PR 1999/82 - Income tax: Kings Creek Vineyard Project

Product Ruling

Income tax: Kings Creek 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 Kings Creek Vineyard 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 of the ITAA 1997;
- section 70-35 of the ITAA 1997;
- section 42-15 of the ITAA 1997;
- section 387-125 of the ITAA 1997;
- section 387-165 of the ITAA 1997;
- section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- section 82KZM of the ITAA 1936; and
- the relevant provisions of Part IVA of the ITAA 1936.

Class of persons

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

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

Qualifications

5. The Ruling provides this specified class of persons with a binding ruling as to the tax consequences of this product. The Commissioner accepts no responsibility in relation to the commercial viability of this product, and gives no assurance the 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 31) 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 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, 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 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, 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, as the case may be, 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:

- Application for Product Ruling dated 12 April 1999;
- Prospectus for Kings Creek Vineyard Project issued by Landy DFK Securities Ltd ('DFK Securities', or 'the Manager'), dated 1 June 1999;
- Trust Deed between DFK Securities and Australian Rural Group Ltd ('ARGL', the trustee of the Project), dated 5 May 1998;

- **Lease Agreement** between ARGL, and the Grower;
- **Management Agreement** between DFK Securities and the Grower;
- **Loan Agreement** between Landy DFK Finance Pty Ltd ('the Lender') and the Grower;
- Grape Sale Agreement between DFK Securities and Kings Creek Winery Pty Ltd ('KCWPL'), as trustee of Kings Creek Winery Unit Trust;
- **Power of Attorney**, between the Grower ('the Applicant') and ARGL ('the Attorney'); and
- Additional correspondence received from DFK Securities dated 11 June 1999, and 16 June 1999.

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

13. The documents highlighted are those the Growers enter into. For the purposes of describing the arrangements 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 (within the meaning of section 318 of the ITAA 1936) of the Grower, will be a party to. The effect of these agreements is summarised as follows.

14. This arrangement is called the Kings Creek Vineyard Project. Growers entering the Project will lease from ARGL (as Lessor) land located on the Mornington Peninsula in Victoria. The term of the lease is 15 years. Growers will also enter into a Management Agreement with DFK Securities to have various varieties of vine seedlings planted on this leased land for the purpose of establishing a vineyard to sell the grapes produced.

15. There are 80 leased areas ('Allotments') on offer, of 0.4 hectares each in size. Growers will lease each Allotment at a fee beginning at $700 per annum for the income year ending 30 June 2000 payable annually in advance, and thereafter adjusted for CPI movements.

Lease Agreement

16. Under the Lease Agreement Growers enter into a 15 year lease for one or more Allotments, for the purpose of establishing a vineyard on which to produce grapes for sale. Clause 1 of the Agreement grants an interest in the leased land to the Grower. Growers are not

entitled to assign their interest in the lease to anyone else, without the consent of the Lessor (cl 5).

17. Clause 2.1 provides that the Grower shall have the right to use the Land for the establishment of a vineyard, including clearing and cultivating the Land, and planting, tending, growing and caring for grapevines on the Land. This clause also gives the Grower the right to harvest the grapes for the purpose of selling them.

Management Agreement

18. Under the Management Agreement Growers will engage DFK Securities as Manager, for a period of 15 years, to establish and maintain a vineyard on their leased Allotment. Growers are not permitted to assign their interest in the Management Agreement without the consent of the Manager (cl 13). Growers have the right at the end of the Project to engage the Manager to remove the trellising. The Growers are required to pay a fee to the Manager to remove the trellising and make good any damage resulting to the vines (cl 8(c)).

19. Growers also appoint the Manager to act as their sole and exclusive agent to market and sell the grape produce from their Allotments (cl 7). A Grower will be entitled to a pro-rata share of the proceeds arising from the sale of the grapes produced from the Project (cl 13 of the Trust Deed).

20. The Manager in consideration of payment by the Grower of the Management Fees will provide both Vineyard Establishment Services and Management Services (cl 2). Commencement of the Vineyard Establishment Services will be on the date set out in Item 4 of the Schedule and the Manager undertakes to use its best endeavours to complete them within 13 months from that date. Under clause 1(b) Vineyard Establishment Services are defined to mean, 'preparation of the Land for planting and planting with rootstock in accordance with good viticultural practice and, without limiting the generality of the foregoing, includes the following:

(i) the establishment and maintenance of fences and trellising on and around the Land in accordance with good viticultural practice;

(ii) the completion of all preparatory work necessary for the planting of vines on the Land including all ploughing and vermin control deemed necessary by the Manager;

(iii) the supply and planting of healthy rootstock to an average density of 1,000 vines per hectare; and

(iv) the control of weeds and other vegetation which might inhibit the growth of the vines on the Land.

21. The Management Agreement dissects the charges for specific items of work to be performed as follows:

Vines/planting/land preparation	$1,320
Irrigation	$1.200
Trellising	$2,700
Management services	$14,530

22. The Management Fee for the first year has been set at $19,750 (Item 5 of the Schedule) (cl 10). In subsequent years Growers are liable to pay a Maintenance Fee, as calculated according to Item 6 of the Schedule to the Management Agreement payable by the Grower to the Manager annually in advance on or before 30 June of the preceding financial year (cl 11).

23. The Manager is to be reimbursed for the costs incurred on harvesting and sale of the grapes. This will be deducted from the gross sale proceeds (cl 7(b)).

24. The Growers are able to replace the Manager in certain instances (cl 14.1.7 of the Trust Deed).

Finance

25. Landy DFK Finance Pty Ltd ('DFK Finance'), a company associated with the Manager, will provide Growers with the opportunity to fund up to 85% of the Management Fee of $19,750 per Allotment.

26. DFK Finance will carry out its own credit assessment of potential borrowers and make a decision whether or not to enter into a Loan Agreement with each person. There is no other agreement, or arrangement, between DFK Finance and the Manager in relation to any guarantee of repayment of the loan or otherwise. The Manager will not provide any security for the loans made by DFK Finance. The Manager may deposit, either directly or indirectly, any loan funds received from a Grower, back with DFK Finance but these will be at call and there will be no restrictions on the Manager's ability to call in such loans as and when it requires funds to carry out obligations under the Management Agreement.

27. DFK Securities is to be put in funds by the Grower upon application. A loan from DFK Finance will involve full recourse loans and DFK Finance will pursue full legal action against defaulting borrowers. The term of the loan is to be 4 years, with principal repayments being made monthly in arrears. Interest, fixed at 7% for the term of the loan, will be payable monthly in arrears. A special repayment of principal of $3,152 is to be made in the 3rd month of the loan.

28. Alternatively, Growers may seek to finance their investment from other lenders. Loan transactions to which this Ruling applies will exhibit the following features;

- all loan terms will be of an arm's length nature;
- borrowers will remain fully liable for the balance of the loan outstanding at any time, and the lender will take full legal action against defaulting borrowers;
- none of the funds lent will be transferred back to the lender, or any associate, as part of any 'round robin' or equivalent transaction;
- the loan will not be a 'split-loan', of the type described in Taxation Ruling TR 98/22;
- there will be no indemnity, or equivalent agreement, to reduce the borrower's liability; and
- repayment of principal and payment of interest will not be linked to deriving income from the Project, and will be made regularly, commencing from or about, the time of the making of the loan.

Derivation of income

29. The first harvest from the Project is expected in the year ending 30 June 2002, with the first full crop expected to be harvested in the year ending 30 June 2004. The harvested crops will be sold to KCWPL under the Grape Sale Agreement. The prices to be paid will vary according to the quality of the grapes, but for the first 8 years of the Project will be the greater of $2,200 per tonne or the current market price at the relevant time for the varieties harvested. During the last 8 year period of the Project the price payable will be the current market price at the relevant time. Revenues will be calculated in total for all the Growers participating in the Project and then pooled. The pooled proceeds will be evenly allocated to Growers, based on the number of Allotments held. Under the Management Agreement and the Grape Sale Agreement, all harvestable grapes grown on each allotment are to be severed from the vines each year. These grapes are to be delivered by the Manager to KCWPL on or before 30 June of each year of harvest.

30. The agreement with KCWPL provides for grape payments to be made in 3 instalments, as follows:

- one third within 30 days of the month of harvest;
- one third by 30 June following the month of harvest; and

- the remaining one third by 30 September following the month of harvest.

Subject to any lien the Manager may have over the grape sale proceeds because of monies owing under the Lease Agreement or Management Agreement, the Manager will pay the proceeds from the sale to the Trustee, ARGL, within 2 working days of receiving it. The Trustee will pay to, or at the direction of each Grower, their entitlements to the proceeds within 21 days of receiving those proceeds.

31. Whilst the crop has been pre-sold under the Grape Sale Agreements, yields and quality are uncertain. Thus, there are no guaranteed returns to investors. However, the Manager's financial projections set out in the draft Prospectus are based on an assumption that the sale price for the Project's wine grapes in the Year 2002 will be $2,200 per tonne and will increase to $3,137 by Year 2014. Based on these projections Growers can anticipate that their gross proceeds from the sale of grapes over the life of the Project will be of the order of $149,000, which will exceed their total expenses.

Ruling

32. For a Grower who invests in the Kings Creek Vineyard Project by 30 June 1999, and who utilises the services of the Manager and incurs the fees set out in paragraphs below, the following deductions will be available for the years ended 30 June 1999 to 30 June 2001:

Fee type	**Deductions available each year**		
	Year 1	**Year 2**	**Year 3**
	30/6/1999	**30/6/2000**	**30/6/2001**
Management fee (see note (a))	$14,530	$4,750	$2,500
Vineyard Rent (note (b))	$700	$721	$743
Irrigation (note (c))	$400	$400	$400
Preplanting and planting of Vines (note (d))	--------	--------	--------
Trellising (note (e))		$360	$468

Notes:

(a) management fees paid for the services outlined in the Management Agreement will be allowable deductions to the Grower in the year incurred (section 8-1);

(b) rent paid by the Grower in relation to the leased area will be an allowable deduction in the year incurred (section 8-1);

(c) expenses incurred on irrigation will constitute allowable deductions to the Grower in the year incurred and in the next two years at the rate of 33.3% per annum (section 387-125);

(d) a deduction for vine establishment expenditure will be allowable, at a rate of 13% per annum, commencing from the time that the vines enter their first commercial season, which is expected to be in the income year ending 30 June 2002-(section 387-165); and

(e) 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, commencing from the time that the trellising is first used for the purpose of producing assessable income.

33. Interest incurred by a Grower in relation to money borrowed from DFK Finance to fund their investment in the Project will be an allowable deduction for the year of income in which it is incurred.

Sections 82KZM and 82KL; Part IVA

34. 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 relevant provisions of Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Assessable income from the Project

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

Trading stock

36. It is intended that Growers should not have any trading stock on hand at the end of any income year, as their harvested grapes are to be delivered to KCWPL on or before this time. However, Growers having grapes on hand at the end of an income year that are trading stock of their business, will need, under section 70-35, to include in their assessable income any excess of the value of that trading stock at

the end of the income year over the value at the start of that income year.

Explanations

Section 8-1: Lease and Management fees

37. Consideration of whether the Lease and the Management fees are deductible under section 8-1 begins with an examination of paragraph 8-1(1)(a). To be deductible under this paragraph:

- the outgoing 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 no 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.

38. A viticulture undertaking involving the growing of grapevines and harvesting of grapes for sale can constitute the carrying on of a business. Where there is such a business, or a future business, the gross sale proceeds from that business will constitute 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 and maintaining of the grapevines, and harvesting of the grapes.

39. 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, as developed by the Courts, point to the carrying on of a business.

40. Under the Lease and the Management Agreement, Growers have rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of a commercial vineyard. The Grower appoints the Manager to establish, maintain, supervise and manage on a day-to-day basis all activities to be carried on by the Grower on their leased area. The Manager will also arrange for the harvesting of the grapes.

41. The Lease and the Management Agreement give Growers an identifiable interest in specific grapevines and Growers have a legal interest in the land by virtue of the lease.

42. Growers have the right to use the land in question for viticulture purposes and to have the Manager come onto the land to carry out its obligations under the Management Agreement. The Growers' degree of control over the Manager, as evidenced by the agreement and supplemented by the Corporations Law, is sufficient. Growers are entitled to receive regular progress reports from the Manager. Growers are able to replace the Manager in certain instances. The activities carried out under the Management Agreement are carried out on the Growers' behalf.

43. 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 these indicators. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the 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.

44. Growers will receive the benefit of professional services through the Manager. These services are based on accepted viticulture practices and are of the type ordinarily found in viticulture activities that would commonly be said to be businesses.

45. Growers have a continuing interest in the grapevines from the time they are acquired until the end of the 15 year Project. 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' vineyard activities will constitute the carrying on of a business.

46. 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 be deductible under the 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 in subsection 8-1(2) do not apply.

Expenditure of a capital nature

47. 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 certain amounts charged under the Management Agreement, for purchasing and establishing the vines, irrigation and trellising are considered to be capital in nature. The fees for these expenditures 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.

48. The Manager has identified the relevant expenditures that are of a capital nature in the Management Agreement. Growers entering into the Project incur and pay a separate amount to the Manager for these items, amounting to $5,220. The separate components of this amount are identified at paragraph 21 of this Ruling

Section 42-15: trellising expenditure

49. Growers accepted into the Project incur expenditure on acquiring and installing trellising, upon which the vines are to be grown, on their behalf, in the operation of the vineyard business. This is attached to the land as a fixture. This expenditure is of a capital nature.

50. Under section 42-15, a taxpayer can deduct an amount for depreciation of a unit of plant used for the purpose 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.

51. However, it is accepted in certain circumstances that a lessee is entitled to claim depreciation where they are considered to be the owner of those improvements. Income Tax Ruling IT 175 sets out our 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, we accept the lessee is entitled to be recognised as the owner of the fixture for depreciation purposes.

52. A Grower accepted into the Project enters into a lease for a right to occupy certain land upon which they are entitled to grow vines to conduct a business of a vineyard. Growers have the right at the end of the Project to engage the Manager to remove the trellising. The Growers are required to pay a fee to the Manager to remove the trellising and make good any damage resulting to the vines.

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

Section 387-125: irrigation expenditure

54. 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 are covered by this provision.

55. As the taxpayer who can claim the deduction does not have to actually own the land but can be a tenant or a 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, commencing from the year of income in which the expenditure was incurred.

Section 387-165: horticulture expenditure

56. Section 387-165 allows capital expenditure on establishing horticultural plants for use in a horticultural business to be written off for tax purposes, as allowable deductions. 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. Under subsection 387-170(3), the definition of 'horticulture' encompasses the cultivation of grapevines. For the purpose of section 387-165, 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.

57. The write-off commences from the time the vines 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 vines enter their first commercial season. The Manager will need to advise the Grower of this event, but anticipates that this will be in July 2001.

58. Under Subdivision 387-C, of which section 387-165 is a part, 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.

59. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. It is estimated that the vines will have an effective life in excess of 13 years. The write-off rate for horticultural plants with an effective life of 13 to 30 years is 13%, if Growers determine effective life (see subsection 387-175(2) and section 387-185).

Section 82KZM

60. Section 82KZM operates to spread over more than one income year a deduction for 'advance' expenditure that would otherwise be deductible, in full, under section 8-1, for the year of income in which it was incurred. This section applies if certain expenditure incurred under an agreement is in return for the doing of a thing under the agreement that is not to be wholly done within 13 months after the day on which the expenditure is incurred.

61. Under the Management Agreement a Management fee of $14,530 per Allotment will be incurred upon 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 the purposes of this Ruling, 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 services. There is no evidence to suggest the services covered by this fee could not be able to be provided with 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.

62. 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 Fee of $14,530. There is no basis on which to apply section 82KZM to any of the other fees incurred in respect of the Project.

Section 82KL

63. 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' and the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

64. 'Additional benefit' (as defined in 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.

65. 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 deductions otherwise allowable under section 8-1.

Part IVA

66. 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 relevant scheme (section 177D).

67. The Project will be a 'scheme'. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of 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.

68. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of grapes from the vines. Further, there are no features of the Project, such as the payment of excessive management 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.

Sections 6-5 and 70-35: assessable income

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

70. Once harvested, the Growers' grapes will, in most circumstances, be trading stock of the Growers. As a consequence, if grapes are on hand at the end of the income year, the Grower will need to account for that trading stock in accordance with section 70-35 of the ITAA 1997. In Taxation Ruling IT 2001, it is accepted that costs associated with the establishment of a vineyard do not form part of the trading stock ultimately produced by the vineyard.

Detailed contents list

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

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Commissioner of Taxation
23 June 1999

Previous draft:
No draft issued

Related Rulings/Determinations:
IT 175; IT 2001; PR 98/1; TR 92/1; TR 94/25; TR 97/11; TR 97/16; TD 93/34

Subject references:
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
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- primary production
- primary production expenses
- producing assessable income
- product rulings
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- schemes and shams
- taxation administration
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- 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)
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NO 99/5251-9
BO
FOI index detail: I 1020236
ISSN: 1039-0731
Price: $1.70