

# ***CR 2004/122 - Income tax: ABB Grain Limited - 0:100 grain pool***



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## Class Ruling

### Income tax: ABB Grain Limited – 0:100 grain pool

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#### **Preamble**

*The number, subject heading, **What this Class 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**

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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 whom this Ruling applies is all growers who, after 26 September 2004, enter into a contract for the sale of grain by delivery or transfer into the 0:100 grain pool (0:100 pool) operated by ABB Grain Limited.

#### **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 at paragraphs 10 to 17 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- this Ruling may be withdrawn or modified.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

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8. This ruling applies to the income year commencing 1 July 2004 and subsequent years in which the arrangement is offered by ABB Grain Limited. 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 withdrawn by *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

## Previous Ruling

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9. The arrangement described in this ruling is substantially the same as the arrangement described in Class Ruling CR 2003/97 apart from the change of name of the grain pool operator from AusBulk Limited to ABB Grain Limited.

## Arrangement

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10. The arrangement that is the subject of this ruling is the 0:100 pool operated by ABB Grain Limited and is described in the documents set out below. The relevant documents or parts of documents are:

- (a) Class Ruling application from KPMG 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 which have been confirmed as being the same as offered by ABB Grain Limited; and
- (c) Documents as provided and noted in Class Ruling CR 2003/97.

**Note:** Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

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

12. The ABB 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 weigh note nominating an ABB Grain Limited 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 ABB Grain Limited pool;
- ABB Grain Limited makes estimates from time to time of the likely pool return as a guide to suppliers. ABB Grain Limited 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, that is, when the pool is finalised;
- Pools vary from season to season, but are typically finalised within 18 months from harvest. However ABB Grain Limited 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 ABB Grain Limited may deduct prior to calculating your pool payments, all receipt, transport, transfer, storage, handling and outturn charges and compulsory levies applicable to your pool deliveries (and, in the case of commodities delivered to ABB Grain Limited sites, charged as if the pool was a separate client of ABB Grain Limited);
- 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 ABB Grain Limited from time to time; and
- Once a distribution is declared it is a debt due to you from ABB Grain Limited and is payable within 30 days from declaration.

13. 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 ABB Grain Limited for each harvest season.

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

15. 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 ABB Grain Limited from time to time.

16. Pool distributions may not repay amounts owing in respect of a grower's drawing amounts. For the payment of a commercial underwriting fee, ABB Grain Limited accepts 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.

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

## **Ruling**

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### **Sales of grain into the 0:100 pool**

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

19. 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**

20. Under subsection 6-5(4) of the ITAA 1997 the grower is treated as having received distribution amounts when the 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 ABB Grain Limited as repayments of loans from ABB Grain Limited to the grower.

### **Drawing amounts**

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

### **Underwriting protection**

22. 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.

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

### **Trading stock**

24. The grain ceases to be trading stock of the grower at the time ABB Grain Limited accepts delivery of the grain.

### **Application of Part IVA**

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

## Explanation

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### Sales into the 0:100 pool

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

27. 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. ABB Grain Limited quantifies the amount payable to growers by determining and declaring pool distributions.

28. 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 ABB Grain Limited is the point at which this debt becomes presently existing, unconditional, and not subject to any contingency.

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

30. 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

31. 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.

32. Amounts applied or dealt with by ABB Grain Limited 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 ABB Grain Limited or any other encumbrance are treated as having been received by the grower.

### Trading stock

33. As stated at paragraph 26, the grower has sold and ABB Grain Limited has purchased the grain at the time ABB Grain Limited accepts delivery of the grain.

34. When accepted into the 0:100 pool by ABB Grain Limited, 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 ABB Grain Limited and the grower has disposed of the grain (*Farnsworth v. FC of T* (1949) 78 CLR 504; (1949) 9 ATD 33).

35. 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**

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

## **Detailed contents list**

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

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# CR 2004/122

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## **Commissioner of Taxation**

10 November 2004

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

CR 2001/1; CR 2003/96;  
CR 2003/97; TR 92/1; TR 92/20;  
TR 97/16

### *Subject references:*

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

### *Legislative references:*

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

### *Case references:*

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

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### ATO references

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