



Product Ruling

Income tax: Rewards Group Tropical Fruits Project 2008

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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* (TAA).

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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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.

No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give 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. We recommend 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) who 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 provision(s) identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. In this Product Ruling this scheme is referred to as 'Rewards Group Tropical Fruits Project 2008' or simply as 'the Project'.

Class of entities

2. This part of the Product Ruling specifies which entities:

- are subject to the taxation obligations; and
- can rely on the taxation benefits;

set out in the Ruling section of this Product Ruling.

3. The members of the class of entities who are subject to those taxation obligations and who can rely on those taxation benefits are referred to as Growers.

4. Growers will be those entities that are accepted to participate in the scheme specified below as initial participants¹ on or after the date this Product Ruling is made and who have executed the relevant Project Agreements set out in paragraph 34 of this Ruling on or before 15 June 2008.

5. The class of entities who can rely on the tax benefits set out in the Ruling section of this Product Ruling does **not** include entities who:

- participate in the scheme other than as initial participants;
- intend to terminate their involvement in the scheme prior to its completion, or who otherwise do not intend to derive assessable income from it;
- are accepted into this Project before the date of this Ruling or after 15 June 2008;
- participate in the scheme through offers made other than through the Product Disclosure Statement (PDS);
- enter into finance arrangements with Rewards Projects Ltd, the Preferred Financier or entities associated with this Project or their associates, other than those specified at paragraphs 84 to 90 of this Ruling (the word 'associate' has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936));

¹ For the purposes of this Ruling an 'initial participant' means a participant who has obtained their interest in the scheme from the Responsible Entity or the Manager of the scheme.

- have their application conditionally accepted subject to finance by Rewards Projects Ltd or the Preferred Financier where the funds are not paid in full to the Responsible Entity by 15 June 2008; or
- have their application conditionally accepted subject to finance by a lending institution other than Rewards Projects Ltd or the Preferred Financier, where written evidence of finance approval has not been given to the Responsible Entity by 15 June 2008, and the funds are not paid in full to the Responsible Entity by 30 June 2008.

Superannuation Industry (Supervision) Act 1993

6. This Product ruling **does not** address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Tax Office gives no assurance that the product 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 product may contravene the provisions of SISA 1993.

Qualifications

7. 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 34 to 93 of this Ruling.

8. 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.

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Date of effect

10. This Product Ruling applies prospectively from 12 March 2008, the date this Product Ruling is made. It therefore applies only to the specified class of entities that enter into the scheme from 12 March 2008 until 15 June 2008, being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for the income years up to 30 June 2010.

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;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

12. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Changes in the law

15. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments to the law may impact on this Ruling. Any such changes will take precedence over the application of this Product Ruling and, to the extent of those amendments this Product Ruling will be superseded.

16. 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

17. 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 Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling is issued.

Goods and Services Tax

18. All fees and expenditure referred to in this Product Ruling include the Goods and Services Tax (GST) where applicable. In order for an entity (referred to in this Ruling as a Grower) to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

Ruling

Application of this Ruling

19. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for a Grower in the defined class of entities who enters into the scheme described at paragraphs 34 to 93 of this Ruling.

20. The Grower's participation in the Project must constitute the carrying on of a business of primary production. Provided the Project is carried out as described below, the Grower's business of primary production will commence at the time of execution of their Sub-lease and Management Agreement.

Minimum subscription

21. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the PDS, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 150 Groves is achieved.

Concessions for 'small business entities'²

22. From the 2007-08 income year, a range of concessions previously available under the simplified tax system (STS), will be available to an entity if it carries on a business and satisfies the \$2 million aggregated turnover test (a 'small business entity').

² The meaning of 'small business entity' is explained in section 328-110.

23. A 'small business entity' can choose the concessions that best suit its needs. Eligibility for some small business concessions is also dependent on satisfying some additional conditions. Because of these choices and the eligibility conditions the application of the small business concessions to Growers who qualify as a 'small business entity' is not able to be dealt with in this Ruling.

Assessable income

Sections 6-5 and 17-5

24. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

25. For gross sales proceeds attributable to Joint Venture Growers:

- the First Joint Venturer will be assessable on 28%; and
- the Second Joint Venturer will be assessable on the balance of 72%,

less any GST payable on those proceeds.

Deductions for Project Fees

Sections 8-1 and 25-25 of ITAA 1997 and sections 82KZME and 82KZMF of ITAA 1936

26. A Grower may claim tax deductions for the following fees and expenses on a per Grove basis, as set out in the Table below.

Fee Type	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
Management Services (Fixed Component) Fees	\$3,351.57 See Notes (i), (ii) and (iv)	\$887.03 See Notes (i), (ii) and (iv)	\$938.77 See Notes (i), (ii) and (iv)
Rent	\$39.14 See Notes (i), (ii) and (iv)	\$375.73 See Notes (i), (ii) and (iv)	As incurred See Notes (i), (ii) and (iv)
Optional insurance	As incurred See Notes (i) and (ii)	As incurred See Notes (i) and (ii)	As incurred See Notes (i) and (ii)
Credit card merchant fees	As incurred See Notes (i) and (ii)	As incurred See Notes (i) and (ii)	As incurred See Notes (i) and (ii)
Harvest costs	Nil	As incurred See Notes (i), (ii) and (iv)	As incurred See Notes (i), (ii) and (iv)

Cost of sales	Nil	As incurred See Notes (i), (ii) and (iv)	As incurred See Notes (i), (ii) and (iv)
Management Services (Harvest Component) Fee	Nil	As incurred See Notes (i), (ii) and (iv)	As incurred See Notes (i), (ii) and (iv)
Interest on loans with Rewards Projects Ltd or the Preferred Financier	Nil	As incurred See Notes (iii) and (iv)	As incurred See Notes (iii) and (iv)
Loan Application Fee	Must be calculated See Note (v)	Must be calculated See Note (v)	Must be calculated See Note (v)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example, input tax credits): Division 27.
- (ii) The Management Services (Fixed Component) Fee, Rent, optional insurance, credit card merchant fees, Harvest costs, Costs of sale, and Management Services (Harvest Component) Fees are deductible under section 8-1 in the income year that the relevant fee is incurred.
- (iii) Interest payable to Rewards Projects Ltd or the Preferred Financier under the finance arrangements described at paragraph 84 of this Ruling are deductible under section 8-1 in the income year in which it is incurred. The deductibility or otherwise of interest arising from agreements entered into with financiers other than Rewards Projects Ltd or the Preferred Financier, is outside the scope of this Ruling. Prepayments of interest to any lender, including Rewards Projects Ltd and the Preferred Financier, are not covered by this Product Ruling. Growers who enter into agreements with other financiers and/or prepay interest may request a private ruling on the deductibility of the interest incurred.

- (iv) This Ruling does not apply to Growers who choose to prepay fees or who choose, or who are required to prepay interest under a loan agreement (see paragraphs 108 to 112 of this Ruling). Subject to certain exclusions, amounts that are prepaid for a period that extends beyond the income year in which the expenditure is incurred may be subject to the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936. Any Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.
- (v) The loan Application Fee (being 1% of the finance application amount, subject to minimum charge of \$100 and a maximum of \$500) payable to either Rewards Projects Ltd or to the Preferred Financier is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing money that is used or is to be used during that income year solely for income producing purposes. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred, otherwise the deduction is spread over the period of the loan or 5 years, whichever is shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Rewards Projects Ltd or the Preferred Financier is outside the scope of this Ruling.

Joint Venture Growers

27. The First Joint Venturer Grower may claim the following deductions per Grove in respect of the items described in the table above (and accompanying Notes):

- the Management Services (Fixed Component) Fees and Rent for the period from commencement to 30 June 2008;
- 28% of the Management Services (Harvest Component) Fees;
- 28% of Harvest costs and Costs of sale; and
- if applicable, credit card merchant fee, interest and loan Application Fee.

28. The Second Joint Venturer Grower may claim the following deductions per Grove in respect of the items described in the table above (and accompanying Notes):

- the Management Services (Fixed Component) Fee and Rent for the period from 1 July 2008;
- 72% of the Management Services (Harvest Component) Fee;

- 72% of Harvest costs and Costs of sale; and
- if applicable, insurance and credit card merchant fee.

Deductions for capital expenditure***Division 40 and Subdivision 328-D***

29. A Grower may claim tax deductions for the following capital expenses on a per Grove basis, as set out in the Table below.

Fee Type	Year ending 30 June 2008	Year ending 30 June 2009	Year ending 30 June 2010
Landcare services fee	\$1,320 See Notes (i) & (vi)	Nil	Nil
Trellis fee	Must be calculated See Notes (i), (vii) & (viii)	Must be calculated See Notes (i), (vii) & (viii)	Must be calculated See Notes (i), (vii) & (viii)
Planting fee	Nil	Nil	Must be calculated See Notes (i) & (ix)
12 months Terms Option Application Fee	Must be calculated See Notes (i) & (x)	Must be calculated See Notes (i) & (x)	Must be calculated See Notes (i) & (x)

Notes:

- (vi) Any capital expenditure incurred for a 'landcare operation' as defined in section 40-635 is fully deductible in the year in which it is incurred under Subdivision 40-G, section 40-630.
- (vii) For a Grower who is **not** a '**small business entity**', a Grower's interest in trellising is a 'depreciating asset', the cost of which is the amount paid by the Grower (\$44.12 per Grove). The decline in value of the asset is calculated by using the formula in either subsection 40-70(1) (diminishing value method) or subsection 40-75(1) (prime cost method). Both formulas rely on the 'effective life' of the assets.

Growers can either self-assess the effective life (section 40-105) or use the Commissioner's determination of effective life (section 40-100). The Commissioner has determined that trellising has an effective life of 20 years. The trellising will be installed and first used during the year ended 30 June 2008.

For a Grower who purchases **less than 23 Groves** in this Project, their interest in trellising will be a 'low-cost asset' of less than \$1,000, and can be allocated to a 'low-value pool'. Once any 'low-cost asset' is allocated to a 'low-value pool', all other 'low-cost assets' the Grower starts to hold in that year or a later year must be allocated to that pool.

Where an asset is allocated to a 'low-value pool', the capital expenditure on the asset will be deductible under the diminishing value method based on the rate of 18.75% in the year the asset is first used and 37.5% in subsequent years (section 40-440).

If the cost of trellising is not allocated to a 'low-value pool', it can be written off based on the effective life of the asset.

- (viii) For a Grower who is a '**small business entity**', a deduction equal to the amount of the Grower's expenditure for the trellising is available (Subdivision 328-D) in the income year in which the asset is used or 'installed ready for use'. This is provided that: the Grower is a 'small business entity' for the income year in which the Grower starts to hold the asset and the income year in which the asset is first used or 'installed ready for use' to produce assessable income; and that the asset is a 'low-cost asset' of less than \$1,000.

For a Grower who purchases **more than 22 Groves**, the Grower's interest in the trellising may not be a 'low-cost asset' as the cost may be \$1,000 or greater. For these Growers, their interest in trellising is a 'depreciating asset' that can be allocated to a 'general small business pool'. The cost of the asset is the amount paid by each Grower.

For trellising allocated to a 'general small business pool', the tax deduction allowable is determined in the year ended 30 June 2008 by multiplying the cost of the interest by 15%.

Each Grower's interest in the trellising is allocated to their 'general small business pool' at the end of the financial year ending 30 June 2008 and that part of the cost not deducted in the first year is added to the pool balance. In subsequent years, the pool rate of 30% will apply.

- (ix) Fruit trees are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the Land under a sub-lease, the conditions in item 3 of subsection 40-525(2) are met and a deduction for the decline in value of the horticultural plants is available under subparagraph 40-515(1)(b).

The deduction for the new fruit trees is determined using the formula in section 40-545 and is based on the capital expenditure (in this case the Planting fee) of \$496.34 per Grove. If the new fruit trees have an effective life of greater than 13 years but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the fruit trees enter their first commercial season (section 40-530, item 2). Rewards Projects Ltd will inform Growers when the new fruit trees enter their first commercial season.

- (x) Growers who elect to use the 12 month Terms Option must pay an Application Fee to Rewards Projects Ltd of 1% of the Finance Application Amount, subject to a minimum of \$100 and maximum of \$500. This expenditure is not deductible in full when it is incurred. Under section 40-880 it is deductible in equal proportions over five income years beginning in the year in which the administration fee is incurred (see paragraphs 106 and 107 of this Ruling).

Joint Venture Growers

30. The First Joint Venturer Grower may claim the following deductions per Grove in respect of the items described in the table above (and in accordance with the accompanying Notes):

- landcare services fee;
- trellis fee;
- the initial capital expenditure for the establishment of horticultural plant, being the first year planting fee; and
- 12 months Terms Option Application Fee.

31. The Second Joint Venturer Grower may claim deductions for the capital expenditure for the establishment of horticultural plant, being the second year planting fee, as calculated according to the Notes.

Deferral of losses from non-commercial business activities***Section 35-55 – exercise of Commissioner’s discretion***

32. A Grower who is an individual accepted into the Project by 15 June 2008 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described below, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers for the income years ended **30 June 2008 to 30 June 2011**. This conditional exercise of the discretion will allow those losses to be offset against the Grower’s other assessable income in the income year in which the losses arise.

Prepayment provisions and anti-avoidance provisions***Sections 82KZME, 82KZMF and 82KL and Part IVA***

33. For a Grower who commences participation in the Project and incurs expenditure as required by the Sub-lease and Management Agreement, the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Grower does not fall within the scope of sections 82KZME and 82KZMF (but see paragraphs 108 to 112 of this Ruling);
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Scheme

34. The scheme that is the subject of this Ruling is specified below. This scheme incorporates the following documents:

- Application for a Product Ruling as constituted by documents provided on 30 October 2007, and additional correspondence including emails received on 18 December 2007, 2 January 2008, 14 January 2008, 24 January 2008, and 30 January 2008;
- Draft **Product Disclosure Statement** for the Rewards Group Tropical Fruits Project 2008 received on 30 October 2007, 29 January 2008, and 4 March 2008;
- Independent Expert’s Report dated 21 October 2007 received on 30 October 2007;
- Draft **Application Guide** received 24 January 2008;

- Draft **Management Agreement**, to be entered into by each Grower and Rewards Projects Ltd (the Manager), received 30 October 2007;
- Draft **Sub-lease** (Qld Land) to be entered into by each Grower and Rewards Projects Ltd received 30 October 2007;
- Draft **Sub-lease** (WA Land) to be entered into by each Grower and Rewards Projects Ltd received 30 October 2007;
- Draft Lease/Sub Lease to be entered into by Rewards Land Pty Ltd and Rewards Projects Ltd received 30 October 2007;
- Draft **Constitution** establishing the Rewards Group Tropical Fruits Project 2008 received on 30 October 2007;
- Draft Operations Agreement between Rewards Projects Ltd and Rewards Management Pty Ltd received 30 October 2007;
- Tropical Fruits Project 2008 Goldpak Property Management Plan October 2007 received 30 October 2007;
- Tropical Fruits Project 2008 Kumbia Property Management Plan October 2007 received 24 January 2008;
- Tropical Fruits Project 2008 Management Plan Dandaragan October 2007 received 30 October 2007;
- Tropical Fruits Project 2008 Management Plan Childers October 2007 received 30 October 2007;
- Draft **Finance Package**, including Finance Application and Finance Agreement to be entered by each Grower and Rewards Projects Ltd or the Preferred Financier received 24 January 2008;
- Draft Heads of Agreement Fruit Marketing Services between a fruit marketer and Rewards Projects Ltd received 30 October 2007;
- Draft Heads of Agreement Fruit Packaging Services between a packaging company and Rewards Projects Ltd received 30 October 2007;
- Draft Compliance Plan for the Rewards Group Tropical Fruits Project 2008 received 30 October 2007;
- Tropical Fruits Project 2008 Draft Independent Market Report dated 25 October 2007 received 30 October 2007;

- Draft Phytonova Stone Fruit Licence Agreement between the licence holder and Rewards Projects Ltd received 30 October 2007; and
- Draft Limited Licence and Non-propagation Agreement between fruit tree providers and Rewards Project Ltd received 30 October 2007.

Note: certain information may have been provided on a commercial-in-confidence basis which will not be disclosed or released under Freedom of Information legislation.

35. The documents highlighted are those that a Grower may enter into. For the purposes of describing the scheme to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the scheme.

36. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

37. The main features of the Rewards Group Tropical Fruits Project 2008 are as follows:

Location	Four separate sites near: • Dandaragan in Western Australia; • Childers in Queensland; • Mareeba in Queensland; and • Kumbia in Queensland.
Type of business to be carried on by each Grower	Commercial growing and cultivation of fruit trees for producing mango, nectarine, peach and plum stone fruit.
Term of the Project	20 years
Number of hectares offered for cultivation	135
Size of each Grove	0.05 hectares
Minimum allocation per Grower	2 Groves
Minimum subscription	150 Groves (7.5 hectares)
Initial cost to Grower	\$5,225 per Grove \$10,450 for 2 Groves (equivalent of \$104,500 per hectare)
Ongoing costs to Growers	Management services fees, rent, planting fees, harvest costs, costs of sale, insurance, credit card merchant fees

38. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. Rewards Projects Ltd has been issued with an Australian Financial Service Licence (number 224000) and will be the Responsible Entity for the Project.

39. The Project will involve the planting of new stone fruit trees and cultivating of both new and established mango and stone fruit trees, for the purpose of harvest and sale of the fruit produce by the Rewards Projects Ltd on behalf of the Growers in the Project.

40. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer under the PDS is for 135 hectares, which corresponds to 2,700 Groves in the Project (each Grove being 0.05 hectares in size).

41. Each applicant must apply for a minimum of 2 Groves at an initial total cost of \$10,450 (excluding finance and associated charges). The term of the Project is 20 years.

42. After acceptance of the application, a Power of Attorney contained in the PDS irrevocably appoints Rewards Projects Ltd to enter into, on behalf of the Grower, a Sub-lease agreement, a Management Agreement and any other documents required to hold an interest in the Project.

43. For the purposes of this Ruling, applicants who are accepted to participate in the Project and who execute the Lease and the Management Agreement on or before 15 June 2008 will become Growers.

44. Under terms of the PDS, the interests in the Grower's Groves will be issued if a minimum subscription of 150 Groves has been achieved by 15 June 2008.

45. The Project will be carried out on land the Responsible Entity is currently leasing or will lease from the Rewards Land Pty Ltd and another lessor. Specifically, it is described as:

- Mareeba – Lot 2 on Registered Plan 737776 and Lot 3 on Survey Plan 189422;
- Kumbia – Lot 94 on CP FY460, and Lots 196-198 on Survey Plan 188941;
- Dandaragan – Lot 27 on Deposited Plan 42010; and
- Childers – Lot 925 on Survey Plan 112106 and Lot 1 Registered Plan 809421.

46. Each 0.05 hectare Grove is comprised of:

- 0.0141 hectare sub-grove at the Childers property for new stone fruit;
- 0.0074 hectare sub-grove at Dandaragan for new stone fruit;
- 0.0112 hectare sub-grove at Kumbia for new stone fruit;

- 0.0074 hectare sub-grove at Kumbia for established stone fruit; and
- 0.0098 hectare sub-grove at Mareeba for established mango.

47. Each Grower will use their Groves for the purpose of carrying on a business of cultivating and harvesting mangoes and stone fruit and the sale of harvested produce.

48. Water for the Project will be from the following sources:

- irrigation water from the Mareeba-Dimbulah Irrigation Area for the Mareeba property;
- ground water bores for the Dandaragan property;
- irrigation water from the Burnett River Irrigation Scheme at the Childers property; and
- licensed ground water bores for the new and established orchards at the Kumbia property.

49. Rewards Projects Ltd warrants that sufficient water is available for the Project.

Constitution

50. The Constitution establishes the Project and operates as a deed binding all Growers and Rewards Projects Ltd. The Constitution sets out the terms and conditions under which Rewards Projects Ltd agrees to act as Responsible Entity and thereby manage the Project. Upon acceptance into the Project, Growers are bound by the Constitution by virtue of their participation in the Project.

51. The Constitution does not specify the required form of application – though the Responsible Entity produces an Application Guide which includes an Application Form.

52. Under clause 8.2 of the Constitution, Rewards Projects Ltd will hold all application moneys on trust for the applicants in a 'Subscription Fund'.

53. According to clause 3.3, moneys may not be released from the Subscription Fund until:

- minimum subscription has been reached;
- a legal expert advises that the lessor can grant the sub-leases to the Growers and the Project land is not subject to any detrimental encumbrances;
- the Lease and Management Agreements are in the proper form and any other matters necessary for the creation of these agreements have been attended to; and
- there are no material breaches of the Constitution.

54. Upon acceptance of an application:
- the application money will remain in the same trust bank account, but will be deemed to be the Project Fund (clause 8.3);
 - the applicant becomes a Grower in the Project (clause 3.4); and
 - money can be released from the Project Fund for payment of Project Fees (clause 3.6).
55. In summary, the Constitution also sets out provisions relating to:
- powers and responsibilities of Rewards Projects Ltd as the Responsible Entity (clause 6);
 - sale of Grower's interests in the Project if a Growers default in payment of Project Fees (clause 9.4);
 - payment of monies from the Proceeds Fund (clause 11);
 - complaints, alternative dispute resolution and legal proceedings (clause 12);
 - commencement and termination of the Project (clause 14);
 - Growers' rights (clause 15);
 - destruction and insurance of Groves (clauses 18 and 19); and
 - Joint Venturers (clause 20).

Compliance Plan

56. As required by the *Corporations Act 2001*, Rewards Projects Ltd has prepared a Compliance Plan. The purpose of the Compliance Plan is to ensure that Rewards Projects Ltd manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Head Lease

57. The Responsible Entity will enter into four Head Leases with the lessor(s) in respect of Land required for the Project. The Project Land is located near: Dandaragan in Western Australia; Childers in Queensland; Mareeba in Queensland; and Kumbia in Queensland.

58. Under the head Lease, the Responsible Entity is able to sub-lease the land or any part of the land to Growers in the Rewards Group Tropical Fruits Project 2008 for a term equivalent of the term of the Lease.

59. The Responsible Entity and Growers must use the Land only for the purpose of growing mangoes and stone fruit for commercial sale.

Sub-leases

60. Each Grower will execute a Sub-lease (WA Land) and Sub-lease (Qld Land) with the Responsible Entity as the Sub-lessor. The Responsible Entity will grant to the Grower the right to exclusively possess, occupy, use and enjoy the Groves for the conduct of the Grower's business of growing, harvesting and selling mangoes and stone fruit for commercial profit.

61. The Sub-leases set out the rights and obligations of the parties to the agreements. Clause 5.3 specifies that the Responsible Entity (as sub-lessor) shall install or procure suitable irrigation systems for the new stone fruit orchards on or before 30 September 2008, and will upgrade the irrigation systems until 30 June 2012.

62. Clause 5.4 specifies that suitable netting and trellis systems will be installed by the Landowner for the new stone fruit orchards at Childers and Kumbia on or before 30 September 2008.

63. The Sub-lease shall operate on and from the Commencement Date until terminated in accordance with clause 7 and item 3 of the Schedule.

64. The Schedule to the Sub-lease also identifies the Project Land and the rent payable by the Grower, whilst the Annexure(s) will identify the specific Groves allocated to the Grower.

Operations Agreement

65. Rewards Projects Ltd as the Responsible Entity will enter into an Operations Agreement with Rewards Management Pty Ltd, whereby the latter is appointed as Manager to carry out, in accordance with sound agricultural and environmental practices adopted within the agricultural industry, the Responsible Entities obligations under the Management Agreement.

Management Agreement

66. Under the Management Agreement, the Grower agrees to engage the Responsible Entity to supervise, carry out, manage, and administer the farming and the harvesting of fruit on the Grower's Groves, and to purchase from the Responsible Entity tree seedlings to enable cultivation of trees.

67. The Agreement will commence on the date the Responsible Entity accepts the Grower's application under the PDS and shall continue until its termination on 30 June 2028, subject to clauses 3 and 14.

68. The agreement provides for the following activities to be completed by 30 June 2008:

- landcare services (clause 2.2);
- supply of fruit trees, preparation of the land for planting, and trellising for Dandaragan (clause 2.4(a) and Annexure B);
- sales agreements negotiated and executed with agents and purchasers (clause 2.3(a) and Annexure A(d) and (e)); and
- pruning, fertilising, weed control, replacement of dead trees etc for the established orchards (clause 2.3(a) and Annexure A(i)).

69. The agreement provides for all planting activities to be completed by 30 September 2008 (clause 2.4(b) and Annexure B).

70. Other and ongoing Management Services are detailed in Annexure A of the agreement.

71. The Responsible Entity is irrevocably appointed to arrange each harvest at any time deemed appropriate (clause 6).

72. The Responsible Entity is authorised to appoint Fruit Agents to negotiate the sale of the harvested fruit, and must ensure that the Fruit Agent negotiates the highest sale price practicable, and the pooled fruit will be sold collectively (clause 7).

Pooling of crops and Grower's entitlement to proceeds of harvest

73. The Management Agreement at clause 6.3 requires the Responsible Entity to pool all fruit from each harvest. The Constitution and the Management Agreement set out provisions relating to the Grower's entitlement to the proceeds of harvest.

74. Receipts, being the proceeds from sale of Grower's fruit or insurance proceeds from claims in respect of Growers fruit trees, are to be held in the Proceeds Fund (clause 6.1(u) of the Constitution).

75. The balance in the Proceeds Fund shall be distributed to Growers after deducting the following payments (clause 11.1 of the Constitution):

- costs of harvest and sale;
- project fees, and other fees, costs, interest or taxes payable to the Responsible Entity under the Constitution;
- 12 months estimated Project Fees in advance to the Responsible Entity;
- amounts owing to the Responsible Entity under the Management Agreement;

- amounts owing to the (sub)Lessor; and
- any other amounts owed by the Grower to the Responsible Entity.

76. Each Grower's share of the Proceeds Fund is restricted to their proportionate share (after costs). The 'Rights to Receipts' of Joint Venture Growers are set out in clause 20.5 of the Constitution.

77. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed fruit or insurance proceeds are entitled to benefit from distributions from the Proceeds Fund; and
- any pooled fruit and or Receipts must consist only of fruit or Receipts contributed by Growers of the same Project Class.

Fees

78. The initial subscription payable by a Grower is \$5,225 per Grove, consisting of:

- **Management Services (Fixed Component) Fees** of \$3,351.57, for services to be provided from the Commencement Date to 30 June 2008 (Item 2 of the Schedule to the Management Agreement);
- **Landcare Services Fee** of \$1,320.00 for services to be provided from the Commencement Date to 30 June 2008 (Item 3 of the Schedule to the Management Agreement);
- **Trellis Fee** of \$44.12 for installing trellis on new stone fruit orchards before 30 June 2008 (Item 4 of the Schedule to the Management Agreement);
- **Planting Fee** of \$470.17 to supply trees and prepare the land for planting by 30 June 2008 (Item 5 of the Schedule to the Management Agreement); and
- **Rent** of \$39.14 for the period from the Commencement Date to 30 June 2008 (Item 4 of the Schedule to the Sub-Leases).

79. The annual fees per Grove from 1 July 2008 are:

- **Management Services (Fixed Component) Fees** (Item 2 of the Schedule to the Management Agreement) of:
 - \$887.03 for services to be provided from the 1 July 2008 to 30 June 2009, payable on or before 1 October 2008;

- \$938.77 for services to be provided from 1 July 2009 to 30 June 2010, payable on or before 1 October 2009; and
- thereafter until the end of the Project, the fee is calculated with reference to the previous year's fee increased by 2.8% or by the Consumer Price Index (CPI) payable on or before 1 October of the relevant year.
- **Planting Fee** of \$26.17 to supply trees and prepare the land for planting during the period between 1 July 2008 and 30 September 2008, payable on or before 1 October 2008 (Item 5 of the Schedule to the Management Agreement);
- **Management Services (Harvest Component) Fee** equal to 11% of the Grower's share of the sale proceeds after deducting harvest and sale costs (Item 6 of the Schedule to the Management Agreement);
- **Harvest costs** being all costs incidental or otherwise for picking, packing and transport of fruit from the Groves, payable out of the Receipts of the Project (clause 6.2 of Management Agreement and clause 11.1 of the Constitution);
- the Grower's share of the **Costs of sale** of any saleable fruit derived from trees including royalties or sale commissions, payable out of the Receipts of the Project (clause 7.5 of Management Agreement and clause 11.1 of the Constitution);
- optional tree insurance for the period after 30 June 2009; and
- **Rent** (Item 4 of the Schedule to the Sub-Leases) of:
 - \$375.73 for the period 1 July 2008 to 30 June 2009 payable on or before 1 October 2008; and
 - thereafter until the end of the Project, the rent is calculated by reference to the previous year's rent increased by 2.8% or the CPI rate, payable on or before 1 October of the relevant year.

Joint Venturers

80. Two entities can enter the Project as a joint venture. The obligations, rights and interests of such applicants are set out in clause 20 of the Constitution.

81. The First Joint Venturer pays the \$5,225 initial subscription fee, 28% of the Management Services (Harvest Component) Fee, 28% of Harvest costs, 28% of Costs of sale, and 28% of any other amounts due to the Responsible Entity under the Constitution, Sub-Lease, or Management Agreements.

82. From 1 July 2008, the Second Joint Venturer pays the Management Services (Fixed Component) Fees, Planting Fee, Rent, any optional insurance, 72% of the Management Services (Harvest Component) Fee, 72% of Harvest costs, 72% of Costs of Sale, and 72% of any other amounts due to the Responsible Entity under the Constitution, Sub-Lease, or Management Agreements.

83. The First Joint Venturer and Second Joint Venturer are entitled to 28% and 72% respectively of the Receipts associated with the joint venture Groves.

Finance

84. A Grower who does not pay the Subscription Money in full upon application can enter into a 12 month Terms Option with the Responsible Entity, borrow from the Responsible Entity or the Preferred Financier, or from an independent lender external to the Project.

85. Only the finance arrangements set out below are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they enter into a finance arrangement with Responsible Entity or with the Preferred Financier that materially differs from that set out in the documentation provided to the Tax Office with the application for this Product Ruling. A Grower who enters into a finance arrangement with an independent lender external to the Project other than the Preferred Financier may request a private ruling on the deductibility or otherwise of interest incurred under finance arrangements not covered by this Product Ruling.

86. Other than where a 12 month Terms Option is in place, Growers cannot rely on any part of this Ruling if the Subscription Monies are not paid in full on or before 15 June 2008 by the Grower or, on the Grower's behalf, by a lending institution. Where an application is accepted subject to finance approval by any lending institution other than the Responsible Entity or the Preferred Financier, Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by the lending institution by 15 June 2008, and the funds are not paid in full to the Responsible Entity by 30 June 2008.

Finance offered by the Responsible Entity or the Preferred Financier

87. Subject to the terms and conditions of the Finance Agreement a Grower can finance the cost of their Subscription Money by borrowing that amount from the Responsible Entity or the Preferred Financier.

88. Subject to the Responsible Entity or the Preferred Financier accepting the Grower's application, the Grower will be bound by the terms and conditions of the Loan Agreement. All loans have a fixed rate of interest of 10.95%, and an Application Fee of 1% of the finance application amount (minimum \$100/maximum \$500). The loan repayment amounts described in the following 2 paragraphs are indicative only and do not include stamp duty, ASIC registration fees, or the Application Fee.

89. The loan offered by the Responsible Entity is a 5 years principal and interest loan with 60 monthly payments of \$113.47 per Grove.

90. The loan options offered by the Preferred Financier are:

- 2 years principal and interest with 24 monthly payments of \$243.40 per Grove;
- 5 years principal and interest with 60 monthly payments of \$113.47 per Grove;
- 10 years principal and interest with 120 monthly payments of \$71.83 per Grove; and
- 3 years interest only then 7 years principal and interest, with 36 monthly payments of \$47.68 per Grove followed by 84 monthly payments of \$89.33 per Grove.

12 month Terms Option

91. The Responsible Entity offers Growers the option of payment of the Subscription Money under a 12 month terms payment option, whereby instalments are payable monthly in arrears, by 12 equal monthly instalments of \$435.41, with the first payment on 30 June 2008. The full amount of the Subscription Monies must be paid no later than 12 months from the date the Grower is accepted to participate in the Project.

92. An Application Fee of 1% of the Finance Application Amount, subject to a minimum Application Fee of \$100 and a maximum of \$500.

93. This Ruling does not apply if the finance arrangement entered into by the Grower includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;

- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, other than the Responsible Entity or the Preferred Financier, are involved or become involved in the provision of finance to Growers for the Project.

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.*

Is the Grower carrying on a business?

94. For the amounts set out in paragraphs 26 and 29 of this Ruling to constitute allowable deductions, the Grower's horticultural activities as a participant in the Rewards Group Tropical Fruits Project 2008 must amount to the carrying on of a business of primary production.

95. Two Taxation Rulings are relevant in determining whether a Grower will be carrying on of a business of primary production.

96. The general indicators used by the Courts are set out in Taxation Ruling TR 97/11 Income tax: am I carrying on a business of primary production?

97. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Rewards Group Tropical Fruits Project 2008. As Taxation Ruling TR 2000/8 sets out, the relevant principles have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

98. Having applied these principles to the arrangement set out above, a Grower in the Rewards Group Tropical Fruits Project 2008 is accepted to be carrying on a business of growing and harvesting mangoes and stone fruit for sale.

Deductibility of Project Fees

Section 8-1

99. The Management Services (Fixed Component) Fees, Rent, optional insurance, credit card merchant fees (if applicable), Harvest costs, Costs of sale, Management Services (Harvest Component) Fee, and interest on loans with the Responsible Entity or the Preferred Financier are deductible under section 8-1 (see paragraphs 43 and 44 of Taxation Ruling TR 2000/8). A 'non-income producing' purpose (see paragraphs 47 and 48 of TR 2000/8) is not identifiable in the arrangement and there is no capital component evident in the fees (see paragraphs 49 to 51 of TR 2000/8).

100. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Provided that the prepayment provisions do not apply (see paragraphs 108 to 112 of this Ruling) a deduction for these amounts can be claimed in the year in which they are incurred. (Note: the meaning of incurred is explained in Taxation Ruling TR 97/7.)

101. Some Growers may finance their participation in the Project through a Loan Agreement with the Rewards Projects Ltd (the Responsible Entity) or the Preferred Financier. Applying the same principles as that used for the Management Services (Fixed Component) Fees etc above, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

102. Other than where the prepayment provisions apply (see paragraphs 108 to 112 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

Borrowing costs

Section 25-25

103. A deduction is allowable for expenditure incurred by a Grower in borrowing money to the extent that the borrowed money is used for the purpose of producing assessable income (subsection 25-25(1)).

104. In this Project the loan Application Fee of 1% of the finance amount (subject to a minimum of \$100 and a maximum of \$500) payable to either the Responsible Entity or the Preferred Financier is incurred to borrow money that is used or is to be used solely for income producing purposes during each income year over the term of the loan.

105. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6)). Where the amount exceeds \$100, the deduction for the borrowing expense is spread over the period of the loan or 5 years, whichever is the shorter (subsection 25-25(4)).

Application Fee payable under the 12 months Terms Option

Section 40-880

106. Growers who elect to pay their Subscription Monies under the 12 months Terms Option must pay an Application Fee of 1% of the finance amount (subject to a minimum of \$100 and a maximum of \$500). This expenditure does not constitute a borrowing expense and is therefore not deductible under section 25-25. As it is capital in nature it is also not deductible under section 8-1.

107. However, section 40-880 will allow the Application Fee to be deducted on a straight line basis over five income years. Section 40-880 applies to capital expenditure that is incurred in relation to a business and which is not taken into account elsewhere or denied deductibility under another provision of income tax law.

Prepayment provisions***Sections 82KZL to 82KZMF***

108. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (for example, the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

109. For this Project, the only prepayment provisions that are relevant are section 82KZL of the ITAA 1936 (an interpretive provision) and sections 82KZME and 82KZMF of the ITAA 1936 (operative provisions).

Application of the prepayment provisions to this Project

110. Under the scheme to which this Product Ruling applies, Management Services (Fixed Component) Fees, Rent, optional insurance, credit card merchant fees (if applicable), Harvest costs, Costs of sale, Management Services (Harvest Component) Fee, and interest on loans payable to the Responsible Entity or the Preferred Financier is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this scheme.

111. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project prepays all or some of the expenditure payable under the Management Agreement and/or the Sub-lease(s), or prepays interest under a loan agreement (including loan agreements with lenders other than the Responsible Entity or the Preferred Financier). Where such a prepayment is made these prepayment provisions will also apply to 'small business entities' because there is no specific exclusion contained in section 82KZME of the ITAA 1936 that excludes them from the operation of section 82KZMF of the ITAA 1936.

112. As noted in the Ruling section above, Growers who prepay fees or interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

Sections 35-10 and 35-55 – deferral of losses from non-commercial business activities and the Commissioner’s discretion

113. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2008 to 30 June 2011**, the Commissioner has applied the principles set out in Taxation Ruling TR 2007/6 Income tax: non commercial business losses: Commissioner’s discretion. Based on the evidence supplied, the Commissioner has determined that for those income years:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35; and
- there is an objective expectation that within a period that is commercially viable for the horticulture industry, a Grower’s business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

114. A Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) until a later income year is able to offset that loss against their other assessable income.

115. The exercise of the Commissioner’s discretion under paragraph 35-55(1)(b) is conditional on the Project being carried on in the manner described in this Ruling during the income years specified. If the Project is carried out in a materially different way to that described in the Ruling a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

Section 82KL – recouped expenditure

116. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of ‘additional benefits(s)’. Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL of the ITAA 1936. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA – general tax avoidance provisions

117. For Part IVA of the ITAA 1936 to apply there must be a ‘scheme’ section 177A of the ITAA 1936, a ‘tax benefit’ section 177C of the ITAA 1936 and a dominant purpose of entering into the scheme to obtain a tax benefit section 177D of the ITAA 1936.

118. The Rewards Group Tropical Fruits Project 2008 will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 26 and 29 of this Ruling to that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

119. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of mangoes and stone fruit. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) of the ITAA 1936 it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/7; TR 97/11; TR 98/22;
TR 2000/8

Subject references:

- borrowing expense
- carrying on a business
- interest
- management services
- producing assessable income
- product rulings
- taxation administration
- tax avoidance
- tax benefits

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZLA
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
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NO: 2007/19105

ISSN: 1441-1172

ATOLaw topic: Income Tax ~ Product ~ orchards