


# ***CR 2002/23 - Income tax: AusBulk Ltd - 0:90:10 Extended Wheat Pool***

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## **Class Ruling**

### **Income Tax: AusBulk Ltd - 0:90:10 Extended Wheat Pool.**

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<b>Contents</b>	<b>Para</b>
<b>What this Class Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Arrangement</b>	<b>9</b>
<b>Ruling</b>	<b>10</b>
<b>Background</b>	<b>14</b>
<b>Explanations</b>	<b>18</b>
<b>Detailed contents list</b>	<b>27</b>

#### ***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**

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' 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*.

#### **Class of persons**

3. The class of persons to whom this Ruling applies are all persons ('growers') who, after 1 July 2001, enter into a contract for the sale of wheat by delivery or transfer into the 0:90:10 extended wheat pool ('0:90:10 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 described below at paragraph 9 is carried out in accordance with the details of the arrangement provided in this Ruling.

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

- (a) 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
- (b) this Ruling may be withdrawn or modified.

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The Manager  
Legislative Services, AusInfo  
GPO Box 1920  
CANBERRA ACT 2601.

## **Date of effect**

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8. This ruling applies to the income year commencing 1 July 2001 and subsequent years in which the arrangement is offered by AusBulk.

## **Arrangement**

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9. The arrangement that is the subject of this ruling is the 0:90:10 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 14 November 2001 from Ernst & Young requesting the Commissioner to make a class ruling in relation to the assessability of amounts from the sale of wheat by growers into the 0:90:10 pool.
- (b) Ernst & Young letter to AusBulk dated 11 October 2001.
- (c) Facsimile and covering letter dated 1 February 2002 from Ernst & Young in response to a request for further

information on 11 January 2002. Also included are a description of the 0:90:10 pool arrangement and the 'AusBulk 0:90:10 Extended Wheat Pool Product Terms and Conditions'.

- (d) Product brochures entitled:
  - (i) 'AusBulk 0:90:10 Extended Wheat Pool'.
  - (ii) 'Grain marketing that makes sense'.
  - (iii) 'How can we help you?'.
- (e) AusBulk's sample documents:
  - (iv) Delivery weighnote.
  - (v) Confirmation of Title Transfer
  - (vi) 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.**

## **Ruling**

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### **Sales of wheat into the 0:90:10 pool**

10. For growers returning their income on an accruals basis, distributions made by AusBulk are included in assessable income in the income year in which AusBulk declares each distribution.

11. For growers returning their income on a cash basis, distributions are included in assessable income in the income year in which the grower receives the payments.

### **Trading stock**

12. The wheat ceases to be trading stock of the grower at the time AusBulk accepts delivery of the wheat.

### **Application of Part IVA**

13. Having regard to the facts of the arrangement, Part IVA does not apply.

## Background

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14. When wheat is delivered or transferred into the 0:90:10 pool, a grower accepts the terms and conditions set out in the ‘AusBulk 0:90:10 Extended Wheat Pool Product Terms and Conditions’.

15. The AusBulk 0:90:10 Extended Wheat Pool Product Terms and Conditions provide that:

- ‘A contract for the sale of wheat is formed between AusBulk and [the grower] by the physical delivery of the wheat to the 0:90:10 pool at a bulk handler’s receival site, or by AusBulk Grain Marketing Division approving an in-store transfer authorised by [the grower] to the 0:90:10 pool, or by [the grower] agreeing with AusBulk Grain Marketing Division for the future delivery of wheat to the 0:90:10 pool (as evidenced by the issue to [the grower] of a valid AusBulk contract number);’
- ‘Title of and physical risk for the wheat passes to AusBulk at the time of delivery of the wheat to the 0:90:10 Pool. Delivery is deemed to occur:
  - (a) in the case of physical delivery, at the time [the grower] accepts all the bulk handler’s terms and conditions of receival, including the selection of the 0:90:10 as the purchase option, by signing the completed weighnote supplied by the bulk handler; and
  - (b) in the case of in-store transfer, when AusBulk Grain Marketing Division has approved the transfer and it has been processed by the bulk handler (as evidenced either by the bulk handler updating AusBulk Grain Marketing Division’s acquisitions records in respect of the transfer or by designating the transfer in the bulk handler’s system as having been fulfilled).’
- ‘AusBulk may publish or advise growers of the estimated 0:90:10 pool return for a particular harvest season. This is an estimate only and actual distributions may vary considerably. [A grower is] not entitled to any pool payment until such time that AusBulk declares a distribution for the 0:90:10 Pool for a particular harvest season;’
- ‘The 0:90:10 Pool payment distributions will be made in two separate intervals. The first payment will be

90% of the estimated 0:90:10 Pool return (as determined by AusBulk) at that time. The second and final pool distribution payment will be the actual 0:90:10 Pool return (as determined by AusBulk) less the amount of the first distribution;'

- 'In estimating the 0:90:10 Pool return and prior to payment of the first pool payment distribution AusBulk may deduct all storage, outturn and handling charges (and, in the case of wheat delivered to AusBulk's receival sites, calculated as if the 0:90:10 Pool was a separate client of AusBulk), as well as all transport costs, transfer charges and compulsory levies applicable to a grower's deliveries to the 0:90:10 Pool;'
- 'The 0.90.10 Pool payment distributions will be net of any selling costs and expenses incurred in respect of pool sales of [a grower's] wheat and a pool management fee as determined by AusBulk from time to time.'

16. The AusBulk 0:90:10 Extended Wheat Pool Product Terms and Conditions also set out the general timing for the declaration and payment of the 0:90:10 pool distributions as it applies for each harvest season. These terms and conditions provide:

- 'Subject to compliance with these terms and conditions, the declaration of the first 0:90:10 Pool payment distribution will be made in July of the year following the opening of the pool;'
- 'Subject to compliance with these terms and conditions, the declaration of the second and final 0:90:10 Pool payment distribution will be made in April of the year following the first declaration of the pool payment distribution;'
- '[A grower] will not be entitled to a distribution from the 0:90:10 Pool until such time as a payment has been declared;'
- 'All 0:90:10 Pool payment distributions will be made within 5 working days after the payment declaration has been made.'

17. The specific timing (i.e., exact date) for the declaration and payment of the pool distributions for any particular harvest season will be detailed in the product brochure for the 0:90:10 pool which is published by AusBulk for each harvest season.

## **Explanations**

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### **Sales of wheat into the 0:90:10 pool**

18. By delivering or transferring wheat into the 0:90:10 pool, AusBulk and the grower enter into a contract of sale. At the time AusBulk accepts delivery of the grower's wheat or approves an in-store transfer, the grower has sold and AusBulk has purchased the wheat.

19. At the time growers sell their wheat 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.

20. 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.

21. For growers returning their income on an accruals basis, distributions made by AusBulk are included in assessable income in the income year in which AusBulk declares each distribution.

22. For growers returning income on a cash basis, distributions are included in assessable income in the year in which the grower receives the payments.

### **Trading stock**

23. As stated at paragraph 18, the grower has sold and AusBulk has purchased the wheat at the time AusBulk accepts delivery of the wheat.

24. When accepted into the 0:90:10 pool by AusBulk, the wheat delivered by the grower is mixed with that of other growers. Accordingly, the grower has lost dispositive power over the wheat as the wheat of that particular grower is no longer identifiable. In the circumstances title in the wheat has passed to AusBulk and the grower has disposed of the wheat (*Farnsworth v. FC of T* (1949) 78 CLR 504; (1949) 9 ATD 33).

25. Consequently, the wheat ceases to be trading stock of the grower at that time.

**Application of Part IVA**

26. Having regard to the commercial character of the arrangement, Part IVA does not apply.

**Detailed contents list**

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

	<b>Paragraph</b>
<b>What this Class Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Arrangement</b>	<b>9</b>
<b>Ruling</b>	<b>10</b>
Sales of wheat into the 0:90:10 pool	10
Trading stock	12
Application of Part IVA	13
<b>Background</b>	<b>14</b>
<b>Explanations</b>	<b>18</b>
Sales of wheat into the 0:90:10 pool	18
Trading stock	23
Application of Part IVA	26
<b>Detailed contents list</b>	<b>27</b>

**Commissioner of Taxation**

24 April 2002

*Previous draft:*

Not previously released in draft form

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

*Related Rulings/Determinations:*

CR 2001/1; TR 92/1; TR 97/16

*Legislative references:**Subject references:*

- wheat growing

- TAA 1953 Pt IVAAA
- ITAA 1997 6-5
- ITAA 1936 Pt IVA
- ITAA 1997 Div 70

# CR 2002/23

- Copyright Act 1968

*Case references:*

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

ATO References

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