



PR 1999/74 - Income tax: Australian Cricket Bat Willow Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *23 June 1999*



Product Ruling

Income tax: Australian Cricket Bat Willow 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 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 Cricket Bat Willow Project', or just simply as the 'Project' or the 'product'.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are sections 6-5 and 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and sections 82KL and 82KZM and Part IVA of the *Income Tax Assessment Act 1936* ('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 non-residents or 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. This 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 33) 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.

Note: A material difference may arise in relation to a variation in the facts of the arrangement described in the Ruling. It may also arise in circumstances where the person otherwise included in the class of persons enters into the arrangement as described, but also enters into transactions or arrangements (including financing arrangements) that, when viewed as a whole with the arrangement described in the Ruling, will produce a different taxation consequence for the arrangement. This might include, for example, where the Participant borrows to enter into the arrangement by way of a limited or non-recourse loan and the overall consequence might be that the arrangement is one that would have attracted the application of a tax avoidance provision.

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Date of effect

9. This Ruling applies prospectively from 23 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, 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:

- Application for a Product Ruling lodged on behalf of Australian Cricket Bat Willow Plantation Management Services Ltd (the 'Project Manager'), dated 19 November 1998, including:
- Information requirements as referred to in Product Ruling PR 98/1;
- Draft of the proposed Product Ruling;
- Prospectus issued by the Project Manager, dated 15 June 1998;

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- Deed of Trust between Project Manager, Sandhurst Trustees Ltd, as the Growers Representative and Grower, undated;
- **Sublease** between Grower and Australian Willow Plantation Pty Ltd, as Landholder, dated 18 September 1998;
- **Plantation Management Contract** between Grower and Project Manager, undated;
- Plantation Services Agreement between Project Manager and Murray Valley Nurseries Pty Ltd, as Contractor, undated;
- **Loan Agreement** between Australian Plantation Finance Pty Ltd, as Financier, and Grower, undated; and
- Flowchart showing flow of funds between parties.
- Letter from the Australian Taxation Office ('ATO') to Project Manager's solicitor dated 20 January 1999;
- Letter to the ATO from Project Manager's solicitor dated 10 February 1999, including:
- Annual Return dated 7 December 1998 of Australian Plantation Finance Pty Ltd;
- Certificate of Registration on Change of Name of Australian Plantation Finance Pty Ltd; and
- Certificate of Registration of a Company of Melbourne Housing Finance Pty Ltd.
- Letter from the ATO to Project Manager's solicitor dated 15 April 1999;
- Letter to the ATO from Project Manager's solicitor, dated 4 May 1999, including:
- Head leases over land that is subject to the Project Agreements.
- Facsimile from the ATO to Project Manager's solicitor dated 10 June 1999; and
- Facsimile to the ATO from Project Manager's solicitor, dated 11 June 1999.

Note: Certain information received from the Project Manager's solicitor 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 Growers enter into or are otherwise a party to. They are collectively known as the Project Agreements. 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, to which a Grower or an associate of a Grower will be a party. The effect of these agreements is summarised as follows.

14. This arrangement is called the 'Australian Cricket Bat Willow Project'. Under the Prospectus, applications are invited from people wishing to enter into the Project Agreements. The Applicant appoints the Project Manager to be their Attorney for the purpose of entering into and executing the Project Agreements. Upon entering into a Project Management Contract and a Sublease, the applicant is known as a Grower.

15. Growers will sublease land situated in and around the Swan Hill district of Victoria from the Landholder. The sublease is for 11 years with Growers being granted an option to extend the term of their sublease for an additional 4 years or until the earlier harvesting of the trees. Growers will also enter into a Project Management Contract with the Project Manager to have willow (*salix alba var. caerulea*) seedlings planted on this leased land for the purpose of eventual harvesting between 2008 and 2010. It is intended to sell the wood to cricket bat manufacturers.

16. There are 3,000 units (equivalent to a specific and identifiable area of land of 0.0075 hectares) on offer at \$2,500 per unit. The minimum area of land leased by each Grower is 2 units with additional subscriptions available in single units. This fee comprises an initial management fee of \$4,950 and \$50 for the first year's rental. Other expenses, for the minimum Leased Area, are a further annual management fee of \$50 (CPI adjusted), an annual maintenance fee of \$150 (CPI adjusted) and a further annual rental of \$50 (CPI adjusted). There is an option to accept oversubscriptions.

Deed of Trust

17. The parties to the Deed of Trust are the Project Manager, as Manager, Sandhurst Trustees Ltd, as Representative of the Growers, and persons (Growers) entering into Project Management Contracts.

18. The Trust Deed provides that the Representative will supervise Growers' funds and the rights of Growers. Among other things, it states:

- that the Representative will establish a Project Account into which all Growers Contributions will be deposited (cl 4.1);

- that all Harvest Income will be paid into an account established by the Representative for that purpose. Within 21 days of payment into the account, the Harvest Income, after specified payments to the Manager and the Representative will be distributed by the Representative to Growers according to their proportional interest in the Project (cl 8.1, cl 8.2);
- that the Manager will use its best endeavours to carry on and conduct the business of the Manager in a proper and efficient way. That it will perform all engagements entered into with the Grower in a proper and efficient manner (cl 11.1(a));
- that no money available for investment will be invested in or lent to the Manager or any person which is by virtue of the Corporations Law associated with the Manager (cl 11.1(g));
- that the Manager will establish, manage and maintain the Plantations on behalf of Growers in accordance with good silvicultural practice and in accordance with the Project Management Contract (cl 11.2(a));
- that the Representative will exercise due care and diligence in carrying out its functions (cl 12.1(a));
- that the Representative will perform its functions and exercise its powers in the best interests of the Growers (cl 12.1(n));
- that Growers may resolve to remove the Manager (cl 18.3); and
- that the Project shall terminate on 30 June 2013 or upon the sooner completion of the harvesting and distribution of all Harvest Income. However, Growers may by extraordinary resolution vote to extend the period of the Project (cl 22.1).

Project Management Contract

19. The parties to the Project Management Contract are the Project Manager, and the Grower.

20. The Project Management Contract recites:

- that the Grower is the sublessee of the Land;
- that the Grower desires to establish a Willow Tree Plantation;

- that the Project Manager has and has access to expertise in relation to management of willow tree plantations; and
- that the Grower desires to engage the Project Manager to carry out such services as are required to plant, manage and maintain the Willow Tree Plantation on the Land.

21. The Project Management Contract, among other things, provides:

- that in consideration of the fees payable by the Grower, the Project Manager will provide the services as are provided for in this Contract (cl 3);
- that the Project Manager will perform or cause to be performed all the services in relation to the Land as are set out in the Management Plan (cl 4.1);
- such services include (cl 4.2):
 - ◆ the establishment and management of the Willow Tree Plantation in a proper and skilful manner;
 - ◆ the planting of a plantation of willow trees;
 - ◆ tending, maintaining and generally monitoring and caring for the Plantation Crop;
 - ◆ the provision of sufficient healthy willow tree root stock to achieve a specified stocking rate;
 - ◆ at the cost to the Grower, such fire insurance as may be reasonably available; and
 - ◆ the establishment and planting of the Plantation shall be completed no later than 27 July 2000;
- that the Contract terminates when the whole of the Plantation Crop has been Harvested (cl 5.1);
- that the Grower may express opinions and give recommendations to the Project Manager, which shall, subject to clauses 7.3(a) and 7.3(b), use its best endeavours to carry out such recommendations (cl 7);
- that the Project Manager shall provide reports to Growers each year and as soon as practicable following the completion of the planting of the Plantation Crop (cl 8);
- that the Grower shall not assign or dispose of its rights and obligations under this Contract, unless the Grower

provides to the Project Manager an indemnity in respect of the performance of the proposed Assignee (cl 9.9);

- The Management Plan provides that the Project Manager will perform or cause to be performed all the services in relation to the land and the Willow Tree Plantation in a proper and skilful manner in accordance with this management plan and in accordance with sound forestry and environmental practices adopted within the forestry industry (Part 1 of the Schedule);
- that charges payable by the Grower (Part 4 of the Schedule) will be:
 - ◆ \$4,950 for the first 0.0150 hectares and \$2,475 for each additional Unit for the establishment and management of the Plantation Crop until 27 July 1999;
 - ◆ \$50 (Indexed) for the Minimum Leased Area and \$25 (Indexed) for each additional Unit for annual management from 30 June 1999;
 - ◆ \$150 (Indexed) for the Minimum Leased Area and \$75 (Indexed) for each additional Unit for annual maintenance from 30 June 1999; and
 - ◆ 20% of the amount by which the net proceeds of the sale of the Plantation Crop harvested from each Unit that exceeds the sum of \$9,000 indexed.

Sublease

22. The parties to the Sublease are Australian Willow Plantation Pty Ltd, as Landholder, and the Grower.

23. The Sublease recites that the Landholder holds a lease or sublease over the land and that the Landholder has agreed to sublet to the Grower the Leased Area for the purpose of planting, tending and harvesting a willow tree plantation for use in the manufacture of cricket bats.

24. The Sublease, among other things, states:

- that the Landholder subleases to the Grower and the Grower takes a sublease of the Leased Area for the Term (cl 3.1);
- that the Term may not exceed the period which is one day less than the Head Lease (cl 3.2);

- that the Grower may extend the term of the lease by giving at least 6 months notice prior to the expiration of the term (cl 4.1);
- that the Grower agrees to pay to the Landholder the rent payable (cl 6.1);
- that the Grower agrees to establish, tend and manage the Plantation Crop (cl 6.2);
- that the Landholder will install a trickle irrigation system to water the Plantation Crop (cl 7.13);
- that each Party has full and free right to assign its rights under this Sublease provided that the transferring Party first obtains a deed of covenant by the proposed assignee in favour of the non-transferring Party that the assignee will observe and perform all covenants contained or implied in this Sublease (cl 8.12);
- that the Parties acknowledge and agree that the Plantation Crop is, and shall remain, the property of the Grower until the end of the Term and the Grower shall be entitled to harvest the Plantation Crop and retain all income from the sale thereof (cl 8.16);
- that, where the whole or a substantial part of the Plantation Crop is damaged and an independent forestry consultant commissioned by the Grower determines that it is no longer commercially viable to operate the Plantation Crop or any substantial portion thereof, then the Grower will be entitled to terminate this Sublease or reduce the Plantable Area (cl 9.1);
- that Rent payable will be \$50 per annum for the first 0.0150 hectares and \$25 per annum for each 0.0075 hectares thereafter for the first year, and, for future year's, Rent will be the previous year's Rent Indexed, but in no event will be less than that payable the previous year (Part 3 of the Schedule); and
- that the Term is from the Sublease Commencement Date and expiring on 30 June 2009. The Option is for a term of 4 years commencing on 1 July 2009, and subject to clause 4, expiring on 29 June 2013.

Plantation Services Agreement

25. The parties to the Plantation Services Agreement are the Project Manager and Murray Valley Nurseries Pty Ltd, as Contractor.

26. The Plantation Services Agreement, among other things, provides:

- that the Project Manager engages the Contractor to carry out the Plantation Services during the Term (cl 2.1);
- that the Contractor agrees with the Project Manager to carry out or cause to be carried out such services and duties as are set out in the Plantation Development and Maintenance Plan (cl 5.1); and

Finance and the Loan Agreement

27. The Prospectus outlines a finance option offered by Australian Plantation Finance Pty Ltd, a company associated with the Project Manager. If taken up, the loan transaction is evidenced by the execution of a Loan Agreement between Australian Plantation Finance Pty Ltd, as Financier, and the Grower, as borrower.

28. The Prospectus states finance from Australian Plantation Finance Pty Ltd is available to Growers subscribing to at least 4 units (0.030 hectares). In their letter of 4 May 1999, the Project Manager's solicitor states that Australian Plantation Finance Pty Ltd is a lender of last resort.

29. Growers may also choose to fund the investment themselves or borrow from their own bankers. If Growers choose not to use their bankers, the Project Manager has conducted negotiations with Laton Finance Pty Ltd whereby that company will be provided with the first opportunity to provide finance to the Grower. Laton Finance Pty Ltd is not related through shareholdings to any of the entities associated with the Project.

30. The Loan Agreement, among other things, provides:

- that the Grower shall pay interest at the rate of 7.5% per annum on the amount of the principal sum outstanding (cl 3);
- that the Grower assigns, transfers and sets over to the Financier by way of security all its right, title and interest in and under:
 - ◆ the Plantation Management Contract;
 - ◆ the Sublease;
 - ◆ any agreement to purchase the wood under a Wood Purchase Agreement;
 - ◆ all money payable to the Grower under the Wood Purchase Agreement; and

- ◆ the insurances effected on the land, provided, that upon the repayment of the Principal Sum, interest thereon and all other money secured by this Agreement, this assignment shall be void (cl 6).

31. Information in the Application for a Product Ruling and the letter of 4 May 1999 provide:

- that the loan is provided on a full recourse basis;
- that loan funds will comprise cash paid to the Grower;
- that the flow of funds will be represented by an actual physical flow of funds at or close to the time the Growers agreements are executed; and
- that the Grower's debt can only be discharged by the Growers repaying that debt.

32. In their letter of 4 May 1999, the Project Manager's solicitor states that no parties to the Project have entered into any security deposits, lines of credit or transactions having a similar effect or character, other than those in relation to the Security Dealers License requirements at the Australian Securities and Investment Commission.

33. Where Growers finance their entry into the Project without resort to Australian Plantation Finance Pty Ltd, Growers entering into such financing arrangements will only do so under the following conditions:

- all loan terms are of an arm's length nature;
- borrowers remain fully liable for the balance of the loan outstanding at any time and lenders will take legal action against defaulting borrowers;
- 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;
- there are no indemnity arrangements or any other collateral agreements in relation to the loan; and
- repayments of principal and payments of interest are not linked to derivation of income from the Project and are made regularly starting shortly after the making of the loan.

Ruling

Section 8-1

34. Where a Grower applies for and is accepted into the Project in the year ending 30 June 1999, the following outgoings will be allowable deductions under section 8-1 of the ITAA 1997 in respect of the years of income mentioned below.

35. For the year of income ending 30 June 1999:

- the initial management fee of \$2,475 per Unit for services to be provided before 27 July 2000 under the Plantation Management Contract;
- annual Rent of \$25 per Unit incurred under the Sublease;
- where fire insurance has been taken out by the Project Manager on behalf of the Grower pursuant to clause 4.2 of the Project Management Contract, the amount of the insurance premium; and
- interest expenses that either have been paid or have fallen due for payment during the year of income ended 30 June 1999, where that interest is incurred by the Grower in respect of a loan taken out solely to finance the payment of fees owing under the Project Agreements.

36. For the year of income ending 30 June 2000:

- annual management fee of \$50 (Indexed) per Unit incurred under the Plantation Management Contract;
- annual maintenance fee of \$75 (Indexed) per Unit incurred under the Plantation Management Contract;
- annual rent of \$25 (Indexed or the previous year's rent, whichever is the greater) per Unit incurred under the Sublease;
- where fire insurance has been taken out by the Project Manager on behalf of the Grower pursuant to clause 4.2(j) of the Project Management Contract, the amount of the insurance premium; and
- interest expenses that either have been paid or have fallen due for payment during the year of income ended 30 June 2000, where that interest is incurred by the Grower in respect of a loan taken out solely to finance the payment of fees owing under the Project Agreements.

37. For the year of income ending 30 June 2001:
- annual management fee of \$50 (Indexed) per Unit incurred under the Plantation Management Contract;
 - annual maintenance fee of \$75 (Indexed) per Unit incurred under the Plantation Management Contract;
 - annual rent of \$25 (Indexed or the previous year's rent, whichever is the greater) per Unit incurred under the Sublease;
 - where fire insurance has been taken out by the Project Manager on behalf of the Grower pursuant to clause 4.2(j) of the Project Management Contract, the amount of the insurance premium; and
 - interest expenses that either have been paid or have fallen due for payment during the year of income ended 30 June 2001, where that interest is incurred by the Grower in respect of a loan taken out solely to finance the payment of fees owing under the Project Agreements.

Assessable income

38. For a Grower who invests in the Project, gross income received from the sale of wood from their Interest will be assessable income under section 6-5 of the ITAA 1997 in the year in which a recoverable debt accrues to them.

Sections 82KZM, 82KL and Part IVA

39. For a Grower who invests 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; and
 - the provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law with which this ruling deals.

Explanations

Section 8-1

40. Consideration of whether fees payable under the Project Management Contract and Sublease are deductible under section 8-1, begins with the first limb of the section. This view proceeds on the following basis:

- the outgoings in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb 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/herself 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 the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

41. 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 sale of the timber from the scheme 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, maintaining and harvesting of the trees.

42. 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.

43. For this Project, Growers have, under the Sublease, rights in the form of a sublease over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the Project Management Contract Growers appoint the Project Manager to provide services such as planting, tending, maintaining and otherwise caring for the trees. Growers control their investment. On behalf of Growers, the Project Manager will ensure that the purchase price paid for the wood will be fair and reasonable.

44. The Sublease gives Growers more than a chattel interest in the wood on harvest. The Project documentation contemplates Growers will have an ongoing interest in the growing trees: a leasehold interest usually confers on an investor an identifiable interest in specific trees in the area covered by the lease.

45. Growers have the right to use the land in question for afforestation purposes and to have the Project Manager and Contractor come onto the land to carry out their obligations under the Project Agreements. The Growers' degree of control over the Project Manager, as evidenced by the Project Agreements and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports (including annual written reports) on the Project Manager's activities. Growers are able to terminate arrangements with the Project Manager in certain instances, including, but not limited to, cases of default or neglect. The afforestation activities described in the Project Management Contract are carried out on the Growers' behalf.

46. 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. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections in the Prospectus that suggest the Project should return an 'after tax' profit to the Growers, ie., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

47. Growers will engage the professional services of a manager with appropriate credentials. There is a means to identify which trees Growers have an interest in. 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.

48. Growers have a continuing interest in the trees from the time they are acquired until harvest. 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.

49. The fees associated with the afforestation 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 wood) is to be gained from this business. They will be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The tests of deductibility on the outgoings ruled upon under the first limb of section 8-1 are met. The exclusions do not apply.

Insurance premiums

50. Under clause 4.2(j) of the Project Management Contract the Project Manager undertakes to keep a policy of fire insurance at the Grower's expense. Any insurance recoveries under the above policies will be assessable; insurance premiums paid will have a sufficient connection with the gaining or producing of assessable income. The expenditure is required under the Project Management Contract, and is relevant and incidental to the operations which more directly gain or produce the assessable income. These insurance premiums will have a sufficient connection with the gaining of assessable income. No capital, private or domestic component is identifiable in respect of them. The insurance premiums will be deductible under section 8-1.

Interest deductibility

51. Some Growers intend to finance their investment in the Project through borrowings. This may be through their own banks, Laton Finance Pty Ltd or the loan facility offered by Australian Plantation Finance Pty Ltd. Whether the interest expenses are deductible under section 8-1 depends on the same reasoning as that applied to whether the initial management fee, rental amounts or maintenance fees will be deductible. The interest expenses incurred in the years ended 30 June 1999, 2000 and 2001 will be in respect of a loan to finance the services to be performed under the Project Management Contract. This is directly connected with the gaining of 'business income' from the Project. These expenditures will have a sufficient connection with the gaining of assessable income. No capital, private or domestic component is identifiable in respect of them.

Assessable income

52. For a Grower who invests in the Project, gross income received from the sale of wood from their Interest will be assessable income under section 6-5 of the ITAA 1997 in the year in which a recoverable

debt accrues to them. This will depend on the terms of the specific sale contracts entered into.

Section 82KZM

53. Under the Project Management Contract, the establishment charges will be incurred on acceptance of applications to become a Grower by the Project Manager. This fee is charged for providing services to a Grower for the period ending 27 July 2000. The fee is expressly stated to be for a number of establishment services. 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. There is also no evidence that might suggest the services covered by the fee could not be provided within 13 months of incurring the expenditure in question. For the purposes of this Ruling it can be accepted that no part of the fee is for the project Manager doing 'things' that are not to be wholly done within 13 months of the fee 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 \$2,475 per Unit.

Section 82KL

54. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Here, there may be a loan provided by Australian Plantation Finance Pty Ltd to the Grower and will be at commercial rates of interest. The loan is provided on a full recourse basis. In relation to the loan, either insufficient or no 'additional benefits' will be provided to trigger the application of section 82KL. Section 82KL will not apply to deny interest deductions otherwise allowable under section 8-1.

55. Section 82KL will also not apply to deny deductions otherwise allowable under either section 8-1, or a combination of section 8-1 and subsection 82KZM(1), for establishment fees, rental or maintenance fees.

Part IVA

56. 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 Australian Cricket Bat Willow Project will be a 'scheme'. It commenced in the period leading up to the issue of the Prospectus on 16 June 1998. The Growers will obtain, for example, 'tax benefits' from entering into the scheme, in the form of deductions for the amounts referred to in paragraphs 35 to 39 above, allowable under

either section 8-1, or a combination of section 8-1 and subsection 82KZM(1), 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.

57. 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 or the lease fees being uncommercial, and 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

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

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Commissioner of Taxation

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Previous draft:

No draft issued

- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

Related Rulings/Determinations:
 PR 98/1; TR 92/1; TR 97/11;
 TR 97/16; 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

Legislative references:

- ITAA1936 82KL
- ITAA1936 82KZM
- ITAA1936 82KZM(1)
- ITAA1936 Pt IVA
- ITAA1936 177A
- ITAA1936 177C
- ITAA1936 177D
- ITAA1997 6-5
- ITAA1997 8-1

Case references:

 ATO references:

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