



WITHDRAWN - see ruling BR Prd 21/04

PRODUCT RULING – BR PRD 20/03

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of the Person who applied for the Ruling

This Ruling has been applied for by StockCo Limited and StockCo Capital Limited.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of ss BG 1, DA 1(1), DA 2, EA 3, EJ 10, FA 6 to FA 11, FA 12 and GA 1 and subpart EW.

The Arrangement to which this Ruling applies

The Arrangement is the leasing of livestock by either StockCo Limited or StockCo Capital Limited (both referred to as StockCo in this Ruling) to their customers to use solely in a farming business. Each customer will be a "New Zealand resident" (as defined in s YA 1). StockCo will purchase the livestock either from the customer and then lease them back to the customer or from a third party and then lease them to the customer. The customer will lease the livestock over a period of usually four years. The livestock will be progressively culled (or may go missing or die) over the period of the lease, with cull payments being returned to StockCo.

Further details of the Arrangement are set out in the paragraphs below.

Purchase of livestock

1. The StockCo Group considered it commercially prudent to separate its livestock-leasing business from its usual banking arrangements and relationships, so incorporated StockCo Capital Limited (as a sister company to StockCo Limited) for this purpose.
2. StockCo will purchase an agreed number of "specified livestock" (as defined in s YA 1) – in this case cows – from the customer or a third party, for the purchase price as provided for in cls 4 to 6 of the Dairy Herd Lease Master Terms:

WE WILL PURCHASE THE HERD

- 4 We will purchase the Cows specified in each Lease Agreement for the Purchase Price detailed in the Lease Agreement on the Commencement Date.
 - 5 When we purchase Cows from you we will create a buyer generated invoice.
 - 6 We are purchasing the Cows at your request. You are responsible for inspecting and approving all Cows prior to us purchasing them.
3. The purchase price is the equivalent of the market value of the purchased cows at the time of acquisition.

4. Where the livestock are purchased from a third party, StockCo will pay the purchase price to the third- party vendor.
5. The customer will apply the purchase price to debt or other farming costs (such as expanding their farming operations or covering other business-related costs).

The Lease

6. The agreement entered into between StockCo and its customers is made up of two documents: the Dairy Herd Lease Master Terms and the Lease Agreement (together, "the Lease"). The Lease sets out the terms of the sale (where StockCo purchases livestock from the customer) and the lease of the livestock.
7. The terms of the Lease will not be materially different from those in the version provided to Inland Revenue on 21 May 2020.
8. As provided for in cls 7 and 8 of the Master Terms, StockCo owns the cows and leases the purchased cows to the customer for the lease period, and the customer owns all milk and progeny the leased cows produce:

- 7 We will own the Cows. You will own all progeny and milk produced by the Cows during the Lease period.

WE WILL LEASE YOU THE HERD

- 8 We lease to you, and you take on lease, the Herd for the term specified in the Lease Agreement from the time we purchase the Herd.
9. The progeny will be valued in accordance with the livestock valuation rules set out in part EC of the Act.
10. Clauses 11 to 13 of the Master Terms set out the customer's payment obligations:

YOUR PAYMENT OBLIGATIONS

- 11 You will pay us for each Herd:
 - 11.1 **Lease Payments:** the Lease Payments as set out in the relevant Lease Agreement. The Lease Payments are the rent payable for the lease of the Herd.
 - 11.2 **Cull Payments:** the Cull Payments as set out in the relevant Lease Agreement.
 - (a) The Cull Payments are the amounts we agree to realise from Cull Cows when they are culled. You agree to realise this amount for us by selling the Cull Cows on our behalf.
 - (b) You will pay us the Cull Payments regardless of the amount you realise from selling the Cull Cows on our behalf. If you realise more than the Cull Payments you may keep the additional amount.
 - 12 On the Commencement Date (or as otherwise specified) you will also pay us any establishment fee or other fee specified in a Lease Agreement.
 - 13 You will provide us with a signed Dairy Order so that the Lease Payments are paid directly to us by the Dairy Company.
11. Under cl 13, the customer must arrange for the lease payments to be made directly to StockCo by the Dairy Company (defined in cl 59 of the Master Terms as

"Fonterra"). Accordingly, only Fonterra members are eligible to enter into the agreement.

12. The customer will use the livestock valuation regime in subpart EC of the Act to determine the value of the leased livestock.

Early termination of the Lease and events of default

13. Clause 21 of the Master Terms provides for the early termination of the Lease by the customer in certain situations:

EARLY TERMINATION

- 21 Where there is a material change in your circumstances, you may terminate the Lease early by:
- 21.1 purchasing the remainder of the Herd for the Net Present Value of the unpaid Lease Payments and Cull Payments; and
- 21.2 paying us any other amount owing to us under this agreement in relation to the relevant Lease; or
14. It is expected that cl 21 of the Master Terms would be applied only in rare cases, as a cost-benefit analysis would usually favour the customer remaining in the Lease and continuing to meet the Lease obligations.
15. Clause 22 of the Master Terms provides for early termination by StockCo:
- 22 We can end the Lease under clause 25.2 because of your default.
16. Clause 25.2 of the Master Terms states:
- 25 If an Event of Default has occurred, we may:
- ...
- 25.2 end the Lease with effect from any date specified by us and require you to, at our option:
- (a) return the Herd to us at the location and by the date nominated by us. If we end the Lease under this clause 25.2(a) you will pay us liquidated damages equal to the amount (if any) by which the market value of the Herd (as determined by us, acting reasonably) is less than the Net Present Value of the unpaid Lease Payments and Cull Payments; or
- (b) purchase the Herd for the sum of the Net Present Value of the unpaid Lease Payments and Cull Payments.
17. Clause 25.1 of the Master Terms allows for StockCo to repossess the herd or any cows following an event of default:
- 25.1 enter the Land (or any land where we consider the Herd or any Cows may be) without notice and repossess any or all of the Cows; ...
18. This Ruling does not consider or rule on early termination or events of default that occur as part of the Arrangement.

Return of the leased cows

19. The leased cows are returned to StockCo by way of an agreed culling process over the term of the Lease. In this respect, cls 9 and 10 of the Master Terms state:

YOU WILL CULL THE COWS ON OUR BEHALF

- 9 We recognise that the Herd will progressively reach the end of its useful milking life over the Lease period.
- 10 You agree to reduce the Herd to zero over the Lease period at the approximate Annual Cull Rate specified in the relevant Lease Agreement. The Annual Cull Amount Due has been determined on the basis of the Annual Cull Rate and Cull Value specified in the relevant Lease Agreement.

20. Despite cl 10 of the Master Terms, it is acknowledged in the Lease that cows may die or go missing. Clauses 15 and 16 of the Master Terms set out terms relating to missing and dead cows:

MISSING AND DEAD COWS

- 15 We understand that deaths occur and that Cows may go missing. We have included an annual death and missing cow allowance of 2.5% of the Herd within the Lease Payment calculation.
- 16 You agree that the Cows are at your sole risk. You must pay the Lease Payments and Cull Payments regardless of anything else, including the reason for, or the number of, deaths or missing cows.

21. A dairy herd generally loses about 25% of its mature cows annually through culling of older cows and natural attrition. Therefore, it is expected that none of the leased livestock will remain at the end of the lease period.

Deferred cull payment

22. The amount and timing of the cull payments are agreed at the time of entering into the Lease and are reflected in the payment schedule. As the amounts payable are fixed, the customer takes on the risk of under-recovery from the meat works on the culled cows but gets the benefit of any over-recovery.
23. The customer and StockCo negotiate the frequency and timing of cull payments, but payment will generally be at the time the livestock are culled or deferred until the end of the lease term and paid as a lump sum.
24. As StockCo retains legal ownership of cull payments, it will return them as income in the year in which those payments are derived.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- a) The lease payments are deductible under s DA 1(1) and none of the general limitations in s DA 2 apply to prevent deductibility, provided that no provision in subparts DB to DZ applies to prevent a deduction under s DA 1(1).
- b) At the end of an income year, unless the customer is excused from this requirement pursuant to a determination issued by the Commissioner, s EA 3 applies to require the unexpired portion of any lease payments to be included in

the customer's income in the current income year and to be an amount for which the customer is allowed a deduction in the following income year, provided the Lease is not the customer's "revenue account property" or "trading stock" (within the meaning of s YA 1).

- c) The financial arrangements rules in subpart EW do not apply to the Arrangement, because the lease is an excepted financial arrangement.
- d) Section EJ 10 does not apply to the Arrangement.
- e) Sections FA 6 to FA 11 do not apply to the Arrangement.
- f) Section FA 12 does not apply to the Arrangement.
- g) Sections BG 1 and GA 1 do not apply to negate or vary the above conclusions.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 14 July 2020 and ending on 14 July 2024.

This Ruling is signed by me on the 15th day of July 2020.

Dinesh Gupta
Tax Counsel Lead
Tax Counsel Office