

CR 2004/123 - Income tax: ABB Grain Limited - 0:90:10 extended barley pool



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Class Ruling

Income tax: ABB Grain Limited – 0:90:10 extended barley 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

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 barley by delivery or transfer into the 0:90:10 extended barley pool ('0:90:10 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 12 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- this Ruling may be withdrawn or modified.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 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

9. The arrangement described in this ruling is substantially the same as the arrangement described in Class Ruling CR 2003/96 apart from the change of name of the grain pool operator from AusBulk Limited to ABB Grain Limited.

Arrangement

10. The arrangement that is the subject of this ruling is the 0:90:10 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 barley by growers into the 0:90:10 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 2003/96.

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 barley is delivered or transferred into the 0:90:10 pool, a grower accepts the terms and conditions set out in the 'ABB Grain Limited Pools Standard Terms and Conditions'.

12. The ABB Grain Limited 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;

- 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 ABB Grain Limited for each harvest season;
- Unless otherwise stated in the relevant product brochure ABB Grain Limited 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 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;
- Once a distribution is declared it is a debt due to you from ABB Grain Limited and is payable within 30 days from declaration; and
- 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 ABB Grain Limited) at that time. The second and final pool distribution payment will be the actual 0:90:10 pool return (as determined by ABB Grain Limited) less the amount of the first distribution.

Ruling

Sales of barley into the 0:90:10 pool

13. 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.

14. 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.

Trading stock

15. The barley ceases to be trading stock of the grower under Division 70 of the ITAA 1997 at the time ABB Grain Limited accepts delivery of the barley.

Application of Part IVA

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

Explanation

Sales of barley into the 0:90:10 pool

17. By delivering or transferring barley into the 0:90:10 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 barley or approves an in-store transfer, the grower has sold and ABB Grain Limited has purchased the barley.

18. At the time growers sell their barley 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.

19. 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.

20. 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.

21. 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.

Trading stock

22. As stated at paragraph 17, the grower has sold and ABB Grain Limited has purchased the barley at the time ABB Grain Limited accepts delivery of the barley.

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

24. Consequently, the barley 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

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

Detailed contents list

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

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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 Div 70
- Copyright Act 1968

Case references:

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

ATO references

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