



PR 1999/13 - Income tax: Australian Irrigated Timber Project No 1

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 This document has changed over time. This is a consolidated version of the ruling which was published on *28 April 1999*



Product Ruling

Income tax: Australian Irrigated Timber Project No 1

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Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the Taxation Administration Act 1953. Product Ruling PR 98/1 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling, this arrangement is sometimes referred to as the Australian Irrigated Timber Project No 1, or just simply as 'the Project', or the 'product'.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 25-25 of the ITAA 1997;
- section 387-55 of the ITAA 1997;
- section 387-125 of the ITAA 1997;
- sections 82KL and 82KZM of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- Part IVA of the ITAA 1936.

Class of persons

3. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling these persons are referred to as ‘Growers’.

4. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it.

Qualifications

5. The Ruling provides this specified class of persons with a binding ruling as to the tax consequences of this product. The Commissioner accepts no responsibility in relation to the commercial viability of this product, and gives no assurance the fees charged are reasonable, appropriate, or represent industry norms. A financial (or other) adviser should be consulted for such information.

6. The Commissioner rules on the precise arrangement identified in the Ruling.

7. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 12 to 30) is carried out in accordance with details described in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

- the Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
- the Ruling will be withdrawn or modified.

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Date of effect

9. This Ruling applies prospectively from 28 April 1999, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

10. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

11. This Product Ruling is withdrawn and ceases to have effect after 30 June 2001. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

12. The arrangement that is the subject of this Ruling is described below. This description incorporates the following documents:

- original Application for Product Ruling dated 24 December 1998;
- amended Application for Product Ruling dated 27 January 1999;
- Draft Prospectus dated 25 January 1999 issued by Australian Irrigated Timber Project No 1 and **Management Agreement** within it;
- letter dated 10 February 1999 from Amalgamated Mortgage Management (AMM) to Monpro Management Ltd (MML);

- letter dated 19 February 1999 from MML to ATO enclosing **draft loan documentation from AMM Finance Corporation No 5**, updated Draft Prospectus dated 19 February 1999, and Project Budget for first three years;
- Constitution and Regulations of Australian Irrigated Timber Pty Ltd (AIT);
- Constitution and Regulations of MML;
- Constitution of Australian Irrigated Timber Project No 1 (AIT Project No 1);
- Constitution of AIT Land Corporation (No 1) Limited (AIT Land);
- Plantation Management Agreement between MML and AIT;
- Licence Agreement between AIT Land and AIT dated 2 March 1999;
- facsimile dated 25 February 1999 from Jago Advisory Group to ATO;
- facsimile dated 1 April 1999 from AMM to ATO including letters from:
 - GIO Insurance Ltd to AMM dated 1 April 1999;
 - Credit Lyonnais Australia Ltd to AMM dated 1 April 1999; and
 - AMM to MML dated 1 April 1999; and
- Compliance Plan for Australian Irrigated Timber Project No 1 dated 14 January 1999.

Note: certain information received from Australian Irrigated Timber Pty Ltd has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

13. The documents highlighted are those the Growers are parties to. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower or any associate of a Grower is, or will be a party to in relation to investment in this scheme.

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

15. The effect of the agreements is summarised as follows:

16. In the Draft Prospectus, applications are invited from people wishing to enter into the Project to purchase an 'A' class share in AIT Land and also to enter into a Management Agreement as part of The Australian Irrigated Timber Project No 1. The Applicants appoint AIT to be their Attorney for the purpose of entering into and executing the Management Agreement.

17. This arrangement is called the Australian Irrigated Timber Project No 1. Growers entering into the Project will, by virtue of the Constitution of AIT Land, have the right to occupy land (a Plantation) being purchased in South East Queensland. The land will be purchased by AIT Land with funds raised by the sale of 'A' class shares to the Growers. The taxation consequences of any subsequent dealing or disposal of these shares do not form part of this Ruling.

18. The Growers enter into an agreement to purchase and have the seedling trees (listed below) planted on their Plantation for the purpose of eventual felling and sale. The first trees felled after approximately 4 years will be for horticultural poles and the last trees to be harvested will be for milled timber, with the Project finishing within 15 years.

Species list for the Project

Botanical Name	Common Name	End Use
1. <i>Acacia melanoxylon</i>	Tasmanian Blackwood	Milled Timber
2. <i>Cedrela odorata</i>	Cigarbox Cedar	Milled Timber
3. <i>Eucalyptus dunnii</i>	Dunn's White Gum	Milled Timber
4. <i>Eucalyptus badgensis</i>	Big Badga Gum	Milled Timber
5. <i>Eucalyptus grandis</i>	Rose Gum	Horticulture poles / Transmission poles / saw / veneer logs
6. <i>Eucalyptus maculata</i>	Spotted Gum	Horticulture poles / Transmission poles / Milled Timber
7. <i>Eucalyptus microcorys</i>	Tallowwood	Horticulture poles / Transmission poles / Milled Timber
8. <i>Eucalyptus paniculata</i>	Grey Ironbark	Horticulture poles / Transmission poles
9. <i>Eucalyptus nitens</i>	Shining Gum	Milled Timber
10. <i>Eucalyptus oreades</i>	White Mountain Ash	Milled Timber

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11. Eucalyptus saligna	Sydney Blue Gum	Milled Timber
12. Eucalyptus smithii	Gully Peppermint	Milled Timber
13. Eucalyptus viminalis	Manna Gum	Milled Timber
14. Pinus radiata	Monterey Pine	Horticulture poles / Milled Timber
15. Cloned eucalyptus	Rose Gum and River Red Gum Cross	Horticulture poles / Milled Timber

19. Each Plantation comprises of 0.5 hectare and there are 1,000 Plantations on offer. For the Project to commence a minimum number of 600 plantations must be subscribed to. This ruling does not apply to any arrangement in which this minimum subscription requirement is not met by 30 June 1999. Approximately 1,000 trees will be planted per Plantation. The projected yield per Plantation of 0.5 hectare is 165.3 cubic metres of timber.

20. Over the 15 years of the Project the total projected income per Plantation is \$53,444 (without irrigation). With irrigation the figure increases to \$68,361. The projected returns depend on a range of assumptions listed in the Draft Prospectus at paragraph 12.

Management Agreement

21. Growers acquire shares in the land company (AIT Land), which confers the right to occupy and grow trees on an identifiable block of land. Growers contract with MML to establish and maintain the plantation until maturity and to harvest and sell the timber on their behalf. Growers execute a power of attorney enabling MML to act on their behalf.

22. The Management Agreement between MML (the Responsible Entity (RE)) and the Grower states the agreement will:

- commence on the date the RE accepts the Grower's application under the Prospectus for the Project; and
- continue until the earlier of the termination of the Grower's interest or 30 June 2014.

Plantation

- The RE will carry out duties that are usual and necessary in preparing the Plantation for the planting of trees; and

- the RE must carry out those duties in a manner according to sound silvicultural, environmental and industry practices for similar timber plantations.

Trees

- The RE will carry out the duties relating to the supply, propagation, planting and care of seedlings along with those duties that are usual or necessary for carrying on the business of afforestation on the Grower's Plantation. These duties must be carried out in the first 13 months;
- the RE must carry out those duties in a manner according to sound silvicultural and environmental practices;
- the RE must continue to manage and maintain the Grower's Plantation;
- the Grower can elect to market his or her own timber. The election must be made in writing. If this is the case, the RE will notify the Grower in writing of the harvest time and the Grower must arrange for the removal of the timber within 2 weeks of the harvest, otherwise the RE will dispose of the harvest timber as it sees fit;
- if the RE is responsible for the marketing and sale of the timber, the RE may in its discretion accumulate the timber together with the timber of other Plantations;
- the RE must insure or cause to be insured the Land Owner, the Grower, the Custodian, and itself against public risk for an amount of not less than \$10,000,000. The RE must pay the cost of this insurance from its own funds;
- the Grower is at liberty to take out additional insurance over its own plantation; and
- either party can terminate the agreement if there is a default in monies owing.

23. MML has contracted with AIT under the Plantation Management Agreement for AIT to be the operational managers and carry out the day to day activities of the Project. The agreement states:

- the RE appoints the Operational Manager to carry out the day to day operations and duties that are the

responsibilities of the RE under Individual Management Agreements with Growers;

- the duties the Operational Manager will perform mirror the duties under the Individual Management Agreements;
- additional duties of the Operational Manager include the vermin-proof fencing of the land, commissioning a surface irrigation system, meeting all commissioning costs in respect of preparing the land, and establishing a shadehouse for maintenance of replacement stock upon land other than that upon which individual Plantations will be located;
- the RE pays the Operational Manager out of its own fees; and
- the RE will supply at least 1,100,000 tree seedlings to the Operational Manager at no cost to the Operational Manager.

Fees

24. The Growers will make the following payments per Plantation for the first year of operation:

Year ending 30 June 1999

- | | |
|-------------------------------------------------------|---------|
| • Purchase of 'A' class share in AIT Land | \$2,100 |
| • Australian Irrigated Timber Project No 1 | |
| Supply of 1,000 seedlings | \$2,600 |
| Management fees (only \$4,014 deductible) | \$4,079 |
| Capital works (water conveying and soil conservation) | \$1,121 |

Year ending 30 June 2000

- | | |
|---------------------------------------------|---------|
| • Management fees (only \$1,703 deductible) | \$1,900 |
|---------------------------------------------|---------|

Year ending 30 June 2001

- | | |
|---------------------------------------------|----------|
| • Management fees (only \$1,643 deductible) | \$1,900. |
|---------------------------------------------|----------|

25. The Growers will make the following payments per Plantation in subsequent years for the remainder of the fifteen year project:

- | | |
|------------------------------------------------------|---------|
| • for the years ending 30 June 2002 and 30 June 2003 | \$1,300 |
|------------------------------------------------------|---------|

- for the next ten years the management fees will be calculated on an incentive basis as follows:
 - a Land Occupation Fee of \$156 per annum indexed; plus:
 - (a) 15% of the net income earned by a Plantation; plus
 - (b) 20% of any excess over and above the net income projected in the Prospectus for one Plantation once the fee in (a) is deducted.

Planting

26. MML will be responsible for providing the initial services including planting of the species to be used on the Plantations within 13 months of execution of the agreements. Annual services, also the responsibility of MML, will then be provided in accordance with good silvicultural practice. MML will subcontract plantation establishment and maintenance functions to AIT under the Plantation Management Agreement.

27. Growers not electing to market their own timber will share on a proportionate basis in the Harvest Proceeds derived from the Plantations.

Finance

28. The financing agreement has not been finalised. There is a proposal for the provision of finance through Amalgamated Mortgage Management Finance Corporation (No 5) Pty Ltd (AMMFC), a member company of the AMM Holdings Group. Under these proposals AMMFC will borrow funds from a bank and on-lend these funds to Growers who request finance. The proposal is that the loan from AMMFC will be secured by a charge over the Grower's interest in the Project and the share in AIT Land. The lender will have full recourse to the Borrower's assets should the Borrower (Grower) default. Legal action will be taken over any outstanding repayments. With the exception of the 10% security deposit lodged by MML with GIO Insurance Ltd, all borrowed monies paid by the Growers to the Manager remain with the Manager for the purpose of giving effect to its obligations.

29. Financing arrangements entered into by Growers contain the following features:

- all terms are of an arms length nature;
- there is no right to assign;
- there are no round robin characteristics;

- there are no split loan features of a type referred to in TR 98/22;
- repayments and payments of interest would not be linked to a derivation of income from the scheme;
- repayments and payments of interest would be regular, starting at loan commencement; and
- there are no indemnity arrangements or any other collateral agreements.

30. Finance arrangements organised directly by the Grower with a lender are outside the arrangement to which this Ruling applies.

Ruling

31. For a Grower who invests in the Australian Irrigated Timber Project No 1 for the year ending 30 June 1999 the following deductions will be available:

- administration and management fees paid for services outlined in the Management Agreement will be an allowable deduction in the year incurred (section 8-1 of the ITAA 1997), being:

Year 1	\$4,014
Year 2	\$1,703
Year 3	\$1,643;
- a deduction for the cost of the seedling trees to be planted will be allowable to the Grower for the year in which the expenditure is incurred (section 8-1), being:

Year 1	\$2,600;
--------	----------
- interest incurred on borrowed funds used to fund the Grower's investment in the Project are deductible in the year in which they are incurred (section 8-1);
- expenses incurred in borrowing the funds can be deducted over the period of the loan or 5 years, whichever is soonest (section 25-25);
- expenses incurred on irrigation will constitute allowable deductions to the Grower in the year incurred and the next two years at the rate of 33.3% per annum (section 387-125), being:

Year 1	\$292
Year 2	\$292

Year 3 \$291;

- expenses incurred on soil conservation will constitute allowable deductions to the Grower in the year incurred (section 387-55), being:

Year 1 \$246.

Section 82KZM

32. The expenditure by Growers does not fall within the scope of section 82KZM of the ITAA 1936.

Section 82KL

33. Section 82KL of the ITAA 1936 does not apply to deny the deductions otherwise allowable under 8-1 of the ITAA 1997.

Part IVA

34. Part IVA does not apply to deny deductions for the expenditure by Growers or interest on any loans taken out to fund payment of their expenditure.

Explanations

Section 8-1

35. Consideration of whether the management fees are deductible under section 8-1 of the ITAA 1997 begins with paragraph (a) of that section. This view proceeds on the following basis:

- the outgoings in question must have a sufficient connection with the operation or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under paragraph (b) of section 8-1 if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer contractually commits himself to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether paragraph (b) applies. However, that does not preclude the application of paragraph (a) and determining whether the outgoings in

question have a sufficient connection with activities to produce assessable income.

36. An afforestation scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from the timber's sale from the scheme will constitute gross assessable income in its own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income. These operations will be the planting, tending, maintaining and harvesting of the trees.

37. Generally, an investor will be carrying on a business of afforestation where:

- the investor has an identifiable interest in specific growing trees coupled with a right to harvest and sell the timber;
- the afforestation activities are carried out on the investor's behalf; and
- the weight and influence of the general indicators of a business as used by the Courts point to the carrying on of a business.

38. For this Project Growers have, under the Management Agreement and the Regulations of AIT Land, rights to use an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the Management Agreement, Growers appoint MML as Manager to provide services such as irrigation infrastructure, planting, cultivating, tending, culling, pruning, fertilising, replanting, spraying, maintaining and otherwise caring for the trees. MML have entered into a Plantation Management Agreement with AIT to carry out these duties on their behalf for the Growers.

39. Growers control their investment. The specific cost of these services provided in the first thirteen months will total \$7,800. Growers may either collect the forest produce and arrange for its sale, or they have the option of MML/AIT arranging marketing and sale.

40. The Management Agreement gives Growers more than a chattel interest in the timber on harvest. The Project documentation contemplates Growers will have an ongoing interest in the growing trees and Growers have a legal interest in and right to occupy the Plantation(s) applied for.

41. Growers have the right to use the land in question for afforestation purposes and to have MML/AIT come onto the land to carry out its obligations under the Management Agreement. The

Growers' degree of control over MML/AIT, as evidenced by the Constitution of the Project being a Managed Investment Scheme that also incorporates the Management Agreement, and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on MML/AIT's activities. Growers are able to terminate arrangements with MML in certain instances, such as cases of default or neglect. The afforestation activities described in the Management Agreement are carried out on the Growers' behalf.

42. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the arrangement's description for all the indicators discussed in that Ruling. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections in the Draft Prospectus that suggest the Project should return a 'before tax' profit to the Growers, i.e., a 'profit' in cash terms that does not depend on its calculation on the fees in question being allowed as a deduction.

43. Growers will engage the professional services of a Manager with appropriate credentials. These services are based on accepted silvicultural practices and are of the type ordinarily found in afforestation ventures that would commonly be said to be businesses.

44. There is a means to identify which trees Growers have an interest in. Growers have a continuing interest in the trees from the time they are acquired. Harvesting of horticultural poles begins in year 4. The purpose of this is to give the other trees room to grow and also to produce assessable income for the Growers.

45. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. The Growers' afforestation activities will constitute the carrying on of a business.

46. The fees associated with the afforestation activities relate to the gaining of income from this business, and hence have a sufficient connection to the operations by which this income (from the sale of timber) is to be gained from this business. The management fees of \$4,014 will be deductible under paragraph (a) of section 8-1 of the ITAA 1997. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The tests of deductibility under paragraph (a) of section 8-1 are met. Subsection 8-1(2) does not apply.

Seedlings

47. The cost of the seedling trees to be planted (\$2,600) is an allowable deduction pursuant to section 8-1 (see paragraph 107(e) of Taxation Ruling TR 95/6). The acquisition of seedlings is part of the income producing operations and is a working expense. In a 'fruit or tree analysis, the tree is the 'fruit', unlike a fruit or nut tree where the fruit or nuts are the 'fruit'. In this case the trees are to be harvested over a number of years beginning in year 4. As the trees are harvested the remaining trees get more room to grow and improve their quality.

Interest deductibility

48. Some Growers may finance the investment through a loan facility. Whether the interest fees are deductible under section 8-1 depends on the same reasoning as that applied to whether the management fees incurred in the year ended 30 June 1999 will be deductible. The interest fees incurred in the years ended 30 June 1999, 30 June 2000 and 30 June 2001 will be in respect of a loan to finance the operations (the tending, maintenance and harvesting of the trees, and the occupation fees for the land on which the trees will have been planted) that will continue to be directly connected with the gaining of 'business income' from the Project. These fees will thus have a sufficient connection with the gaining of assessable income. No capital, private or domestic component is identifiable in respect of them.

Borrowing expenses - section 25-25

49. Expenditure incurred in borrowing money is normally capital expenditure that would not fall within the scope of the general deduction provisions of section 8-1. However, section 25-25 specifically allows a deduction for certain borrowing expenses.

50. Borrowing expenses such as procurement fees, legal expenses, stamp duty, valuation and survey fees, broker's commission, underwriter's fees, prospectuses, advertising, printing and other expenses relating to debenture issues, etc., are deductible under section 25-25 where the borrowed moneys are used or are to be used during the income year for income producing purposes.

51. Provided the borrowed money is used by the taxpayer solely for income producing purposes, borrowing expenses are fully deductible under 25-25. The deduction is not restricted to payments made on or due at the time of the loan; it extends to payments made during the life of the loan pursuant to a contractual obligation incurred at the time of borrowing as an incident of establishing the loan. The expenses are deductible over the period of the loan specified in the

contract or the actual loan period, or five years, whichever is the shorter period, beginning with the year in which they were incurred.

52. Therefore, if the Grower borrows money to finance the investment in the Project, he/she is allowed pursuant to section 25-25 to write off the charges over a period of 5 years.

Subdivision 387-A

53. Capital expenditure incurred by a person carrying on a primary production business in respect of various measures and principally for the prevention of land degradation qualifies for a 100% deduction in the year in which the expenditure is incurred, under Subdivision 387-A. Expenditure that qualifies includes erecting fences to prevent soil erosion and the eradication of pests, either animal or plant.

54. For the expenditure to qualify as a deduction under section 387-55, a business must be being carried on at the time the expenditure was incurred. A taxpayer incurring such expenditure need not be the owner of the land so long as it is used at that time for carrying on a primary production business. The Grower's business of primary production will generally have commenced at the time the expenditure was incurred. The necessary requirements under Subdivision 387-A will have been met in this respect.

55. However, where all that occurs in an income year is that a person has been accepted into the Project as a Grower but no business operations have been commenced, the Grower will not be accepted as having commenced a primary production business and no deduction under Subdivision 387-A will be allowable for that, or any other, year of income.

56. The Manager of the Project, MML, has identified that the relevant expenditure attributable to eligible Landcare measures for the purposes of sections 387-55 and 387-60 is \$246. A deduction for this amount will be allowed in the year in which a participant enters into contractual arrangements with MML and commences to carry on a business of primary production.

Subdivision 387-B

57. Capital expenditure incurred by a person carrying on a primary production business on the construction, acquisition and installation of plant, equipment and structural improvements to be used primarily and principally for the purpose of conserving or conveying water for use in such a business, qualifies for a write off over a three year period (i.e., 33 1/3% with no pro rating required) under section 387-125. A taxpayer incurring this expenditure need not be the owner of the land to claim the deduction, so long as he/she is carrying on a business of

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primary production. In this case, there will generally be no delay between the signing of the agreements and the commencement of 'business operations'. Accordingly, a Grower's business of primary production will generally have commenced at the time the expenditure is incurred. The requirements of Subdivision 387-B will have been met in this respect.

58. An amount of \$875 has been identified for this purpose. Therefore, a Grower entering into the Project by 30 June 1999 and commencing to carry on a primary production business by that date would be allowed a deduction under section 387-125 at a rate of 33 1/3% per annum for the cost of the irrigation system.

Section 82KZM

59. Under the Management Agreement, the fees of \$4,014 will be incurred on execution of the agreements. The fees are payable by a Grower for services, licence entitlements and access to facilities that are provided within 13 months from the execution of the agreements.

60. For the purposes of this Ruling, no explicit conclusion can be drawn from the arrangement's description, that the fees have been inflated to result in reduced fees being payable for subsequent years. The fees are expressly stated to be for a number of specified services. There is no evidence that might suggest the services covered by the fees could not be provided within 13 months of incurring the expenditure in question. Thus, for the purposes of this Ruling, it can be accepted that no part of the fees is for the doing of things that are not to be wholly done within 13 months of the fees being incurred.

61. On this basis, the basic precondition for section 82KZM's operation is not satisfied and it will not apply to the expenditure incurred by Growers per Plantation in respect of the year ending 30 June 1999. Similarly, the section will not apply to licence fees and management fees incurred by Growers in subsequent years of income.

Section 82KL

62. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Here, there may be a loan provided by AMMFC to the Grower. Any such loan is to be provided on a full recourse basis, and on commercial terms.

63. In making this Ruling in relation to the finance arrangements, we would expect that the following conditions would also apply:

- the loan from AMMFC will be secured by a charge over the Grower's interest in the Project and a share in the land company;
- the lender will have full recourse to the Borrower's assets should the Borrower (Grower) default;
- legal action will be taken over any outstanding repayments;
- all terms are of an arm's length nature;
- there is no right to assign;
- there are no round robin characteristics;
- there are no split loan features of a type referred to in Taxation Ruling TR 98/22;
- repayments and payments of interest would not be linked to a derivation of income from the scheme;
- repayments and payments of interest would be regular, starting at loan commencement; and
- there are no indemnity arrangements or any other collateral agreements.

64. If these conditions are met, insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA

65. For Part IVA to apply there must be a 'scheme' (section 177A); a 'tax benefit' (section 177C); and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D). The AIT Project No 1 will be a 'scheme' commencing when the Prospectus is issued. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of an allowable deduction for ... 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.

66. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting of the trees. Further, there are no features of the Project, for example, such as the management fees being 'excessive' and uncommercial, and predominantly financed by a non-recourse loan, that might suggest the Project was so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that would attract the operation of Part IVA.

Detailed contents list

67. Below is a detailed contents list for this Ruling:

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Commissioner of Taxation**28 April 1999**

Previous draft:

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- schemes
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Related Rulings/Determinations:

TR 95/6; TR 97/11; TR 98/22

*Legislative references:**Subject references:*

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- ITAA 1997 8-1
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- ITAA 1887 387-A
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- ITAA 1997 387-B
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- ITAA 1936 82KL
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- ITAA 1936 Part IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D

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