


PR 2024/2 - Lannock Strata Finance 2 Pty Ltd - Lot Owner Upfront Payment Agreement

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Status: **legally binding**

Product Ruling

Lannock Strata Finance 2 Pty Ltd – Lot Owner Upfront Payment 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 Participating Lot Owner in the Lot Owner Upfront Payment Agreement offered by Lannock Strata Finance 2 Pty Ltd (Lannock).
2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated. Terms which are defined in the Lot Owner Upfront Payment Agreement referred to in paragraph 10 of this Ruling have been capitalised.
3. This Ruling does not address:
 - the tax consequences for an Owners Corporation that is a party to the Lot Owner Upfront Payment Agreement¹
 - the tax consequences for a lot owner other than a Participating Lot Owner²
 - the deductibility of any levy payments made by a Participating Lot Owner in conjunction with the Lot Owner Upfront Payment Agreement, and
 - whether this scheme constitutes a financial arrangement for the purposes of Division 230 (taxation of financial arrangements).

Who this Ruling applies to

4. This Ruling applies to you if you are:
 - a resident of Australia for tax purposes, and
 - accepted to participate as a Participating Lot Owner in the scheme described in paragraphs 10 to 24 of this Ruling on or after 13 March 2024 and on or before 30 June 2026.
5. This Ruling does not apply to you if you either are:
 - a non-resident for Australian tax purposes
 - accepted to participate in the scheme described in paragraphs 10 to 24 of this Ruling before 13 March 2024 or after 30 June 2026, or
 - subject to Division 230 in respect of this scheme.

Date of effect

6. This Ruling applies from 13 March 2024, the date it was published, to a Participating Lot Owner specified in paragraph 4 of this Ruling that enters into a Lot Owner Upfront Payment Agreement from 13 March 2024 until 30 June 2026.
7. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the Participating Lot Owner's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 10 to 24 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

¹ All references in this Ruling to 'Owners Corporation' apply equally to a body corporate or any other type of strata title body created under relevant state or territory strata title legislation.

² All references in this Ruling to a 'lot owner' is a reference to a person which may otherwise be referred to as a proprietor, owner or member, and is recorded in the land title register as entitled to an estate in fee simple or leasehold in the lot.

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Ruling

8. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 9 of this Ruling:

- Each interest payment received by a Participating Lot Owner from the Owners Corporation in respect of a PLO Loan (by way of crediting against the levy invoice of the Participating Lot Owner) will be assessable income of the Participating Lot Owner under section 6-5 in the income year in which the interest payment is credited.
- Interest received by a trust established under the circumstances contemplated in paragraph 23 of this Ruling from the Owners Corporation in respect of a PLO Loan (by way of crediting against the levy invoice of the Participating Lot Owner or Owners, as applicable) will be included in the net income of the trust estate, and each Participating Lot Owner will be assessable under paragraph 97(1)(a) of the *Income Tax Assessment Act 1936* (ITAA 1936) on so much of that share of the net income of the trust estate to which the Participating Lot Owner is presently entitled.
- Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to a Participating Lot Owner.

Assumptions

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

- The Participating Lot Owner will not be under any legal disability.
- The scheme will be executed in the manner described in the Lot Owner Upfront Payment Agreement referred to in paragraph 10 of this Ruling and in the Scheme section of this Ruling.
- All dealings between the Participating Lot Owner, Owners Corporation, Lannock and the trustee of any trust established under the circumstances contemplated in paragraph 23 of this Ruling will be at arm's length.

Scheme

10. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 5 January 2023, 27 March 2023 and 3 August 2023, and
- Lot Owner Upfront Payment Agreement received on 3 August 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.

11. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which a Participating Lot Owner, or any associate of a Participating Lot Owner, will be a party to which are a part of the scheme.

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12. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

Overview of scheme

13. Lannock provides finance (strata loans) to the Owners Corporations of schemes registered under and governed by state or territory strata title legislation (strata title schemes) for the purpose of funding large capital works, maintenance projects and other expenses.

14. Owners Corporations may charge lot owners a levy to cover particular expenses it otherwise doesn't have the capacity to meet and, under certain (but not all) state or territory-based strata title legislation, such levies must be levied in respect of each lot and are payable by all lot owners of a strata title scheme in shares proportional to the unit entitlements of their respective lots. Therefore where, for example, an Owners Corporation procures a 'conventional' strata loan to fund the cost of capital works relating to the common property of a strata title scheme, every lot owner under the strata title scheme is charged a levy to cover their proportionate share of the Owners Corporation's obligations (principal and interest) under the loan.

15. Under the Lot Owner Upfront Payment Agreement offered by Lannock, one or more lot owners of a strata title scheme that have the capacity to fund their proportionate share of costs upfront, each referred to as a Participating Lot Owner, agree to make an upfront payment of that amount (the PLO Contribution Amount) to the Owners Corporation via an interest-bearing loan facility, and the Owners Corporation agrees to borrow the PLO Contribution Amount from each Participating Lot Owner. Each upfront payment of the PLO Contribution Amount made by multiple Participating Lot Owners under a strata title scheme, and under the terms of a single Lot Owner Upfront Payment Agreement, constitute a separate PLO Loan.

16. The Owners Corporation will separately enter into a loan agreement with Lannock on or about the date of the Lot Owner Upfront Payment Agreement (Lannock Loan). The total amount the Owners Corporation will borrow is equal to the amount of the Lannock Loan plus the sum of each of the PLO Loans, and each Participating Lot Owner, along with Lannock, is separately a lender to the Owners Corporation.

17. Some of the terms and conditions applying to the Lannock Loan also apply to each PLO Loan. This includes the loan repayment type (that is, either principal and interest repayments or interest only repayments), the loan repayment frequency, the applicable interest rate and the loan term.

18. The loan repayment obligations of the Owners Corporation comprise amounts payable to Lannock under the Lannock Loan and amounts payable to each of the Participating Lot Owners under the PLO Loans.

19. All lot owners (both Participating Lot Owners and the remaining lot owners) will be required to make additional levy payments to the Owners Corporation to cover their share of those obligations (in the same manner as a conventional strata loan), and the provision of the PLO Loan to the Owners Corporation in accordance with the terms of the Lot Owner Upfront Payment Agreement facilitates the charging of levies to all lot owners of the strata title scheme in a manner that conforms with relevant state or territory strata title legislation.

20. The levy payments charged by the Owners Corporation to all lot owners is in an amount required to meet the Owners Corporation's total loan repayment obligations under those loans and the levy payments charged by the Owners Corporation to each Participating Lot Owner are obliged to equal the Owners Corporation's loan repayments to

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be received by each Participating Lot Owner under the Lot Owner Upfront Payment Agreement.

21. The only means by which each Participating Lot Owner is entitled to earn interest under the Lot Owner Upfront Payment Agreement is if each Participating Lot Owner bears a commensurate charge from the Owners Corporation, such charge forming part of the levy payable by each Participating Lot Owner.

22. All loan repayment obligations of the Owners Corporation under a PLO Loan must be offset (by book-entry) against the levy payments that the Participating Lot Owner owes to the Owners Corporation (that is, the loan repayments by the Owners Corporation to the Participating Lot Owner appear as a credit on the Participating Lot Owner's levy invoice).

23. Where, for example, contractors undertaking relevant capital works or maintenance projects require progressive payments to be made and it is deemed impractical to seek a payment from each Participating Lot Owner at each progress point, Lannock may (in conjunction with the Owners Corporation) facilitate the establishment of a trust in which each Participating Lot Owner in respect of the relevant strata title scheme will invest an amount equivalent to their PLO Contribution Amount and monies will be drawn down from the trust as required by the Owners Corporation to make each progress payment.

24. Under these circumstances, the PLO Loan is made to the Owners Corporation by the trust (rather than the Participating Lot Owner directly) and the loan repayment obligations of the Owners Corporation will comprise amounts payable to Lannock under the Lannock Loan and amounts payable to the trust under the PLO Loan. Each Participating Lot Owner will be presently entitled to their pro rata share of the net income of the trust (equivalent to their investment in it as a proportion of the total amount invested in it by all Participating Lot Owners).

Commissioner of Taxation

13 March 2024

 Status: not legally binding

Appendix – Explanation

① *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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Interest assessable as ordinary income under section 6-5

25. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. Whether or not a particular amount is income according to ordinary concepts depends on the nature and character of the receipt in the hands of the taxpayer.

26. The assessable income of an Australian resident includes the ordinary income they derived directly or indirectly from all sources during the income year (subsection 6-5(2)). Ordinary income may be said to be derived pursuant to subsection 6-5(4) which provides that in working out whether an amount of ordinary income has been derived, and (if so) when, it will be taken to be received as soon as it has been applied or dealt with in any way on behalf of or as directed by the taxpayer.

27. The PLO Loan is a loan on which interest is payable by the Owners Corporation. Typically, the receipt of interest is ordinary income.

PLO Loan by Participating Lot Owner

28. Any interest credited by the Owners Corporation to the Participating Lot Owner's levy invoice in satisfaction of the Owners Corporation's obligations under a PLO Loan made directly by a Participating Lot Owner will be ordinary income derived by the Participating Lot Owner pursuant to subsection 6-5(4), and assessable under section 6-5 in the income year in which it is applied on behalf of the Participating Lot Owner (that is, at the time it is credited and offset against the corresponding levy payment owing by the Participating Lot Owner to the Owners Corporation).

29. Any interest credited to the Participating Lot Owner pursuant to the terms of the Lot Owner Upfront Payment Agreement will not be subject to the principle of mutuality and will not constitute a return of any surplus contribution made by the Participating Lot Owner to the Owners Corporation which may otherwise be deemed not assessable income.³

³ See Taxation Ruling 2015/3 *Income tax: matters relating to strata title bodies constituted under strata title legislation* for an explanation regarding the application of the principle of mutuality to proprietor contributions and the treatment of surplus contributions returned to proprietors.

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PLO Loan by trust

30. Any interest credited by the Owners Corporation to the Participating Lot Owner's levy invoice in satisfaction of the Owners Corporation's obligations under a PLO Loan made by a trust will be:

- ordinary income derived by the trust estate pursuant to subsection 6-5(4)
- assessable income of the trust estate under section 6-5 in the income year in which it is applied as directed by the trust (that is, at the time it is credited and offset against the corresponding levy payment owing by the Participating Lot Owner to the Owners Corporation), and
- included in the calculation of the net income of the trust estate pursuant to section 95 of the ITAA 1936 in that income year.

31. The assessable income of an Australian-resident beneficiary of a trust estate who is not under a legal disability includes so much of the share of the net income of the trust estate to which the beneficiary is presently entitled (paragraph 97(1)(a) of the ITAA 1936). The Participating Lot Owner shall therefore be assessable under section 97 of the ITAA 1936 on so much of the share of the net income of the trust as reflects the proportion of income of the trust estate to which the Participating Lot Owner is presently entitled.

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References

Related Rulings/Determinations:

TR 2015/3

- ITAA 1936 97(1)(a)
- ITAA 1936 Pt IVA
- ITAA 1997 6-5
- ITAA 1997 6-5(2)
- ITAA 1997 6-5(4)
- ITAA 1997 Div 230

Legislative references:

- ITAA 1936 95
- ITAA 1936 97

ATO references

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