Status: **legally binding**

Product Ruling

XLD Commodities Pty Ltd – XLD Grain & Fertiliser Prepayment Program

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Terms of use of this Ruling

This Ruling has been given on the basis that the entity who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

Changes in the law

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Scheme are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

No guarantee of commercial success

The Commissioner does not sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for entities that participate as a customer in the XLD Grain & Fertiliser Prepayment Program (the Program) offered by XLD Commodities Pty Ltd (XLD).

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated. Terms which are defined in the XLD Grain and Fertiliser Prepayment Account Opening Form referred to in paragraph 11 of this Ruling have been capitalised.

3. This Ruling does not address:

- the tax consequences for a customer that is not a small business entity as defined in section 328-110 of the *Income Tax Assessment Act 1997* (ITAA 1997) or an entity covered by subsection 82KZM(1A)
- the tax consequences of any fees and charges paid by a customer for the delivery of the grain or fertiliser
- the tax consequences upon application of the X-Credits (defined in subparagraph 14(c) of this Ruling) against a customer's purchases of grain and fertiliser
- the tax consequences of any financial accommodation obtained by a customer in order to fund the Prepayment
- the application of the prepaid expenditure provisions under Subdivision H of Division 3 of Part III, other than for section 82KZM
- the circumstances under which a customer is entitled to a GST credit for goods and services tax paid under the Program
- the tax consequences upon any assignment or transfer of a customer's rights under the Program to another party, and
- whether this scheme constitutes a financial arrangement for the purposes of Division 230 of the ITAA 1997 (taxation of financial arrangements).

Who this Ruling applies to

4. This Ruling applies to you if you:

- are accepted to participate in the Program described in paragraphs 11 to 15 of this Ruling, as a customer, on or after 1 July 2023 and on or before 30 June 2026
- use the grain and fertiliser purchased under the Program in carrying on a business for the purposes of gaining or producing assessable income, and
- are a small business entity as defined in section 328-110 of the ITAA 1997 or an entity covered by subsection 82KZM(1A).

5. This Ruling does not apply to you if you:

- are accepted to participate in the Program before 1 July 2023 or after 30 June 2026
- are not a small business entity as defined in section 328-110 of the ITAA 1997 or an entity covered by subsection 82KZM(1A)

- participate in the Program through offers made other than through the XLD Grain and Fertiliser Prepayment Account Opening Form referred to in paragraph 11 of this Ruling
- do not satisfy an assumption set out in paragraph 10 of this Ruling, or
- are subject to Division 230 of the ITAA 1997 in respect of this scheme.

Requirements of the Superannuation Industry (Supervision) Act 1993

6. This Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993*. The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Ruling as to whether investment in this scheme may contravene the provisions of the *Superannuation Industry (Supervision) Act 1993*.

Date of effect

7. This Ruling applies from 1 July 2023 to a customer specified in paragraph 4 of this Ruling that enters into the Program from 1 July 2023 until 30 June 2026.

8. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the customer's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 11 to 15 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

Ruling

9. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 10 of this Ruling:

(a) The Prepayment paid by a customer to XLD under the Program is deductible under section 8-1 of the ITAA 1997 in the income year it is paid.[1]

(b) Section 82KZM will not apply to deny a customer an immediate deduction of the Prepayment incurred under the Program and allowable as a deduction under section 8-1 of the ITAA 1997.

(c) The anti-avoidance provisions in Part IVA will not be applied to deny the deductibility of the Prepayment incurred under the Program by a customer.

Assumptions

10. This Ruling is made on the basis of the following necessary assumptions:

(a) The customer is an Australian resident for tax purposes.

[1] The extent to which the Prepayment is deductible under section 8-1 of the ITAA 1997 is subject to section 27-5 of the ITAA 1997 which denies a deduction for a loss or outgoing to the extent that it includes an amount relating to a GST credit to which the customer is entitled.

(b) The customer is a small business entity as defined in section 328-110 of the ITAA 1997 or an entity covered by subsection 82KZM(1A).

(c) The customer is carrying on a farming business with a purpose of producing assessable income in excess of its deductible expenditure, and all grain and fertiliser purchased from XLD under the Program is used in carrying on that business.

(d) The grain and fertiliser purchased from XLD by customers do not constitute trading stock and are not of a capital, private or domestic nature.

(e) The customer is not in breach of the Program Terms or any other agreement entered into with XLD nor is it insolvent within the definition of section 95A of the *Corporations Act 2001*.

(f) The customer has not chosen to apply section 82KZMD to the expenditure incurred under the Program.

(g) The Prepayment is not 'excluded expenditure' as defined in subsection 82KZL(1).

(h) The scheme will be executed in the manner described in the XLD Grain and Fertiliser Prepayment Account Opening Form referred to in paragraph 11 of this Ruling and in the Scheme section of this Ruling.

(i) All dealings between the customer and XLD will be at arm's length.

Scheme

11. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 4 October 2023, and
- the XLD Grain and Fertiliser Prepayment Account Opening Form, including the Program Terms, received on 4 October 2023.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under freedom of information legislation.

12. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which a customer, or any associate of a customer, will be a party to which are a part of the scheme.

Overview of scheme

13. The Program constitutes an agreement between a customer of XLD and XLD. The Program is, among other things, designed to assist customer cash-flow management by enabling them to pay for rural products during major agricultural sale periods.

14. Pursuant to the Program Terms:

(a) The customer makes a payment to XLD referred to as the 'Prepayment'. The Prepayment

(i) must be a minimum of $20,000

(ii) can only be used by the customer to purchase grain and fertiliser from XLD during the Program Period

(iii) is not refundable to the customer (or any other entity), and

(iv) will be forfeited in full by the customer if unused by the end of the Program Period.

(b) The Program Period commences on the date of the Prepayment and ends on the date that is 12 months after the Prepayment.

(c) The customer receives a reward based on the unused Prepayment balance during the Program Period (the X-Credits). The X-Credits

(i) are applied as a credit on the customer's Prepayment balance

(ii) are calculated monthly at a specified rate on the unused balance of the Prepayment, and credited monthly in arrears[2]

(iii) can only be used by the customer to purchase grain and fertiliser from XLD during the Program Period

(iv) are not refundable to the customer (or any other entity), and

(v) will be forfeited in full by the customer if unused by the end of the Program Period.

(d) XLD may use any Prepayment made by the customer, and any X-Credits added, as part of the Program to settle any other amounts that are due and payable by the customer to XLD under any other arrangement that the customer has entered into with XLD if the customer

(i) breaches the Program Terms or any other agreement it has entered into with XLD, or

(ii) is insolvent within the definition of section 95A of the *Corporations Act 2001*.

15. Grain and fertiliser purchased by the customer under the Program, using the Prepayment or the X-Credits, are also subject to XLD's normal terms and conditions of sale under the XLD Commodities Terms of Trade Grain and the XLD Commodities Terms of Trade Fertiliser.

Commissioner of Taxation
29 November 2023

[2] The rate is 6.5% per annum as at the date of issue of this Ruling.

Status: **not legally binding**

Appendix – Explanation

This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

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Section 8-1 of the ITAA 1997 – deductibility of the Prepayment

16. A loss or outgoing is deductible under section 8-1 of the ITAA 1997 if it is necessarily incurred in carrying on a business for the purpose of gaining or producing a taxpayer's assessable income. The expenditure must be part of the cost of trading operations and must not be of a capital, private or domestic nature.

17. An outgoing incurred by a business will be 'necessarily incurred' where, in the circumstances, it is reasonably capable of being seen as desirable or appropriate from the point of view of the pursuit of the business ends of the business being carried on for the purpose of earning assessable income (see *Magna Alloys & Research Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia* [1980] FCA 180).

18. Upon entry into the Program, the Prepayment is both immediately due and non-refundable such that the customer becomes definitively committed to, and incurs, the Prepayment. As the Prepayment is incurred for the purchase of grain and fertiliser to be used in the customer's farming business, it constitutes expenditure which is clearly appropriate from the point of view of the pursuit of the business ends of the customer's business and is therefore necessarily incurred in the carrying on of that business.

19. The Prepayment necessarily incurred by the customer to purchase grain and fertiliser in the course of carrying on its business is not of a capital, private or domestic nature. The deduction for the Prepayment is allowable under section 8-1 of the ITAA 1997 in the income year the payment is made to XLD (that is, at the time it is necessarily incurred).

Section 82KZM – prepaid expenditure incurred by certain small and medium business entities and individuals incurring non-business expenditure

20. Subject to paragraph 21 of this Ruling, section 82KZM operates to spread over more than one income year a deduction which, apart from that section, would be allowable under section 8-1 of the ITAA 1997 for the year of income in which the prepaid expenditure (other than excluded expenditure as defined in subsection 82KZL(1)) is incurred under an agreement by a taxpayer that is either:

- a small business entity, or an entity covered by subsection 82KZM(1A), for the year of income that has not chosen to apply section 82KZMD to the expenditure, or
- an individual that has not incurred the expenditure in carrying on a business.

Status: **not legally binding**

21. Section 82KZM applies if the eligible service period for the expenditure is longer than 12 months, or the eligible service period for the expenditure is 12 months or shorter but ends after the last day of the year of income after the one in which the expenditure was incurred.

22. In relation to the Prepayment incurred by a customer under the Program, the eligible service period for the purpose of section 82KZM is the period to which the Prepayment relates. That period is:

- from the first day of the Program Period (the date of the Prepayment), being the day on which the thing to be done under the Program in return for the Prepayment (that is, the provision of grain and fertiliser by XLD and the calculation of the X-Credits credited to the customer's unused Prepayment balance under the circumstances set out in subparagraph 14(c) of this Ruling) is required or permitted (as the case may be) to commence being done
- until the last day of the Program Period (the date that 12 months after the date of the Prepayment), being the day on which the thing to be done under the Program in return for the Prepayment is required or permitted (as the case may be) to cease being done.

23. The eligible service period in relation to the deductible Prepayment under the Program 12 months or less. As it is not more 12 months and does not end after the last day of the year of income after the one in which the expenditure was incurred, section 82KZM will have no application to customers that (as assumed at paragraph 10 of this Ruling) are a small business entity (or an entity covered by subsection 82KZM(1A)) for the year of income and have not chosen to apply section 82KZMD to the expenditure.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZM(1A)
- ITAA 1936 82KZMD
- ITAA 1936 Pt IVA
- ITAA 1997 8-1
- ITAA 1997 27-5
- ITAA 1997 Div 230
- ITAA 1997 328-110
- SISA 1993
- Corporations Act 2001 95A

Cases relied on:

- Magna Alloys & Research Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia [1980] FCA 180; 80 ATC 4542; 11 ATR 276; 49 FLR 183; 33 ALR 213

ATO references

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