



PR 2019/3 - Income tax: taxation consequences for a Customer entering into a Prepay Plus Agreement with Landmark

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 This document has changed over time. This is a consolidated version of the ruling which was published on *13 May 2020*



Product Ruling

Income tax: taxation consequences for a Customer entering into a Prepay Plus Agreement with Landmark

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this Ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this Ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (www.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 who participate in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936) unless otherwise indicated.
2. The scheme described in this Product Ruling involves a prepayment by a Customer under a Prepay Plus Agreement (the Agreement) offered by Landmark Operations Limited (Landmark)¹ to purchase Goods 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)
 - the taxation consequences of any fees and charges paid by the Customer for the delivery of the Goods
 - the taxation consequences upon application of the Reward Amount against the Customer's purchases of Goods
 - the taxation 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 taxation 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).

¹ On 2 March 2020, Landmark changed its name to Nutrien Ag Solutions Limited. From 2 March 2020, all references to 'Landmark' in this Product Ruling should be read to mean 'Nutrien Ag Solutions Limited'.

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 20 of this Product Ruling on or after 1 July 2018 and on or before 30 June 2021
- use the Goods 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.

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 1 July 2018 or after 30 June 2021
- are not a small business entity as defined in section 328-110 of the ITAA 1997
- participate in the scheme through offers made other than through the Agreement 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 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 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 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
- this Product Ruling may be withdrawn or modified.

Date of effect

10. This Product Ruling applies from 1 July 2018. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2018 until 30 June 2021, 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 take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

13. Entities who 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 Amount paid by the Customer to Landmark 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

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 9 April 2019, 14 April 2020 and 27 April 2020, and
- the Prepay Plus Agreement, received on 9 April 2019.

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 Agreement referred to in paragraph 16 of this Product Ruling.

Overview

18. The Agreement constitutes an agreement between a customer of Landmark (the Customer) and Landmark. 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 with their major agricultural sale periods.

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

- (a) The Customer makes a payment to Landmark referred to as the Prepayment Amount. The Prepayment Amount
 - (i) shall be a minimum of \$10,000 and a maximum of \$5,000,000 (or any such other amount as agreed by Landmark in its absolute discretion)

- (ii) must be paid into the Customer's Landmark Trading Account on or before the Prepayment Date
 - (iii) must be used by the Customer for the sole purpose of purchasing Goods from Landmark within 12 months of the Prepayment Date, and
 - (iv) is not refundable to the Customer in whole or in part.
- (b) The Goods purchased by the Customer from Landmark will
 - (i) be as agreed between those parties under the Agreement, including but not limited to, seed, agricultural chemicals, fertiliser and others
 - (ii) not include livestock and services, and
 - (iii) not constitute trading stock.
- (c) The Agreement commences on the Prepayment Date, being the date on which the Prepayment Amount is paid, and expires 12 months from that date.
- (d) 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 Landmark Trading Account
 - (ii) is calculated daily by application of the Rate, being 4.15% per annum, on the balance of the Prepayment Amount, and credited monthly
 - (iii) must be used only to purchase Goods (as described in paragraph 19(b) above) from Landmark 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.

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.
- (c) The Customer is carrying on their farming business with a purpose of producing assessable income in excess of its deductible expenditure.
- (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 scheme will be executed in the manner described in the Agreement and in the Scheme section of this Product Ruling.
- (g) All dealings between the Customer and Landmark will be at arm's length.

Commissioner of Taxation12 June 2019

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 – deductibility of the Prepayment Amount

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 and Research Pty Ltd v Federal Commissioner of Taxation* [1980] FCA 150).

23. 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 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 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 Landmark (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 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 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 from Landmark and the calculation of the Reward Amount credited on the Customer's Landmark Trading Account under the circumstances set out in paragraph 19(d) 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.

28. The eligible service period in relation to the deductible Prepayment Amount under the Agreement is, pursuant to paragraph 26 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 20 of this Product Ruling) are a small business entity 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 Ruling:

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 Div 230
- ITAA 1997 328-110
- SISA 1993
- TAA 1953

Legislative references:

- ITAA 1936
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZMD
- ITAA 1936 Part IVA
- ITAA 1997
- ITAA 1997 8-1

Case references:

- Magna Alloys and Research Pty Ltd v FC of T [1980] FCA 150; 11 ATC 4542; 80 ATR 276

ATO references

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