



<AuthorisationNumber>

Edited version of private ruling**Authorisation Number 76255**

This ruling is a private ruling for the purposes of Division 359 of Schedule 1 of the Taxation Administration Act 1953.

What this ruling is about:

1. Is the income from generating electricity from solar tiles assessable income?
2. Are expenses incurred in generating electricity from solar tiles allowable deductions?

Ruling:

1. Is the income from generating electricity from solar tiles assessable income?

No

2. Are expenses incurred in generating electricity from solar tiles allowable deductions?

No

Year(s) of income or period(s) to which this ruling applies:

Year ended 30 June 2008

Commencement date of scheme:

1 July 2007

The scheme that is the subject of the ruling:

You are about to install solar photovoltaic panels to your home.

It is expected that you will produce more energy than your domestic requirements.

The panels have the capacity to produce 5Kwh.

For a period of six hours on a sunny day, you could produce 30Kw.

You expect to average approximately 15Kw per day annually.

You have calculated your domestic usage as around 12Kw per day.

You have switched to the energy provider, which charges 18 cents a Kilowatt in daylight hours and less in the evening.

Buyback scheme customers can supplement their own electricity use with energy from a photovoltaic system and have the option to sell excess energy back to the energy provider for use in the program.

The primary purpose for installing the photovoltaic system is to minimise electricity bills.

It is estimated that the amount of electricity you will generate in excess of your private needs during an income year would be approximately 730 kWh. Taking the average tariff price set out by the energy provider it is estimated that the value of the power you would return to the grid would be approximately \$40 per annum.

Relevant provisions:

Income Tax Assessment Act 1997 Section 6-5.

Income Tax Assessment Act 1997 Subsection 6-10

Income Tax Assessment Act 1997 Section 8-1.

Income Tax Assessment Act 1997 Section 40-25.

Explanation: (This does not form part of the notice of private ruling)**Are amounts received assessable income?**

Income, or more specifically assessable income, is divided into two categories:

- (i) ordinary income (being income according to ordinary concepts) which is made assessable by section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- (ii) statutory income which is made assessable by section 6-10 of the ITAA 1997 (being amounts made assessable under specific provisions of the ITAA 1997 or the *Income Tax Assessment Act 1936*).

If an amount is not ordinary income, and is not statutory income, it is not assessable income.

As there are no specific provisions within the legislation regarding credits received from energy suppliers it is not 'statutory income'. Therefore, it is only necessary to consider if amounts received from the energy company should be included as 'ordinary income'.

If the amounts were received as the result of carrying on a business they would be ordinary income.

Business is defined in section 995-1 of the ITAA97 as 'any profession, trade, employment, vocation or calling, but does not include occupation as an employee.'

This definition simply states what activities may be included in a business. It does not provide any guidance for determining whether the nature, extent, and manner of undertaking those activities amount to the carrying on of a business.

Whilst the existence of a business or otherwise is a question of fact, a number of factors have emerged from case law which are considered relevant in considering this question. These factors were brought together in Taxation Ruling TR 97/11.

Although TR 97/11 dealt with whether a business of primary production can be considered to exist, paragraph 11 of TR 97/11 states that the indicators are no different, in principle, from the indicators as to whether activities in any other area constitute the carrying on of a business.

The indicators outlined in TR 97/11 which suggest a business is being carried on are

- significant commercial activity;
- purpose and intention of the taxpayer in engaging in the activity;
- an intention to make a profit from the activity;
- the activity is or will be profitable;
- repetition and regularity of activity;
- activity is carried on in a similar manner to that of the ordinary trade;
- activity organised and carried on in a businesslike manner and systematically - records are kept;
- size and scale of the activity;
- not a hobby, recreation or sporting activity.

Paragraph 16 of TR 97/11 states that indicators must be considered in combination and as a whole. Whether a business is being carried on depends on the 'large or general impression from looking at all the indicators, and whether these factors provide the operations with a 'commercial flavour'.

The photovoltaic system is used principally to generate energy for your own domestic use as a householder.

The information you have provided indicates that the activity will be of a small scale with very little excess energy being generated. The income that is received from exporting the excess energy to the grid in a financial year is estimated to be minimal compared to the costs of installation of the photovoltaic system. This indicates that the activity would not be profitable.

The facts of your case indicate that your activity would not have a significant commercial purpose or character and that you are not in the business of producing or selling of energy.

In conclusion, payments from your energy company in relation to the provision of energy are made for the purposes of a non-commercial or domestic transaction and are therefore not assessable income under section 6-5 of the ITAA 1997.

Similarly the energy consumed by your household is not considered to be assessable income.

Deductions

Section 8-1 of the ITAA 1997 allows a deduction for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income except where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income or a provision of the taxation legislation excludes it.

Decline in value (depreciation) claims are considered to be capital and are covered by Division 40 of the ITAA 1997. Under this division a claim can only be made where the depreciating asset is used for income producing purposes.

As the amounts you will receive from the energy company will not be assessable income there will be no deductible expenses in relation to the installation and ongoing costs of the photovoltaic system because the expense are not incurred in gaining or producing assessable income and the assets are not being used for income producing purposes.

Therefore no deductions are allowable for items such as;

- interest on monies borrowed in relation to the photovoltaic system
- repairs and maintenance costs for the system
- decline in value (depreciation) of the system

DISCLAIMER

The *Register of private binding rulings* is a historical public record of written binding advice the Tax Office has issued to specific entities.

Each record is based on the facts of a specific situation as advised to the Tax Office and reflects our view of the law in force at the time the advice was issued.

Before we place a record on the Register, we edit it to protect the applicant's privacy, so this record may not disclose all the relevant facts or circumstances on which our advice was based.

The Register is not updated to reflect changes in the law or the Tax Office's views, withdrawal of the advice, or any other change in circumstances.

Given the above, this record is not a publication approved in writing by the Commissioner. It is not intended to provide advice, nor does it set out the Tax Office's general administrative practice. Therefore this record is non-binding and provides no protection (including from any penalty or interest).

The Commissioner is required to apply the law in the way set out in the ruling *only* in respect of the entity/ies on whose behalf the ruling was sought.

Edited versions of written binding advice as published on the *Register of private binding rulings* cannot be relied upon as precedent by any other entity.

Our commitment to you

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 and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

Copyright

© Commonwealth of Australia 2004

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved.

Requests for further authorisation should be directed to the Commonwealth Copyright Administration, Intellectual Property Branch, Department of Communications, Information Technology and the Arts, GPO Box 2154, Canberra ACT 2601 or posted at <http://www.dcita.gov.au/cca>.