PR 1999/23 - Income tax: Preston Vale Vineyard Project

Product Ruling
Income tax: Preston Vale Vineyard Project

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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 law(s)' 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 'Preston Vale Vineyard Project' offered by Southern Wine Corporation Limited, or just simply as 'the Arrangement'.

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 42-15 of the ITAA 1997;
- section 43-25 of the ITAA 1997;
- section 387-125 of the ITAA 1997;
- section 387-185 of the ITAA 1997;
- Part IVA of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- section 82KL of the ITAA 1936; and
- section 82KZM 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 prices charged for the product 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 27) 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 12 May 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 is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents are:

- Product Ruling request dated 1 February 1999;
- Draft Licence and Management Agreement between Southern Wine Corporation Limited ('Project Manager') and the Grower (revised version received by facsimile dated 1 April 1999);
- Agreement to Lease dated 15 December 1998 between Southern Wine Corporation Limited (Lessee) and the Fernvale Unit Trust ('Property Trust' as Lessor);

- Viticultural Management Agreement dated 12 December 1998;
- Fernvale Unit Trust ('Property Trust') Deed dated 25 November 1998;
- Preston Vale Vineyard Prospectus dated 24 December 1998;
- Draft Loan Agreement between Westralian Capital Holdings Pty Ltd (Lender) and the Borrower and Southern Wine Corporation Limited (Guarantor); and
- Additional correspondence from the Applicant dated 5 and 8 March; 1, 9, 12 and 21 April; and 4 May 1999.

NOTE: certain information received from the Applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

13. For the purposes of describing the Arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, that a Grower, or any associate of the Grower, will be a party to.

14. This Arrangement is called 'Preston Vale Vineyard Project'. The Arrangement is for the growing of grapes on Licenced Areas. The vineyard development has commenced. It is planned to be substantially completed by 30 June 1999 and to be operational by that date. Growers entering into the Arrangement will obtain a Licenced Area to grow grapevines on the land in the vicinity of Donnybrook, Western Australia, for a period of twenty years. Growers will also purchase two stapled units in the Lessor at cost of $737.50 for each unit.

15. The Growers will make payments to the Project Manager for the purchase and establishment of grapevines (rootlings), irrigation system and trellising system that is on their Licenced Area. In addition, Growers will contribute towards the cost of buildings and roads associated with the Arrangement. The Licence and Management Agreement from which the Growers obtain their Licenced Areas, also binds the Growers to a contract with the Project Manager for the management and harvesting of the grapes.

16. The minimum individual holding is a single Grower's Licenced Area of 0.165 hectares of land planted with 330 grapevines. Overall, it is proposed to plant 250 hectares with approximately 500,000 grapevines. The 1,515 Licenced Areas that this represents will be separately identified on the Vineyard Row Register and noted on the Vineyard Development Plan. A copy of the Vineyard

Development Plan will be sent to the Grower when the Licence and Management Agreement with the Grower has been executed.

Licence and Management Agreement

17. The Growers will make payments to the Project Manager under the Licence and Management Agreement. The Agreement is to be executed no later than 30 June 1999, assuming the receipt of minimum subscriptions. The payments will be for a licence fee, management fee, irrigation, rootlings, trellising, roads and buildings.

18. Southern Wine Corporation Limited as Lessee grants the Grower a licence to plant, propagate, cultivate and develop the vines without conferring rights of exclusive occupation on the Grower's Area (set out in clause 2 of the Licence and Management Agreement) and the Grower (pursuant to clause 6) will not:

- use or permit any other person to use the Grower's Area for any purpose other than the Grower's Project;
- install or remove any trees, earth, minerals, fixtures or vines from the Grower's Area without the consent of the Project Manager; and
- do anything that would invalidate or increase the premiums of any insurance policies in respect of the Grower's Area that will cause nuisance, disturbance, obstruction or damage.

19. In return, the Grower and the Grower's servants, agents and contractors may at all reasonable times have reasonable right of passage through the Project Land and the Common Areas for the purpose of conducting the Crower's Project on the Grower's Area (pursuant to clause 3 of the Licence and Management Agreement).

20. At the expiration, or sooner termination (triggered by a breach of the Agreement by the Grower that is not remedied) of the term of the Licence and Management Agreement, the Grower and the Project Manager acknowledge the vines, fixtures and improvements to the Grower's Area shall vest in the Property Trust and no compensation will be payable to the Grower or Project Manager (pursuant to clause 2.4 of the Licence and Management Agreement).

21. The Grower appoints the Project Manager to establish, maintain, supervise and manage on a day-to-day basis on behalf of the Grower all activities to be carried on by the Grower on their Licenced Area. The Project Manager is required to perform these services according to good horticultural practices and may provide these services directly or through consultants or other specialists engaged. The Project Manager will have commenced these business operations on behalf of the Grower by 30 June 1999. The Project Manager will obtain insurance against public risk in respect of the vineyard; insure to cover cost of replacement of all buildings, improvements and

farming equipment in respect of damage or destruction caused by fire and other insurable risks normally covered in a standard rural insurance package; and use its best efforts to arrange insurance of the Grower's Project against frost damage if commercially feasible.

22. Unless Growers have notified the Project Manager that they have elected to market their produce themselves, the Licence and Management Agreement authorises the Project Manager to market the grapes of their Licenced Area(s) as agent of the Growers.

Fees

23. The Growers will make the following payments per Licenced Area for the first year of operation:

- a licence fee of $180 to the Project Manager for the Licenced Area of the Project for the period 30 June 1999 to 30 June 2000;
- a management fee of $16,484 to the Project Manager for management of the vineyard for the period 30 June 1999 to 30 June 2000;
- a fee of $1,309 to the Project Manager being for the cost of supply and installation of the irrigation system;
- a fee of $408 to the Project Manager for the purchase and establishment of grapevines (rootlings);
- a fee of $304 to the Project Manager for the cost to supply and construct a trellising system;
- a fee of $195 to the Project Manager for buildings and roads located on the common property; and,
- purchase of two units (per Licenced Area) in the Fernvale Unit Trust (Property Trust) at the cost of $1,475.

24. The Growers will make the following payments per Licenced Area in subsequent years for the remainder of the twenty year project period:

- a management fee to the Project Manager set at $3,093 for the year ended 30 June 2000, $1,900 for the year ended 30 June 2001 and $1,957 for the year ended 30 June 2002. The fee of 30 June 2002 will be increased in subsequent years by the greater of three percent or the percentage increase in the Consumer Price Index (All Groups) Perth from the immediately preceding year;
- the final instalments on capital expenditures paid to the Project Manager for the year ended 30 June 2000,

being for: irrigation $79; grapevines (rootlings) $392; trellising $1,133; and roads and buildings $3;

- a licence fee to the Project Manager of $189 for the year ending 30 June 2001, $198 for the year ended 30 June 2002 and thereafter increased by the greater of five percent or the percentage increase in the Consumer Price Index (All Groups) Perth from the immediately preceding year.

Finance

25. Growers can fund the investment themselves or borrow from an unassociated lending body. There are three 'Preferred Lenders' being promoted by the Preston Vale Vineyard Project. The Applicant has advised that the Preferred Lenders have no interest in the Arrangement, nor any relationship directly or indirectly with the Arrangement's promoters or related entities. Two of the Preferred Lenders will provide full recourse loans that are subject to the Borrower's own personal security arrangements.

26. The third lender, Westralian Capital Holdings Pty Ltd ('WCH') will provide full recourse loans that will be secured by security deposits provided by Southern Wine Corporation Limited ('SWC'). The Applicant has advised that this loan facility and security deposit will be restricted to a maximum of eight million dollars ($8,000,000). The draft loan agreement provides, inter alia, that SWC will indemnify WCH for any loss, subject to and conditional upon WCH seeking full repayment of the loan to the full extent of the law and to the assets of the Borrower. Other features of this draft loan agreement are:

- WHC will provide a loan of $25,300 per Licenced Area by means of two 'tranches'; the 'First Tranche' of $20,700 is paid on the Commencement Date and the 'Second Tranche' of $4,600 shall be paid on 30 June 2000;
- interest is paid in advance by the Borrower with the first payment being made on or before 15 June 1999;
- interest is calculated daily at 10.5% per annum on the borrowed funds;
- the loan period is 10 years;
- Borrowers will repay WHC $7,000 per Licenced Area on or before 31 October 1999; $1,200 per Licenced Area on or before 31 October 2000; and, on the third anniversary of the commencement date and on each subsequent anniversary up to including the expiration

date, Borrowers will pay WHC $3,231.18 together with interest;

- Borrowers will pay a non-refundable application fee of $350 and a management fee calculated as 0.8% per annum of the balance of the loan account;
- WCH may require SWC to deposit with it funds to the extent of any outstanding loan balance as security under the agreement.

Ruling

27. For a Grower who invests in the Preston Vale Vineyard Project the following deductions will be available:

- Licence fee paid by the Grower in relation to the Licenced Area will be an allowable deduction in the year incurred (section 8-1);
- management fees paid for the services outlined in the Licence and Management Agreement will be allowable deductions to the Grower in the year incurred (section 8-1);
- depreciation of trellising will be an allowable deduction to the Growers (section 42-15) at a rate (determined under section 42-125) of 20% per year diminishing value or 13% per year prime cost;
- 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); and,
- a deduction for the capital expenditure attributable to the establishment of grapevines will be allowable to the Grower (section 387-165) calculated from the income year that the grapevines first become commercially productive at a rate of 13% per year (section 387-185).

28. A deduction for sealed roads and buildings will not be allowed to a Grower who invests in the Preston Vale Vineyard Project (section 43-15).

Sections 82KZM and 82KL; Part IVA

29. For a Grower who invests in the Arrangement, the following provisions of the ITAA 1936 have application as indicated:

- the expenditure by Growers does not fall within the scope of section 82KZM;
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the provisions in Part IVA will not be applied to the Arrangement described in this Ruling.

Explanations

Section 8-1: licence and management fees

30. Consideration of whether licence fees and management fees are deductible begins with the requirements under paragraph 8-1(1)(a). This consideration proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoing is not deductible under paragraph 8-1(1)(b) if it is incurred when the business has not commenced; and
- where a taxpayer contractually commits themselves 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 8-1(1)(b) applies. However, that does not preclude the application of paragraph 8-1(1)(a) in determining whether the outgoing in question would have a sufficient connection with activities to produce assessable income.

31. A viticulture project can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from the Arrangement will constitute gross assessable income in their own right. The generation of 'business income' from such a 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 grapes.

32. Generally, a Grower will be carrying on a business of viticulture where:

- the Grower has an identifiable interest in specific growing vines coupled with a right to harvest and sell the grapes produced;

- the viticulture activities are carried out on the Grower'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.

33. For this Arrangement, the Growers have under the Licence and Management Agreement, rights in the form of a licence over an identifiable area of land consistent with the intention to carry on a business of a commercial viticulture. Under the Licence and Management Agreement, Growers appoint Southern Wine Corporation Limited, as Project Manager, to provide services such as planting, tending, pruning, training, fertilising, replanting, spraying, maintaining and otherwise caring for the grapevines. The Project Manager is also responsible for the harvesting of the grapes from the vines.

34. The Licence and Management Agreement gives Growers an identifiable interest in specific grapevines and Growers have a legal interest in the land by virtue of a Licence. Growers have the right personally to market the grapes attributed to their Licenced Area or they can elect to use the Project Manager to market the grapes for them.

35. Growers have the right to use the land in question for viticulture purposes and to have the Project Manager come onto the land to carry out its obligations under the Licence and Management Agreement. The Growers' degree of control over the Project Manager, as evidenced by the Agreement and supplemented by the Corporations Law, is sufficient. Under the Arrangement, Growers are entitled to receive a yearly account for the proceeds of the sale of grapes from the Custodian as well as quarterly reports of the vineyard's activities from the Project Manager. Growers are able to terminate Arrangements with the Project Manager in certain instances, such as cases of default or neglect. The activities described in the Licence and Management Agreement are carried out on the Growers' behalf.

36. 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. The Independent Viticulturist's report considers that the Arrangement has sound vineyard potential but will require a high level of expertise to develop and manage in order to maximise the success of the project. Growers to whom this Ruling applies intend to derive assessable income from the Arrangement. This intention is related to projections contained in the Prospectus that suggest the Arrangement should return a 'before-tax' profit to the Growers, i.e., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

37. Growers will receive the benefits of professional services through the Project Manager, who engages a consultant with appropriate credentials via the Viticultural Management Agreement. These services are based on accepted viticultural practices and are of the type ordinarily found in vineyards that would commonly be said to be businesses.

38. Growers have a continuing interest in the grapevines from the time they are acquired until the end of the 20 year Arrangement. There is a means to identify which grapevines Growers have an interest in. The viticulture 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' viticulture activities will constitute the carrying on of a business.

39. The fees associated with the viticulture activities will 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 grapes) is to be gained from this business. They will thus be deductible under the paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fee is identifiable from the Arrangement. No capital component is identifiable. The tests of deductibility under paragraph 8-1(1)(a) are met. The exclusions of subsection 8-1(2) do not apply.

Expenditure of a capital nature

40. Any part of the expenditure of a Grower entering into the viticulture business that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. It is apparent from the Project's Agreements that certain payments made are attributable to the acquisition of capital assets. This includes preplanting costs, the cost of establishing the vines, the erection and establishment of such items as trellising and irrigation to support and water the vines. However, expenditures of this nature can fall for consideration under specific deduction provisions relevant to carrying on of a business of primary production, and under the general depreciation provisions of the ITAA 1997.

Division 42: trellising expenditure

41. Growers accepted into the Arrangement incur expenditure on trellising upon which the grapevines are attached and are to be used on their behalf in the operation of the viticultural business. Trellising is attached to the land as a fixture. This expenditure is of a capital nature.

42. Under section 42-15 a taxpayer can deduct an amount for depreciation of a unit of plant used for the purpose or purposes of producing assessable income where they are the owner or quasi-owner of that plant. However, where an item is affixed to land so that it becomes a fixture, at common law it becomes part of the land and is legally, absolutely owned by the owner of the land.

43. It is, however, accepted in certain circumstances that a lessee is entitled to claim depreciation where they are considered to be the owner of those improvements. Taxation Ruling IT 175 sets out the Australian Taxation Office's (ATO's)views on this issue. Where a lessee is considered to own the improvements under a state law, as detailed in the Ruling, or where they have a right to remove the fixture or are entitled to receive compensation for the value of the fixture, the ATO accepts the lessee is entitled to claim depreciation for the fixture.

44. A Grower accepted into the Arrangement enters into a licence for a right to occupy certain land upon which they are entitled to grow grapevines to conduct a business of viticulture. Subject to the terms and conditions of the Licence and Management Agreement they have a right to remove the trellising at any stage of the Arrangement.

45. The Project Manager will advise Growers the date when the trellising is installed and begins to be used for the purpose of producing assessable income. Therefore, the cost that relates to the acquisition and installation of trellises on the land, will be eligible for a depreciation deduction by the Growers under section 42-125, at a rate of 13% prime cost or 20% diminishing value from this date.

Division 43: buildings and road expenditure

46. Growers accepted into the Arrangement incur expenditure on buildings and roads, located on the common areas outside the Licenced Area, that are to be used on their behalf in the operation of a viticultural business. These items are attached to the land as fixtures. The expenditure is of a capital nature.

47. Under section 43-10 a taxpayer can deduct an amount for capital works for buildings, structural improvements and environmental protection earthworks subject to certain conditions.

48. In order for a Grower to obtain a deduction, Subdivision 43-C requires that the construction expenditure relates to an area that is owned, leased or held by the Grower. In this case, the construction expenditure relates to the common area of the project land that is neither owned, leased or held by the Grower. The buildings and roads become a fixture of the land and at common law is legally owned by the Property Trust. A unit owner may expect an improvement in value of their units as a result of this expenditure, but does not own the land. It is, therefore, concluded that the expenditure incurred by Growers for buildings and sealed roads is not deductible either in their

role as a person involved in a business of viticulture or as an owner of units in the Property Trust.

Subdivision 387-B: irrigation expenditure

49. Subdivision 387-B allows a taxpayer, who is carrying on a business of primary production on land in Australia, to claim a deduction for capital expenditure on conserving or conveying water. The deduction is allowed over a three year period and applies to plant or a structural improvement primarily or principally used for the purpose of conserving or conveying water for use in a primary production business. Irrigation systems of the kind proposed would be covered by this Subdivision.

50. As the taxpayer who can claim the deduction does not have to actually own the land but can be a tenant or lessee, a deduction would be available to the Growers in the Arrangement at a rate of 33.3% per annum for the cost of the irrigation system.

Subdivision 387-C: horticultural plant expenditure

51. Subdivision 387-C allows capital expenditure on establishing horticultural plants owned and used, or held ready for use, in Australia in a business of horticulture to be written off for tax purposes. Costs of establishing horticultural plants may include the cost of acquiring the plants; the cost of establishing the plants; and the costs of ploughing, contouring, top dressing, fertilising and stone removal. Expressly excluded is expenditure incurred on draining swamps or clearing land. A lessee or licensee of land carrying on a business of horticulture is taken to own the plants growing on that land rather than the actual owner of the land.

52. Under this Subdivision, if the effective life of the plant is less than three years the expenditure can be written off in full; if the effective life of the plant is more than three years an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period. The period starts from the income year that the grapevines first become commercially productive and the Project Manager will advise the Grower of this date.

53. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. The write-off rate for horticultural plant is detailed in section 387-185. For a plant with an effective life of 13 to 30 years the rate is 13% per annum.

Section 82KZM

54. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure that would otherwise be

immediately deductible, in full, under section 8-1. The section applies if certain expenditure incurred under an agreement is in return for the doing of a thing under the agreement that is not wholly done within 13 months after the day on which the expenditure is incurred.

55. Under the Licence and Management Agreement the Management fee of $16,484 per Licensed Area will be incurred on execution of the Agreement. This fee is charged for providing services to a Grower only for the period of 12 months from the execution of the Agreement. For this Ruling's purposes no explicit conclusion can be drawn from the Arrangement's description, that the fee has been inflated to result in reduced fees being payable for subsequent years. The fee is expressly stated to be for a number of specified services. There is no evidence to suggest that the services covered by this fee could not be provided within 13 months of the fee being incurred. Therefore, it cannot be suggested that the 'thing' to be done cannot be done within 13 months of the fee being incurred.

56. The basic precondition for the operation of section 82KZM is not satisfied and the section will not apply to disallow a deduction for the management fees.

Section 82KL

57. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under 82KL(1) a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' and the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

58. 'Additional benefit' (see the definition of 'additional benefit' at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit received that is additional to the benefit for which the expenditure is ostensibly incurred. The 'expected tax saving' is essentially the tax saved if a deduction is allowed for the relevant expenditure.

59. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. 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

60. For Part IVA to apply there must be a 'scheme' (section 177A); a 'tax benefit' (section 177C); and a dominant purpose of entering into or carrying out the scheme to enable the relevant

taxpayer to obtain a tax benefit in connection with the scheme (section 177D).

61. The Preston Vale Vineyard Project will be a 'scheme'. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of the tax deductions per Licenced Area 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 enabling the relevant taxpayer to obtain this tax benefit.

62. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of the grapes from the vines. Further, there are no features of the Arrangement, such as non-recourse financing by related entities and the management fees being 'excessive', that might suggest the Arrangement was so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that it would attract the operation of Part IVA.

Detailed contents list

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

Commissioner of Taxation
12 May 1999

Previous draft:
No draft issued

Related Rulings/Determinations:
IT 175; PR 98/1; TR 92/1; TR 97/11; TR 97/20; TD 93/34

Subject references:
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees expenses
- primary production
- primary production expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

Legislative references:
- ITAA1936 82KH(1)
- ITAA1936 82KH(1F)(b)
- ITAA1936 82KL
- ITAA1936 82KL(1)
- ITAA1936 82KZM
- ITAA1936 Pt IVA
- ITAA1936 177A
- ITAA1936 177C
- ITAA1936 177D
- ITAA1997 8-1
- ITAA1997 42-15
- ITAA1997 43-25
- ITAA1997 387-B
- ITAA1997 387-125
- ITAA1997 387-C
- ITAA1997 387-185

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