


# ***PR 2021/15 - Tax consequences for a Customer entering into a Prepay Plus Agreement with Nutrien Ag Solutions Limited***

 This cover sheet is provided for information only. It does not form part of *PR 2021/15 - Tax consequences for a Customer entering into a Prepay Plus Agreement with Nutrien Ag Solutions Limited*



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Status: **legally binding**

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## Product Ruling

# Tax consequences for a Customer entering into a Prepay Plus Agreement with Nutrien Ag Solutions Limited

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### **📌 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.

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## No guarantee of commercial success

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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.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

## Terms of use of this Product Ruling

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This Product Ruling has been given on the basis that the entity(s) that applied for the Product 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 Product Ruling.

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Status: **legally binding**

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### What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.
2. The scheme described in this Product Ruling involves a prepayment by a Customer (as defined in paragraph 18 of this Product Ruling) under a Prepay Plus Agreement (the Agreement) offered by Nutrien Ag Solutions Limited<sup>1</sup> (Nutrien) to purchase goods and/or services to be used by the Customer in their business.
3. This Product 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 the Customer's purchases of goods and/or services
  - the tax consequences of any financial accommodation obtained by the Customer in order to fund the Prepayment Amount
  - the application of the prepaid expenditure provisions under Subdivision H of Division 3 of Part III, other than for section 82KZM
  - the tax consequences upon any assignment of the Agreement 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).

### Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to in this Product Ruling as the 'Customer'.
5. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that:
  - enter into the scheme described in paragraphs 16 to 21 of this Product Ruling on or after 1 July 2021 and on or before 30 June 2024
  - use the goods and/or services 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).

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<sup>1</sup> Or a 'related body corporate' of Nutrien Ag Solutions Limited, as defined in section 50 of the *Corporations Act 2001*.

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6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are accepted to participate in the scheme described in paragraphs 16 to 21 of this Product Ruling before 1 July 2021 or after 30 June 2024
- 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 an Agreement referred to in paragraph 16 of this Product Ruling
- do not satisfy an assumption set out in paragraph 21 of this Product Ruling, or
- are subject to Division 230 of the ITAA 1997 in respect of this scheme.

### ***Superannuation Industry (Supervision) Act 1993***

7. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). 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 Product Ruling as to whether investment in this scheme may contravene the provisions of the SISA.

### **Qualifications**

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 21 of this Product Ruling.

9. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

### **Date of effect**

10. This Product Ruling applies from 1 July 2021. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2021 until 30 June 2024, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

11. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

### **Changes in the law**

12. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will

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take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

13. 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 Product Ruling since it was issued.

#### **Note to promoters and advisers**

14. 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 that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

## **Ruling**

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15. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 21 of this Product Ruling:

- (a) The Prepayment Amount paid by the Customer to Nutrien under the Agreement is deductible under section 8-1 of the ITAA 1997 in the income year it is paid.
- (b) Section 82KZM will not apply to deny the Customer an immediate deduction of the Prepayment Amount incurred under the Agreement 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 Amount incurred under the Agreement by the Customer.

## **Scheme**

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16. The scheme that is the subject of this Product Ruling is identified and described in the following:

- application for a Product Ruling as constituted by documents and information received on 29 July 2021 and 1 November 2021
- the Prepay Plus Agreement, received on 29 July 2021, and
- the Prepay Plus Agreement (as updated), received on 1 November 2021.

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

17. For the purposes of describing the scheme to which this Product Ruling applies, 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. Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from an Agreement referred to in paragraph 16 of this Product Ruling.

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**Overview**

18. The Agreement constitutes an agreement between a customer of Nutrien (the Customer) and Nutrien. The Agreement is, amongst other things, designed to assist in providing the Customer more effective cash flow management, enabling them to time the payment for goods and/or services with their major agricultural sale periods.

19. Pursuant to the terms and conditions of the Agreement:

- (a) The Customer makes a payment to Nutrien referred to as the Prepayment Amount. The Prepayment Amount
  - (i) must be paid into the Customer's Nutrien Ag Solutions Trading Account on or before the Prepayment Date
  - (ii) must be used by the Customer for the sole purpose of purchasing goods and/or services from Nutrien within 12 months of the Prepayment Date<sup>2</sup>, and
  - (iii) is not refundable to the Customer in whole or in part.
- (b) The goods purchased by the Customer from Nutrien will
  - (i) be as agreed between those parties under the Agreement, including but not limited to, seed, agricultural chemicals and fertiliser, and
  - (ii) not include livestock.
- (c) The services purchased by the Customer from Nutrien will be as agreed between those parties under the Agreement, including but not limited to, agronomy advice and crop input application.<sup>3</sup>
- (d) The Agreement commences on the Prepayment Date, being the date on which the Prepayment Amount is paid, and expires 12 months from that date.
- (e) The Customer receives a Reward Amount based on the balance of the Prepayment Amount (that is, the unspent Prepayment Amount at the time). The Reward Amount
  - (i) is applied as a credit on the Customer's Nutrien Ag Solutions Trading Account
  - (ii) is calculated daily by application of the Rate<sup>4</sup> on the balance of the Prepayment Amount, and credited monthly
  - (iii) must be used only to purchase goods and/or services (as described in paragraphs 19(b) and (c) of this Product Ruling) from Nutrien within 12 months of the Prepayment Date
  - (iv) will not be paid out as cash to the Customer under any circumstances, and
  - (v) shall be forfeited by the Customer and not rolled over into any subsequent Agreement to the extent it is unspent as at the expiry of the Agreement.

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<sup>2</sup> As of 1 November 2021, the Prepayment Amount may also be used to pay for freight or other delivery charges in respect of the purchased goods.

<sup>3</sup> These services are only available for purchase under the Agreement from 1 November 2021.

<sup>4</sup> The Rate is 4.15% per annum as at the date of this Product Ruling, and subject to change.

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- (f) Nutrien may use any Prepayment Amount made by the Customer to set off any amount owing by the Customer to Nutrien if the Customer is
  - (i) in default of the Customer's Nutrien Ag Solutions Trading Account terms, this Agreement or any other agreement the Customer has entered into with Nutrien, or
  - (ii) insolvent within the definition of section 95A of the *Corporations Act 2001*.

20. The Prepayment Amount shall be a minimum of \$10,000 and a maximum of \$5 million (or any such other amount as agreed by Nutrien in its absolute discretion).

### **Assumptions**

21. This Product 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 their farming business with a purpose of producing assessable income in excess of its deductible expenditure, and all goods and/or services purchased from Nutrien under the Agreement are used in carrying on that business.
  - (d) The Customer has not chosen to apply section 82KZMD to the expenditure incurred under the Agreement.
  - (e) The Prepayment Amount is not 'excluded expenditure' as defined in subsection 82KZL(1).
  - (f) The goods purchased by the Customer from Nutrien will not constitute trading stock and are not of a capital, private or domestic nature.
  - (g) The services purchased by the Customer from Nutrien are not of a capital, private or domestic nature.
  - (h) The scheme will be executed in the manner described in the Agreement and in the Scheme section of this Product Ruling.
  - (i) All dealings between the Customer and Nutrien will be at arm's length.

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**Commissioner of Taxation**

24 November 2021

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 Status: **not legally binding**


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## Appendix – Explanation

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**❶** *This Appendix 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 – deductibility of the Prepayment Amount**

22. 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.

23. 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).

24. Upon entry into the Agreement the Prepayment Amount is both immediately due and non-refundable such that the Customer becomes definitively committed to, and incurs, the Prepayment Amount. As the Prepayment Amount is incurred for the purchase of goods and/or services 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.

25. The Prepayment Amount necessarily incurred by the Customer to purchase goods and/or services in the course of carrying on its business is not of a capital, private or domestic nature. The deduction for the Prepayment Amount is allowable under section 8-1 of the ITAA 1997 in the income year the payment is made to Nutrien (that is, at the time it is necessarily incurred).

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

26. Subject to paragraph 27 of this Product 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.



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27. 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.

28. In relation to the Prepayment Amount incurred by the Customer under the Agreement, the eligible service period for the purpose of section 82KZM is the period to which the Prepayment Amount relates. That period is:

- from the first day of the Agreement (the Prepayment Date), being the day on which the thing to be done under the Agreement in return for the Prepayment Amount (that is, the purchase of goods and/or services from Nutrien and the calculation of the Reward Amount credited on the Customer's Nutrien Ag Solutions Trading Account under the circumstances set out in paragraph 19(e) of this Product Ruling) is required or permitted (as the case may be) to commence being done
- until the last day of the Agreement, being the day on which the thing to be done under the Agreement in return for the Prepayment Amount is required or permitted (as the case may be) to cease being done.

29. The eligible service period in relation to the deductible Prepayment Amount under the Agreement is, pursuant to paragraph 27 of this Product Ruling, 12 months or less. 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 21 of this Product 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.

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## References

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*Previous draft:*

Not previously issued as a draft

*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 Div 230

- ITAA 1997 328-110
- TAA 1953
- Corporations Act 2001 50
- Corporations Act 2001 95A
- SISA 1993

*Case references:*

- Magna Alloys and 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

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ATO references

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