

# AGFARM ADVANTAGE DEFERRED PAYMENT OPTION



advantage

The below information has been provided at the request of growers who require more information relating to the Australian Taxation Office (“ATO”)’s treatment of grain pools that provide a deferred payment option. It is based on advice received by Agfarm from our accounting partner.

It should in no way be seen that Agfarm is providing taxation advice in relation to these arrangements and Agfarm strongly encourages growers to obtain their own advice as to the potential taxation consequences of utilising the deferred payment option under Agfarm Advantage.

The following comments have been extracted from the advice received and are provided for information purposes only.

## ASSESSABILITY OF AMOUNTS FROM SALE OF GRAIN SOLD UNDER POOLING ARRANGEMENTS

As growers may be aware, other entities offer grain sale arrangements similar to those that Agfarm offers to its customers. The ATO has issued various rulings in relation to the taxation implications of these arrangements, including a public ruling, TR 2001/1, in relation to arrangements operated by AWB. Essentially, the ATO accepts that under the terms of these arrangements:

- The grain ceases to be trading stock of the grower at the time of delivery to AWB and it is at that point that the sale of the grain (to AWB) occurs;
- Notwithstanding that there is a sale of grain on delivery, no presently existing recoverable debt arises at that point in time – the grower has merely received a right to receive an as yet undetermined proportion of the final pool proceeds. The grower therefore does not derive any assessable income on delivery of the grain to AWB.
- No assessable income is derived by the grower until such time as either AWB quantifies and declares the distribution (for growers who return their income on an accruals basis) or pays the distribution (for growers who operate on a cash basis).

## TRANSFER OF TITLE IN GRAIN

The Agfarm Advantage Terms and Conditions specifically provide that the title in the grain passes from the grower to Agfarm on delivery. We believe that this accurately reflects the reality of the situation, particularly where the grain is physically mixed with that of other suppliers. It will also remove any doubt as to the income tax implications by more closely aligning the circumstances with those of which the ATO has favourably ruled.

While the matter is not free from doubt, if the growers did retain beneficial ownership of the grain there would perhaps be some

question as to whether it would be possible to defer recognition of the income until the final distribution of proceeds (if the grower retains ownership, they arguably derive the income as and when the individual sales occur).

## PAYMENTS OF DISTRIBUTIONS

The monthly Sales Programs provide for monthly distributions to be made to growers, as the sales occur. Under the deferred payment arrangements, the number of distributions is reduced to one for the 2 and 5 Month Program (to be paid in July) and possibly two or more for the 10 Month Program (the first to be paid in July and the remaining distributions in the following 5 months).

In order to achieve the desired income tax outcome (i.e. deferral of income recognition), the Terms and Conditions reflect the revised distribution arrangements. In particular it is clear that the growers have no entitlement to payment of any distributions or amounts until such time as they are quantified and declared by Agfarm (which will occur in July for the 2 and 5 month Program and in July and/or more later months for the 10 month Program).

## PROGRESSIVE SALE OF GRAIN

A key feature of the existing Sales Programs is the progressive sale of the grain in equal instalments over the term of the Program in order to minimise sale price risk.

The deferred recognition of income from the grain sales depends to a large extent on there being sufficient uncertainty as to the timing and amount that the grower will receive. If the Sales Program provides for predetermined quantities of grain to be sold at regular intervals, there is perhaps some risk that it could be argued that growers would derive the income from those sales as they occur (notwithstanding that the funds may not be paid across until a later date).

