


# ***PR 2021/16 - ING Bank (Australia) Limited - Orange Everyday Round Up to Charity***

 This cover sheet is provided for information only. It does not form part of *PR 2021/16 - ING Bank (Australia) Limited - Orange Everyday Round Up to Charity*



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Status: **legally binding**

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## Product Ruling

# ING Bank (Australia) Limited – Orange Everyday Round Up to Charity

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### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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## No guarantee of commercial success

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The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

## Terms of use of this Product Ruling

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This Product Ruling has been given on the basis that the entity(s) that applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

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### What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.
2. In this Product Ruling, the scheme involves the holding of an ING Bank (Australia) Limited (ING) Orange Everyday or Orange Everyday Youth bank account (an Everyday Account) and the activation of the Round Up to Charity feature.
3. This Product Ruling does not address:
  - any tax consequences associated with an Everyday Account other than the Round Up to Charity feature, and
  - an Account Holder's ability to elect to spread deductions over and up to five income years pursuant to Subdivision 30-DB.

### Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to as the Account Holder, being an individual who holds an Everyday Account with ING.
5. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities who participate in the scheme described in paragraphs 15 to 19 of this Product Ruling by activating the Round Up to Charity feature on or after 1 December 2021 and on or before 30 June 2024.
6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities who participate in the scheme described in paragraphs 15 to 19 of this Product Ruling by activating the Round Up to Charity feature before 1 December 2021 or after 30 June 2024.

### Qualifications

7. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 19 of this Product Ruling.
8. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:
  - has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
  - may be withdrawn or modified.

### Date of effect

9. This Product Ruling applies prospectively from 1 December 2021. It applies only to the specified class of entities that enter into the scheme by activating the Round Up to Charity feature from 1 December 2021 until 30 June 2024, being its period of application.

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This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

10. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

#### **Changes in the law**

11. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

12. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

#### **Note to promoters and advisers**

13. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

## **Ruling**

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14. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 19 of this Product Ruling:

- (a) Round Up Amounts transferred by Account Holders using the Round Up to Charity feature are deductible gifts under section 30-15 where the total amount transferred during the income year is \$2 or more.
- (b) The extent to which Round Up Amounts of \$2 or more are deductible under section 30-15 for Account Holders who jointly hold an Everyday Account is in proportion to their beneficial interest in the Everyday Account.
- (c) The Account Holder's quarterly Everyday Account bank statements will include all of the requirements outlined in paragraph 39 of this Product Ruling and therefore constitute written evidence to support a claim for a deduction allowable in accordance with paragraph 14(a) of this Product Ruling.
- (d) The anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not be applied to deny the deductibility of Round Up Amounts transferred under the Round Up to Charity feature.

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## Scheme

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15. The scheme that is the subject of this Product Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by documents and information received on 20 April 2021, 24 May 2021, 7 October 2021 and 9 November 2021, and
- draft ING Orange Everyday and Orange Everyday Youth Terms and Conditions (the Terms and Conditions) received on 9 November 2021.

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

16. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an Account Holder, or any associate of an Account Holder will be a party to, which are a part of the scheme. Unless otherwise defined, capitalised terms in this Product Ruling take their meaning as per the Terms and Conditions.

17. All Australian Prudential Regulation Authority requirements are, or will be, complied with.

### Overview

18. Following is a summary of the scheme:

- (a) ING is an authorised deposit taking institution which offers various Australian banking products, including the Everyday Account, a non-interest bearing transaction product which can be opened and operated in one or two names (as a joint account).<sup>1</sup>
- (b) An Everyday Account may be opened by an individual who is an Australian resident for tax purposes and who does not open or operate the Everyday Account for business, trade, superannuation or trustee purposes.
- (c) ING is extending the functionality of the optional 'Everyday Round Up' feature under the Everyday Account to include the Round Up to Charity feature.
- (d) If activated by Account Holders (via online or mobile banking), the Round Up to Charity feature allows
  - the Account Holders to automatically round up all eligible transactions debited from their Everyday Account and have the amount by which the transaction is rounded up (the Round Up Amount) transferred by ING, on the Account Holder's behalf (acting as their agent), to Intelligent Foundation Limited as trustee for Intelligent Foundation ABN 48 156 978 613 (Intelligent Foundation<sup>2</sup>), and

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<sup>1</sup> The Everyday Youth bank account cannot be opened jointly with someone else.

<sup>2</sup> Relevant details regarding Intelligent Foundation are set out in subparagraph 18(l) of this Product Ruling.

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- Intelligent Foundation to disburse the Round Up Amount to a charity endorsed by the Commissioner as a deductible gift recipient described under table item 1 in subsection 30-15(2).
- (e) To process the transfer of a Round Up Amount
  - the Round Up Amount will be transferred from the Account Holder's Everyday Account to an ING Holding Account after the corresponding transaction has been debited from that Everyday Account
  - typically every second month, ING will transfer to Intelligent Foundation the aggregate of all Round Up Amounts that were transferred to the ING Holding Account since the previous payment<sup>3</sup>, and
  - Intelligent Foundation will disburse funds to the participating charities within a reasonable period of receipt from ING (usually within one month).
- (f) At the time of activating the Round Up to Charity feature, Account Holders nominate, from a list of charities made available for selection by ING, a charity to which they wish to have their Round Up Amounts transferred. While Intelligent Foundation endeavours to disburse the Round Up Amounts in accordance with the nomination of each Account Holder, the charities to which the Round Up Amounts are disbursed is at the unfettered discretion of Intelligent Foundation.
- (g) The Round Up Amounts from which Account Holders can choose at the time of activation are to the nearest \$1 or to the nearest \$5. Neither ING nor Intelligent Foundation is entitled to retain any portion of the Round Up Amounts.
- (h) Account Holders must choose to activate the Round Up to Charity feature. Once activated, Account Holders can disable the Round Up to Charity feature or change their nominated charity at any time.
- (i) Account Holders are not required to pay any costs or fees in association with the Round Up to Charity feature.
- (j) Each of the Account Holder's quarterly bank statements will detail each Round Up to Charity transaction debited from their Everyday Account, provide an aggregate running total for the financial year to date of Round Up Amounts under the Round Up to Charity feature debited on the Account Holder's behalf, and identify Intelligent Foundation as the recipient of those Round Up Amounts. The total Round Up Amounts transferred to Intelligent Foundation on the Account Holder's behalf within an income year will be reflected in the bank statement for the quarter ended 30 June.
- (k) Intelligent Foundation will not be issuing receipts for Round Up Amounts transferred to it via the Round Up to Charity feature.
- (l) Intelligent Foundation is
  - covered by table item 2 of subsection 30-15(2) on the basis that it is a public ancillary fund in accordance with section 426-102 of Schedule 1 to the *Taxation Administration Act 1953* established for

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<sup>3</sup> The Terms and Conditions acknowledge that Round Up Amounts debited within the last 14 days of the income year may not be transferred to Intelligent Foundation until the subsequent income year.

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- the purpose of receiving funds from donors and providing those funds to the end charities, and
- a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012* (effective from 22 January 2021) and endorsed by the Commissioner as a deductible gift recipient in accordance with section 30-120.

### **Assumptions**

19. This Product Ruling is made on the basis of the following necessary assumptions:
- (a) The Account Holder is an Australian resident for tax purposes.
  - (b) The Round Up Amounts will be disbursed by Intelligent Foundation to charities which are covered by an item in a table in Subdivision 30-B and to which gifts are deductible under table item 1 of subsection 30-15(2).
  - (c) Deductions claimed by an Account Holder for Round Up Amounts transferred under the Round Up to Charity feature will not add to or create a tax loss for the Account Holder under subsection 26-55(2).
  - (d) The scheme will be executed in the manner described in the scheme documentation and in the Scheme section of this Product Ruling.
  - (e) All dealings between the Account Holder, ING and Intelligent Foundation will be at arm's length.

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**Commissioner of Taxation**

1 December 2021

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Status: **not legally binding**

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## Appendix – Explanation

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**❶** *This Appendix is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.*

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### **Deductibility of Round Up Amounts: Division 30**

20. A donor can claim a tax deduction for a gift if the requirements in section 30-15 are satisfied. The table in subsection 30-15(2) sets out the categories of recipients of deductible gifts and contributions, the types of deductible gifts or contributions that can be made to each category of recipients, how much can be deducted and special conditions that require satisfying.

### **Gift recipient**

21. Table item 2 of subsection 30-15(2) states that deductible gifts and contributions can be made to:

An ancillary fund established and maintained under a will or instrument of trust solely for:

- (a) the purpose of providing money, property or benefits:
  - to a fund, authority or institution gifts to which are deductible under item 1 of this table; and
  - for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or
- (b) the establishment of such a fund, authority or institution.

22. As recognised in paragraph 18(l) of this Product Ruling, Intelligent Foundation is a recipient covered under table item 2 of subsection 30-15(2) on the basis that it is a public ancillary fund<sup>4</sup> established and maintained for the sole purpose of receiving money from donors and on-paying that money to the charities, each of which should be a fund, authority or institution covered by an item in any of the tables in Subdivision 30-B (and therefore a recipient to which gifts are deductible under table item 1 of subsection 30-15(2)).

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<sup>4</sup> An ancillary fund is defined in subsection 995-1(1) to mean a public ancillary fund or a private ancillary fund.



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### ***Type of gift***

23. Table item 2 of subsection 30-15(2) provides that the deductible gifts and contributions that can be made to a table item 2 recipient include gifts of money. Money can be paid in various ways, including by cash, cheque, credit card or electronically.

24. Under the Round Up to Charity feature, Account Holders will pay the Round Up Amounts (money) to Intelligent Foundation.

25. The meaning of 'gift' for the purposes of Division 30 is dealt with in Taxation Ruling TR 2005/13 *Income tax: tax deductible gifts - what is a gift*. The word 'gift' is not defined in the ITAA 1997 and, for the purposes of Division 30, has its ordinary meaning.

26. The courts have described a gift as having the following characteristics and features:

- the donor transfers money or property
- the donor makes the transfer voluntarily
- the transfer arises by way of benefaction, and
- there is no material benefit or advantage for the donor.

27. The Round Up Amounts constitute a gift of money as:

- the beneficial interest in them is transferred from the Account Holders to Intelligent Foundation (at the time of the transfer from the ING Holding Account)<sup>5</sup>
- they are made voluntarily by the Account Holders (who are free to activate, and disable, the Round Up to Charity feature)
- the transfers of the Round Up Amounts arise by way of benefaction as Intelligent Foundation is conferred with a benefit (the Round Up Amounts) without any associated detriments, obligations, liabilities or limitations, and
- there is no evidence that the Account Holders will obtain any benefit or advantage from the Round Up Amounts.

### ***Amount of gift that can be deducted***

28. Table item 2 of subsection 30-15(2) states that the amount that can be deducted for a gift of money is the amount that is given.

29. The amount given by the Account Holders in the form of Round Up Amounts under the Round Up to Charity feature for the income year will only include Round Up Amounts that are transferred to Intelligent Foundation from the ING Holding Account during the income year.

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<sup>5</sup> Transfers may still be a gift when made by way of an agent. In an agency relationship, an agent has an authority or capacity to create or affect legal relations between a principal and third parties but does not itself have beneficial interest in the property being transferred. As agent, ING facilitates the transfer of the Round Up Amounts from the Account Holders to Intelligent Foundation and does not obtain a beneficial interest in the Round Up Amount at any time.

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### ***Special conditions***

30. Table item 2 of subsection 30-15(2) requires the following special conditions to be satisfied:

- (a) the value of the gift must be \$2 or more; and
- (b) the terms of the will or trust must allow the trustee to invest money that the ancillary fund receives because of the gift only in a way that an Australian law allows trustees to invest trust money; and
- (c) the ancillary fund must meet the requirements of section 30-17; and
- (d) if the property is to be valued by the Commissioner – the requirements of section 30-212 are satisfied.<sup>6</sup>

31. In relation to the special condition in paragraph (a) of table item 2 of subsection 30-15(2), an Account Holder can add together a series of Round Up Amounts in an income year to work out whether the gift is \$2 or more.

32. As an endorsed deductible gift recipient covered by table item 2 of subsection 30-15(2), the special conditions at paragraphs (b) and (c) of that subsection will also be satisfied. That is:

- the terms of the trust allow the trustee for Intelligent Foundation to invest money that Intelligent Foundation receives because of the Round Up Amounts only in a way that an Australian law allows trustees to invest trust money, and
- Intelligent Foundation meets the requirements of section 30-17.

33. Subject to the Round Up Amounts of an Account Holder using the Round Up to Charity feature being \$2 or more for the income year, each of the requirements in table item 2 of subsection 30-15(2) will therefore be satisfied, and the Account Holder will be able to claim a deduction under section 30-15 for the Round Up Amounts that are transferred to Intelligent Foundation from the ING Holding Account during the income year.

34. Where the Everyday Account from which the Round Up Amounts are transferred is jointly owned by two Account Holders, the extent to which those Account Holders will be able to claim a deduction under section 30-15 for the Round Up Amounts will be in proportion to their beneficial interest in the Everyday Account.

35. Unless there is evidence to the contrary, it will be presumed that each of those Account Holders have an equal beneficial interest in the Everyday Account and will therefore share the deduction in equal proportions.

### ***Evidence of a gift***

36. In the making of an assessment under section 166 of the ITAA 1936, the Commissioner may disallow an amount claimed under section 30-15 as a gift of money if the taxpayer does not hold sufficient evidence that demonstrates an entitlement to the deduction claimed.

37. Deductible gift recipients are not required to issue receipts. As Intelligent Foundation will not issue receipts for Round Up Amounts transferred using the Round Up to Charity feature, Account Holders will rely on their quarterly Everyday Account bank statements as evidence of the gift.

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<sup>6</sup> As the Round Up to Charity feature does not involve a gift of property, the special condition at paragraph (d) is not relevant and does not require satisfying.

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38. Guidance in relation to the records needed to evidence a gift is provided in the ATO online publication *Gifts and fundraising: Receipts from third parties* which states:

We will accept third-party receipts as evidence of a gift to a DGR if the receipt:

- identifies the DGR
- states the fact that the amount is a donation to the DGR.

39. The Account Holder's quarterly Everyday Account bank statements will be sufficient written evidence to substantiate a deduction being claimed under section 30-15 on the basis that:

- they include the date of each Round Up to Charity transaction debited from the Account Holder's Everyday Account
- they include the amount of each Round Up to Charity transaction debited from the Account Holder's Everyday Account
- the statement for the quarter ended 30 June includes the total Round Up to Charity transactions debited from the Account Holder's Everyday Account and donated to Intelligent Foundation for the financial year
- they identify Intelligent Foundation as the deductible gift recipient (by name and/or by ABN), and
- they state that all Round Up to Charity transactions are donated, on the Account Holder's behalf, to Intelligent Foundation.

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Status: **not legally binding**

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2005/13

*Legislative references:*

- ITAA 1936 166
- ITAA 1936 Pt IVA
- ITAA 1997 26-55(2)
- ITAA 1997 Div 30
- ITAA 1997 30-15
- ITAA 1997 30-15(2)

- ITAA 1997 30-17
- ITAA 1997 Subdiv 30-B
- ITAA 1997 30-120
- ITAA 1997 Subdiv 30-DB
- ITAA 1997 995-1(1)
- TAA 1953 426-102 Sch 1
- Australian Charities and Not-for-profits Commission Act 2012

*Other references:*

- [Gifts and fundraising: Receipts from third parties](#)

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ATO references

NO: 1-P6SY30A

ISSN: 2205-5517

BSL: PW

ATOLaw topic Income tax ~~ Deductions ~~ Gifts / donations ~~ Other

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