence is subject to the capital gains tax (CGT) provisions in Parts 3-1 and 3-3. CGT event C2 happens under section 104-25 when the licence is surrendered. The amount determined by the Valuer-General of Victoria represents the capital proceeds for the CGT event under subsection 116-20(1).

35. A licence that is used in carrying on a commercial fishing operation is an active asset within the meaning of 'active asset' set out in subsection 152-40(1) for the purposes of the small business concessions in Division 152.

Income support payment

Section 6-5 – income according to ordinary concepts

36. Income support payments to compensate for loss of income earned from Western Port fishing are ordinary income in the hands of the recipient and assessable under section 6-5 in the income year in which they are derived.

Capital gains tax

37. Any capital gain made as a result of receiving an income support payment is reduced to nil under section 118-20.

Allowance of \$50,000 to compensate for the redundancy and loss in value of the fishing vessel and equipment

Section 6-5 – income according to ordinary concepts

38. The allowance is not income according to ordinary concepts and is therefore not assessable under section 6-5.

Section 15-10 – bounty or subsidy

39. The allowance is not a bounty or subsidy received in relation to carrying on a business and is therefore not assessable under section 15-10.

Subdivision 20-A – assessable recoupment

40. The allowance is not an assessable recoupment of a loss or outgoing under Subdivision 20-A.

Capital allowances

41. The fishing vessel and equipment are depreciating assets within the meaning of that term in section 40-30. Under Division 40, a balancing adjustment event occurs for each asset where the recipient either (1) disposes of the asset; or (2) still holds the asset but stops using it and expects never to use it again. The allowance is not included in the termination value of the asset for the purposes of calculating any balancing adjustment income or balancing adjustment deduction.

Capital gains tax

42. No CGT event happens as a result of receiving the allowance. Therefore, as provided by section 102-20, there is no capital gain or loss.

Reimbursement of up to \$3,000 for financial advice sought in association with a licence surrender offer

Section 6-5 – income according to ordinary concepts

43. The reimbursement is ordinary income and assessable under section 6-5 in the income year in which it is derived.

Capital gains tax

44. The reimbursement is a recoupment of the costs of obtaining the financial advice. However, there are no CGT consequences arising from the recoupment as the amount is included in assessable income (subsection 110-40(3), 110-45(3) or 110-55(6)).

Primary production income

45. The reimbursement is 'assessable primary production income' for the purposes of calculating the 'averaging adjustment' available under Division 392.

A grant of \$5,000 for re-training for the licence holder

Section 6-5 – income according to ordinary concepts

46. The grant is not income according to ordinary concepts. Therefore it is not assessable as ordinary income under section 6-5.

Section 15-10 – bounty or subsidy

47. The grant is not a bounty or subsidy that is received in relation to carrying on a business. It is not assessable income under section 15-10.

Capital gains tax

48. Any capital gain or loss made when the retraining grant is received is disregarded under paragraph 118-37(2)(a).

Amount to compensate for the redundancy and loss in value of other capital assets*Section 6-5 – income according to ordinary concepts*

49. The amount is not income according to ordinary concepts and is therefore not assessable under section 6-5.

Section 15-10 – bounty or subsidy

50. The amount is not a bounty or subsidy received in relation to carrying on a business and is therefore not assessable under section 15-10.

Subdivision 20-A – assessable recoupment

51. The amount is not an assessable recoupment of a loss or outgoing under Subdivision 20-A.

Capital allowances

52. Specialised equipment; storage, transport and marketing related equipment and structures (that are also plant within the ordinary meaning of that term) are depreciating assets within the meaning of that term in section 40-30. Under Division 40, a balancing adjustment event occurs for each depreciating asset where the recipient either (1) disposes of the depreciating asset; or (2) still holds the depreciating asset but stops using it and expects never to use it again. The amount received is not included in the termination value of the depreciating asset for the purposes of calculating any balancing adjustment income or balancing adjustment deduction.

Capital gains tax

53. No CGT event happens as a result of receiving an amount for the redundancy and loss in value of a CGT asset. Therefore, as provided by section 102-20, there is no capital gain or loss.

54. Where the relevant CGT asset is still owned at the time of receipt, its cost base or reduced cost base is reduced by the amount of the compensation payment received (subsection 110-40(3), 110-45(3) or 110-55(6)). Where the asset is no longer owned at the time of receipt, the amount is included in the capital proceeds under subsection 116-20(1) for the CGT event that happened as a result of the ownership ending.

55. If the asset is also a depreciating asset for which a balancing adjustment event occurs, any capital gain or loss arising from a corresponding CGT event (other than CGT event K7) will be disregarded under section 118-24. However, if the asset was used (or installed ready for use) for a non-taxable purpose, the balancing adjustment event will cause CGT event K7 under section 104-235 to happen (subject to exceptions in subsection 104-235(1A)). A capital gain or capital loss from CGT event K7 is not disregarded.

2. Fishing relocation package

Section 6-5 – income according to ordinary concepts

56. Financial assistance to compensate for the loss of income earned from Western Port is ordinary income in the hands of the recipient and assessable under section 6-5 in the income year in which it is derived.

Capital gains tax

57. Any capital gain made when the assistance is received is reduced to nil under section 118-20.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

1. Licence surrender package

Amounts for the surrender of the fishing licence

Section 6-5 – income according to ordinary concepts

58. Subsection 6-5(1) provides that assessable income includes income according to ordinary concepts (ordinary income). However, as there is no statutory definition of 'ordinary income', it is necessary to apply the principles developed by the courts, about the nature of income, to the facts of a particular case.

59. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.

60. In *G P International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*¹ (*GP International Pipecoaters*), the Full High Court stated at CLR 138; ATR 7; ATC 4420:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

61. A generally decisive consideration is whether the payment is the product in a real sense of any employment, services or business carried on by the recipient.² A payment that is provided for a purpose which is not part of the recipient's business will not be income in nature.³ The receipt of an amount for the surrender of the fishing licence is neither a normal incident of the recipient's business nor is it provided for a purpose for which the recipient's business was carried on. The receipt is for the surrender of the licence. The licence is part of the profit yielding structure of the licensed fishing operation. A compensation receipt generally takes the character of the item it replaces.⁴ Compensation for the loss of a capital asset or an enduring part of a taxpayer's profit-yielding structure will be capital in nature.⁵ Accordingly, an amount received for the surrender of the fishing licence is capital in nature and does not constitute assessable income under section 6-5.

¹ (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

² *Squatting Investment Company Ltd v. FCT* (1953) 86 CLR 570 at 633.

³ *Reckitt & Colman Pty Ltd v. FC of T* (1974) 4 ATR 501; 74 ATC 4185 at 4187.

⁴ *C of T v. Meeks* (1915) 19 CLR 568, per Griffith CJ at 580.

⁵ *Reckitt & Colman Pty Ltd v. FC of T* (1974) 4 ATR 501; 74 ATC 4185 at 4187 per Mahoney J.

Section 15-10 – bounty or subsidy received in relation to carrying on a business

62. Section 15-10 provides that an amount is included in assessable income if it is:

- a bounty or subsidy;
- received in relation to carrying on a business; and
- not assessable as ordinary income under section 6-5.

63. The terms 'bounty' and 'subsidy' are not defined in income tax legislation. Following the decisions in *The Squatting Investment Co Ltd v. Federal Commissioner of Taxation*;⁶ *Reckitt and Colman Pty Ltd v. Federal Commissioner of Taxation*;⁷ and *First Provincial Building Society Ltd v. Commissioner of Taxation*⁸ (*First Provincial*), it is now well accepted that a 'subsidy' or 'bounty' includes financial assistance made by a government.

64. A bounty or subsidy will be 'in relation to' carrying on a business when there is a real connection between the payment and the business. The term 'in relation to' includes within its scope payments that have a direct or indirect connection to the business. As stated by Hill J in the *First Provincial* case:

The words 'in relation to' are words of wide import. They are capable of referring to any relationship between the two subject matters, in the present case the receipt of the bounty or subsidy, on the one hand, and the carrying on of the business, on the other ... the degree of connection will be 'a matter of judgment on the facts of each case'. ...What is necessary, at the least, in the present context is that there be a real connection ... the relationship need not be direct, it may also be indirect.

65. A bounty or subsidy must be related to 'carrying on' the business not merely for commencing or ceasing a business. As stated by Hill J in the *First Provincial* case:

The relationship must be to the 'carrying on' of the business. These words may perhaps be understood in opposition to a relationship with the actual business itself. They would make it clear, for example that a bounty received, merely in relation to the commencement of a business or the cessation of the business, would not be caught. The expression 'carrying on of a business' looks, in my opinion, to the activities of that business which are directed towards the gaining or producing of assessable income, rather than merely to the business itself.

66. Government payments to industry received by an entity as assistance either to cease a business or give or sell part of the profit yielding structure of the business are not in relation to the 'carrying on' of the business.

⁶ (1953) 86 CLR 570.

⁷ (1974) 4 ATR 501; 74 ATC 4185.

⁸ (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207.

67. An amount received for the surrender of the fishing licence is not a bounty or subsidy in relation to the carrying on of a business for the purposes of section 15-10.

Capital gains tax

68. A fishing licence is a CGT asset under section 108-5. When the licence holder surrenders the licence, CGT event C2 happens under section 104-25. This CGT event happens when ownership of an intangible CGT asset ends. The time of the event under subsection 104-25(2) is when the deed is executed.

69. A capital gain is made if the capital proceeds exceed the cost base of the licence, and a capital loss is made if the capital proceeds are less than the reduced cost base (subsection 104-25(3)).

70. The capital proceeds under subsection 116-20(1) for the surrender of the licence is the amount determined by the Valuer-General of Victoria.

71. The cost base of the licence is calculated under Divisions 110 and 112. It includes the costs of applying for the licence surrender package. The cost base or reduced cost base is reduced by any amount that is a deductible expense (subsection 110-45(1B), 110-45(2) or 110-55(4)). If the licence was acquired at or before 7.30pm on 13 May 1997,⁹ any expenditure relating to the asset cannot form part of the second and third elements of the cost base if it is deductible (subsection 110-40(2)).

72. Any capital gain or loss which results from the surrender of a licence acquired before 20 September 1985 (pre-CGT) is disregarded under paragraph 104-25(5)(a).

73. If a fishing licence was acquired before 20 September 1985 and an additional licence was acquired on or after that date, the new licence is not a capital improvement to the original pre-CGT fishing licence. The capital gain or loss on the surrender of the new licence is to be worked out separately.

74. A capital gain can be reduced by the general CGT discount if the relevant requirements of Subdivisions 115-A, 115-B and 115-C are met.

75. A capital gain can be reduced or deferred by the small business CGT concessions if the licence is an active asset and the other requirements of Division 152 are met. The concessions potentially available are:

- small business 15-year exemption;
- small business 50% active asset reduction;
- small business retirement exemption; and
- small business roll-over.

⁹ By legal time, in the Australian Capital Territory.

Income support payment

Section 6-5 – income according to ordinary concepts

76. The explanation at paragraphs 58 to 61 of this Ruling also applies here.

77. The income support payment is to compensate for loss of income that could have been earned from Western Port fishing. A compensation receipt generally takes the character of the item it replaces.¹⁰ The amount of the income support payment is determined by using the average gross value of total fish caught by the licence holder over the highest 4 years for the period 1999/2000 – 2005/06, and multiplying this by a factor of 5. Calculation of a payment by reference to profits that would ordinarily have been expected to have been made is a factor supporting a conclusion that the payment is income.¹¹

78. The income support payment constitutes assessable income under section 6-5.

Capital gains tax

79. CGT event C2 happens under section 104-25 when the entitlement to receive the income support payment is satisfied. This event happens at the time the payment is made.

80. As the payment is included in assessable income under section 6-5, any capital gain made from the CGT event C2 is reduced to nil under section 118-20.

Allowance of \$50,000 compensating for the redundancy and loss in value of the fishing vessel and equipment

Section 6-5 – income according to ordinary concepts

81. The allowance is not provided for a purpose which is part of the recipient's business but rather it is made for the purpose of recognising the probable loss in value of capital assets in the recipient's business as a result of the WPCNLSR Program. The allowance is capital in nature and is not assessable as ordinary income under section 6-5.

¹⁰ *C of T (NSW) v. Meeks* (1915) 19 CLR 568, per Griffith CJ at 580.

¹¹ *Reckitt & Colman Pty Ltd v. FC of T* (1974) 4 ATR 501; 74 ATC 4185 at 4187 per Mahoney J.

Section 15-10 – bounty or subsidy

82. The allowance is made for the purpose of recognising the probable loss in value of capital assets in the recipient's business as a result of the WPCNLSR Program. It is provided as part of a package that seeks to obtain surrender of fishing licences from holders who wish to exit the entire fishery. It is received in relation to cessation of a business, or a distinct part of the business operations, and not in relation to carrying on a business. Accordingly, the allowance is not assessable under section 15-10.

Subdivision 20-A – assessable recoupment

83. Under Subdivision 20-A, a taxpayer's assessable income may include an amount received as recoupment of a loss or outgoing if an amount is deductible for the loss or outgoing and the amount received is not otherwise assessable income.

84. The allowance is made for the purpose of recognising the probable loss in value of capital assets in the recipient's business as a result of the WPCNLSR Program. The allowance is not made in respect of any outgoing for which the recipient can claim a deduction under a provision listed under section 20-30 (for example, the cost of the asset). The allowance is also not made in respect of any loss for which the recipient can claim a deduction under a provision listed under section 20-30.

85. Accordingly, the allowance is not an assessable recoupment of a loss or outgoing under Subdivision 20-A.

Capital allowances

86. The fishing vessel and equipment are depreciating assets within the meaning of that term in section 40-30. As such the capital allowances provisions in Division 40 apply to each of these assets.

87. As noted in subparagraph 24(iii) of this Ruling, the assets remain the property of the recipient licence holder. Accordingly, the allowance is not received for the sale of the asset or for the loss or destruction of the asset. The recipient licence holder may choose to retain and continue to use the asset, hold the asset but stop using it and never expect to use it again, or dispose of the asset.

88. Where the recipient taxpayer retains and continues to use the asset, it continues to decline in value for the purposes of the capital allowances provisions of Division 40. As no balancing adjustment event for the asset occurs, the allowance is not taken into account in working out a balancing adjustment amount for the asset as provided for under Subdivision 40-D.

89. Where the recipient taxpayer still holds the asset but stops using it and expects never to use it again, a balancing adjustment event under paragraph 40-295(1)(b) occurs. Under section 40-300 the termination value of the asset is its market value at the time the recipient taxpayer stops using it. Accordingly, the allowance is not included in the termination value for the asset.

90. Where the recipient taxpayer disposes of the asset, a balancing adjustment event under paragraph 40-295(1)(a) occurs and the termination value for the asset under this event will be the sale proceeds received. The allowance is not included in the termination value for the asset as the right to receive the allowance is not for or in relation to the sale or disposal of the asset.

Capital gains tax

91. The fishing vessel and equipment are CGT assets under section 108-5. The right to receive the allowance for the redundancy and loss in value of these assets is also a CGT asset. However, as the payment relates most directly to the assets that have suffered the loss in value, the fishing vessel and equipment are considered to be the 'relevant assets' for which the payment is received (see Taxation Ruling TR 95/35 at paragraphs 69 to 82).

92. For CGT purposes, the allowance for the redundancy and loss in value of the fishing vessel and equipment represents a recoupment of all or part of the acquisition costs of these assets where those assets are still owned at the time of receipt. The cost base or reduced cost base of each CGT asset is reduced to the extent that the allowance relates to a permanent reduction in its value (subsection 110-40(3), 110-45(3) or 110-55(6)).

93. To the extent that the allowance relates to an asset that is no longer owned at the time of receipt, that amount is included in the capital proceeds under subsection 116-20(1) in respect of the CGT event that happened as a result of the ownership ending.

94. However, as the fishing vessel and equipment are also depreciating assets, any capital gain or loss arising from a CGT event (other than CGT event K7) that is also a balancing adjustment event will be disregarded under section 118-24. However, if the asset was used (or installed ready for use) for a non-taxable purpose, the balancing adjustment event will cause CGT event K7 under section 104-235 to happen (subject to exceptions in subsection 104-235(1A)). A capital gain or capital loss from CGT event K7 is not disregarded (paragraph 118-24(2)(a)).

95. A capital gain which results from CGT event K7 can be reduced by the general CGT discount if the relevant requirements of Subdivisions 115-A, 115-B and 115-C are met.

96. The small business CGT concessions in Division 152 do not apply to a capital gain under CGT event K7 (subsection 152-10(1)). Essentially those concessions relate to the use of an asset in a small business and a capital gain from CGT event K7 arises from the use of an asset for a non-taxable purpose.

Reimbursement of up to \$3,000 for financial advice sought in association with a licence surrender offer

Section 6-5 – income according to ordinary concepts

97. The purpose of the reimbursement is to help the recipient with the cost of obtaining financial advice to assess whether to accept the offer.

98. The reimbursement of the cost of obtaining financial advice prior to deciding whether to accept an offer of assistance is given for a purpose that is part of the recipient taxpayer's normal business operations, as explained in Example 6 at paragraphs 46 to 48 of Taxation Ruling TR 2006/3. Accordingly, the reimbursement of up to \$3,000 for costs associated with financial advice sought in relation to a licence buy-back offer is income according to ordinary concepts and is included as assessable income under subsection 6-5(1).

99. The recipient taxpayer derives the assessable income when the expenditure is reimbursed under the terms of the licence surrender package.

Capital gains tax

100. The reimbursement is a recoupment of the costs of obtaining the financial advice. The cost of the advice is an incidental cost under paragraph 110-35(1)(b) incurred in relation to the surrender of the fishing licence. Incidental costs form the second element of the cost base under subsection 110-25(3).

101. As the recoupment is included in assessable income under subsection 6-5(1), its receipt does not prevent the cost of the financial advice forming part of the cost base of the fishing licence under subsection 110-40(3) or 110-45(3), or the reduced cost base under subsection 110-55(6). However, the financial advice will not form part of the cost base or reduced cost base of the fishing licence if it is deductible (subsection 110-40(2), 110-45(1B) or 110-55(4)).

Primary production income

102. In order for income to be derived from, or result from, carrying on a primary production business, there must be a causal connection between the income received and the primary producer's trade or business.

103. Where a payment is made whilst a business or trading activity continues, and no decision has been taken to cease business, there is the necessary causal connection between the income received and the primary producer's trade or business.

104. Accordingly, the reimbursement of expenses for advice sought prior to deciding whether to apply for the licence surrender package is 'assessable primary production income' under subsection 392-80(2).

A grant of \$5,000 for re-training for the licence holder

Section 6-5 – income according to ordinary concepts

105. The grant for retraining for the licence holder is provided to offset any costs that the taxpayer may incur in seeking alternative employment. It is not a product in a real sense of any employment, services or business carried on by the recipient and it does not have the characteristics normally associated with ordinary income such as periodicity and reliance on the payments to meet regular expenditure. Accordingly, the grant for retraining for the licence holder is not ordinary income and is not assessable under section 6-5.

Section 15-10 – bounty or subsidy

106. The grant for retraining for the licence holder is not a bounty or subsidy received in relation to carrying on the taxpayer's business as it is received in relation to the cessation of the taxpayer's business. Accordingly, the payment is not assessable under section 15-10.

Capital gains tax

107. CGT event C2 under section 104-25 happens when the entitlement of a licence holder to receive the grant is satisfied.

108. However, any capital gain or loss made when the grant is received by the licence holder is disregarded under paragraph 118-37(2)(a).

109. Paragraph 118-37(2)(a) provides a CGT exemption by disregarding a capital gain or loss that results from the receipt of a payment as a reimbursement or payment of expenses (or anticipated expenses), under a scheme established by an Australian government agency. The grant for retraining expenses is provided under such an Australian government scheme.

Amount compensating for the redundancy and loss in value of other capital assets

110. The Program Administrator may make payments to licence holders which represent a reasonable amount to compensate the licence holder for financial loss as a natural and direct consequence of the policy described in paragraphs 15 and 16 of this Ruling which is not covered elsewhere in the Licence Surrender package.

111. This amount compensates for the redundancy and loss in value of specialised equipment and storage, transport and marketing related equipment and structures for which the licence holder can provide evidence that the resale value is less than the 'depreciated value' (referred to as 'adjustable value' in Division 40).

112. The amount is not assessable under section 6-5, section 15-10 or Subdivision 20-A for the same reasons explained paragraphs 81 to 85 of this Ruling.

113. Specialised equipment and storage, transport and marketing related equipment are depreciating assets within the meaning of that term in section 40-30. Storage, transport and marketing related structures that are also plant within the ordinary meaning of that term¹² are also depreciating assets within the meaning of that term in section 40-30. For similar reasons to those explained in paragraphs 87 to 90 of this Ruling, the amount received is not included in the termination value of each depreciating asset for the purposes of calculating any balancing adjustment income or balancing adjustment deduction.

114. Division 40 does not apply to storage, transport and marketing related structures that are not plant within the ordinary meaning of that term. These are considered in the capital gains tax analysis below.

Capital gains tax

115. The specialised equipment, storage, transport and marketing related equipment and structures are CGT assets under section 108-5. The right to receive an amount for their loss in value is also a CGT asset. However, as the payment relates most directly to the assets that have suffered the loss in value, these assets are considered to be the 'relevant assets' in respect of which the payment is received (see TR 95/35 at paragraphs 69 to 82).

116. As the specialised equipment is the 'relevant asset' in relation to the payment, C2 does not happen as a result of the 'ending' of the right to payment of this amount. The CGT consequences of the payment will depend on whether the relevant assets (the specialised equipment) is still owned at the time of payment and are as follows:

- Where the relevant CGT asset is still owned at the time of receipt, its cost base or reduced cost base is reduced by the amount of the compensation payment received (subsection 110-40(3), 110-45(3) or 110-55(6)).
- Where the asset is no longer owned at the time of receipt, the amount is included in the capital proceeds under subsection 116-20(1) for the CGT event that happened as a result of the ownership ending.

¹² See Taxation Rulings TR 2004/16 and TR 2007/9 for a discussion of what is the ordinary meaning of plant.

117. However, where the asset is also a depreciating asset for which a balancing adjustment occurs on disposal, any capital gain or loss made from the CGT event A1 is disregarded under section 118-24.

118. A capital gain or loss may arise under section 104-235 for a CGT event K7 if the asset was used for a non-taxable purpose (or installed ready for such use) and there is a balancing adjustment event.

119. The small business CGT concessions in Division 152 do not apply to a capital gain under CGT event K7 (subsection 152-10(1)).

120. A capital gain which results from CGT event K7 can be reduced by the general CGT discount if the relevant requirements of Subdivisions 115-A, 115-B and 115-C are met.

2. Fishing Relocation package

Section 6-5 – income according to ordinary concepts

121. The explanation at paragraphs 58 to 61 of this Ruling also applies here.

122. The financial assistance paid under this package is to compensate for loss of income that could have been earned from Western Port fishing. A compensation receipt generally takes the character of the item it replaces.¹³ The amount of the income support payment is determined by using the average gross value of total fish caught by the licence holder over the highest 4 years for the period 1999/2000 – 2005/06, and multiplying this by a factor of 2. Calculation of a payment by reference to profits that would ordinarily have been expected to have been made is a factor supporting a conclusion that the payment is income.¹⁴

123. The income support payment constitutes assessable income under section 6-5.

Capital gains tax

124. CGT event C2 under section 104-25 happens when the entitlement to receive the financial assistance is satisfied. This event happens at the time the payment is made.

125. As the payment is included in assessable income under section 6-5, any capital gain made from the CGT event C2 is reduced to nil under section 118-20.

¹³ *C of T (NSW) v. Meeks* (1915) 19 CLR 568, per Griffith CJ at 580.

¹⁴ *Reckitt & Colman Pty Ltd v. FC of T* (1974) 4 ATR 501; 74 ATC 4185 at 4187 per Mahoney J.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 95/35; TR 2004/16;
TR 2006/3; TR 2007/9

Subject references:

- abnormal income
- assessable recoupments
- balancing adjustments
- bounties & subsidies
- capital gains tax
- capital receipts
- government grants income
- income
- primary production income
- termination value

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