

Biodiversity Credits

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 42	29 November 2010	01 July 2010	-	Current

Preamble

1. A biodiversity banking and offsets scheme operates in New South Wales (**NSW**) under the *Threatened Species Conservation Act 1995*. The scheme helps to address the loss of biodiversity in NSW. It achieves this by enabling landowners in NSW to establish biobank sites to secure conservation outcomes and offset impacts on biodiversity values.
2. Credits are created by a landowner who establishes a biobank site and commits to enhancing and protecting biodiversity values. The scheme creates a market for the credits. Landowners can sell the credits to provide income and fund the future management of the site. Developers can buy the credits to offset impacts from their development. There may also be demand for credits from organisations seeking to secure conservation outcomes.
3. A biobank site is established by the Minister administering the *Threatened Species Conservation Act 1995* when a biobanking agreement is executed with a landowner. Each biobanking agreement sets out:
 - actions or proposed actions to be undertaken by the owner of the biobank site to improve the biobank site's composition, structure and function of ecosystems, and includes (but is not limited to) threatened species, populations and ecological communities, and their habitats;
 - the number of biodiversity credits created for the actions that have been or will be carried out;
 - the amount required to be deposited into a "fund", which will be used to make payments to the owner of the biobank site to manage the site; and
 - a schedule of payments to the owner of the biobank site out of the "fund".
4. A biobanking agreement registered on the land titles register with the LPI in respect of the biobank site "runs with the land". That is, it is binding on, and enforceable by and against, the owner and any successors in title (e.g. a mortgagee or a chargee). A biobanking agreement has effect in perpetuity unless it is terminated by the Minister, or by consent of the Minister and the owner of the biobank site. It may only be varied by the Minister, or by agreement between the Minister and the owner of the biobank site.
5. Biodiversity credits are created and granted/issued to the owner of the biobank site on execution of the biobanking agreement. Owners of the biobank sites can sell the biodiversity credits to a person who may use the biodiversity credits by way of offset against the adverse impacts on biodiversity values resulting from a proposed development of a particular parcel of land, or may on-sell the biodiversity credits to another person.
6. A revenue ruling explaining any duty implications in regard to biodiversity credits is necessary to assist with the establishment, development, growth and continued operation of the biobanking scheme.

Ruling

1. It is necessary to consider whether a biodiversity credit is dutiable property under Chapter 2 of the *Duties Act 1997*:
 - as land or an interest in land in NSW; or
 - as a statutory licence or permission under a NSW law.
2. While a biobanking agreement is a covenant on the land and is enforceable against the owner from time to time of that land, biodiversity credits arising from a biobanking agreement do not give any right or licence to use the land from which they derived. On the contrary, biodiversity credits are able to be sold and transferred independently of the land. On that basis, they are not regarded as being land or an interest in land.
3. While biodiversity credits are created under the *Threatened Species Conservation Act 1995 (NSW)* they do not allow or permit any action or activity by the holder of the biodiversity credits. On that basis, they are not regarded as being a statutory licence or permission.
4. In summary, biodiversity credits are not regarded as being dutiable property. Accordingly, a transaction in respect of them cannot be liable for duty as a dutiable transaction under Chapter 2 of the *Duties Act 1997*.

Tony Newbury

Chief Commissioner of State Revenue
29 November 2010