



PR 2021/4 - Income tax: taxation consequences for a customer entering into an XLD Grain and Fertiliser Prepayment Program with XLD Commodities Pty Ltd

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 This document has changed over time. This is a consolidated version of the ruling which was published on *16 August 2023*



Product Ruling

Income tax: taxation consequences for a customer entering into an XLD Grain and Fertiliser Prepayment Program with XLD Commodities Pty Ltd

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❗ Relying on this Ruling

This publication (excluding appendixes) 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.

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

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.

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

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.

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. In this Product Ruling, the scheme involves a prepayment by a customer under an XLD Grain and Fertiliser Prepayment Program (the Program) offered by XLD Commodities Pty Ltd (XLD) to purchase grain and/or fertiliser to be used by the customer in their business.

3. This Product Ruling does not address:

- the taxation 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 taxation consequences of any fees and charges paid by a customer for the delivery of the grain and/or fertiliser
- the taxation consequences upon application of the X-Credits (defined in paragraph 19(c) of this Product Ruling) against a customer's purchases of grain and/or fertiliser
- the taxation 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 taxation 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).

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 a 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 20 of this Product Ruling on or after 19 May 2021 and on or before 30 June 2023
- 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).

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 20 of this Product Ruling before 19 May 2021 or after 30 June 2023
- 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 XLD Grain and Fertiliser Prepayment Account Opening Form referred to in paragraph 16 of this Product Ruling
- do not satisfy an assumption set out in paragraph 20 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*. The Commissioner gives no assurance that the scheme is an appropriate investment for a super fund. The trustees of super 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 *Superannuation Industry (Supervision) Act 1993*.

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 20 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 prospectively from 19 May 2021, the date it published. It therefore applies only to the specified class of entities that enter into the scheme from 19 May 2021 until 30 June 2023, 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 change will 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 taxation 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

15. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 20 of this Product 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.
- (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.

Scheme

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

- application for a Product Ruling as constituted by documents and information received on 1 April 2021, and
- the XLD Grain and Fertiliser Prepayment Account Opening Form, including the Program Terms, received on 1 April 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 the XLD Grain and Fertiliser Prepayment Account Opening Form referred to in paragraph 16 of this Product Ruling.

Overview

18. The Program constitutes an agreement between a customer of XLD and XLD. The Program is, among other things, designed to assist in providing the customer more effective cash-flow management, enabling them to time the payment for rural products with their major agricultural sale periods.

19. 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/or 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 rate of 4.25% per annum on the unused balance of the Prepayment, and credited monthly in arrears
 - (iii) can only be used by the customer to purchase grain and/or 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*.

Assumptions

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

- (a) The customer is an Australian resident for taxation 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 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 are 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 and in the Scheme section of this Product Ruling.
- (i) All dealings between the customer and XLD will be at arm's length.

Commissioner of Taxation19 May 2021

Appendix 1 – Explanation

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.***

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

21. 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.

22. 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).

23. 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/or 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.

24. The Prepayment necessarily incurred by the customer to purchase grain and/or 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 business entities and individuals incurring non-business expenditure

25. Subject to paragraph 26 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.

26. 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.

27. 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 purchase of grain and/or fertiliser from XLD and the calculation of the X-Credits credited to the customer's unused Prepayment balance under the circumstances set out in paragraph 19(c) of this Product 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 is 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.

28. The eligible service period in relation to the deductible Prepayment under the Program is 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 20 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.

Part IVA – anti-avoidance

29. Provided that the scheme ruled on is entered into and carried out in the manner described in this Product Ruling, it is accepted that the scheme is an ordinary commercial transaction and Part IVA will not apply.

Appendix 2 – Detailed contents list

30. The following is a detailed contents list for this Product Ruling:

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References

Previous draft:

Not previously issued as a draft

- TAA 1953
- SISA 1993
- Corporations Act 2001 95A

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

Case references:

- Magna Alloys & Research Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia [1980] FCA 180; 33 ALR 213; 49 FLR 183

ATO references

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