

PGBR 2003/1 - Product grants and benefits: public rulings

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Product Grant and Benefit Ruling

Product grants and benefits: public rulings

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Preamble

*This document does not rule on the application of a 'tax law' and is, therefore, not a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. The document is, however, administratively binding on the Commissioner of Taxation.*

What this Ruling is about

1. This Ruling outlines the system of binding public rulings that applies to product grant or benefit laws after the *Energy Grants (Credits) Scheme Act 2003* (EGCS Act) became law and following the consequential amendments to the *Product Grants and Benefits Administration Act 2000* (PGBA Act) and the *Taxation Administration Act 1953* (TAA 1953) by the *Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003*.

2. A public rulings system has applied to income tax and fringe benefits tax matters since 1 July 1992. As a result of amendments to the PGBA Act and the TAA 1953, the existing system applies to product grant and benefit laws from 1 July 2003.

3. In relation to product grant and benefit public rulings, this Ruling considers:

- what constitutes a product grant and benefit public ruling;
- the types of product grant and benefit public rulings we publish;
- the legal status and binding effect of product grant and benefit public rulings;
- the legal status of rulings in relation to product grant or benefit laws that are not product grant and benefit public rulings;
- the withdrawal of product grant and benefit public rulings;
- the date of effect of product grant and benefit public rulings;
- the application of the public rulings provisions;

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- the grouping and numbering of product grant and benefit public rulings; and
- the relationship between product grant and benefit rulings and settled disputes.

4. Product Grant and Benefit Public Ruling PGBR 2003/2 outlines the system of binding and reviewable private rulings in relation to product grant and benefit laws.

Ruling

What constitutes a public ruling

5. Part IVAAA of the TAA 1953 contains most of the tax law public ruling provisions and sets out what is necessary for a published opinion of the Commissioner to be a public ruling about a tax law. Under these public rulings provisions, a public ruling sets out the Commissioner's opinion as to the way in which a 'tax law' applies to:

- any person in relation to a class of arrangements (section 14ZAAE of the TAA 1953);
- a class of persons in relation to an arrangement (section 14ZAAF of the TAA 1953); or
- a class of persons in relation to a class of arrangements (section 14ZAAG of the TAA 1953).

6. The *Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003* amended the TAA 1953 so that for the purposes of the public rulings system, the term 'tax law' includes a product grant or benefit law (section 14ZAAA).

7. The term 'product grant or benefit law' is defined in section 14ZAAA of the TAA 1953 as a law under which the extent of an entitlement to a grant or benefit mentioned in section 8 of the PGBA Act is worked out. The product grants and benefits listed in section 8 of the PGBA Act (and their corresponding entitlement Acts) are:

- fuel sales grants (*Fuel Sales Grants Act 2000*);
- product stewardship (oil) benefits (*Product Stewardship (Oil) Act 2000*); and
- energy grants (*Energy Grants (Credits) Scheme Act 2003*).

8. The term 'tax law' as defined in Part IVAAA of the TAA 1953 does not include all laws in relation to product grants or benefits. Rather, only those provisions that determine the extent of an entity's entitlement to a product grant or benefit are included in the definition of the term 'tax law'.

9. If a provision of an Act or a regulation is not relevant to working out the extent of entitlement to one or more of those grants or benefits (e.g. it deals exclusively with the lodging of claim forms or the Commissioner's access powers), it is not a tax law for the purpose of the public ruling provisions. A statement setting out the Commissioner's view on procedural, administrative, or collection aspects of the law (e.g. the procedure for recovering overpaid grants) is not a 'public ruling' for the purposes of Part IVAAA of the TAA 1953.

10. A public ruling on the way in which a product grant or benefit law applies may be a ruling on the way in which the Commissioner would exercise his discretion under that law (section 14ZAAD of the TAA 1953).

11. The Commissioner makes a public ruling by publishing it, and publishing notice of it in the *Gazette* (subsection 14ZAAI(1) of the TAA 1953). The notice in the *Gazette* must include the number and subject heading by which the public ruling is identified and a brief description of the public ruling (subsection 14ZAAI(3) of the TAA 1953).

12. A public ruling must:

- state that it is a public ruling for the purposes of Part IVAAA of the TAA 1953; and
- include a number and a subject heading by which it can be identified (subsection 14ZAAI(2) of the TAA 1953).

13. A public ruling is *made* at the later of the time when it is published and the time when the notice of it is published in the *Gazette* (section 14ZAAJ of the TAA 1953).

The types of ruling we publish

14. We make known our views about the application of the tax laws (including product grant or benefit laws) in a number of ways.

15. Public rulings provide guidance for practitioners, industry specialists and tax office staff on matters of policy and interpretation of tax law (including a product grant or benefit law). Product grant and benefit public rulings in the product grant and benefit ruling series (see paragraph 41 below) will cover the interpretation of the product grant or benefit laws and, if appropriate, detail guidelines, precedents, practices or procedures that affect the grant or benefit entitlements of eligible entities. Product grant and benefit public rulings in the PGBR series are also an appropriate way for the Commissioner to clarify administrative developments arising from new or revised interpretations of the product grant and benefit laws.

16. We also make known our views about product grant and benefit laws in other Australian Taxation Office (ATO) publications such as information booklets, ATO press releases and in speeches of senior officers.

17. A public ruling may be published in any of the forms mentioned in paragraphs 15 to 16 above. Each public ruling will be readily identifiable because it will clearly state that it is a public ruling for the purposes of Part IVAAA of the TAA 1953.

18. In publishing a public ruling concerning the way in which a product grant or benefit law applies, we will include a statement along the following lines:

The number, subject heading, What this Ruling is about (including Class of person/arrangement sections), Date of Effect, and Ruling parts of this document are a 'public ruling' for the purposes of Part IVAAA of the TAA and are legally binding on the Commissioner.

Thus, if a public ruling is only capable of being a public ruling in part, only that part will have the status of a public ruling.

19. For example, a product grant and benefit public ruling could set out the ATO's view as to how an entity's entitlement to a particular type of energy grant will be determined and also outline the ATO's plans to audit some of the entities that had received those grants. That part of the ruling which states the ATO's view as to how entitlement is determined would be a public ruling but that part which explains our audit strategy would not be a public ruling.

20. If no part of a ruling concerns the way in which a product grant or benefit law applies, no part of the ruling is a public ruling for the purposes of Part IVAAA. However, the ruling may still be administratively binding. The preamble to each publicly issued ruling will identify whether it is legally or administratively binding.

Status and binding effect of favourable public rulings

21. A product grant and benefit public ruling is legally binding if it can be said to be favourable to an entity. A product grant and benefit public ruling about an arrangement can be said to be favourable if:

- the way in which a product grant or benefit law applies to a entity in relation to that arrangement is different from the way the product grant and benefit public ruling states that the law applies; and
- the amount of a grant or benefit under an assessment in relation to an entity would (apart from the binding product grant and benefit public ruling provisions) be less than it would have been if the interpretation of the law stated in the product grant and benefit public ruling

had been applied (sections 24B and 24D of the PGBA Act).

22. A favourable product grant and benefit public ruling concerning an entitlement to a product grant or benefit is legally binding in the sense that the assessment and the amount of entitlement must be what they would have been if the interpretation of the law stated in the product grant and benefit public ruling applied (section 24B of the PGBA Act). Accordingly, an entity can self assess in line with a favourable product grant and benefit public ruling. If the Commissioner makes an assessment under a product grant or benefit law in respect of which the Commissioner has issued a public ruling stating that the law applies in a particular way, that assessment must be made in accordance with the way in which the law applies according to the ruling.

23. Product grant and benefit public rulings only apply to arrangements begun to be carried out after 1 July 2003 (when the binding rulings system for product grant and benefit laws commenced).

24. A product grant and benefit public ruling, that deals with the way in which the EGCS Act applies to on-road diesel fuel, on-road alternative fuel or off-road diesel fuel as defined in the Act, purchased or imported into Australia between 1 July 2000 and 30 June 2003 inclusive has binding legal effect from 1 July 2003.¹ If a public ruling dealing with the way in which the EGCS Act applies to an arrangement begun to be carried out before 1 July 2003, the ATO will treat that ruling as administratively binding in relation to that part of the arrangement.

Status of product grant and benefit public rulings which are not favourable public rulings

25. To the extent that a product grant and benefit public ruling is not a favourable public ruling, it does not have the force of law in the sense referred to in paragraph 21 or in any other sense. If there is no favourable public or private ruling relevant to a particular arrangement, we make our decision on the basis of the facts of the particular case having regard to any relevant product grant and benefit public rulings. If the provisions concerning legally binding public and private rulings do not apply, no conduct on the part of the ATO can operate as an estoppel against the operation of tax laws (including product grant or benefit laws. See *FC of T v. Wade* (1951) 84 CLR 105 at 116-117; 9 ATD 337 at 344 per Kitto J; *AGC (Investments)*

¹ Schedule 7 to the *Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003*, extends the application of the EGCS Act to such fuel.

Limited v. FC of T 91 ATC 4180; (1991) 21 ATR 1379 and the authorities cited in that case).

26. However, the basic administrative policy of the ATO is to stand by what is said in a public ruling and to depart from a public ruling only where there are good and substantial reasons to do so. To the extent a product grant and benefit public ruling is not a favourable public ruling, the ATO will only depart from the ruling in the following situations:

- there is a legislative change;
- a Tribunal or Court overturns or modifies an interpretation of the law on which a product grant and benefit public ruling is predicated; or
- the approach adopted in a product grant and benefit public ruling is no longer considered appropriate.

27. In summary, to the extent that a product grant and benefit public ruling is not legally ‘binding’, in the sense explained above in paragraph 2 under the public rulings provisions, the ATO will treat the ruling as administratively binding. As stated at paragraph 20, the preamble to each publicly issued ruling will identify whether it is legally or administratively binding.

Withdrawal of public rulings

28. The Commissioner may withdraw either the whole or part of a public ruling by:

- publishing notice of the withdrawal in the *Gazette* (subsection 14ZAAK(1) of the TAA 1953); or
- publishing a new public ruling which is inconsistent with an existing public ruling (subsection 14ZAAK(2) of the TAA 1953).

29. If a new public ruling is only partly inconsistent with an earlier public ruling, the earlier public ruling is only withdrawn to the extent of the inconsistency (subsection 14ZAAK(2) of the TAA 1953).

30. To the extent that a public ruling is withdrawn, it does not apply to arrangements entered into after the withdrawal. However, a withdrawn public ruling continues to apply to arrangements begun to be carried out before the withdrawal (section 14ZAAL of the TAA 1953).

Conflicting rulings

31. If a public ruling is issued about a matter and there is an earlier public ruling on the same matter, the earlier ruling continues to apply to arrangements commenced before the issue of the new ruling (even though it is withdrawn by the later ruling) to the extent that it is inconsistent with the later ruling (section 14ZAAL of the TAA 1953). If only one of those public rulings is favourable in the sense set out in paragraph 21, the favourable public ruling is binding in the manner set out in paragraphs 22 and the other has no effect.

32. However, there are special rules to resolve a conflict between two favourable product grant and benefit public rulings in relation to the same arrangement. There is only one application of the binding rulings provisions and that is the one which provides the entity with the greatest benefit (subsection 24D(3) of the PGBA Act).

33. Similarly, if there is a conflict between a favourable public ruling and a favourable private ruling under Part IVAA of the TAA 1953, there is only one application of the binding ruling provisions and that is the one which would result in the highest amount of grant or benefit (subsection 24D(3) of the PGBA Act).

34. If the Commissioner makes a public ruling about a tax law and that tax law is re-enacted or remade, the ruling is taken also to be a public ruling about the re-enacted or remade tax law to the extent the new law expresses the ideas of the old law (section 14ZAAM of the TAA 1953).

Date of effect of product grant and benefit public rulings

35. Each product grant and benefit public ruling will contain a date of effect paragraph that explains the application of the ruling.

36. Subject to the qualifications at paragraphs 37 and 38, product grant and benefit public rulings apply to past, present and future arrangements (subsection 14ZAAH(1) of the TAA 1953).

37. If a product grant and benefit public ruling states that it applies only to arrangements begun to be carried out after a specified date, it only applies to those arrangements (subsection 14ZAAH(2) of the TAA 1953). This may occur if the public ruling applies to a new provision in the law or if the Commissioner considers that it would be unfair to apply a public ruling to arrangements commenced before the ruling is made, even though there has not been an earlier public ruling on the matter.

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Application of public rulings provisions

38. The Commissioner has only been able to make public and private rulings on how a product grant or benefit law applies since 1 July 2003 (the date of commencement of the consequential amendments to the PGBA Act and the TAA 1953). Therefore a ruling that issued publicly prior to 1 July 2003 on a matter that is now within the definition of a product grant or benefit law is not a public ruling for the purposes of Part IVAAA of the TAA 1953.

Relationship between product grant and benefit rulings and settlements

39. Situations may arise where, after a dispute is settled between a claimant for a product grant or benefit and the ATO, a public ruling is issued that covers an issue which was part of the settlement. In such cases the public ruling will not apply to the claimant in relation to that issue for the claim periods which were the subject of the settlement. It will be our general practice to state in each product grant and benefit ruling the extent to which it will apply to claimants who have agreed to a settlement of an issue with the ATO.

40. If, after a settlement with a claimant, a basis of assessment of the amount of the grant or benefit is followed for future claim periods, and a new public ruling is issued which is:

- (i) less favourable to the claimant than the settlement terms - the ruling will apply to the claimant for all transactions, arrangements, agreements, acts or events entered into, commenced or occurring after the date the ruling is issued or any later date specified in the ruling; or
- (ii) more favourable to the claimant than the settlement terms - the ruling will generally have both a past application (other than in respect of the claim periods which were the subject of the settlement) and a future application.

Grouping and numbering of product grant and benefit rulings

41. Each product grant and benefit public ruling in the product grant and benefit ruling series will have the prefix 'PGBR' followed by the particular calendar year in which the Ruling issued. For example, rulings issued in 2003 will have the prefix PGBR 2003/.

42. The rulings will as far as practicable be numbered in the order they are issued. Thus, the first ruling issued in 2003 will be PGBR 2003/1, the second will be PGBR 2003/2 and so on.

43. As this is the first ruling in the PGBR series, it is numbered PGBR 2003/1.

44. The last public ruling issued by the ATO in a calendar year will contain a statement that it is the last public ruling of that year and that the next ruling will appear with a new prefix.

Detailed contents list

45. Below is a detailed contents list for this Product Grant and Benefit Public Ruling:

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Commissioner of Taxation 10 December 2003

Previous draft:

Not previously released in draft form.

Related Rulings/Determinations:
PGBR 2003/2

Subject References:

- public rulings
- private rulings
- product grants and benefits rulings
- product grants and benefits law
- taxation administration

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Legislative References:

- Taxation Administration Act 1953
- TAA 1953 Part IVA
- TAA 1953 14ZAAA
- TAA 1953 14ZAAD
- TAA 1953 14ZAAE
- TAA 1953 14ZAAF
- TAA 1953 14ZAAG
- TAA 1953 14ZAAH
- TAA 1953 14ZAAH(1)
- TAA 1953 14ZAAH(2)
- TAA 1953 14ZAAI(1)
- TAA 1953 14ZAAI(2)
- TAA 1953 14ZAAI(3)
- TAA 1953 14ZAAJ
- TAA 1953 14ZAAK(1)
- TAA 1953 14ZAAK(2)
- TAA 1953 14ZAAL
- TAA 1953 14ZAAM
- Product Grants and Benefits Administration Act 2000
- PGBAA 2000 8

- PGBAA 2000 24B
- PGBAA 2000 24D
- PGBAA 2000 24D(3)
- Energy Grants (Credits) Scheme Act 2003
- Energy Grants (Credits) Scheme (Consequential Amendments) Act (2003)
- Energy Grants (Credits) Scheme (Consequential Amendments) Act (2003) Schedule 7
- Product Stewardship (Oil) Act 2000
- Fuel Sales Grants Act 2000

Case References:

- FC of T v. Wade (1951) 84 CLR 105
- AGC (Investments) Limited v. FC of T 91 ATC 4180 ; (1991) 21 ATR 1379

ATO references

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