



PR 1999/47 - Income tax: The Koorian Olives Project

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Product Ruling

Income tax: The Koorian Olives Project

Contents	Para
What this Product Ruling is about	1
Date of effect	9
Withdrawal	11
Arrangement	12
Ruling	25
Explanations	32
Detailed contents list	69

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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 Koorian Olives Project, or just simply as ‘the Project’ or the ‘product’.

Tax law(s)

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

- section 6-5 of the *Income Tax Assessment Act 1997* (‘ITAA 1997’);
- section 8-1 (ITAA 1997);
- section 387-125 (ITAA 1997);
- section 387-165 (ITAA 1997);
- Part 3-1 (ITAA 1997);
- section 82KL of the *Income Tax Assessment Act 1936* (‘ITAA 1936’);
- section 82KZM (ITAA 1936); and
- Part IVA (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 24) 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 2 June 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, the Product 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 2002. 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, for arrangements entered into 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, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Draft Prospectus prepared for Koorian Olives;
- Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 28 September 1999;
- Second Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 20 October 1999;

- Third Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 26 May 2000;
- Fourth Supplementary Prospectus for Koorian Olives prepared and issued by Moltoni Agricultural Ltd and Koorian Land Co Ltd dated 19 June 2001;
- draft copy of the Koorian Olives Project Constitution ('the Constitution') dated 12 February 1999;
- draft Lease and Management Agreement, forming the Second Schedule to the Constitution, entered into by the Grower, Moltoni Agricultural Ltd ('the Responsible Entity'), Koorian Land Co Ltd ('the Lessor') and Koorian Operations Pty Ltd ('the Operations Manager');
- Product Ruling application received from the applicant dated 18 March 1999; and
- additional correspondence received from the applicant dated 12 May 1999, 13 May 1999, 17 May 1999, 20 May 1999, 12 December 2000 and 14 June 2001.

Note: certain information provided by 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, which a Grower, or any associate of the Grower, will be party to. The effect of these agreements is summarised as follows.

Overview

14. This arrangement is called 'The Koorian Olives Project'. The Project is to carry out a large scale planting of olive trees in an area situated approximately 9 kilometres north of Gingin, Western Australia. The Project aim is to establish an olive grove of 135 hectares.

15. A maximum of 450 leased areas are proposed to be offered for subscription in 1999. Growers entering into the Project will sublease land from the Lessor for a period of 25 years. In addition to purchasing the olive trees and irrigation system that are on their leased area, Growers also contribute to the costs of establishing the olive trees. Growers contract with the Responsible Entity for the management and harvesting of the olive trees. The Operations

Manager will be appointed by the Responsible Entity to train, manage and maintain the trees on the leased area and to harvest the olives from the leased area. The minimum individual holding is one leased area, being an allotment of 0.30 hectares of land planted with an average of 148 olive trees. The Growers' leased areas are separately identified and a plan is attached to the Lease and Management Agreement. Growers will also subscribe for shares in the Lessor.

16. Growers will enter into a contract with the Responsible Entity for the purchase and establishment of the olive trees, the establishment of an irrigation system and the management of their leased area. Growers will have an option to take possession of their olives after harvest and be responsible for the marketing and sale of the olives themselves. Where Growers do not make this election, the Responsible Entity will enter into negotiations for the sale and marketing of the olives on their behalf.

Lease and Management Agreement

17. Under the Lease and Management Agreement Growers make payments for lease rental, management fees, administration fees, irrigation costs and olive trees. Growers may also, at their option and cost, take out additional insurance for their leased area.

18. The Lessor grants the Growers a lease of a leased area (identified on the plan of the olive grove attached to the Lease and Management Agreement) and the Growers:

- will not use or permit any other person to use the leased area for any purpose other than that of commercial horticulture and the Project;
- will not erect any building or construction (whether temporary or permanent) on the leased area except with the approval of the Lessor and for the purpose of commercial horticulture and the Project;
- will not use or permit any other person to use the leased area for residential, recreational or tourist purposes: and
- with the Lessor, consent to the Operations Manager performing the services on the leased area on behalf of the Grower.

19. In return, the Growers have the right to pass over the leased area at any time and the Growers will at all times have full right, title and interest in the Growers' olives produced from the leased area. At the expiration of the term of the lease, the Growers will peaceably surrender and yield up to the Lessor the leased area and fixtures free and clear of rubbish and in good and substantial repair, order and condition.

20. The Growers appoint the Responsible Entity to establish, maintain, supervise and manage all activities to be carried on by the Growers on their leased area. The Responsible Entity accepts the appointment upon the terms and conditions contained in the Agreement and undertakes to provide the services on behalf of the Growers.

21. Unless the Growers have elected otherwise, the Responsible Entity is authorised to enter into a contract as agent for the Growers to collect and market the olives from their leased areas.

Fees

22. The Growers will make the following payments per leased area for the first year of the Project:

- a management fee of \$8,636 to the Responsible Entity for the management of the leased area for the period 30 June 1999 to 30 June 2000;
- an administration fee of \$1,775 to the Responsible Entity for administering the Project for the period 30 June 1999 to 30 June 2000;
- purchase cost of \$1,147 to the Responsible Entity for purchase of the irrigation system to be installed;
- a lease fee of \$380 to the Lessor for lease of the leased area of the olive grove for the period 30 June 1999 to 30 June 2000;
- a fee of \$1603 to the Responsible Entity for the purchase and establishment of the olive trees; and
- cost of subscribing for 540 shares of \$540 in the Lessor.

23. The Growers will make the following payments per leased area in subsequent years until the completion of the 25 year project period:

- a management fee to the Responsible Entity of \$1,624 for year 2 of the Project. This fee will be increased annually by the greater of three percent or the percentage increase in the Consumer Price Index Australia (All Groups) from the immediately preceding year;
- a lease fee of \$391 to the Lessor for the leased area, thereafter increased annually by the greater of three percent or the percentage increase in the Consumer

- Price Index Australia (All Groups) from the immediately preceding year;
- an administration fee of \$333 to the Responsible Entity for administering the Project, thereafter increased annually by the greater of three percent or the percentage increase in the Consumer Price Index Australia (All Groups) from the immediately preceding year; and
 - premiums for insurance against damage to the leased area, where the Growers choose to take out such insurance.

Growers who invest in the project on or after 21 September 1999 may elect a payment option whereby the annual contribution payable in respect of a relevant year is discounted. The election of an option containing a discount will apply to reduce the subsequent years management, rent and administration fee by the relevant discount amount.

Finance

24. Growers can fund the investments themselves or borrow from an unassociated lending body. No entity involved in the Project is involved in the provision of financing for the Project. Nor are there any 'preferred lenders' being promoted by the Responsible Entity or any other entity associated with the Project. There is no agreement, arrangement or understanding between any entity or party associated with the Project and any financial or other institutions for the provision of any loan or finance for the Growers for any purposes under the Project.

Ruling

25. For Growers who invest in the Koorian Olives Project the following deductions will be available:

- management fees paid for the services outlined in the Lease and Management Agreement will be allowable deductions to the Growers in the year incurred (section 8-1);
- administration fees paid for administration of the Project will be allowable deductions to the Growers in the year incurred (section 8-1);

- rent paid by the Growers in relation to the leased area will be an allowable deduction in the year incurred (section 8-1);
- expenses incurred on irrigation will constitute allowable deductions to Growers in the year incurred and the next 2 years at the rate of 33.3% per annum (section 387-125);
- a deduction for the cost of establishment of the olive trees at a rate of 7% per annum will be allowable to Growers, calculated from the income year that the olive trees first become commercially productive (section 387-165); and
- a deduction for insurance premiums paid for the leased area covering fire, public risk or loss of profits (section 8-1).

Division 35 – deferral of losses from non-commercial business activities

Section 35-55 – Commissioner’s discretion

25.1 For a Grower who is an individual and who entered the Project on or after 2 June 1999 and prior to any withdrawal of this Product Ruling the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner has decided for the income years ended 30 June 2001 to 30 June 2002 that the rule in section 35-10 does not apply to this business activity provided that the Project has been, and continues to be, carried on in a manner that is not materially different to the arrangement described in this Ruling.

25.2 This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- a Grower’s business activity satisfies one of the objective tests in sections 35-30, 35-35, 35-40 or 35-45; or
- the ‘Exception’ in subsection 35-10(4) applies.

25.3 Where either the Grower’s business activity satisfies one of the objective tests, the discretion in subsection 35-55(1) is exercised, or the Exception in subsection 35-10(4) applies, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any ‘loss’ from that activity, to a later year. Instead, this ‘loss’ can be offset against other assessable income for the year in which it arises.

25.4 Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be a commercially viable investment. An assessment of the Project or the product from such a perspective has not been made.

Sections 82KZM and 82KL; Part IVA

26. For Growers who invest in the Project 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 to the Growers, 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.

Purchase of shares in the Lessor

27. Where Growers subscribe for shares in the Lessor, the subscription fee will not constitute an allowable deduction but will form part of the cost base of the shares and will be taken into account in determining the Growers' assessable profit, or capital gain or loss, if any, on the ultimate disposal of the shares.

Capital gains tax

28. Acquisition by Growers of the interest in the leased area and associated contractual rights, together with the acquisition of other property by the Growers under the Agreement entered into by the Growers, will constitute the acquisition of an asset to which Part 3-1 of the ITAA 1997 may apply.

29. An assignment of the Growers' interest under the Agreement may result in a capital gain or loss to the Growers.

Assessability of income from the Project

30. Growers who invest in the Project will be assessable on their share of the gross proceeds arising from the Project (section 6-5).

31. Any dividends received by Growers who subscribe for shares in the Lessor will be assessable to the Growers (section 6-5).

Explanations

Section 8-1: lease, management and administration fees

32. Consideration of whether lease, management and administration fees are deductible under section 8-1 begins with paragraph 8-1(1)(a). This view 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 of the taxpayer.

33. A horticultural project can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from olives from the Project will constitute gross assessable income in their 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 and maintenance of trees and harvesting of the olives.

34. Growers will be considered to be carrying on a business of an olive grower where:

- the Growers have an identifiable interest in specific growing trees coupled with a right to harvest and sell the olives;
- the olive grove activities are carried out on the Growers' 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.

35. Under the Lease and Management Agreement, Growers have rights in the form of a lease over an identifiable area of land consistent

with the intention to carry on the business of a commercial olive grove. Under the Agreement, Growers appoint the Responsible Entity to provide services such as planting. The Agreement gives Growers full right, title and interest in the olives produced and the right to have the olives sold for their benefit.

36. Under the Agreement, Growers appoint the Responsible Entity to provide services which include general administration of the Project, planting of the olive trees, installation and maintenance of the micro sprinkler or trickle irrigation system, and all operations necessary to develop and maintain mature olive bearing trees. The Responsible Entity is also responsible for harvesting and selling the olives.

37. The Lease and Management Agreement gives Growers an identifiable interest in specific olive trees and a legal interest in the land by virtue of a Lease. Growers have the right personally to market the produce attributed to their leased area, or they can elect to use the Responsible Entity to market the produce for them.

38. Growers have the right to use the land in question for horticultural purposes and to have the Responsible Entity come onto the land to carry out its obligations under the Agreement. The Growers' degree of control over the Responsible Entity, as evidenced by the Agreement and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on the Responsible Entity's activities. Growers are able to terminate arrangements with the Responsible Entity in certain circumstances, such as cases of default or neglect. The activities described in the Agreement are carried out on the Growers' behalf.

39. 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 agricultural report considers that the Project is realistic and commercially viable. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the Draft Prospectus that suggest the Project should return a 'before-tax' profit to the Growers, that is, a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

40. Growers will engage the professional services of a Responsible Entity with appropriate credentials. There is a means to identify which trees Growers have an interest in. The services are based on accepted horticultural practices and are of the type ordinarily found in olive grove activities that would commonly be said to be businesses.

41. Growers have a continuing interest in the olive trees from the time they are acquired until the end of the Project. The olive grove 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' olive grove activities will constitute the carrying on of a business.

42. The management and administration fees incurred in the first year of the Project associated with the olive grove activities will relate to the gaining of income from this business and, hence, have a sufficient connection to the operations by which this income is to be gained from this business. They will be deductible under paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fees 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.

43. Lease, management and administration fees are pre-paid. Taxation Ruling TR 94/25 states that the facts in *Coles Myer Finance Ltd v. Federal Commissioner of Taxation* (1993) 176 CLR 640; 93 ATC 4214; (1993) 25 ATR 95 were fundamentally different from those of a prepayment and that the decision did not affect the deductibility of pre-paid expenses. The lease, management and administration fees will be incurred in the year of payment.

Expenditure of a capital nature

44. Any part of the expenditure of Growers entering into a horticultural 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. In this Project the costs of purchasing and establishing the olive trees and the costs of irrigation are considered to be capital in nature. The fees for these expenses are not deductible under section 8-1. However, expenditure of this nature can fall for consideration under specific capital write-off provisions of the ITAA 1997.

45. The Relevant Entity has identified the relevant expenses that are of a capital nature. Growers entering into the Project incur and pay a separate amount to the Relevant Entity for these items amounting to \$3,290. These amounts are identified at paragraph 22 of this Ruling.

Section 387-125: irrigation expenditure

46. Section 387-125 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.

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

Section 387-165: horticultural expenditure

48. Section 387-165 allows capital expenditure on establishing horticultural plants for use in an horticulture business to be written off for tax purposes. Under subsection 387-170(3), the definition of 'horticulture' includes the cultivation of olive trees. For the purpose of Subdivision 387-C, a lessee or licensee of land carrying on a business of horticulture is treated as owning the plants growing on that land rather than the actual owner of the land.

49. The write-off commences from the time the olive trees are used or held ready for use for the purpose of producing assessable income in commercial horticulture. The write-off deductions will commence when the olive trees enter their first commercial season. The Responsible Entity will advise the Growers of this event.

50. Under this Subdivision, if the effective life of the plant is more than 3 years, an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period.

51. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. It is estimated that the olive trees will have an effective life in excess of 30 years. The write-off rate for horticultural plants with an effective life of more than 30 years is 7% (section 387-185).

Alternative view

52. The applicant has indicated disagreement with the view that the olive trees do not commence to be used for the purpose of producing assessable income in a horticultural business until their first commercial season, and has submitted an alternative view that the olive trees commence to be so used immediately after their establishment. This view is submitted by the applicant to be more consistent with the inclusion of propagation and cultivation within the meaning of 'horticulture' under the relevant provisions and the timing aspects of other distinctions drawn between capital and revenue costs.

Section 82KZM: prepaid expenditure

53. 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.

54. Under the Lease and Management Agreement, the management and administration fees of \$10,411 per leased area will be incurred on execution of the Agreement. These fees are charged for providing services to a Grower only for the period of 13 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 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 evidence these fees are for services to be provided within 13 months of incurring the expenditure in question.

55. For the purposes of this Ruling, it is accepted that no part of the fees of \$10,411 are for the Responsible Entity to do 'things' that are not to be wholly done within 13 months of the fees being incurred. On this basis, the basic precondition for the operation of section 82KZM is not satisfied and it will not apply to the expenditure by Growers of \$10,411 per leased area.

Section 82KL: recouped expenditure

56. 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 subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' plus the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

57. 'Additional benefit' (see the definition of 'additional benefit' at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit 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.

58. 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: general tax avoidance provision

59. 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).

60. The 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 leased area that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

61. 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 olives from the trees. Further, there are no features of the Project, for example, such as the payment of excessive management and administration fees and non-recourse loan financing by any entity associated with the Project that might suggest the Project 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. No ruling is given out on the application of Part IVA to financing arrangements entered into between investors and other financiers in respect of lending arrangements to invest in the Project.

Section 6-5: assessable income

62. Gross sale proceeds derived from the sale of olives harvested from the Project will be assessable income of the Growers under section 6-5.

63. Once harvested, the Growers' olives will, in most circumstances, be trading stock of the Growers. As a consequence, if olives are on hand at the end of the income year, Growers will need to account for that trading stock in accordance with the trading stock provisions in Part 2-5 of the ITAA 1997. In accordance with Taxation Ruling IT 2001, it is accepted that costs associated with the establishment of an olive grove do not form part of the trading stock ultimately produced by the olive grove.

64. Any dividend income received from the Growers' shares in the Lessor will also form part of the Growers' assessable income under section 6-5.

Section 8-1: insurance deductibility

65. Under the terms of the Lease and Management Agreement; a Grower may elect to take out additional insurance in respect of their portion of the olive grove. Insurance premiums for fire, public risk and loss of profits are deductible. Therefore, where a Grower takes out insurance to cover these events, the premiums will be deductible under section 8-1.

Part 3-1: capital gains tax

66. Acquisition by the Growers of the lease interest in the land and associated contractual rights, together with the acquisition of other property under the various agreements entered into by the Growers, will constitute the acquisition of an asset to which Part 3-1 may apply. Accordingly, the expiration of the lease will constitute the disposal of those assets.

67. Unless any shares in the Lessor are trading stock of the Growers or otherwise assessable on revenue account to the Growers, a capital gain or loss will arise on the disposal of those shares.

68. In the event that the Lessor is liquidated at the conclusion of the Project, further taxation considerations arise for the Growers holding shares in the Lessor. Any distribution made to the Growers on liquidation of the Lessor would be deemed to be a dividend to the Growers, to the extent of undistributed profits of the Lessor. This dividend would be assessable as a normal dividend and may have franking credits attached. Further, a capital gain or loss could arise, based on the difference between the Growers' indexed cost base and the amount distributed.

Detailed contents list

69. Below is a detailed contents list for this Product Ruling:

	Paragraph
What this Product Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	5
Date of effect	9
Withdrawal	11
Arrangement	12

Overview	14
Lease and Management Agreement	17
Fees	22
Finance	24
Ruling	25
Division 35 – deferral of losses from non-commercial business activities	25.1
Section 35-55 – Commissioner’s discretion	25.1
Sections 82KZM and 82KL; Part IVA	26
Purchase of shares in the Lessor	27
Capital gains tax	28
Assessability of income from the Project	30
Explanations	32
Section 8-1: lease, management and administration fees	32
Expenditure of a capital nature	44
Section 387-125: irrigation expenditure	46
Section 387-165: horticultural expenditure	48
Alternative view	52
Section 82KZM: prepaid expenditure	53
Section 82KL: recouped expenditure	56
Part IVA: general tax avoidance provision	59
Section 6-5: assessable income	62
Section 8-1: insurance deductibility	65
Part 3-1: capital gains tax	66
Detailed contents list	69

Commissioner of Taxation

2 June 1999

Previous draft:

No draft issued

Related Rulings/Determinations:
IT 2001; PR 98/1; TD 93/34;
TR 92/1; TR 92/20; TR 97/11;
TR 97/16

PR 1999/47

Subject references:

- capital gains tax
- carrying on a business
- commencement of business
- fee expenses
- horticulture
- insurance expenses
- interest expenses
- management fees expenses
- product rulings
- public rulings
- primary production
- primary production expenses
- producing assessable income
- rental expenses
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

- ITAA1936 177D
- ITAA1997 6-5
- ITAA1997 8-1
- ITAA1997 8-1(1)(a)
- ITAA1997 8-1(1)(b)
- ITAA1997 8-1(2)
- ITAA1997 Div 35
- ITAA1997 35-10
- ITAA1997 35-10(4)
- ITAA1997 35-30
- ITAA1997 35-35
- ITAA1997 35-40
- ITAA1997 35-45
- ITAA1997 35-55
- ITAA1997 35-55(1)
- ITAA1997 35-55(1)(b)
- ITAA 1997 Pt 2-5
- ITAA1997 Pt 3-1
- ITAA1997 387-125
- ITAA1997 Subdiv 387-C
- ITAA1997 387-165
- ITAA1997 387-170(3)
- ITAA1997 387-185
- TAA 1953 Pt IVAAA
- Copyright Act 1968

Legislative references:

- ITAA1936 82KH(1)
- ITAA1936 82KH(1F)(b)
- ITAA1936 82KL
- ITAA1936 82KL(1)
- ITAA1936 82KZM
- ITAA1936 Pt IVA
- ITAA1936 177A
- ITAA1936 177C

Case references:

- Coles Myer Finance Ltd v. Federal Commissioner of Taxation (1993) 176 CLR 640; 93 ATC 4214; (1993) 25 ATR 95

ATO references:

NO 99/4044-8

BO

FOI number: I 1019737

ISSN: 1039-0731

Price: \$1.70