

# Taxation of Australian Biodiversity Projects

## Introduction

'Biodiversity Banking' is a globally recognised practice that has been implemented in various forms in almost every state and territory in Australia, and now at a Federal level via the proposed creation of a Nature Repair Market.

At a high level, these schemes operate to facilitate the creation of 'certificates', 'credits' or 'offsets' which are subsequently utilised by developers to offset the environmental impacts of their developments and/or infrastructure projects.

The nature and legal structure of biodiversity certificates, credits or offsets in Australia are diverse but are generally tradeable assets. Some biodiversity schemes require conservation covenants to be entered into over land.

## Income tax rules

There are no specific tax rules applicable to all types of biodiversity arrangements.

However, specific rules apply to conservation covenants. For all other certificates, credits, or offsets, general tax principles must be applied to the facts and circumstances of each arrangement.

## Conservation covenants

- ▶ A capital gain or capital loss may arise when the covenant is granted, depending on whether any consideration is granted
- ▶ An income tax deduction may be available, equal to the decrease in market value of land as a result of a covenant, and it may be spread over five years.

## Certificates, offsets or credits

- ▶ Where granted in the course of carrying on a business of creating and selling such assets:
  - The certificate, offset or credit is likely to be trading stock, and
  - The costs of carrying on the project are likely to be tax deductible.

## Contact us



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- ▶ Where granted in the course of carrying on a business of creating assets for the purpose of holding long-term:
  - The certificate, offset or credit might be a capital gains tax (CGT) asset, but may lose that status if the holder's intention changes, and
  - Costs of carrying on the project are likely to be tax deductible.
- ▶ Where granted outside of a business:
  - Likely to be a CGT asset, but may lose that status if they begin to be held in a business of creating such assets, and
  - Costs of carrying on the project are unlikely to be tax deductible but might add to the CGT cost base of the certificate, offset or credit.

Owing to the complexities of the applicable tax laws, appropriately detailed tax analysis should be undertaken to support the tax treatment, and accordingly, tax advice should be included in the establishment costs of setting up a biodiversity project.

### **Goods and Services Tax (GST)**

Biodiversity certificates, offsets or credits may be GST-free, however there is no uniform rule, and specific advice should be obtained.

### **Closing comments**

Tax is just one of the areas that should be considered when contemplating a biodiversity project. Land ownership, agreements, permanence periods should also be considered.

### **Further information**

More resources, including our series of carbon farming factsheets, can be found at [www.bdo.com.au/carbonfarming](http://www.bdo.com.au/carbonfarming).

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