

# ***PGBR 2003/2 - Product grants and benefits: private rulings***

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *22 December 2004*



## Product Grant and Benefit Ruling

### Product grants and benefits: private 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. Product Grant and Benefit Ruling PGBR 2003/1 explains when a Product Grant and Benefit Ruling is a 'public ruling' and how it is binding on the Commissioner.*

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

#### **What this Ruling is about**

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1. This Ruling outlines the system of binding and reviewable private rulings that applies to product grant or benefit laws.
2. A private ruling system has applied to income tax and fringe benefits tax matters since 1 July 1992. As a result of the amendments to the *Product Grants and Benefits Administration Act 2000* (PGBA Act) and the *Taxation Administration Act 1953* (TAA 1953), the existing rulings system under Part IVAA of the TAA 1953 was extended to apply to product grant or benefit laws (other than to cleaner fuel grants laws under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* (EGCFS Act)) from 1 July 2003. Further amendments contained in the *Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Act 2004* extended the private ruling system to include cleaner fuel grants laws from 21 April 2004 when the EGCFS Act became law.
3. This ruling also discusses the scope of the new provisions in the EGCFS Act, the PGBA Act and the TAA 1953.
4. This Ruling considers:
  - what constitutes a product grant and benefit private ruling;
  - arrangements in relation to which product grant and benefit private rulings can be made;
  - who may apply for a product grant and benefit private ruling;

- the form of application and information to be provided;
- applications that do not have to be dealt with;
- withdrawal of a private ruling and the circumstances in which a private ruling will have no effect;
- meaning of binding effect of private rulings;
- resolving conflicts between a product grant and benefit private ruling and a product grant and benefit public ruling;
- right to object against a private ruling; and
- when a product grant and benefit private ruling becomes final.

5. Product Grant and Benefit Public Ruling PGBR 2003/1 outlines the system of public rulings in relation to product grant and benefit laws.

## Ruling

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### **What constitutes a product grant and benefit private ruling?**

6. Product grant and benefit private rulings (like private rulings in relation to income tax and fringe benefit tax matters) are:

- a written expression of opinion by the Commissioner
- about the way in which a tax law would apply
- to an entity (the rulee)
- in relation to an arrangement

7. Whereas a private ruling on income tax or fringe benefits tax applies to a specified year of income, a product grant and benefit private ruling applies to a specified claim period, as set out in section 12 of the PGBA Act.

8. 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).

9. The term ‘product grant or benefit law’ is defined in section 14ZAAA of the TAA 1953 as a law under which the extent of entitlement to a grant or benefit mentioned in section 8 of the PGBA Act is worked out. The product grants or 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*);
- energy grants (*Energy Grants (Credits) Scheme Act 2003*); and
- cleaner fuel grants (*Energy Grants (Cleaner Fuels) Scheme Act 2004*).

10. 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’. 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 purposes of Part IVAAA of the TAA 1953.

11. The Commissioner may limit the scope of a private ruling given to the precise question asked by the applicant. Alternatively, section 14ZAP of the TAA 1953 entitles the Commissioner to issue additional rulings, not sought by the applicant, in certain circumstances. In relation to product grant and benefit private rulings, the Commissioner may:

- rule on the way in which a different product grant or benefit law would apply in relation to the arrangement; or
- rule on the way in which a product grant or benefit law would apply in relation to a different claim period or a related arrangement.

12. Where a product grant and benefit private ruling request is very specific in its application to an arrangement and a particular product grant or benefit law, the Commissioner may give a product grant and benefit private ruling which does no more than express an opinion on that particular product grant or benefit law.

13. As an example, an entity might ask for a product grant and benefit private ruling on whether, under Part 4 of the EGCS Act (which relates to off-road credits), off-road fuel purchased for use in a truck is eligible for an off-road credit. The Commissioner may give a product grant and benefit private ruling that the fuel is not eligible for an off-road credit under Part 4, without considering whether or not another provision would apply to give another entitlement (for example, Part 3, which relates to on-road credits). Alternatively, the Commissioner may also give a related product grant and benefit private ruling expressing the view that the entity would be entitled to an on-road credit under Part 3.

14. Product grant and benefit private rulings give opinions on specific questions. It is therefore important for applicants to take care in the formation of those questions. For example, a question which seeks confirmation that sheep are 'live-stock' for the purposes of section 23 of the EGCS Act would receive an affirmative ruling. That ruling does not represent confirmation that an off-road credit would be available to the entity if say, their activities amounted to a hobby.

### **Arrangements in relation to which private rulings can be made**

15. A private ruling can apply to an arrangement which is proposed, is being carried out or has been completed (section 14ZAI of the TAA 1953). However, other than an arrangement described in paragraphs 16 and 16A, a product grant and benefit private ruling can only be issued in relation to arrangements that are begun to be carried out after 1 July 2003. Arrangement is widely defined in section 14ZAAA of the TAA 1953 to include a 'scheme, plan, action, proposal, course of action, course of conduct, transaction, agreement, understanding, promise or undertaking; or part of an arrangement'.

16. A product grant and benefit private 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 that Act, purchased or imported into Australia between 1 July 2000 and 30 June 2003 inclusive has binding legal effect if issued after 1 July 2003.<sup>1</sup>

16A. A product grant and benefit private ruling in relation to a cleaner fuel grant matter will only apply to arrangements begun to be carried out on or after 18 September 2003 (the date of commencement for an entitlement under the EGCS Act).

17. Given the variable nature of claim periods, an entity may apply for a product grant and benefit private ruling for the existing claim period plus all future claim periods with the last claim period ending on a specified date. However, the Commissioner may choose to rule for only a certain period.

### **Who may apply for a product grant and benefit private ruling**

18. An entity may either apply for a product grant and benefit private ruling regarding their own affairs (in relation to a claim period in relation to an arrangement), or they may seek a product grant and benefit private ruling on behalf of another entity. If they are applying for a product grant and benefit private ruling on behalf of another entity, they must obtain the written consent of the other entity.

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

19. The requirement in section 14ZAG of the TAA 1953 that the written consent of the entity be obtained means that an adviser, such as an accountant, cannot rely on an oral agreement for the general provision of accounting or taxation services as being sufficient authority. Any written consent between the adviser and their client needs to contain the client's consent to the adviser seeking private rulings on behalf of the client. The written agreement does not need to be made available to the Australian Taxation Office (ATO) unless requested.

20. In respect of discretionary and unit trusts, it would generally be the trustee who would request a private ruling about an arrangement entered into or carried out by the trust.

21. In respect of partnerships, a partner may apply for a private ruling on the partnership's behalf.<sup>2</sup>

### **Form of application and information to be provided**

22. Paragraph 14ZAJ(b) of the TAA 1953 requires an application to give such information, and be accompanied by such documents, relating to the private ruling as are required by the Commissioner. Application forms for product grant and benefit private rulings are available from all branches of the ATO and the use of them, although not compulsory, will usually expedite the handling of an application. The forms detail the type of information required by the Commissioner when dealing with requests for product grant and benefit private rulings.

23. In summary, the information required by the Commissioner falls into 5 categories:

- **The rulee:** name and tax file number or Australian business number;
- **The facts:** a full and complete description of the facts is required. A private ruling will bind the Commissioner only in relation to the particular arrangement described. Any material difference between stated and actual facts or the omission of a material fact will mean that the actual arrangement differs from the arrangement described in the private ruling;
- **The questions:** the request should refer to the specific sections of the particular Act on which a private ruling is required;

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<sup>2</sup> Subsection 51(1) of the PGBA Act provides that the Act and the entitlement Acts apply to a partnership as if the partnership were a person subject to the changes mentioned in subsection 51(2) to 51(5).

- **The issues to be considered:** applicants who are professional advisers in the field of product grants or benefits law are expected to provide a full description of the issues together with the results of research undertaken. That research might cover journal and textbook commentary on the relevant provisions and the application should detail case citations and references to public rulings (where applicable). Other applicants should complete the application form to the best of their ability and in accordance with the complexity of the matter raised. As mentioned, applicants are required to identify the sections of the Act on which they are seeking an interpretation. Applicants would ordinarily state their own opinion on the question together with the reasons behind that opinion and may, if they wish, supply a draft of the private ruling sought; and
- **Certifying certain facts:** these appear in a Yes/No format on the application form and ask for information such as details of the amount at issue, whether an audit is being carried out, whether the arrangement has commenced and whether the consent of the claimant has been obtained.

## **Applications that do not have to be dealt with**

24. Sections 14ZAQ and 14ZAN of the TAA 1953 describe the circumstances in which applications do not have to be dealt with by the Commissioner. Section 14ZAQ allows the Commissioner to decline to make a private ruling where the correctness of the ruling would depend on assumptions which were made about a future event or other matter. Alternatively, the Commissioner may make appropriate assumptions and issue a private ruling.

25. Section 14ZAN lists 10 circumstances where a private ruling does not have to be given. The circumstances relevant to product grant and benefit private rulings are:

- (a) The rulee already has a private ruling on the matter. Each product grant and benefit private ruling applies to a particular entity for a specified claim period. The existence of a product grant and benefit private ruling on the same matter in respect of a different claim period does not relieve the Commissioner of the obligation to comply with the application;

- (b) The matter sought to be ruled on has been decided for the purposes of a Commissioner assessment. A Commissioner assessment is defined as one made other than through the self assessment processes and includes an assessment made as the result of an audit;
- (c) The rulee has been informed of an audit having been commenced by the Commissioner and, in the opinion of the Commissioner, the matter sought to be ruled on will be required to be decided by that audit. However, if a private ruling request is not directed at forestalling the conclusion of an audit and the Commissioner is satisfied the request discloses all relevant facts, a private ruling will generally be given. There may be situations when a private ruling will not be given during an audit because of revenue collection consideration;
- (d) The application is frivolous or vexatious. Falling within this category are requests where the arrangement is only hypothetical or where the applicant is fully aware of their entitlements and is seeking a private ruling for purposes other than clarifying the law;
- (e) The arrangement to which the application relates has not been carried out, is not being carried out and is not seriously contemplated by the rulee;
- (f) In the opinion of the Commissioner, insufficient information has been provided by the applicant despite a request by the Commissioner for additional information; and
- (g) In the opinion of the Commissioner, it is unreasonable to comply with the application given the extent of resources available or other relevant matters. This provision would not often apply as it is only in respect of very time consuming matters that the Commissioner cannot devote resources.

### **Withdrawal of a private ruling and the circumstances where a private ruling will have no effect**

26. A private ruling can be withdrawn at any time with the consent of the rulee (subsection 14ZAU(1) of the TAA 1953). Without that consent, the Commissioner is restricted in the circumstances in which he can withdraw a private ruling. For example, if the arrangement has begun to be carried out, the Commissioner can only withdraw the private ruling if he forms an opinion about the relative disadvantage that would be suffered by the rulee because of the withdrawal

compared with the disadvantage suffered by another entity by a failure to withdraw the private ruling. In this context, 'another entity' will generally be a business competitor of the rulee. The Commissioner may (subject to the limitations in paragraph 27) withdraw a private ruling where the arrangement to which the ruling relates has not yet commenced.

27. A private ruling cannot be withdrawn (whether or not the arrangement has begun) if the ruling is under review, that is if the Commissioner has decided an objection against the private ruling and the rulee has either sought review of that decision or the period within which review may be sought has not ended (subsection 14ZAU(2) of the TAA 1953).

28. There are various circumstances under which a private ruling is taken never to have been made (section 14ZAY of the TAA 1953). The circumstances relevant to a product grant and benefit private ruling are where:

- (a) the private ruling has been withdrawn; or
- (b) the applicant failed to tell the Commissioner at the time of the application that:
  - where the applicant is not the rulee, the consent of the rulee was not genuine or was withdrawn before the application was made;
  - the rulee already had a private ruling on the matter;
  - the matter sought to be ruled on had been decided for the purposes of a Commissioner assessment; or
  - an audit was being carried out and the rulee had been informed.

## **Meaning of binding effect of product grant and benefit private rulings**

29. Section 24C of the PGBA Act provides that product grant and benefit private rulings will affect product grant or benefit assessments where:

- a product grant and benefit private ruling states that the law applies to an entity in a particular way; and
- the product grant and benefit private ruling would result in the entity being entitled to a higher grant or benefit in respect of an assessment for a particular

claim period than it would if the law were applied in the absence of the ruling.

30. In these cases, the assessment and the amount of the grant or benefit must be calculated in accordance with the product grant and benefit private ruling.

### **Resolving conflicts between a product grant and benefit private ruling and a product grant and benefit public ruling**

31. There may be occasions where a public ruling and private ruling may apply to the same entity in respect of the same arrangement in the same claim period. For example, a public ruling may be issued that conflicts with an existing private ruling. If the entity has already commenced the arrangement to which the private ruling relates, the private ruling cannot be withdrawn (except in limited circumstances) and both rulings could potentially apply.

32. Subsection 24D(3) of the PGBA Act ensures that there can only ever be one application of the binding rulings provisions and that it is the one which provides the entity with the highest amount of grant or benefit.

### **Review of product grant and benefit private rulings**

33. A rulee may object against an unfavourable product grant and benefit private ruling in the same way as an objection can be lodged against an assessment (subsection 14ZAZA(1)). However an objection cannot be made where an assessment has been made in respect of the arrangement and claim period covered by the product grant and benefit private ruling. In this situation the matter dealt with in the product grant and benefit private ruling may only be reviewed by objection against the assessment (subsection 14ZAZA(2)).

34. Where an objection against a private ruling is allowed (whether in whole or part) the ruling is taken to have been altered in accordance with the objection decision (subsection 14ZAZB(2)). If the objection is disallowed to any extent, the rulee may seek a review of the objection decision by the Federal Court or the Administrative Appeals Tribunal (AAT).

### **When a product grant and benefit private ruling becomes final**

35. Where an entity has obtained a product grant and benefit private ruling, unsuccessfully objected against the ruling, and obtained a decision from an AAT or court, sections 24E and 24F of the PGBA Act render that decision final and irreversible once the time period for further appeal expires.

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36. This means that should another entity with identical facts obtain a more favourable decision from the AAT or court, neither the first entity nor the Commissioner have the ability to reverse the decision of the first tribunal or court.

37. However, sections 24E and 24F of the PGBA Act only apply in respect of the claim period specified in the product grant and benefit private ruling. Hence, the decision made by the AAT or court does not limit the entity's ability to claim a grant or benefit for periods outside of the claim period specified in the product grant and benefit private ruling.

38. On the other hand, where a rulee obtains a favourable decision from the AAT or court and the Commissioner does not appeal the decision within the requisite time period, the Commissioner has no power to later amend the entity's amount of grant or benefit if the AAT or court issues a decision in respect of another entity that clearly shows that the first entity should not have been entitled to a grant or benefit.

## **Detailed contents list**

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

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**Commissioner of Taxation**

10 December 2003

*Previous draft:*

Not previously released in draft form

*Related Rulings/Determinations:*

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*Subject References:*

- private rulings
- public rulings
- product grant and benefit ruling
- product grant and benefit law
- taxation administration

*Legislative References:*

- Taxation Administration Act 1953
- TAA 1953 Part IVAAA
- TAA 1953 14ZAAA
- TAA 1953 14ZAP
- TAA 1953 14ZAI
- TAA 1953 14ZAG
- TAA 1953 14ZAJ(b)
- TAA 1953 14ZAQ
- TAA 1953 14ZAN
- TAA 1953 14ZAU(1)
- TAA 1953 14ZAU(2)
- TAA 1953 14ZAY
- TAA 1953 14ZAZA(1)
- TAA 1953 14ZAZA(2)
- TAA 1953 14ZAZB(2)

- Energy Grants (Cleaner Fuels) Scheme Act 2004
- Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Act 2004
- Energy Grants (Credits) Scheme Act 2003
- EGCS 2003 Part 3
- EGCS 2003 Part 4
- EGCS 2003 23
- Product Grants and Benefits Administrations Act 2000
- PGBAA 2000 8
- PGBAA 2000 12
- PGBAA 2000 24C
- PGBAA 2000 24D(3)
- PGBAA 2000 24E
- PGBAA 2000 24F
- PGBAA 2000 51(1)
- PGBAA 2000 51(2)
- PGBAA 2000 51(3)
- PGBAA 2000 51(4)
- PGBAA 2000 51(5)
- Energy Grants (Credits) Scheme Consequential Amendments Act 2003
- Energy Grants (Credits) Scheme Consequential Amendments Act 2003 Schedule 7
- Fuel Sales Grants Act 2000
- Product Stewardship (Oil) Act 2000

## ATO references

NO: 2002/12091

ISSN: 1449-1583