Taxation of Australian Carbon Credit Units (primary producers)

Introduction

Specific tax rules apply to the ‘holder’ of an Australian Carbon Credit Unit (ACCU). The ‘holder’ is the person or entity to whose Australian National Register of Emissions Units (ANREU) account the ACCU is registered.

When a carbon abatement project is registered with the Clean Energy Regulator (CER), the ‘project proponent’ is the entity or person legally responsible for undertaking the project. ACCUs, in relation to the carbon project, are first issued to the project proponent’s ANREU account and may be subsequently sold or transferred to other ANREU account holders.

Multi-disciplinary carbon project developers are frequently the project proponents of carbon projects. Alternatively, owners of land on which carbon projects are undertaken can also be project proponents.

Income tax rules

The following rules apply to individual taxpayers carrying on a primary production business.

Individual primary producers have access to primary production tax averaging and the Farm Management Deposit scheme, both of which look to the individual’s ‘primary production income’ and ‘non-primary production income’.

There is a separate BDO fact sheet for all other taxpayers.

- ACCUs are revenue assets – they are not eligible for capital gains tax concessions or discounts
- ACCUs issued to the project proponent are not immediately taxed
- The gross proceeds for ceasing to hold an ACCU is taxable in the year the ACCU ceases to be held
- Income from selling eligible primary production ACCUs (see below) is primary production income
- The gross expenditure specifically relating to acquiring an ACCU is deductible (but the deduction is effectively deferred until the unit ceases to be held)
- The general deductibility provisions may allow project proponents to deduct the expenses incurred in undertaking a carbon project. For example, the cost of fencing, costs involved with ongoing maintenance, and the like
- For any ACCUs that are not eligible primary production ACCUs, the difference between the value of registered emissions units held at the start and at the end of the income year is brought to account under the ‘rolling balance mechanism’. This is done in such a way that:
  - Any increase in value is included in assessable income
  - Any decrease in value is a deduction.

Contact us

Andrew Jones
Partner, Tax
+61 7 3237 5999
andrew.jones@bdo.com.au

The following additional points should also be noted:

- If no proceeds are received for ceasing to hold an ACCU, no income arises – however, a taxable amount could arise under the rolling balance mechanism
- The rolling balance mechanism permits a choice of methods for determining the change in value, including first-in, first-out cost, or market value
- The rolling balance mechanism does not apply to eligible primary production ACCUs held by an individual primary producer
- The death of the holder of an ACCU results in the value of the ACCU being included in the deceased's assessable income
- The tax laws are silent on how to establish the market value of an ACCU
- Deductions for acquiring ACCUs are reversed if there is a disposal outside of the ordinary course of business.

Eligible primary production ACCUs

For ACCUs to give rise to primary production income, they must meet the tax law definition of a 'primary producer registered emissions unit'. There are several parts to this definition, but the key points are:

- The ACCU must be newly issued and held by an individual or carbon service provider
- The registered carbon project giving rise to the ACCU must be on land that is at all times used or connected with a primary production business (as defined for tax purposes)
- The primary production business must be carried on by an individual (alone or in partnership), or by a trust that the individual benefits from.

There are several important points to take from this, including:

- If a company carries on a primary production business on land connected with the carbon project, ACCUs will be ineligible – even if the individual ACCU holder controls the company
- ACCUs purchased on the secondary market by a primary producer are ineligible
- If a primary production business is not carried on for each year of the permanence period of the carbon project, ACCUs will be ineligible.

The law is unclear about how to establish whether carbon project land is 'connected with' primary production land. However, we expect that physical proximity will be important.

Carbon service providers

There are specific rules applicable to arrangements with carbon service providers that primary producers should be aware of. Broadly, a carbon service provider is an entity that provides services relating to carbon projects and includes project developers. Under these rules:

- Income derived from selling an ACCU issued to and sold by a developer is classified as primary production income when paid to the primary producer, but with a condition: The ACCU must have met the criteria of an eligible primary production ACCU had it been directly issued to the primary producer. This usually holds true for most profit-split arrangements
- If an ACCU is initially issued to a developer and later transferred to a primary producer, it will be considered an eligible ACCU provided it would have been an eligible primary production ACCU had it been directly issued to the primary producer. This typically applies to ACCU share arrangements.

These concessions do not apply in cases where the payment from the carbon service provider to the individual is considered payment under a lease.

Primary production structures

Income from the sale of ACCUs (directly or by a carbon service provider) flowing through partnerships and trusts is included in primary production income for individual primary producers.

If a trust owns ACCUs, the rolling balance mechanism continues to apply even if the ACCUs would have been eligible primary production ACCUs had they been held by an individual.

Navigating the intricacies of ACCU income within partnerships and trusts can be complex. We advise individuals involved in such arrangements to seek professional advice to ensure they are compliant.

Goods and Services Tax (GST)

ACCUs are GST-free.

Closing comments

Tax is just one of the areas that should be considered when contemplating a carbon project to generate ACCUs. Land ownership, agreements, permanence period should also be considered.

The tax rules discussed above apply to ACCUs. Voluntary carbon units, such as Verra units, or the Gold Standard, or ISO-certified units, are not subject to these tax rules, and separate tax analysis needs to be undertaken in relation to such units.

Further information

More resources, including our series of carbon farming factsheets, can be found at www.bdo.com.au/carbonfarming.

1300 138 991
www.bdo.com.au

NEW SOUTH WALES • NORTHERN TERRITORY QUEENSLAND • SOUTH AUSTRALIA • TASMANIA • VICTORIA • WESTERN AUSTRALIA

BDO