


PR 2023/6 - CSBP Limited prepayment agreement

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Status: **legally binding**

Product Ruling

CSBP Limited prepayment agreement

❶ 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

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) who 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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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 the prepayment by a customer under an End of Financial Year (EOFY) Offer Order Form (the Agreement) offered by CSBP Limited (CSBP) to purchase fertiliser to be used by the customer in their business.¹
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 Bonus Amount against the customer's purchases of fertiliser
 - the tax consequences of any financial accommodation obtained by the customer in order to fund the prepayment
 - the tax consequences of any storage and insurance fee paid by the customer under the Agreement
 - 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 or transfer of a customer's rights under 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 May 2023 and on or before 30 June 2025
 - use the fertiliser purchased under the Agreement 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).

¹ Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from the Agreement referred to in paragraph 16 of this Product Ruling.

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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 May 2023 or after 30 June 2025
- 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 May 2023. It therefore applies only to the specified class of entities that enter into the scheme from 1 May 2023 until 30 June 2025, 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

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

- (a) Any prepayment made by the customer to CSBP under Option 1 of the Agreement or payment of the Prepaid Funds by the customer to CSBP under Option 2 of 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 for a payment referred to in paragraph 15(a) of this Product Ruling 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 customer a deduction for a payment referred to in paragraph 15(a) of this Product Ruling.

Scheme

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 20 March 2023, 26 April 2023 and 5 May 2023, and
- the End of Financial Year Offer Order Form received on 5 May 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.

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.

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Overview

18. The Agreement constitutes an agreement between a customer of CSBP and CSBP. The Agreement offers 2 EOFY options which are open for acceptance between 1 May and 30 June and are designed to assist customer cash flow management by enabling them to pay for fertiliser during major agricultural sale periods.² The offer is only available in respect of fertiliser acquired for use on properties owned or lease by customers.

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

- (a) All fertiliser ordered under Option 1 will be invoiced at the time the customer's order is placed, but acceptance of an Option 1 order by CSBP will only occur when CSBP issues an invoice and the customer has paid such invoice on or before 30 June of that year.
- (b) All granular fertiliser ordered under Option 1 must be collected after 30 June of the year of payment and no later than 28 February or 31 March of the following calendar year (depending on the range of granular fertiliser ordered) in order to avoid monthly storage and insurance fees being charged for that uncollected fertiliser.
- (c) The customer must take delivery of all liquid fertiliser ordered under Option 1 after 30 June of the year of payment and no later than 30 November of that year in order to avoid monthly storage and insurance fees being charged for that undelivered fertiliser.
- (d) The customer must collect or take delivery of (as appropriate) all fertiliser ordered under Option 1 by 30 June of the year following payment. CSBP reserves the right to cancel any order, or part order, to the extent that ordered goods are not collected by that date.

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

- (a) The Customer makes a payment to CSBP in respect of Option 2 referred to as Prepaid Funds. The Prepaid Funds
 - (i) are capped at a maximum of \$3 million (or any such other amount as agreed by CSBP in its absolute discretion)
 - (ii) must be paid into the customer's CSBP Account on or before 30 June
 - (iii) must be applied by the customer for the sole purpose of purchasing granule or liquid fertiliser products from CSBP within 12 months of the prepayment date
 - (iv) are not refundable to the customer (or any other entity), and
 - (v) will be forfeited in full by the customer if unused within 12 months of payment.
- (b) The customer receives a Bonus Amount under Option 2 that
 - (i) is applied as a credit on the customer's CSBP Account
 - (ii) is calculated daily by application of a specified rate³ 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

² In relation to Option 1, the offer may close earlier if relevant products are sold out.

³ The rate is 4.15% per annum as at the date of issue of this Product Ruling, and subject to change.

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- following payment), and credited following 25 February of the year following payment
- (iii) must be applied by the customer for the sole purpose of purchasing granule or liquid fertiliser products from CSBP within 12 months of the prepayment date
- (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 prepayment date.
- (c) CSBP may use any Prepaid Funds paid by the customer, and any Bonus Amount added to the customer's CSBP Account, to set off any amount owing by the customer to CSBP if the customer is
 - (i) in default of payment obligations under a contract between them and CSBP
 - (ii) insolvent as defined under the *Corporations Act 2001*, or
 - (iii) an individual who commits an act of bankruptcy under the *Bankruptcy Act 1966*.

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 a farming business with a purpose of producing assessable income in excess of its deductible expenditure, and all fertiliser purchased from CSBP under the Agreement is 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 expenditure incurred under the Agreement is not 'excluded expenditure' as defined in subsection 82KZL(1).
 - (f) The fertiliser purchased by the customer from CSBP 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 Agreement and in the Scheme section of this Product Ruling.
 - (h) All dealings between the customer and CSBP will be at arm's length.

Commissioner of Taxation

24 May 2023

Status: not legally binding

Appendix – Explanation

❗ ***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 of the ITAA 1997 – deductibility of the prepayment

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 a prepayment under Option 1 or the Prepaid Funds under Option 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. As the relevant payment is incurred for the purchase of 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.

25. The prepayment under Option 1 or the Prepaid Funds under Option 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 the payment is made to CSBP (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 incurred by the customer under Option 1 of the Agreement, 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 Agreement in return for the payment (that is, the provision of fertiliser by CSBP) is required or permitted (as the case may be) to commence being done
- until 30 June of the year following payment, being the day on which the thing to be done under the Agreement in return for the payment is required or permitted (as the case may be) to cease being done.

29. In relation to the Prepaid Funds incurred by the customer under Option 2 of the Agreement, the eligible service period for the purpose of section 82KZM is the period to which the Prepaid Funds relate. 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 Prepaid Funds (that is, the provision of fertiliser by CSBP and the calculation of the Bonus Amount credited on the customer's CSBP Account under the circumstances set out in paragraph 20(b) of this Product Ruling) is required or permitted (as the case may be) to commence being done
- until 12 months from the prepayment date, being the last day on which the thing to be done under the Agreement in return for the Prepaid Funds is required or permitted (as the case may be) to cease being done.

30. The eligible service period in relation to the deductible prepayment under Option 1 of the Agreement or the deductible Prepaid Funds under Option 2 of the Agreement 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 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

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
- Corporations Act 2001

- Bankruptcy Act 1966

- SISA 1993

Cases 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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