

Class Ruling

Income Tax: AusBulk Ltd – 0:100 Grain Pool

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Preamble

*The number, subject heading, and the **What this Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- Division 70 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Section 6-5 of the ITAA 1997; and
- Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936).

Class of persons

3. The class of persons to which this Ruling applies is all growers who, after 1 July 2003, enter into a contract for the sale of grain by delivery or transfer into the 0:100 pool (0:100 pool) operated by AusBulk Grain Marketing Division (AusBulk GMD), a division of AusBulk Ltd (AusBulk).

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 16 in this Ruling.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This ruling applies to the income year commencing 1 July 2003 and subsequent years in which the arrangement is offered by AusBulk. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of the Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of this ruling is the 0:100 pool operated by AusBulk GMD and is described in the documents set out below. The relevant documents or parts of documents are:

- (a) Class Ruling application dated 20 June 2003 from Ernst & Young requesting the Commissioner to make a class ruling in relation to the assessability of amounts from the sale of grain by growers into the 0:100 pool;
- (b) AusBulk GMD Pools Standard Terms and Conditions;
- (c) The description of the 0:100 pool arrangement as included in the letter of 20 June 2003 from Ernst and Young;
- (d) Product brochure entitled:
‘AusBulk 0:100 Pool’; and
- (e) AusBulk’s sample documents:
 - (i) Delivery weighnote;
 - (ii) Confirmation of Title Transfer;
 - (iii) Registration form.

Note: Certain information in the letters from Ernst & Young has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. When grain is delivered or transferred into the 0:100 pool, a grower accepts the terms and conditions set out in the ‘AusBulk Grain Marketing Pools Standard Terms and Conditions’.

11. The AusBulk Grain Marketing Pools Standard Terms and Conditions provide that:

- transfer of title and risk of physical loss occur:
 - (a) in respect of physical delivery when you or your agent have presented commodity to a bulk handler and signed a weighnote nominating an AusBulk Grain Marketing pool product as the purchase option; or
 - (b) in respect of delivery by way of in-store transfer of commodity stored on your behalf by a bulk handler – when the bulk handler signs or otherwise authorises on your behalf a title transfer to an AusBulk Grain Marketing pool;

- AusBulk Grain Marketing makes estimates from time to time of the likely pool return as a guide to suppliers. AusBulk Grain Marketing does not warrant that the pool will return these estimates, or any other amount. The estimated pool return is subject to change and therefore you cannot quantify in absolute terms your future returns until declarations are made;
- As the name suggests, this pool has only one declaration and therefore one distribution (payment), made at the conclusion of the Australian international sales program each season i.e. when the pool is finalised;
- Pools vary from season to season, but are typically finalised within 18 months from harvest. However AusBulk Grain Marketing cannot stipulate when the payment will be issued, as this depends solely on the completion of the international sales program from that season;
- Unless otherwise stated in the relevant product brochure AusBulk Grain Marketing may deduct prior to calculating your pool payments, all receival, transport, transfer, storage, handling and outturn charges and compulsory levies applicable to your pool deliveries (and, in the case of commodities delivered to AusBulk Ltd sites, charged as if the pool was a separate client of AusBulk Ltd);
- Pool payments for all suppliers will be net of any selling costs and expenses incurred by the pool and a pool management fee as determined by AusBulk Grain Marketing from time to time; and
- Once a distribution is declared it is a debt due to you from AusBulk Ltd and is payable within 30 days from declaration.

12. The timing (i.e. estimated date) for the declaration and payment of the pool distributions for any particular harvest season will be detailed in the product brochure for the 0:100 pool which is published by AusBulk for each harvest season.

13. Once a grower has delivered their grain they may elect to access a loan facility in respect of the delivery.

14. A grower's estimated equity is the estimated pool return (EPR) for the grain the grower has delivered. The credit limit will be based on a percentage of the grower's EPR as determined by AusBulk from time to time.

15. Pool distributions may not repay amounts owing in respect of a grower's drawing amounts. For the payment of a commercial underwriting fee, AusBulk Finance accept this risk and undertakes that it will not seek to recover from the grower the amount of the guaranteed pool return for the grower's deliveries.

16. Underwriting protection and payment of the underwriting fee by the grower is compulsory for all growers who elect to use the loan facility.

Ruling

Sales of grain into the 0:100 pool

17. For growers returning their income on an accruals basis, distributions made by AusBulk are included in assessable income under section 6-5 of the ITAA 1997 in the income year in which AusBulk declares each distribution.

18. For growers returning their income on a cash basis, distributions are included in assessable income under section 6-5 of the ITAA 1997 in the income year in which the grower receives the payments.

Amounts received

19. Under subsection 6-5(4) of the ITAA 1997 the grower is treated as having received distribution amounts when those amounts are applied or dealt with in any way on the grower's behalf or as the grower directs. These include any distributions applied by AusBulk as repayments of loans from AusBulk Finance Pty Ltd or AusBulk to the grower.

Drawing amounts

20. Amounts paid to growers under the terms of an AusBulk 0:100 Pool – Harvest Loan Facility, are loans and not income.

Underwriting protection

21. In those cases where the drawing amount exceeds the amount of the pool distribution, the difference is assessable income under section 6-5 of the ITAA 1997 in the income year in which the pool distribution is declared.

22. Paragraph 21 applies regardless of whether the grower returns income on a cash basis or on an accruals basis.

Trading stock

23. The grain ceases to be trading stock of the grower under Division 70 at the time AusBulk accepts delivery of the grain.

Application of Part IVA

24. Having regard to the facts of the arrangement, Part IVA of the ITAA 1936 does not apply.

Explanation

Sales into the 0:100 pool

25. By delivering or transferring grain into the 0:100 pool, AusBulk and the grower enter into a contract of sale. At the time AusBulk accepts delivery of the grower's grain or approves an in-store transfer, the grower has sold and AusBulk has purchased the grain.

26. At the time growers sell their grain they have a right to receive payment of their share of the pool proceeds, but that right is not presently existing as the payment is neither quantified nor quantifiable. AusBulk quantifies the amount payable to growers by determining and declaring pool distributions.

27. The amount of the distribution is a presently existing recoverable debt for payment of that part of the pool return. The determination and declaration of the amount by AusBulk is the point at which this debt becomes presently existing, unconditional, and not subject to any contingency.

28. For growers returning their income on an accruals basis, distributions made by AusBulk are included in assessable income under section 6-5 of the ITAA 1997 in the income year in which AusBulk declares each distribution.

29. For growers returning income on a cash basis, distributions are included in assessable income under section 6-5 of the ITAA 1997 in the year in which the grower receives the payments.

Amounts received

30. Subsection 6-5(4) of the ITAA 1997 treats an amount as assessable income of a taxpayer if the amount has been applied or

dealt with in any way on the taxpayer's behalf or as the taxpayer directs.

31. Amounts applied or dealt with by AusBulk in any way on the grower's behalf or as the grower directs including amounts applied in full or partial satisfaction of any amounts owing to AusBulk Finance Pty Ltd or AusBulk or any other encumbrance are treated as having been received by the grower.

Trading stock

32. As stated at paragraph 25, the grower has sold and AusBulk has purchased the grain at the time AusBulk accepts delivery of the grain.

33. When accepted into the 0:100 pool by AusBulk, the grain delivered by the grower is mixed with that of other growers. Accordingly, the grower has lost dispositive power over the grain as the grain of that particular grower is no longer identifiable. In the circumstances title in the grain has passed to AusBulk and the grower has disposed of the grain (*Farnsworth v. FC of T* (1949) 78 CLR 504; (1949) 9 ATD 33).

34. Consequently, the grain ceases to be trading stock of the grower for the purposes of Division 70 of the ITAA 1997 at that time.

Application of Part IVA

35. Having regard to the commercial character of the arrangement, Part IVA of the ITAA 1936 does not apply.

Detailed contents list

36. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

29 October 2003

Previous draft:

Not previously released in draft form

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 97/16*Subject references:*

- grain growing
- crops as trading stock
- derivation of income
- primary production income

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1997 6-5
- ITAA 1997 6-5(4)
- ITAA 1997 Div 70
- TAA 1953 Pt IVAAA
- Copyright Act 1968

Case references:

- Farnsworth v. FC of T (1949) 78
CLR 504; (1949) 9 ATD 33

ATO References

NO 2003/14415
ISSN 1445 2014