


TR 2000/D19 - Income tax: assessability of amounts from the sale of barley, grain or other commodities to ABB Grain Export Limited or ABB Grain Limited.

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This document has been finalised by TR 2001/5.



Draft Taxation Ruling

Income tax: assessability of amounts from the sale of barley, grain or other commodities to ABB Grain Export Limited or ABB Grain Limited.

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling explains when the amounts a grower of barley, grain or other commodities ('grower') is entitled to receive from sales to ABB Grain Export Limited ('ABBGEL') or ABB Grain Limited ('ABBGL') are assessable income for the purposes of the *Income Tax Assessment Act 1997* ('ITAA 1997').
2. This Ruling does not address the deductibility of expenses.

Class of persons

3. This Ruling applies to all growers who enter into a contract for the sale of barley, grain or other commodities to ABBGEL or ABBGL.

Class of arrangement

4. The contract to which this Ruling applies is an ABB payment agreement. Options available to growers for selling barley, grain and other commodities under an ABB payment agreement are as follows:

- a cash sale;
- a sale for a guaranteed minimum price;

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- a fixed price contract;
- pooling in the standard pool; and
- pooling in the extended pool.

5. This Ruling may apply to transactions or agreements a grower may enter into with other parties but only where those transactions or agreements are made under a contract that is the same as an ABB payment agreement.

Ruling

Sales of barley, grain or other commodities for cash

6. For growers returning their income on an accruals basis, gross amounts from the sale of barley, grain or other commodities for cash are included in assessable income in the income year in which the grower sells the barley, grain or other commodity.

7. For growers returning their income on a cash basis, gross amounts from the sale of barley, grain or other commodities are included in assessable income in the income year in which the grower receives the payment.

Sales of barley, grain or other commodities under guaranteed minimum price contracts

8. For growers returning their income on an accruals basis, the gross guaranteed amount from the sale of barley, grain or other commodities is included in assessable income in the year in which the grower sells the barley, grain or other commodity.

9. The gross amount of any subsequent payment to the grower from the sale of barley, grain or other commodities under a guaranteed minimum price contract is included in assessable income in the income year in which the subsequent payment to the grower is determined and declared by ABBGL.

10. For growers returning their income on a cash basis, gross amounts from the sale of barley, grain or other commodities under a guaranteed minimum price contract are included in assessable income in the income year in which the grower receives the payment or payments.

Sales of barley, grain or other commodities under fixed price contracts

11. For growers returning their income on an accruals basis, gross amounts from the sale of barley, grain or other commodities at a fixed price are included in assessable income in the income year in which the grower sells the barley, grain or other commodity.

12. For growers returning their income on a cash basis, gross amounts from the sale of barley, grain or other commodities are included in assessable income in the income year in which the grower receives the payment.

Pool distributions

13. For growers returning their income on an accruals basis, the gross amounts of interim and final distributions made under an ABB payment agreement are included in assessable income in the income year in which ABBGEL or ABBGL declares each distribution.

14. For growers returning their income on a cash basis, the gross amounts of interim and final distributions are included in assessable income in the income year in which the grower receives the payments.

Amounts received

15. The grower is treated as having received amounts when those amounts are applied or dealt with on the grower's behalf or as the grower directs. This includes any distributions applied by ABBGEL or ABBGL as repayments of loans to the grower by ABBGL.

Trading stock

16. The barley, grain or other commodities cease to be trading stock of the grower at the time ABBGEL or ABBGL accepts delivery.

Drawing amounts

17. Harvest advance drawing amounts and subsequent advance drawings paid to growers under the terms of an ABB payment agreement are loans and are not income.

Underwriting protection

18. In cases where the grower pays the optional underwriting fee and the amount owing in respect of the harvest advance drawing amount exceeds the total amount of the pool distributions, the

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difference between the amount owing in respect of the harvest advance drawing amount and the total amount of the pool distributions is assessable income under section 6-5 of the ITAA 1997 in the income year in which the final pool distribution is declared.

19. In cases where, as a result of the grower having underwriting protection, the grower is discharged from any obligation to pay:

- fees and charges for sales with respect to barley the grower has delivered; and/or
- interest charges thereon and on the amount owing in respect of the harvest payment drawing amount;

the amount discharged is assessable income under section 20-20 of the ITAA 1997 in the income year in which the final distribution is declared.

20. Paragraphs 18 and 19 apply to a grower regardless of whether the grower returns income on a cash basis or on an accruals basis.

Part IVA

21. Whether or not Part IVA of the *Income Tax Assessment Act 1936* ('ITAA 1936') will apply to include a harvest advance drawing amount in assessable income will depend on the facts of a particular case. In our view, Part IVA would normally not apply. The following factors support this view:

- the optional commercial underwriting fee;
- the rate of interest charged;
- the amount of the harvest advance drawing amount as a proportion of the estimated net pool return; and
- the likelihood that the harvest advance drawing amount will be repaid in full over a relatively short period.

Date of effect

22. When finalised, this Ruling applies to years commencing on and after 1 July 1999. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Definitions

23. The expressions used in this ruling have the following meaning.
24. **‘ABB payment agreement’** refers to a contract of sale in respect of barley, grain or other commodities between the grower and ABBGEL and ABBGL or the grower and ABBGL.
25. **‘Actual pool revenue’** is the amount the ABBGEL or ABBGL determines to be its total revenue attributable to the sale of barley, grain or other commodities sold or disposed of in connection with the pool.
26. **‘Actual net pool return’** refers to the actual pool revenue less all associated overheads, gains or losses, costs, expenses, liabilities, outgoings, taxes and provisions.
27. **‘Actual net pool return per tonne’** refers to the actual net pool return divided by the total number of tonnes of barley, grain or other commodities in the pool.
28. **‘Amounts owing’** refers to the amounts a grower owes ABBGL and includes the harvest advance drawing amount and subsequent advance drawings (if any) as well as accrued interest, fees and charges and other amounts actually or contingently owing.
29. **‘Encumbrance’** refers to any security for the payment of money or the performance of obligations including but not limited to a mortgage, charge, lien, pledge, trust, or power and further includes obligations to repay any moneys owed to ABBGL.
30. **‘Estimated net pool return’** refers to ABBGEL’s or ABBGL’s estimate of the actual net pool return in respect of the pool.
31. **‘Extended pool’** means that a grower elects to receive pool payments only as and when declared by ABBGEL or ABBGL, as distinct from receiving a harvest advance drawing amount. (Refer to ‘standard pool’ at paragraph 42.)
32. **‘Fees and charges for sales’** refers to amounts the grower irrevocably authorises ABBGEL or ABBGL to deduct from the amount of any distribution from the pool with respect to barley, grain or other commodities the grower has delivered including:
- a pool management fee as determined by ABBGEL or ABBGL from time to time;
 - all fees, duties and charges incurred by ABBGEL or ABBGL in connection with the acceptance of delivery of barley, grain or other commodities into the pool and the purchase of same including any industry levies;

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- any costs, fees and charges incurred or anticipated to be incurred by ABBGEL or ABBGL or on the grower's behalf in connection with the acceptance of any delivery of barley, grain or other commodity including without limitation storage, handling, transport and port costs from the grower's pool distributions.
33. **'Grain'** includes wheat, oats, triticale, rye and other grains excluding barley that ABBGL purchases from growers.
34. **'Grower'** refers to a person who produces the barley, grain, oilseeds, pulses or other commodities that are delivered under an ABB payment agreement. The term 'grower' does not apply to a trader or other parties who are not the original producers of the grain.
35. **'Grower registration form'** refers to the grain registration and claim for payment form or any other document in a form prescribed by ABBGEL or ABBGL for registration of growers.
36. **'Grower-to-buyer contract marketing option'** refers to a grower entering into an ABB payment agreement agreeing to receive the daily price at the time of delivery to the end-user of barley, grain or other commodities stored on the grower's farm.
37. **'Harvest advance drawing amount'** refers to the maximum amount that ABBGL is prepared to lend to a grower in one drawing in respect of a delivery of barley, grain or other commodities which are the subject of a drawing as soon as practicable after delivery based on the announced first advance.
38. **'Multi-grade contract marketing option'** refers to a grower entering into an ABB payment agreement to sell barley, grain or other commodities for cash in respect of deliveries of specified quantities of a particular grade or several grades to a specified silo.
39. **'Other commodities'** includes oil-seeds and pulses that ABBGL purchases from growers but excludes barley and grain.
40. **'Pool'** means in respect of any delivery of barley, grain or other commodity ABBGEL or ABBGL purchased from a grower, the pool of barley, grain or other commodity of a particular description established by ABBGEL or ABBGL for a season notified by ABBGEL or ABBGL to that grower to be the pool (subject to any agreement between ABBGEL or ABBGL and the grower).
41. **'Special pre-harvest scheme marketing option'** refers to a grower entering into an ABB payment agreement agreeing to sell particular quantities or grades of barley, grain or other commodities that provide higher returns due to a specific need in the market.
42. **'Standard pool'** means that a grower elects to receive the harvest advance drawing amount.

43. **‘Subsequent advance drawing’** refers to any amount advanced by ABBGL other than the harvest advance drawing amount.

44. **‘Trigger price contract marketing option’** refers to an arrangement allowing a grower to nominate a price at which the grower would like to enter into an ABB payment agreement to sell barley, grain or other commodities for cash. Once the trigger price is reached, the grower elects whether or not to sell the barley, grain or other commodity to ABBGL.

45. **‘Underwriting protection’** means that any obligation the grower has to repay an amount owing in respect of the harvest advance drawing amount, amounts payable in respect of fees and charges for sales and interest on those amounts, to the extent not repaid shall be discharged and the grower shall no longer have any such obligation.

Background

Methods of selling barley, grain and other commodities

46. ABBGL replaced the Australian Barley Board as from 1 July 1999. Arrangements for the sale of barley to ABBGL or ABBGEL have been implemented for the 1999/2000 season and subsequent seasons.

47. Growers have a number of options when selling their barley, grain or other commodities to ABBGEL or ABBGL. They may:

- sell their barley, grain or other commodities to ABBGL for cash;
- sell their barley, grain or other commodities to ABBGL for a guaranteed minimum price;
- sell their barley, grain or other commodities to ABBGL under a fixed price contract;
- sell their barley to ABBGEL into a standard pool or an extended pool; or
- sell their barley, grain or other commodities to ABBGL into a standard pool or an extended pool.

48. Other marketing options exist for growers when they sell their barley, grain or other commodities for cash under the ABB payment agreement. They include:

- a ‘trigger price contract’ marketing option;
- a ‘special pre-harvest scheme’ marketing option;
- a ‘multi-grade contract’ marketing option;

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- a ‘grower-to-buyer contract’ marketing option.

49. When selling their barley, grain or other commodities, growers enter into an ABB payment agreement. By completing a grower registration form, the grower registers with ABBGEL or ABBGL and makes a request for payment for the barley, grain or other commodities sold to ABBGEL or ABBGL. The grower registration form is updated each year rather than for each delivery. Weighbridge ticket delivery dockets are used to record the selling option the grower has selected in respect of a particular delivery.

Selling barley, grain or other commodities for cash

50. Growers selling for cash deliver their barley, grain or other commodities to ABBGL or its customer and receive the daily cash price offered by ABBGL at the silo site.

Selling barley, grain or other commodities for a guaranteed minimum price

51. A grower selling under a guaranteed minimum price contract receives a cash payment from ABBGL for the crop after delivery to ABBGL. This initial amount paid by ABBGL is the minimum that will be paid in respect of the barley, grain or other commodities delivered by the grower.

52. In addition to the initial guaranteed minimum amount paid by ABBGL, a subsequent payment that is not guaranteed may be made by ABBGL at its discretion depending on whether the net price ABBGL obtains when on-selling the barley, grain or other commodities is higher than expected.

Selling barley, grain or other commodities under a fixed price contract

53. Growers entering into a contract to sell barley, grain or other commodities for a fixed price agree to deliver a specified quantity to ABBGL at an agreed time for an agreed price.

Selling barley into a pool

54. A grower enters into an ABB payment agreement for the sale of barley to ABBGEL or barley, grain or other commodities to ABBGL by delivering the barley, grain or other commodities into a pool ABBGEL or ABBGL operates. Delivery occurs when the barley, grain or other commodity is physically delivered to ABBGEL, ABBGL or their agents at a receival site, or by an in-store transfer.

Title in the barley passes to ABBGEL or ABBGL when it accepts a delivery from a grower.

55. Growers choose one of two pool options each time they deliver to a pool operated by ABBGEL or ABBGL. Growers nominate on weighbridge ticket delivery dockets to deliver their barley, grain or other commodity into either a standard pool or an extended pool.

Pool distributions

56. For both the standard and the extended pool options, ABBGEL or ABBGL agrees to pay distributions from the proceeds of the pool as consideration for the sale of the barley, grain or other commodities by the grower. Prior to the determination of the actual pool revenue, ABBGEL or ABBGL may make interim distributions from time to time to the extent that it has sold barley, grain or other commodities from the pool. The interim distributions are made to growers at a time and for an amount determined by ABBGEL or ABBGL, based on the estimated net pool return per tonne for the barley, grain or other commodities delivered into the pool.

57. A final distribution is paid after the pool is finalised and the actual net pool return per tonne is determined by ABBGEL or ABBGL.

58. ABBGEL or ABBGL first pays any distribution from pool proceeds to the holder of any encumbrance over the barley, grain or other commodities. Where a grower delivers into the standard pool, this includes all amounts owing by the grower to ABBGL on account of harvest advance drawings and any subsequent advance drawings in respect of the delivery. Once all encumbrances have been discharged, ABBGEL or ABBGL pays distributions from the pool to the grower.

59. Whether or not growers avail themselves of a harvest advance drawing amount, the ABB payment agreement provides that the amount a grower receives from ABBGEL or ABBGL as sale proceeds is based on future sales of barley, grain or other commodities from a pool and the costs associated with those sales. The total revenue attributable to the sale of barley, grain or other commodities sold through a pool is neither known nor ascertainable until the actual pool revenue is determined. The actual pool revenue depends on the price ABBGEL or ABBGL can obtain when on-selling barley, grain or other commodities from a pool.

Standard Pool

60. When a grower nominates to deliver into a standard pool, the grower elects to receive a harvest advance drawing amount in respect of that delivery. ABBGL, at its sole discretion, may make subsequent

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advance drawings available to the grower if the estimated pool return has not been finalised.

61. The grower receives the harvest advance drawing amount from ABBGL as soon as practicable after delivery of the barley, grain or other commodities to ABBGEL or ABBGL. In cases where there is a pre-existing encumbrance over the barley, ABBGL will pay to the encumbrance holder an amount sufficient to discharge the encumbrance and pay the balance of the harvest advance drawing amount to the grower.

62. The grower subsequently becomes entitled to interim and final distributions from the standard pool as described at paragraphs 56-58.

Underwriting protection

63. Pool distributions may not entirely repay amounts owing in respect of a grower's harvest advance drawing amount and interest charges thereon. Underwriting protection is offered only to growers who deliver barley to ABBGEL. Agreement to underwriting protection and payment of the underwriting fee by the grower is not compulsory. If the grower pays the optional underwriting fee, ABBGL will provide underwriting protection as defined at paragraph 45.

64. If a grower declines to pay the optional underwriting fee and the harvest advance drawing amount exceeds the total net pool return the grower is liable to repay the difference.

Extended pool

65. When a grower delivers barley, grain or other commodities and nominates the extended pool, that grower elects:

- to receive pool distributions as and when declared by ABBGEL or ABBGL as payment for the barley, grain or other commodity delivered (as described at paragraphs 56-58); and
- not to receive a harvest advance drawing amount.

Explanation

Sales of barley, grain or other commodities for cash

66. Growers can sell their barley, grain or other commodities for cash. For growers returning their income on an accruals basis, the gross proceeds should be included in assessable income in the income

year in which the barley, grain or other commodities are sold. For growers returning their income on a cash basis, the gross proceeds should be included in assessable income in the income year in which the amount has been received, applied or dealt with on the grower's behalf or as the grower directs.

Sales of barley, grain or other commodities under guaranteed minimum price contracts

67. Growers can sell their barley, grain or other commodities under a contract for a guaranteed minimum price. Under a guaranteed minimum price contract, the amount growers receive for their barley, grain or other commodities is quantified at the time the grower sells the barley, grain or other commodity to the extent of the guaranteed minimum price.

68. Payment of subsequent amounts to growers by ABBGL is contingent upon the net price ABBGL obtains when on-selling the barley, grain or other commodities exceeding the guaranteed minimum price already paid. Growers have no entitlement to receive a subsequent amount unless and until ABBGL determines and declares that a subsequent amount is to be paid to them.

69. For growers returning their income on an accruals basis, the gross guaranteed amount from the sale of barley, grain or other commodities is included in assessable income in the income year in which the grower sells the barley, grain or other commodity. The gross amount of any subsequent amount payable to the grower under a guaranteed minimum price contract for the sale of barley, grain or other commodities is included in assessable income in the income year in which the subsequent amount payable to the grower is determined and declared by ABBGL.

70. For growers returning their income on a cash basis, gross amounts from the sale of barley, grain or other commodities under a guaranteed minimum price contract are included in assessable income in the income year in which the grower receives the payment.

Sales of barley, grain or other commodities under fixed price contracts

71. Growers can sell their barley, grain or other commodities for a fixed price. For growers returning their income on an accruals basis, the gross proceeds are included in assessable income in the income year in which the barley, grain or other commodities are sold.

72. For growers returning their income on a cash basis, the gross proceeds are included in assessable income in the income year in

which the amount is received, applied or dealt with on the grower's behalf or as the grower directs.

Pool distributions

73. Under the various Sale of Goods Acts which operate in each State or Territory of Australia, a contract for the sale of goods is made when the seller agrees to transfer the property in the goods to the buyer for the sale price. Where under a contract property in goods is transferred from the seller to the buyer the contract is a sale. Subsection 34(b) of the *Barley Marketing Act 1993* (Vic) & (SA) achieves the same result for barley sold to ABBGEL.

74. The terms and conditions of the ABB payment agreement provide:

- by delivering barley, grain or other commodities into a pool, the grower offers to sell to ABBGEL or ABBGL and ABBGEL or ABBGL agrees to buy the barley, grain or other commodities on and subject to the terms and conditions of the ABB payment agreement; and
- once barley, grain or other commodities have been delivered to a pool and accepted by ABBGEL or ABBGL, title and physical risk in the barley, grain or other commodities pass from the grower to ABBGEL or ABBGL. ABBGEL or ABBGL accepts delivery of all barley, grain or other commodities that are delivered into a pool and which meets ABBGEL's or ABBGL's receival standards.

75. Therefore, the ABB payment agreement is a contract of sale. The grower has sold and ABBGEL or ABBGL has purchased the barley, grain or other commodity at the time ABBGEL or ABBGL accepts delivery of the barley, grain or other commodity.

76. For selling their barley, grain or other commodities, growers receive consideration in the form of a right to receive pool distributions as and when ABBGEL or ABBGL sells the pooled barley, grain or other commodities. In order for there to be a debt which constitutes assessable income, the debt must be both presently recoverable by a grower as a debt and fully quantified.

77. In *Henderson v. FC of T* 119 CLR 612, at 636-637; 69 ATC 4049, at 4060; 1 ATR 133, at 146-147, Windeyer J said:

‘... I think that services rendered for fees do not result in income derived ... until the fees are either paid or payable. This, of course, may be before an account for payment is rendered. For example, a physician may be entitled in law to be paid for attendances upon his patient before his treatment of him for his illness has been completed and he has sent him a

bill. What he is thus entitled to be paid forms part of his income calculated on an earnings basis ... for work done ...

Money is not, I think, earned income until it is in law recoverable as a debt ...'

78. In *Barratt & Ors v. FC of T* 92 ATC 4275, at 4281-4282; 23 ATR 339, at 346, Gummow J said:

'No doubt a debt that is presently recoverable by action generally will be an amount "derived" in the relevant sense by the creditor. The creditor will have a present right to receive the amount in question, something both earned and quantified, without the presence of any element of contingency or defeasibility. At the other end of the scale, where the right of the taxpayer is contingent, there will be no derivation before the contingency is satisfied: see Parsons, "Income Taxation in Australia", §11.49. Nor will there be derivation if the debt is yet to be quantified: *Farnsworth v. FC of T* (1949) 9 ATD 33 at 37; (1949) 78 CLR 504 at 513 per Latham C.J.'

79. An obvious difference between the taxpayers in the *Barratt* and *Henderson* cases and a grower is that the grower derives his income from the sale of an asset constituting trading stock, whereas the *Barratt* and *Henderson* taxpayers derived their income from the delivery of services. The possibility that a situation involving income from the disposal of trading stock may require a different approach to income from the rendering of professional services is pointed to in *J. Rowe and Son Pty Ltd v. FC of T*; At 124 CLR 421, at 448; 71 ATC 4157, at 4158; 2 ATR 497, at 499 Menzies J stated:

'It is implicit in the foregoing provisions that the proceeds of any sale of stock in the ordinary course of business will be brought into account in the year in which it is sold. The problem then is to determine what are the proceeds of sales in the year in which the taxpayer sells items of trading stock to customers upon terms and takes a bill of sale to secure payment in the manner already stated.

In a system of annual accounting, ordinary business considerations would indicate that what becomes owing to a company for trading stock sold during a year should, in some way, be brought into account to balance the reduction of trading stock which the transaction effects. Any other method of accounting would lead to a misrepresentation of the trader's financial position ...'

80. However, in our view, any distinction between proceeds from the sale of trading stock and professional fee income is immaterial in this regard. The crucial factor in both sets of circumstances is the proper characterisation of what if anything is actually payable to the

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relevant taxpayer. In a practical sense, it is not relevant whether a right to receive payment arises from the sale of an asset or the delivery of services. Both forms of activity ultimately give rise to a debt, and what really matters is the character of that debt. In determining the character of a debt for income tax purposes, regard must be had to such questions as whether or not a right to receive payment 'is presently recoverable by action' (*Barratt*) and whether the amount of the debt is quantified or quantifiable. At the time when growers deliver barley, grain or other commodities into a pool, they have no recoverable debt because the amount is not quantifiable. On this basis, it cannot be said that they have derived any assessable income.

81. Support for this view comes from the decision of the Full Federal Court in *FC of T v. Australian Gas Light Co. & Anor*; at 51 ALR691, 698; 83 ATC 4800 at 4805; 15 ATR 105, at 111 the court stated:

'The fees of accountants are derived when they have matured into recoverable debts: *Henderson v. FC of T* 70 ATC 4016; (1970) 119 CLR 621. Fees paid in advance for provision of dancing lessons are not derived until they are earned: *Arthur Murray NSW Pty Ltd v. FC of T* (1965) 114 CLR 314; (1965) 14 A.T.D. 98. The income of a trading business is derived when stock is sold and a debt is created: *Rowe J. & Son Pty Ltd v. FC of T* 71 ATC 4157; (1971) 124 CLR 421.

Conversely, fees for the price of goods sold are not earned, and thus not derived, if a further step is required before the taxpayer is entitled to payment: *Rowe's case*. The passing of property in stock in trade does not necessarily signify the derivation of income if the consequence is merely the creation of a right to an account rather than entitlement to a debt: *Farnsworth v. FC of T* (1949) 78 CLR 504; (1949) 9 ATD 33...

Helpful as these tests may be as signposts, each of them has been conceived in and applied to varied and contrasting circumstances. As signposts they indicate that invariably something more than the provision of goods or services by the taxpayer is required.'

82. Under the ABB payment agreement, growers have a right to receive payment of their share of the pool proceeds but that right is not presently existing or recoverable because it is neither quantified nor quantifiable when growers sell barley, grain or other commodities. Growers agree to receive payment for their barley, grain or other commodities by way of pool distributions. Pool distributions are determined and declared after ABBGEL or ABBGL sells the barley, grain or other commodities from the respective pools. ABBGEL or

ABBGL quantifies the amount payable to growers by making determinations of pool distributions.

83. When ABBGEL or ABBGL declares a pool distribution, the net amount of the distribution to a grower is a presently existing recoverable debt for payment of that part of the pool return. The determination of the distribution by ABBGEL or ABBGL is the time when this debt becomes presently existing, unconditional and not subject to any contingency.

84. For growers returning income on an accruals basis, interim or final distributions are included in assessable income in the income year in which ABBGEL or ABBGL declares the distribution.

85. For growers returning income on a cash basis, the gross amounts of pool distributions paid, applied or dealt with on the grower's behalf or as the grower directs are included in the assessable income of the grower in the income year in which the distributions are paid, applied or dealt with on the grower's behalf or as the grower directs.

86. When standard pool participants receive a harvest advance drawing amount and obtain underwriting protection they are guaranteed a minimum return for barley, grains or other commodities sold to ABBGEL or ABBGL. The existence of this minimum guarantee raises the question of whether a grower's return could be regarded as comprising two separate components, one being variable and the other being fixed (and therefore quantified). This raises the additional question of whether the guaranteed component should be regarded as derived upon its quantification.

87. In our view, this aspect does not disturb the conclusions we have reached. Regardless of the guaranteed amount, a grower's entitlement to payment only arises as and when ABBGEL or ABBGL declares a distribution.

88. Our conclusions follow from and depend on the propositions that 'where the right of the taxpayer is contingent, there will be no derivation before the contingency is satisfied' (*Barratt*; paragraph 78 above), and 'Money is not, I think, earned income until it is in law recoverable as a debt' (*Henderson*; paragraph 77 above). The right of a grower to payment is contingent upon the barley, grain or other commodities being sold by ABBGEL or ABBGL and a distribution being declared. Similarly, no amount is recoverable by a grower unless and until the barley, grain or other commodities are sold and a distribution is declared. For these reasons we do not consider that the existence of the guaranteed return changes the position we have reached in regard to derivation.

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Amounts received

89. 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 on the taxpayer's behalf or as the taxpayer directs.

90. Amounts credited or applied by ABBGEL or ABBGL in full or partial satisfaction of any amounts owing to ABBGL or any other encumbrance are treated as having been received by the grower.

Trading stock

91. As stated at paragraph 75, the grower has sold and ABBGEL or ABBGL has purchased the barley, grain or other commodity at the time ABB accepts delivery of the barley, grain or other commodity. Consequently, the barley, grain or other commodities ceases to be trading stock of the grower at that time.

92. In any event, the grower has delivered the barley, grain or other commodity into a pool where it is unidentifiable. Therefore, the grower has disposed of the barley, grain or other commodity (*Farnsworth v. FC of T* 78 CLR 504; 9 ATD 33).

Drawing amounts

93. As stated at paragraph 60, under the terms of the ABB payment agreement, a grower who nominates to deliver into a standard pool receives a harvest advance drawing amount and may also receive subsequent advance drawings in respect of each delivery.

94. Harvest advance drawing amounts and subsequent advance drawings received by growers are loans under the terms of the ABB payment agreement and are not income. Paragraph 95 contains the factors that we consider support this conclusion.

95. In the circumstances of the arrangements we accept that drawing amounts are loans because of the following factors:

- the rate of interest charged;
- the term of the loan;
- upon electing to obtain underwriting protection, the grower is charged a commercial underwriting fee to limit the lender's recourse;
- although recourse to the loan is limited to the pool proceeds, the harvest advance drawing amount is less than the anticipated final pool return.

Accordingly, it is reasonable to expect that the loan to the grower will be repaid in full.

Underwriting protection

96. Pool distributions are offset against encumbrances including harvest advance drawing amounts and subsequent advance drawings. There is a risk that the pool distributions will not entirely repay the encumbrances. For the payment of an optional commercial underwriting fee, ABBGL accepts the risk in relation to the harvest advance drawing amounts and undertakes not to recover the difference between the amounts specified in the definition of underwriting protection at paragraph 45 and the pool distributions.

97. In cases where the grower pays the optional underwriting fee and the amount owing in respect of the harvest advance drawing amount exceeds the total amount of the pool distributions, the difference is assessable income under section 6-5 of the ITAA 1997 in the income year in which the final pool distribution is declared.

98. In cases where, as a result of the grower having underwriting protection, the grower is discharged from any obligation to pay:

- fees and charges for sales with respect to barley the grower has delivered; and/or
- interest charges thereon and on the amount owing in respect of the harvest payment drawing amount;

the amount discharged is assessable income under section 20-20 of the ITAA 1997 in the income year in which the final distribution is declared.

99. Paragraphs 97 and 98 apply to a grower regardless of whether the grower returns income on a cash basis or on an accruals basis.

Part IVA

100. Subject to a grower's individual circumstances, we do not consider that Part IVA of the ITAA 1936 applies to this arrangement. The factors noted at paragraph 95 are relevant to this conclusion. We also accept that the time lag between the sowing of a crop and an entitlement to pool distributions may cause a grower to borrow in order to provide working capital for the following year and/or repay existing loans. The harvest advance drawing amount is designed to meet this need.

Examples

Sales of barley for cash

101. Kevin, who returns his income on an accruals basis, sells his barley for cash. He signs the registration and claim for payment form, delivers his barley to a receiving station and signs the weighbridge ticket docket. He will receive his payment at a later date.

102. Kevin derives income from the sale of his barley on the date he delivers it and signs the weighbridge ticket delivery docket. Kevin includes the gross amount of income derived in his assessable income in the year in which his barley is delivered/sold.

Pool distributions

(i) Where no harvest advance drawing amount received

103. Ned, who returns his income on an accruals basis, elects not to receive the harvest advance drawing amount when selling his barley to ABBGEL.

104. Ned receives periodic distributions as declared in April 2000, August 2000 and January 2001, and a final distribution as declared in June 2001.

105. Each distribution declared by ABBGEL and either payable to Ned or applied against his amounts owing is included in his assessable income in the income year in which ABBGEL declares the distributions.

(ii) Where harvest advance drawing amount received

106. Jim, who returns his income on an accruals basis, elects to deliver into the standard pool and receive a harvest advance drawing amount when selling his barley to ABBGEL.

107. Jim receives the following amounts in accordance with the ABB payment agreement:

- a harvest advance drawing amount within 21 days of the delivery date;
- a subsequent advance drawing declared by ABBGEL on 27 March 2000; and
- periodic distributions as declared in April 2000, August 2000 and January 2001, and a final distribution as declared in June 2001.

108. Jim's income tax position is the same as Ned's in the previous example. Each distribution declared by ABBGEL and either payable

to Jim or applied or dealt with on Jim's behalf or as Jim directs is included in his assessable income in the year in which ABBGEL declares the distributions. The fact that Jim elects to receive a harvest drawing amount when completing the ABB registration and claim for payment form and weighbridge ticket delivery docket has no effect on the time when he derives his income.

109. The harvest advance drawing amount and subsequent advance drawing are loans and are not income.

(iii) Where harvest advance drawing amount received – cash basis of returning income

110. Mary, who returns her income on a cash basis, elects to receive a harvest advance drawing amount when selling her barley to ABBGEL.

111. In accordance with the ABB payment agreement, Mary receives the following amounts or those amounts are applied or dealt with on Mary's behalf or as Mary directs:

- a harvest advance drawing amount within 21 days of the delivery date;
- a subsequent advance drawing declared by ABBGEL on 27 March 2000; and
- interim distributions as declared by ABBGEL and received by the grower in April 2000, August 2000 and January 2001, and a final distribution as declared and received in June 2001.

112. Each distribution declared by ABBGEL and applied against Mary's amounts owing to ABBGL is included in her assessable income in the income year in which ABBGL receives the distribution. Each distribution declared by ABBGL and paid to Mary will be included in her assessable income in the income year in which she receives the payment.

113. The harvest advance drawing amount and subsequent advance drawing are loans and are not income.

(iv) Where harvest advance drawing amount exceeds pool distributions

114. After delivering barley to ABBGEL into the standard pool and agreeing to underwriting protection, Pam receives a harvest advance drawing amount of \$550,000 on 10 December 2000 from ABBGL.

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The following pool distribution amounts are applied against the amount owing to ABBGL:

- \$200,000 on 31 March 2001;
- \$100,000 on 20 July 2001; and
- \$50,000 on 12 October 2001.

115. ABBGEL declares the pool realised on 12 October 2001 and advises Pam that there will be no further pool distributions. Pam's amount owing totals \$220,000, including \$10,000 for interest and \$10,000 fees and charges for sales.

116. In addition to the pool distributions applied against her amount owing to ABBGL, Pam derives assessable income of \$220,000 (\$550,000 less pool distributions of \$350,000 (\$200,000 is included in her assessable income as per paragraph 18) plus \$20,000 interest and fees and charges for sales is included as per paragraph 19) in the year ended 30 June 2002. Pam includes \$220,000 in her assessable income for the year ended 30 June 2002. Pam derives this assessable income in the year ended 30 June 2002 regardless of whether she returns her income on a cash basis or on an accruals basis.

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Your comments

118. If you wish to comment on this draft Ruling, please send your comments promptly by **2 February 2001** to:

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Commissioner of Taxation

21 December 2000

Previous draft: - Barley Marketing Act 1993 (Vic & -
Not previously issued in draft form SA) 34(b)

Related Rulings/Determinations: *Case references:*
TR 92/20 - Arthur Murray NSW Pty Ltd v. FC of
T 114 CLR 314; 14 ATD 98

Subject references:
- Barratt & Ors v. FC of T 92 ATC
4275; 23 ATR 339
- barley growing - Farnsworth v FC of T 78 CLR 504;
- borrowings & loans 9 ATD 33
- crops as trading stock - FC of T v. Australian Gas Light Co.
- derivation of income 83 ATC 4800; 15 ATR 105
- primary production income - Henderson v. FC of T 119 CLR 612;
- sale of goods 69 ATC 4049; 1 ATR 133

Legislative references:
- J. Rowe & Son Pty Ltd v. FC of T
124 CLR 421; 71 ATC 4157; 2 ATR
497
- ITAA 1997 6-5
- ITAA 1997 6-5(4)
- ITAA 1997 20-20
- ITAA 1936 Pt IVA

ATO references:
NO T2000/19812
BO
ISSN: 1039-0731



Australian
Taxation

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