

1 Additional Definitions

Capitalised terms which are not otherwise defined have the meaning given in the Standard User Funding Agreement.

Aurizon Consolidated Group means the consolidated group, as that term is defined in section 703-5 of the Tax Act, of which Aurizon Holdings Limited is the head company.

Favourable Tax Ruling means a Tax Ruling Determination which is consistent with the intended tax outcomes of the Standard User Funding Agreement.

Ordinary Unit has the meaning given in the Trust Deed.

Preference Unit has the meaning given in the Trust Deed.

Reviewing Parties means:

- (a) for Tax Rulings in respect of the matters set out in Section 1 and Section 2 of [Appendix 1], the User Representative; and
- (b) for Tax Rulings in respect of the matters set out in Section 3 of [Appendix 1], the User Representative and Queensland Treasury Holdings.

Ruling Applicant means:

- (a) for Tax Rulings in respect of the matters set out in Section 1 of [Appendix 1], the Trustee;
- (b) for Tax Rulings in respect of the matters set out in Section 2 of [Appendix 1], Aurizon Network; and
- (c) for Tax Rulings in respect of the matters set out in Section 3 of [Appendix 1] Queensland Treasury Holdings.

Tax Act means the Income Tax Assessment Act 1936 (Cth) (**1936 Act**), the Income Tax Assessment Act 1997 (Cth) (**1997 Act**) or both the 1936 Act and the 1997 Act, as appropriate, and, to the extent applicable, the Taxation Administration Act 1953 (Cth) and includes tax laws having a similar or corresponding object or effect in any jurisdiction.

Tax Law means any law or legal requirement, including common law, in equity, under statute, regulation or by-law, under which tax is imposed, assessed, charged or administered by any governmental agency and includes, without limitation, the Tax Act.

Tax Ruling means a 'private ruling' as defined in subsection 995-1(1) of the Tax Act or an 'administratively binding advice' within the meaning of Practice Statement Law Administration 2008/3.

Tax Ruling Application means an application, made in the approved form to the Australian Taxation Office, for a Tax Ruling.

Tax Ruling Determination means the written determination provided by the Australian Taxation Office in respect of a Tax Ruling Application.

Transaction Documents means, in respect of a User Funded Project, the modified versions of the Standard User Funding Agreement.

Trustee means, in respect of a User Funded Project, the trustee of the trust.

User means, as the context requires, the prospective or actual holders of Preference Units.

User Representative means a representative appointed by 50% or more of Access Seekers or Users (as the case may be).

2 Tax Rulings

2.1 Aurizon Network must seek Favourable Tax Rulings

- (a) Aurizon Network must seek and use all best endeavours to obtain a Favourable Tax Ruling in respect of each of the matters set out in [Appendix 1]:
 - (1) as soon as practicable after the Approval Date, on the basis of the Standard User Funding Agreement; and
 - (2) unless otherwise agreed with the User Representative, on the basis of the Transaction Documents for each User Funded Project prior to executing those Transaction Documents.
- (b) In complying with its obligations under clause 2.1(a) and unless otherwise agreed with the User Representative, Aurizon Network must seek such Favourable Tax Rulings in accordance with the processes set out in this clause 2.
- (c) If Aurizon Network and the User Representative cannot reach agreement under clause 2.1(a)(2), Aurizon Network acknowledges that any of them may refer the matter to be determined by a Tax Ruling Expert in accordance with clause 2.5.

2.2 Preparation and review of Tax Ruling Applications

- (a) Aurizon Network must:
 - (1) promptly prepare a draft Tax Ruling Application for each of the matters set out in [Appendix 1]; and
 - (2) provide each draft Tax Ruling Application to the relevant Reviewing Parties for their review.
- (b) Prior to preparing a draft Tax Ruling Application in accordance with clause 2.1(a), Aurizon Network must:
 - (1) in the case of clause 2.1(a)(1), consult with Access Seekers; and
 - (2) in the case of clause 2.1(a)(2), agree with the User Representatives, as to whether:
 - (3) a particular Tax Ruling will be sought as an 'administrative binding advice' within the meaning of Practice Statement Law Administration 2008/3 or as a 'private ruling' within the meaning of subsection 995-1(1) of the Tax Act; and
 - (4) a particular Tax Ruling will be sought by Aurizon Network or by the relevant Ruling Applicant.
- (c) In respect of a Tax Ruling referred to in clause 2.1(a)(2), Aurizon Network may agree with the User Representative:
 - (1) that two or more of the matters set out in [Appendix 1] will be addressed in a single Tax Ruling Application; or
 - (2) that a Tax Ruling will be sought in accordance with this clause 2 in respect of a matter not listed in [Appendix 1]. If so, Aurizon Network must agree with the User Representative whether that Tax Ruling will be sought by Aurizon Network or by another applicant.
- (d) Aurizon Network must ensure that each Tax Ruling Application makes proper and adequate disclosure of all facts, matters and circumstances relevant to the Tax Ruling Application.

- (e) After receiving a draft Tax Ruling Application pursuant to 2.2(a)(2), the Reviewing Parties may provide Aurizon Network with written comments in respect of a draft Tax Ruling Application, in which case Aurizon Network must:
 - (1) acting reasonably, in good faith and as soon as reasonably practicable after receiving comments on a draft Tax Ruling Application, prepare a revised draft of that Tax Ruling Application which takes into account the comments received from the Reviewing Parties; and
 - (2) provide the revised draft Tax Ruling Application to the Reviewing Parties for their review.
- (f) If, following the preparation of a revised draft Tax Ruling Application in accordance with clause 2.2(e), the Reviewing Parties have further comments on a draft Tax Ruling Application:
 - (1) Aurizon Network must, acting reasonably, in good faith and having regard to the effect on the goodwill or reputation of each party to the Transaction Documents (as applicable), agree the form and content of the Tax Ruling Application with the Reviewing Parties; and
 - (2) if Aurizon Network and the Reviewing Parties cannot agree the form and content of a Tax Ruling Application, Aurizon Network acknowledges that any of them may refer the matter to be determined by a Tax Ruling Expert in accordance with clause 2.5.

2.3 Lodgement of Tax Ruling Applications and further enquiries

- (a) As soon as practicable after the form and content of a Tax Ruling Application is agreed in accordance with clause 2.2, Aurizon Network must, or must procure that the relevant Ruling Applicant:
 - (1) lodge the Tax Ruling Application with the Australian Taxation Office; and
 - (2) provide the Reviewing Parties with a copy of the Tax Ruling Application as lodged with the Australian Taxation Office.
- (b) Other than in respect of correspondence, meetings or discussions of a purely administrative nature, Aurizon Network must, or must procure that the relevant Ruling Applicant:
 - (1) promptly provide the Reviewing Parties with all correspondence with the Australian Taxation Office in relation to a Tax Ruling Application; and
 - (2) make provision for the Reviewing Parties to attend all meetings or discussions with the Australian Taxation Office in relation to a Tax Ruling Application.
- (c) If Aurizon Network or the Ruling Applicant (as applicable) receives a request for further information in relation to a Tax Ruling Application, Aurizon Network must:
 - (1) prepare a draft response to the Australian Taxation Office; and
 - (2) provide the draft response to the Reviewing Parties for their review.
- (d) The Reviewing Parties may provide Aurizon Network with written comments on a draft response prepared in accordance with clause 2.3(c), in which case Aurizon Network must:
 - (1) acting reasonably, in good faith and as soon as reasonably practicable after receiving comments on a draft response, prepare a

revised draft of that response which takes into account the comments received from the Reviewing Parties; and

- (2) provide the revised draft response to the Reviewing Parties for their review.
- (e) If, following the preparation of a revised draft response in accordance with clause 2.3(d), the Reviewing Parties have further comments on a draft response:
- (1) Aurizon Network must, acting reasonably and in good faith and having regard to the effect on the goodwill or reputation of each party to the Standard User Funding Agreement or Transaction Documents (as applicable) agree the form and content of the response with the Reviewing Parties; and
 - (2) if Aurizon Network and the Reviewing Parties cannot agree the form and content of a response, Aurizon Network acknowledges that any of them may refer the matter to a Tax Ruling Expert in accordance with clause 2.5.
- (f) Communications with and the preparation of responses to the Australian Taxation Office in accordance with clauses 2.3(b), 2.3(c), 2.3(d) and 2.3(e) must be undertaken by Aurizon Network having regard to the applicable due date for communicating with or responding to the Australian Taxation Office (including any extensions to such due date).

2.4 Tax Ruling Determination and Favourable Tax Ruling

- (a) As soon as practicable after Aurizon Network or the Ruling Applicant (as applicable) receives a Tax Ruling Determination from the Australian Taxation Office:
- (1) Aurizon Network must, or must procure that the Ruling Applicant, provide a copy of a Tax Ruling Determination to the Reviewing Parties for their review; and
 - (2) Aurizon Network must, acting reasonably and in good faith, agree with the Reviewing Parties whether the Tax Ruling Determination constitutes a Favourable Tax Ruling.
- (b) If Aurizon Network and the Reviewing Parties agree that a Tax Ruling Determination is not a Favourable Tax Ruling, Aurizon Network must, acting reasonably and in good faith, agree with the Reviewing Parties the action which should be taken. Such action may include (but is not limited to):
- (1) ensuring that appropriate amendments are made to the Standard User Funding Agreement or the Transaction Documents (as applicable) to allow a Favourable Tax Ruling to be obtained; or
 - (2) having regard to the prospects of success and the effect on the goodwill or reputation of each party to the Standard User Funding Agreement or Transaction Documents (as applicable), disputing the Tax Ruling Determination with the Australian Taxation Office.
- (c) If Aurizon Network and the Reviewing Parties:
- (1) cannot agree whether the Tax Ruling Determination constitutes a Favourable Tax Ruling; or
 - (2) agree that the Tax Ruling Determination is not a Favourable Tax Ruling but cannot agree what action should be taken,
- Aurizon Network acknowledges that any of them may refer the matter to be determined by a Tax Ruling Expert in accordance with clause 2.5.

2.5 Tax Ruling Expert

Where any matter is referred to a Tax Ruling Expert pursuant to this clause 2 then Aurizon Network acknowledges that the following provisions of this clause 2.5 will apply:

- (a) the Tax Ruling Expert will be:
 - (1) an independent tax expert that the parties to the matter requiring determination agree; or
 - (2) failing such agreement within 10 Business Days, appointed by the President (or his or her delegate) of the Tax Institute of Australia (or its successor);
- (b) in reaching his or her determination, the Tax Ruling Expert will act as an expert and not as an arbitrator and must review the matter referred to them on the basis of the current Tax Law and any announced but not yet enacted changes to the Tax Law, the relevant facts and circumstances and the Australian Taxation Office's interpretation of the Tax Law;
- (c) Aurizon Network must provide reasonable assistance to the Tax Ruling Expert, including providing materials reasonably requested by the Tax Ruling Expert and attending hearings convened by the Tax Ruling Expert;
- (d) in the absence of manifest error, a determination of the Tax Ruling Expert will be final and binding upon the parties; and
- (e) the costs and expenses (including reimbursements) of the Tax Ruling Expert, will be borne by Aurizon Network and the Reviewing Parties as determined by, and in the proportions determined by, the Tax Ruling Expert.

2.6 Changes in facts and circumstances

Where a Favourable Tax Ruling has been obtained in respect of the Transaction Documents for a particular User Funded Project, Aurizon Network must:

- (a) apply the Tax Law in accordance with that Favourable Private Ruling; and
- (b) acting reasonably and in good faith, immediately notify and consult with the Reviewing Parties regarding any facts or circumstances (including potential changes in facts and circumstances and the issue or transfer of Preference Units to another party) which may:
 - (1) preclude Aurizon Network from complying with its obligations under clause 2.6(a); or
 - (2) prevent Aurizon Network, Queensland Territory Holdings, a Trustee or any Users from relying on a Favourable Private Ruling.

2.7 Refreshing of Favourable Tax Rulings

Unless otherwise agreed between Aurizon Network and the User Representative, where a Favourable Tax Ruling in respect of the Transaction Documents for a User Funded Project comes to an end due to the passage of time, at least 6 months before the expiration of the Favourable Tax Ruling Aurizon Network must, or must procure that the relevant Ruling Applicant seek a replacement Favourable Tax Ruling from the Australian Taxation Office in accordance with the processes set out in this clause 2.

2.8 Costs and expenses

Except as provided in clause 2.5 or as otherwise agreed:

- (a) the costs and expenses of preparing, lodging, negotiating and refreshing Tax Rulings in respect of the Standard User Funding Agreement and the Transaction Documents will be borne by Aurizon Network; and
- (b) the costs and expenses incurred by the User Representative in performing its functions under this clause 2, including the costs and expenses of any adviser appointed by the User Representative, will be borne by the Users in a manner determined by the Users.

Appendix 1

1 Tax Rulings to be sought by or on behalf of a Trustee

Aurizon Network must request (or procure that a Trustee request) Tax Rulings from the Australian Taxation Office confirming that:

- (a) the Trust will not join the Aurizon Consolidated Group;
- (b) the costs incurred by the Trustee in respect of issuing the Ordinary Units and Preference Units will be deductible over 5 years pursuant to section 40-880 of the Tax Act;
- (c) the Preference Units will not satisfy the 'debt test' in the debt/equity rules in Division 974 of the Tax Act;
- (d) the Fee paid by the Trustee under the Rail Corridor Agreement will be deductible to the Trustee under section 8-1 of Tax Act;
- (e) the Rent receivable under the Extension Infrastructure Sub Lease will be assessable to the Trustee on a due and receivable basis under section 6-5 of the Tax Act;
- (f) the sub-lease under the Extension Infrastructure Sub Lease will not give rise to a capital gain to the Trust as a result of capital gains tax event F1 in section 104-110 of the Tax Act;
- (g) the transfer and lease-back of the Commissioned Railway Transport Infrastructure under clause 3.1 of the Extension Infrastructure Head Lease will not give rise to an assessable or deductible balancing adjustment event under Division 40 of the Tax Act;
- (h) the transfer and lease-back of the Commissioned Railway Transport Infrastructure under clause 3.1 of the Extension Infrastructure Head Lease will not give rise to capital gain or capital loss under Part 3-1 of the Tax Act;
- (i) the Trust will not be a 'prescribed trust' for the purposes of Division 6B of the Tax Act;
- (j) the Trust will not be a 'public trading trust' for the purposes of Division 6C of the Tax Act;
- (k) the Trust will not be a 'closely held trust' for the purposes of Division 6D of the Tax Act;
- (l) the Trust is the 'holder' of the assets comprising the Extension Infrastructure under section 40-40 of the Tax Act and is eligible to claim depreciation on all assets comprising the Extension Infrastructure;
- (m) the Trust is entitled to a deduction for any capital works relating to the Extension under Division 43 of the Tax Act;
- (n) a distribution of the Trust's income in excess of Trust's taxable income will not be assessable income of a Preference Unit Holder and that any such amounts will be characterised as tax deferred distributions that reduce the Preference Unit Holder's cost base in their Preference Units under capital gains tax event E4 in section 104-70 of the Tax Act;
- (o) the Taxation of Financial Arrangements rules in Division 230 of the Tax Act will not apply to alter the time when receipts or payments due under the Transaction Documents are assessable or deductible for tax purposes; and

- (p) the general anti-avoidance provisions in Part IVA of the Tax Act will not apply to the arrangements contemplated by the Transaction Documents.

2 Tax Rulings to be sought by Aurizon Network

Aurizon Network must request Tax Rulings from the Australian Taxation Office confirming that:

- (a) the Rent payable under the Extension Infrastructure Sub-Lease will be deductible to Aurizon Network under section 8-1 of the Tax Act;
- (b) section 21A of the Tax Act will not apply to include an amount in Aurizon Network's assessable income in relation to the construction of the Extension; and
- (c) there will be no capital gain to Aurizon Network arising from the grant of a licence under the Rail Corridor Agreement as a result of capital gains tax event D1 in section 104-35 of the Tax Act.

3 Tax Rulings to be sought by or on behalf of Queensland Treasury Holdings

Aurizon Network must request (or procure that Queensland Treasury Holdings request) Tax Rulings from the Australian Taxation Office confirming that:

- (a) the lease under the Extension Infrastructure Head Lease will not give rise to a capital gain to the Trust as a result of capital gains tax event F1 in section 104-110 of the Tax Act;
- (b) the transfer and lease-back of the Commissioned Railway Transport Infrastructure under clause 3.1 of the Extension Infrastructure Head Lease will not give rise to an assessable or deductible balancing adjustment event under Division 40 of the Tax Act; and
- (c) the transfer and lease-back of the Commissioned Railway Transport Infrastructure under clause 3.1 of the Extension Infrastructure Head Lease will not give rise to capital gain or capital loss under Part 3-1 of the Tax Act.