Status: **legally binding**

Product Ruling

Summit Rural (WA) Pty Limited – End of Season Scheme

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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Status: **legally binding**

What this Ruling is about

1. This Ruling sets out the income tax consequences for entities that participate as a customer in the End of Season Scheme (EOSS) offered by Summit Rural (WA) Pty Limited (Summit).

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

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 upon application of the reward amount against a customer's purchases of 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 EOSS
- the tax consequences upon any assignment of a customer's rights under the EOSS 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 scheme described in paragraphs 11 to 15 of this Ruling, as a customer, on or after 12 June 2024 and on or before 30 June 2026
- use the fertiliser purchased under the EOSS in carrying on a business for the purpose 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 scheme before 12 June 2024 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 scheme through offers made other than through the terms and conditions (or terms and conditions materially similar to those) 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.

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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 12 June 2024, the date it was published, to a customer specified in paragraph 4 of this Ruling that enters into the scheme from 12 June 2024 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) Any amount paid by a customer under Offer 1 in the terms and conditions of the EOSS is deductible under section 8-1 of the ITAA 1997 in the income year it is incurred.

(b) Any prepayment made by a customer to Summit under Offer 2 in the terms and conditions of the EOSS is deductible under section 8-1 of the ITAA 1997 in the income year it is paid.[1]

(c) Section 82KZM will not apply to deny a customer an immediate deduction for an amount paid or otherwise incurred, as referred to in subparagraphs 9(a) and (b) of this Ruling, and allowable as a deduction under section 8-1 of the ITAA 1997.

(d) The anti-avoidance provisions in Part IVA will not apply to deny the customer a deduction for an amount paid or otherwise incurred, as referred to in subparagraphs 9(a) and (b) of this Ruling.

[1] The extent to which the payments referred to in subparagraphs 9(a) and (b) of this Ruling are 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 a customer is entitled.

Status: **legally binding**

Assumptions

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

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

(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 primary production business with a purpose of producing assessable income in excess of its deductible expenditure, and all fertiliser purchased from Summit under the EOSS is used in carrying on that business.

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

(e) The expenditure incurred under the EOSS is not 'excluded expenditure' as defined in subsection 82KZL(1).

(f) The fertiliser purchased by the customer from Summit will not constitute trading stock and is not of a capital, private or domestic nature.

(g) The scheme will be executed in the manner described in the terms and conditions of the EOSS and in the Scheme section of this Ruling.

(h) The terms and conditions of the EOSS offered by Summit in respect of the income years ending 30 June 2025 and 2026 will not be materially different to the terms and conditions referred to in paragraph 11 of this Ruling.

(i) All dealings between the customer and Summit 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 24 April 2024, 29 April 2024 and 16 May 2024, and
- June 30 2024 Offer Terms and Conditions, received on 29 April 2024.

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 terms and conditions of the EOSS constitute an agreement between a customer of Summit and Summit. The EOSS offers 2 options which are open for acceptance prior to 30 June in the year of payment and are designed to assist customer cash flow management by enabling them to pay for fertiliser during major agricultural sale periods, subject to available Summit stock. The offer is only available in respect of fertiliser acquired for use by the customer who is not a reseller or member of a buying group.

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14. Pursuant to Offer 1 (Pay Now Collect Later) in the terms and conditions of the EOSS:

(a) All fertiliser must be ordered and paid for (subject to subparagraph 14(g) of this Ruling) by the customer before 26 June.

(b) All fertiliser will be invoiced before 30 June of the year of payment and acceptance of the order by Summit will only occur where an invoice is issued by Summit.

(c) All fertiliser ordered must be collected from Summit storage after 30 June of the year of payment and no later than 12 months from the date of invoicing.

(d) Any fertiliser order which has not been collected within 12 months from the date of invoicing will be returned to Summit and monies paid for that order will be forfeited.

(e) No order changes or refunds are available after 30 June in the year of payment.

(f) The purchase price includes product insurance up until the fertiliser has been collected by the customer from Summit storage.

(g) The customer can choose to pay a 10% deposit of the total invoice (including goods and services tax) as payment by 26 June. The outstanding balance is due and payable by the customer no later than 25 January of the year following payment of the deposit, or on collection if prior to this date.

15. Pursuant to Offer 2 (Pre-Pay Now Nominate Later) in the terms and conditions of the EOSS:

(a) The customer makes a payment to Summit referred to as prepaid funds. The prepaid funds

(i) are capped at a maximum of $1.5 million plus goods and services tax

(ii) must be paid in full into the customer's Summit Fertilizers account before 26 June

(iii) will be invoiced before 26 June in the year of payment

(iv) must be applied by the customer for the sole purpose of purchasing fertiliser from Summit for collection between 1 August in the year of payment and 12 months after the date of invoice.

(v) are not eligible for cash refund to the customer (or any other entity), and

(vi) will be forfeited in full by the customer if unused within 12 months of the date of invoice.

(b) The customer receives a reward amount that

(i) is applied as a credit on the customer's Summit Fertilizers Account

(ii) is calculated daily at an annual rate of 5% on the balance of the prepaid funds (that is, the unspent prepaid funds during the period from 1 July in the year of payment to 25 February in the year following payment), and credited before 31 March of the year following payment

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(iii) must be applied by the customer for the sole purpose of purchasing fertiliser from Summit within 12 months of the date of invoice

(iv) will not be paid out as cash to the customer under any circumstances, and

(v) will be forfeited in full by the customer if unused within 12 months of the date of invoice.

(c) Offer 2 can be closed by Summit without notice at its complete discretion.

Commissioner of Taxation
12 June 2024

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 EOSS a prepayment under Offer 1 or the prepaid funds under Offer 2, as elected by the customer, are both immediately due and non-refundable such that the customer becomes definitively committed to, and incurs, the amount paid. Where the customer prepays a deposit under Offer 1, the outstanding balance is due and payable no later than 25 January in the year after the deposit payment, or on collection if prior to this date. In these circumstances, the full amount of the expenditure is incurred by the customer at the time of the deposit on the basis the outstanding amount is presently due and payable and the customer is definitively committed to the obligation at that time.

19. As the relevant payment is incurred for the purchase of fertiliser to be used in the customer's primary production 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.

20. The prepayment under Offer 1 or the prepaid funds under Offer 2 necessarily incurred by the customer to purchase fertiliser in the course of carrying on its business is not of a capital, private or domestic nature. The deduction for the payment is allowable under section 8-1 of the ITAA 1997 in the income year it is necessarily incurred.

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

21. Subject to paragraph 22 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.

22. 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.

23. In relation to the prepayment incurred by the customer under Offer 1 in the terms and conditions of the EOSS, the eligible service period for the purpose of section 82KZM is the period to which the payment relates. That period is:

- from 1 July in the year of payment, being the day on which the thing to be done under the EOSS in return for the payment (that is, the provision of fertiliser by Summit) is required or permitted (as the case may be) to commence being done
- until 12 months from the date of invoicing (that is, a date before 30 June in the year after payment), being the day on which the thing to be done under the EOSS in return for the payment is required or permitted (as the case may be) to cease being done.

24. In relation to the prepaid funds incurred by the customer under Offer 2 in the terms and conditions of the EOSS, the eligible service period for the purpose of section 82KZM is the period to which the prepaid funds relate. That period is:

- from 1 July in the year of payment, being the day on which the first of the things to be done under the EOSS in return for the prepaid funds (that is, the calculation of the reward amount credited on the customer's Summit Fertilizers Account under the circumstances set out in subparagraph 15(b) of this Ruling) is required or permitted (as the case may be) to commence being done
- until 12 months from the date of invoicing (that is, a date before 26 June in the year after the prepayment), being the last day on which the second of the things to be done under the EOSS in return for the prepaid funds (that is, the provision of the fertiliser by Summit) is required or permitted (as the case may be) to cease being done.

25. The eligible service period in relation to the deductible prepayment under Offer 1 in the terms and conditions of the EOSS or the deductible prepaid funds under Offer 2 in the terms and conditions of the EOSS is no longer than 12 months. As it is not more than 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 Part IVA
- ITAA 1997 8-1
- ITAA 1997 27-5
- ITAA 1997 Div 230
- ITAA 1997 328-110
- SISA 1993

Case references:

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

ATO references

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