Tax implications of conservation covenants

Land that is protected with a conservation covenant through Trust for Nature may have different tax benefits or liabilities compared with land not protected by a covenant.

This information sheet provides an overview of taxation issues that may be relevant for landholders with covenants. It is not intended as legal advice or an alternative to obtaining independent taxation advice, but may assist in guiding decisions and identifying what advice is needed.

Victorian tax laws

Land Tax

All landholders with a Trust for Nature covenant are eligible for a land tax exemption over the proportion of their land under covenant. Any part of the land that is not covenanted will retain its existing land tax liability (noting that not all land uses are liable for land tax).

Landholders may claim the exemption once they have received their annual land tax assessment (issued between January and June each year). To apply for the exemption, landholders need to provide the State Revenue Office with:

— customer number

— property address which relates to the covenant

— details of what the land is used for, e.g. your home, primary production land. If it is used for more than one activity, please include all activities.

— a copy of the conservation covenant entered into with Trust for Nature

— date of commencement of the covenant

Applications can be received online through My Land Tax, by contacting the State Revenue Office online or by writing to:

State Revenue Office
GPO Box 1641
Melbourne, VIC, 3001

More information is available at trustfornature.org.au/resources/tax-information-for-landholders

Council rates

Around one third of rural and regional councils provide rate rebates or discounts to landowners with a Trust for Nature covenant. Landholders can check with their local Council to see whether a rebate is provided in their municipality, or see trustfornature.org.au/resources/council-rebates-for-covenants

The Australian Valuation Property Classification Code (AVPCC) applied by municipal valuers to land with a covenant may influence how land is classified for rating and other land-based taxation purposes. If the AVPCC does not seem accurate for the land use, landholders can get in touch with their local Council to check accuracy – it is free to make this amendment if required.

Other pathways

The Victorian Conservation Trust Act 1972 states that Trust for Nature may report to the Minister for Energy, Environment and Climate Action (DEECA) if it appears to the Trust that the preservation of the covenanted land in its natural state is not economically feasible and that such preservation is thereby endangered. On receiving this report, the Minister may seek the consent of the Minister for Local Government or the relevant local council to make an order remitting all or part of the council rates payable by the owner in respect of the land. If the landholder is not eligible for a rates exemption as a result of entering into a covenant, they may contact Trust for Nature to discuss this option.

Commonwealth tax laws

Commonwealth tax laws cover areas such as income tax, capital gains tax (CGT), goods and services tax (GST), fringe benefits tax, tax offsets, tax deductions, capital allowances (akin to depreciation), and the Australian C arbon Credit Unit (ACCU) Scheme.

Income tax

What is likely to be treated as ordinary income for tax purposes?

Any payments a landholder receives under an agreement for managing land (for example, for identified conservation purposes) will be treated as ordinary income. These may be received in periodic payments, such as annual payments, or periodically in performance of parts of an agreement.

Can I receive an income tax deduction for entering into a Trust for Nature covenant?

A landholder can claim an income tax deduction if the market value of their land (as assessed by an ATO valuer) decreases in value by more than $5,000 as a result of covenanting, provided they have not received any ‘money, property or other material benefit’ for entering into the covenant, and provided they entered into a contract to acquire the land not more than 12 months before the covenant was entered into.

Landcare operations

‘Landcare operations’ are generally activities that combat land degradation, which include the types of activities frequently funded under environmental market programs. This may include erecting a fence to separate different land classes in accordance with an ‘approved land management plan’, control of invasive species, and revegetation used to combat salinity or erosion. Deductions relating to landcare operations are available to landowners involved in primary production or taxpayers managing rural land for the purposes of producing assessable income (except the business of mining or quarrying).

Environmental market and incentive schemes

Environmental market schemes include offsets, the Australian Carbon Credit Units (ACCU) Scheme or the Nature Repair Market. If a landholder is participating in one of these schemes as a result of, or in addition to, covenanting, there may be taxation implications. Incentive schemes include stewardship payments that support permanent protection of conservation land.

Can I receive any income tax deductions from my participation in an environmental market scheme?

Income tax deductions may be available to landholders for expenses associated with entering into an environmental market agreement and for performing management actions. Income tax deductions may not be available if the amount derived by the landholder is a capital gain and not ordinary income, and the landholder is not carrying on a commercial business on the land. However, in an offset scheme the landholder may be able to include their expenses in the cost base of their credits for capital gains tax (CGT) purposes.

Preparing annual profit and loss statements for land-based activities regardless of whether or not the landholder is a primary producer, or carrying on a commercial business, may be helpful in dealing with these issues now and into the future.

Do I need to register for Goods and Services Tax (GST) if I enter into a market or incentive scheme?

Landholders may need to register for GST as a result of entering into an environmental market or incentive scheme. The creation of offset or biodiversity credits on entering into the agreement, the sale of credits and the receipt of annual payments may involve a GST liability for landowners who are registered for GST. Landowners who are registered for GST may also be able to claim input tax credits on the acquisition of goods or services when performing management activities.

Will I be liable for Capital Gains Tax if I participate in an environmental scheme?

The entry into a conservation covenant under an environmental scheme where the landholder receives payments (such as for an offset covenant) is likely to have CGT implications. These consequences arise at the time the agreement is entered in to. A CGT exemption may apply where payments are subject to income tax assessment as ordinary income; or if the land was acquired before 1985. A deduction may apply where the land has been owned for at least 12 months before the covenant was entered into; or if the small business CGT concession applies.

How are Australian Carbon Credit Units taxed?

Under the Income Tax Assessment Act (Div 420), the cost of acquiring ACCUs is generally deductible (with some exclusions), the proceeds of disposing of ACCUs as assessable, and any increase or decrease in the value of ACCUs in an income year as assessable or deductible. Further, it may be possible to claim deductions for capital expenditure for establishing trees as a ‘carbon sink forest’, if the landholder is carrying on a business.

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