

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Budget Estimates 29 May 2007)

Question **BET 112**
Topic: **Tax treatment of water rights**
Hansard Page: **E92b**

Senator **Sherry** asked:

There has been a great deal of public debate about the tax treatment of water rights. Has the ATO examined and can it provide an update on the tax treatment of water rights?

Ms Granger—I am sorry, we do not have anyone here tonight who can talk to that. Perhaps we can take that one on notice?

Senator SHERRY—Yes. Just briefly, it goes to the issue of the buyback of irrigation licences and the application of capital gains tax in those circumstances. I understand there are some practical difficulties about how it would be calculated and applied.

Answer:

On 8 June 2007 the Minister for Revenue and Assistant Treasurer, the Honourable Peter Dutton MP, announced a legislative amendment which will have a significant impact on the taxation implications of the New South Wales *Achieving Sustainable Groundwater Entitlements* (ASGE) programme.

The Minister announced that the capital gains tax provisions (CGT) of the *Income Tax Assessment Act 1997* will be amended to allow a partial CGT roll-over where a statutory licence [such as a bore licence affected by the ASGE programme] ends and is replaced by one or more new licences plus the offer to the licensee of non-licence capital proceeds such as money.

Currently, statutory licence holders do not get the benefit of the statutory licence roll-over where their licence ends and is replaced by a new statutory licence or licences together with the offer of other capital proceeds such as money. Furthermore, if the old licence was a pre-CGT asset, that status is not rolled over to the new licence. However, under the current law, any capital gain on a post-CGT asset is rolled over if the licence holder only receives a new or extended statutory licence.

The amendment announced on 8 June will ensure that all statutory licence holders affected by the ASGE programme will also retain pre-CGT status if their old licence had pre-CGT status. Capital gains tax will be payable on the excess of the additional capital proceeds [i.e. the cash payment] over the proportion of the cost base of the old licence which is attributable to those additional capital proceeds. Where the statutory licence was acquired post-CGT, the CGT 50 per cent discount and small business CGT tax concessions may apply.

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The broader question of the tax treatment of water rights in general is very broad and cannot be covered here. However, the Tax Office has received numerous requests for advice and rulings on a variety of water issues over the past four years and there is a substantial body of both guidance material publicly available on the ato.gov.au web site. This material is accessible by searching on the word “water”. For example:

- The NSW Department of Natural Resources (DNR) approached the Tax Office for advice on the taxation implications of proposed changes to water licences in NSW and Class Ruling CR 2005/79 was issued on 5 October 2005 as a result.
- Five ATO Interpretative Decisions have been published.
- Taxation Ruling TR 2006/3 entitled Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business issued on 31 May 2006. While the Ruling does not directly relate to payments for water rights, it provides a comprehensive reference point for entities in receipt of government payments to commence, continue or cease business.
- Class Rulings were issued to assist irrigators in States impacted by the Living Murray Initiative (NSW, Victoria & SA).
- A Class Ruling was issued on the proposed Traveston Crossing and Wyaralong Dams in Queensland as CR 2007/29 on 18 April 2007.