

PR 2024/16 - Stela Agri Pty Ltd - Customer Prepay Flexi Agreement



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Status: **legally binding**

Product Ruling

Stela Agri Pty Ltd – Customer Prepay Flexi Agreement

❗ 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 Customer Prepay Flexi Agreement (the Agreement) offered by Stela Agri Pty Ltd (Stela Agri).
2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated. Terms which are defined in the Customer Prepay Flexi Agreement 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 upon application of the Reward Amount against a Customer's purchases of the Goods
 - the tax consequences of any financial accommodation obtained by a 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 circumstances under which a Customer is entitled to a GST credit for goods and services tax paid under the Agreement
 - 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).

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 16 of this Ruling, as a Customer, on or after 11 September 2024 and on or before 30 June 2027
 - use the Goods 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).
5. This Ruling does not apply to you if you:
 - are accepted to participate in the scheme before 11 September 2024 or after 30 June 2027
 - 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 Agreement 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*. We give 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 11 September 2024, the date it was published, to a Customer specified in paragraph 4 of this Ruling that enters into the scheme from 11 September 2024 until 30 June 2027.

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 16 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 Amount paid by a Customer to Stela Agri under the Agreement 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 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 apply to deny the deductibility of the Prepayment Amount incurred under the Agreement 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.
- (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 primary production business with a purpose of producing assessable income in excess of its deductible expenditure, and all Goods purchased from Stela Agri under the Agreement are used in carrying on that business.

¹ The extent to which the Prepayment Amount 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 a Customer is entitled.

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- (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 Stela Agri will not constitute trading stock and are 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 Ruling.
- (h) All dealings between the Customer and Stela Agri 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 12 July 2024, 15 July 2024 and 23 July 2024, and
- the Customer Prepay Flexi Agreement, received on 15 July 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 Agreement constitutes an agreement between a customer of Stela Agri and Stela Agri. The Agreement is, among other things, designed to assist customer cash flow management by enabling them to pay for Goods during major agricultural sale periods.

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

- (a) The Customer makes a payment to Stela Agri referred to as the Prepayment Amount. The Prepayment Amount
 - (i) must be paid into the Customer's Stela Agri Pty Ltd Trading Account on or before the Prepayment Date
 - (ii) must be used by the Customer to purchase Goods from Stela Agri within 12 months of the Prepayment Date, and
 - (iii) is not refundable to the Customer in whole or in part.
- (b) The Goods purchased by the Customer from Stela Agri will
 - (i) be as agreed between those parties under the Agreement, including but not limited to, seed, agriculture chemicals and fertiliser, and
 - (ii) not include fencing materials.

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- (c) 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 Stela Agri Pty Ltd Trading Account
 - (ii) is calculated by application of a rate set by Stela Agri on the balance of the Prepayment Amount, and credited monthly
 - (iii) must be used only to purchase Goods (as described in subparagraph 14(b) of this Ruling) from Stela Agri 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 to the extent it is unspent as at the expiry of the Agreement.
- (d) Stela Agri may use any Prepayment Amount made by the Customer to set off any amount owing by the Customer to Stela Agri if the Customer is
 - (i) in default of the Customer's Stela Agri Pty Ltd Trading Account terms, the Agreement or any other agreement the Customer has entered into with Stela Agri, or
 - (ii) insolvent within the definition of section 95A of the *Corporations Act 2001*.

15. The Prepayment Amount shall be a minimum of \$10,000 and a maximum of \$1 million (or any such other amount as agreed by Stela Agri in its absolute discretion).

16. The Agreement commences on the Prepayment Date, being the date on which the Prepayment Amount is paid, and expires 12 months from that date.

Commissioner of Taxation

11 September 2024

Status: **not legally binding**

Appendix – Explanation

❶ *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 Amount

17. 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.

18. 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).

19. 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 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 Amount necessarily incurred by the Customer to purchase Goods 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 Stela Agri (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

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.

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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 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 things to be done under the Agreement in return for the Prepayment Amount (that is, the provision of Goods by Stela Agri and the calculation of the Reward Amount credited on the Customer's Stela Agri Pty Ltd Trading Account under the circumstances set out in subparagraph 14(c) of this Ruling) are 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 things to be done under the Agreement in return for the Prepayment Amount are required or permitted (as the case may be) to cease being done.

24. The eligible service period in relation to the deductible Prepayment Amount under the Agreement 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 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
- Corporations Act 2001 95A

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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