



PR 1999/98 - Income tax: ITC Eucalyptus 1999 Esperance Project

 This cover sheet is provided for information only. It does not form part of *PR 1999/98 - Income tax: ITC Eucalyptus 1999 Esperance Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *20 August 2001*



Product Ruling

Income tax: ITC Eucalyptus 1999 Esperance Project

Contents	Para
What this Product Ruling is about	1
Date of effect	10
Withdrawal	12
Arrangement	13
Ruling	30
Explanations	35
Detailed contents list	51

Potential investors may wish to refer to the ATO's Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

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 1999/95 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.]

No guarantee of commercial success

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product as an investment. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential investors must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential investors by confirming that the tax benefits set out below in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, investors lose the protection of this Product Ruling. Potential investors may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential investors should be aware that the ATO will be undertaking review activities in future years to confirm the arrangement has been implemented as described below and to ensure that participants in the arrangement include in their income tax returns income derived in those future years.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

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 ITC Eucalypts 1999 Esperance Project, or just simply as 'the Project', or the 'product'.

Tax law(s)

2. The tax law(s) that are dealt with in this Ruling are section 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and sections 82KL and 82KZM and the relevant provisions of Part IVA of the *Income Tax Assessment Act 1936* ('ITAA 1936').

3. This Ruling does not deal with the consequences or effects of the Goods and Services Tax or any associated 'A New Tax System' legislative reforms, including the proposed changes announced as part of The New Business Tax System or their effect on the various Income Tax Acts (including the provisions set out above).

4. On 21 September 1999, the Government announced a number of changes to the tax system as part of The New Business Tax System. A number of those changes could affect the tax laws dealt with in this Ruling. Some of the changes apply from the date of the announcement and others are proposed to apply from nominated dates in the future.

5. This Ruling does not deal with the announced changes. We cannot rule on those changes until the relevant legislation is enacted.

Class of persons

6. 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'.

7. 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

8. 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.

9. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no Product Ruling may be reproduced by any process without prior written permission from the Commonwealth. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

Date of effect

10. This Ruling applies prospectively from 10 November 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).

11. 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

12. 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, 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

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

- Prospectus issued by ITC Project Management Limited ('ITCPM'), dated 24 May 1999;
- Constitution for the ITC Eucalypts 1999 Esperance Project executed by ITCPM, dated 1 April 1999;
- Compliance Plan for ITC Eucalypts Project executed by the directors of ITCPM;
- Contracting Agreement between Integrated Tree Cropping Pty Ltd ('ITC') and ITCPM executed on 20 May 1999;
- Lease Deed between a Landlord, ITC and ITCPM, commencing 30 June 1999;
- **Lease and Management Agreement** between ITC, ITCPM and the Grower;
- ITC Tree Farm Loan Package including the Tree Farm Loan Deed;
- Letter from ITCPM dated 2 June 1999;
- Letter from ITCPM dated 16 July 1999;
- Letter from ITCPM dated 10 August 1999; and
- Letters from ITCPM dated 6 and 16 September 1999.

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

14. The documents highlighted are those that Growers enter into. 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 a Grower, will be a party to. The effect of these agreements is summarised as follows.

15. This arrangement is called the ITC Eucalypts 1999 Esperance Project. Growers participating in the Project will enter into a Lease and Management Agreement. Under this Agreement Growers

sublease an area of land called a 'Plantation Area' from ITC in the Esperance region of Western Australia. The minimum plantation area for which Growers can subscribe is 3 hectares with increments of 1 hectare thereafter (paragraph 11.5 of the Prospectus and noted in the Application form). As indicated on page 19 of the Prospectus, only land that has previously been cleared and pastured will be used. The sublease is for 10 years or the completion of harvesting. Under the Lease and Management Agreement, Growers also contract with ITCPM to have Tasmanian Blue Gum trees (*eucalyptus globulus*) planted on the leased land for the purpose of eventual felling and sale, expected to occur in 2009.

16. There is no minimum subscription that must be raised under the Prospectus and, thus, no minimum subscription level. The offer is said to relate to a minimum of 250 hectares, with further areas being established on availability. Possible projected returns for Growers are outlined on pages 6 and 7 of the Prospectus. The projected returns depend on a range of assumptions and ITCPM does not give any assurance or guarantee in respect of the future success of or financial returns associated with entering into Lease and Management Agreements being offered pursuant to the Prospectus. Rates of return will vary with the size of the growers' plantation areas. Based on the examples set out on page 4 of the Prospectus, a Grower could expect to achieve compound annual after tax returns of 10.5% on the minimum 3 hectare subscription. Returns would increase as the area leased by an investor increases beyond the minimum requirement of 3 hectares. Growers execute a power of attorney enabling ITCPM to act on their behalf as required, when they make an application for a Plantation Area.

Lease and Management Agreement

17. The Lease and Management Agreement ('the LMA') is entered into between ITCPM, ITC and the Grower for each Plantation Area. Growers are granted an interest in land in the form of a lease to use their Plantation Area (identified in Schedule 2, Item 2) for the purpose of conducting their afforestation business (cls 5(a) and 7(i)). Clause 3 grants an interest in the land to the Grower and the trees remain the property of the Grower until the end of the term (cl 7(h)). At all times the Grower has full right, title and interest in the timber produce (cl 12.2) and the right to have the produce sold for their benefit (cl 4). This agreement is subject to the terms of the Constitution.

18. Part II of the Lease and Management Agreement provides that each Grower contracts with ITCPM to establish and maintain the plantation until maturity for an annual fee. Growers may elect to collect their own timber produce (cl 20) or ITCPM, acting as agent,

will endeavour to sell the timber produce on the Grower's behalf (Schedule 1, Item 1.3). Growers will share on a proportionate basis, the Proceeds of Sale of the forest produce following the payment of Harvest and Processing Costs, other Costs of Sale, rent to the Lessor and payment of amounts due to ITCPM (Schedule 1, Item 2.3).

19. The Agreement is conditional upon all necessary approvals from competent authorities being obtained within 6 months of execution of the Agreement or within such time as otherwise agreed (cl 2). Under the financial hardship provisions, Growers can apply after 5 years to have any amounts owing under the agreement paid by ITCPM for the remainder of the Term in return for 5% of their sale proceeds for each year (or part year) the Manager makes payment on the Grower's behalf (cl 24).

Constitution

20. The Constitution establishes the Project and operates as a deed binding on all of the Growers and ITCPM. The Constitution sets out the terms and conditions under which ITCPM agrees to act as responsible entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 26 of the Constitution, ITCPM keeps a register of Growers. Growers are entitled to assign the Lease and Management Agreement in certain circumstances (cl 19 of Constitution, cl 23 of the LMA). The Lease and Management Agreement must be entered contemporaneously by Applicants signing the Application and Limited Power of Attorney Form in the Prospectus. Clause 10 provides that growers will receive duly executed and stamped copies of their respective LMA.

Compliance Plan

21. As required by the Corporations Law, a Compliance Plan has been prepared by ITCPM. Broadly, the plan encapsulates the Constitution, its purpose to ensure that ITCPM meets its obligations as 'Responsible Entity' for the Project and that the rights of Growers are protected. The latter includes documentation of the details of Lease and Management Agreements in the Register, that scheme assets are identified and held separately, regular reporting to Growers, safeguarding the ownership of timber at harvest and the handling of any proceeds from the sale of timber.

Services and Fees

22. The initial year's rent is \$140 per hectare payable on the date of execution of the LMA (cl 8, Item 4, Schedule 2 of the LMA). In

subsequent years the rent will be reviewed and varied using a formula based on CPI increases, and will be payable on 31 May each year.

23. The Initial Services Fee is comprised of a fixed charge of \$3,000 plus \$2,000 per hectare (Schedule 1, Item 2.1 and Schedule 2, Item 9 of the LMA). This fee covers plantation establishment activities as specified in the Agreement (Schedule 1, Item 1.1 of the LMA), including land preparation and the provision and planting of seedlings. This fee is payable on the later of 30 June 1999 or the date of execution of the Agreement.

24. ITCPM will hold the application price in a special trust account. The application moneys will be released when ITCPM is satisfied that certain specified criteria have been met, as specified in the Constitution (clauses 7 and 8).

25. The Fees for Annual Services are a fixed charge of \$200 plus \$70 per hectare, indexed for inflation after the first year (Schedule 1, Item 2.2 of the LMA). The Fee for Annual Services is payable on 31 May 2000, and on 31 May each year thereafter during the term of the Lease and Management Agreement. This Fee covers services specified in Schedule 1 (Item 1.2) of the Agreement. These services include infilling, weed control, management of the crop, maintenance of fire control measures and equipment, inspection and preparation of reports. The manager will also arrange for insurance against loss by fire, at the Growers' expense.

26. ITCPM will also arrange, manage and pay or arrange for payment of the costs of harvesting the Tree Crop and, unless the Grower elects otherwise, arrange to market and sell the produce (Schedule 1, Item 1.3 of the LMA). The Fee payable for the Harvesting Services is 5% of the Harvest Proceeds (as calculated under Item 2.3 of Schedule 1 of the LMA) and is payable whether or not the Grower elects to market and sell the produce itself (cl 20.2 of the LMA).

Planting

27. ITCPM will be responsible for providing the Initial Services including planting *eucalyptus globulus* on the Leased Area within 13 months of execution of the Lease and Management Agreement (clause 14 of the LMA). ITCPM will then provide the Annual Services in accordance with good silvicultural practice. ITCPM will subcontract plantation establishment and maintenance functions to ITC under the Contracting Agreement made on 20 May 1999.

28. Growers will share on a proportionate basis in the Harvest Proceeds derived from the Leased Areas. The terms 'Proceeds Fund' and 'proportional interest' are defined in clause 1 of the LMA. There

will be separate pools for Leased Areas established in the 1999 and 2000 years.

Finance

29. Growers can fund their investment in the Project themselves, borrow from ITC Finance Pty Ltd (a lender associated with the Responsible Entity) or borrow from an independent lender.

29.1 This Ruling does not apply if a Grower entered into a finance agreement that includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than ITC Finance Pty Ltd are involved or become involved, in the provision of finance to Members for the Project.

Ruling

Section 8-1

30. For the year ending 30 June 2000 section 8-1 of the ITAA 1997 will apply to Growers entering into this Project as follows:

- i. the Rent of \$140 per hectare and Fees for Initial Services of \$3,000 plus \$2,000 per hectare of Leased

Area incurred by a Grower on execution of the Lease and Management Agreement on or before 30 June 2000 will be an allowable deduction; and

- ii. where a Grower borrowed funds in order to fund their obligation to pay the rent and service fees and incurs interest on such borrowings on or before 30 June 2000, that interest will be an allowable deduction.

31. For each of the years ending 30 June 2001 and 30 June 2002, section 8-1 will apply to Growers entering into this Project as follows:

- i. annual Rent of \$140 per hectare, indexed, and Fees for Annual Services of \$200 plus \$70 per hectare, indexed, incurred by a Grower on or before 30 June 2001 and 30 June 2002 respectively, will be an allowable deduction; and
- ii. where a Grower borrowed funds in order to fund their obligation to pay the rent and service fees and incurs interest on such borrowings on or before 30 June 2001 and 30 June 2002, respectively, that interest will be an allowable deduction.

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

Section 35-55 – Commissioner’s discretion

31.1 For a 1999 Grower who is an individual and who entered the Project on or after 10 November 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 2008 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. For a 2000 Grower who is an individual and who entered the Project on or after 10 November 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 2009 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.

31.2 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.

31.3 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, ie, 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.

31.4 Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, 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.

Section 82KZM

32. The expenditure incurred by Growers, as described in paragraphs 30 and 31 above, does not fall within the scope of section 82KZM of the ITAA 1936.

Section 82KL

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

Part IVA

34. 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.

Explanations

Section 8-1

35. Consideration of whether fees payable under the Lease and Management Agreement 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 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 the second limb applies. However, that does not preclude the application of the first limb and determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

36. An afforestation scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from the timber's sale from the scheme will constitute gross assessable income in 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.

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

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

38. For this Project Growers have, under the Lease and Management Agreement, rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the Lease and Management Agreement Growers appoint ITCPM, as Manager, to provide services such as planting, cultivating, tending, fertilising, replanting, maintaining and otherwise caring for the trees according to good silvicultural practice. Growers control their investment. The specific cost of these services provided in the first thirteen months, together

with the initial cost of leasing the land, will total \$9,420 per investor or \$3,140 per hectare for a 3 hectare investment. Growers may either collect the forest produce and arrange for its sale or they have the option of ITCPM arranging marketing and sale for a proportion of the proceeds.

39. The Lease and Management Agreement gives Growers property in the trees (clause 7(h)), the full right, title and interest in the products and the right to have the products sold for their benefit (clause 12.2) until the end of the lease term.

40. Growers have the right to use the land in question for afforestation purposes. They appoint ITCPM to perform the services specified in the Lease and Management Agreement. The Growers' degree of control over ITCPM, 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 state of the tree crop and ITCPM's activities. Growers are able to terminate arrangements with ITCPM in certain instances, such as where the Manager fails to perform its services in a proper or efficient manner. The afforestation activities described in the Lease and Management Agreement are carried out on the Growers' behalf.

41. 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 contained in the Prospectus that suggest the Project should return a 'before-tax' profit to the Growers, i.e., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction. The Independent Forester's assessment was that plantation yields will be economically viable and the assumptions made in the projections included in the Prospectus are reasonable and consistent with expectations.

42. 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.

43. 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.

44. 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 timber) is to be gained from this business. They will, thus, 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 fee appears to be reasonable. No capital, private or domestic component is identifiable. The tests of deductibility under the first limb of section 8-1 are met.

45. Lease and Management Fees are pre-paid. Taxation Ruling TR 94/25 states that the facts in *Coles Myer Finance Ltd v. FC of T* (1993) 176 CLR 640; 93 ATC 4214; (1993) 25 ATR 95 were fundamentally different from those of a pre-payment and the decision did not affect the deductibility of pre-paid expenses. The Lease and Management Agreement Fees will be incurred in the year of payment.

Section 82KZM

46. Under the Lease and Management Agreement, rent and fees of \$3,000 plus \$2,140 per hectare will be incurred on execution of the Agreement. These fees are charged for providing 'Initial 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 fee has been inflated to result in reduced fees being payable for subsequent years. The fee is expressly stated to be for a number of specified services. There is no evidence that might suggest the services covered by the fee could not be provided within 13 months of incurring the expenditure in question. Thus, for the purposes of this Ruling, it can be accepted that no part of this fee is for ITCPM doing 'things' that are not to be wholly done within 13 months of the fee of being incurred. On this basis the basic precondition for section 82KZM's operation is not satisfied and it will not apply to the expenditure by Growers of \$3,000 plus \$2,140 per hectare of Leased Area.

Section 82KL

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

48. 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 ITC Eucalypts 1999 Esperance Project will be a 'scheme'. It commenced generally on 24 May 1999 when the Prospectus was issued. The Growers will obtain an initial 'tax benefit' from entering into the scheme, in the form of the deduction for the amount of \$3,000 plus \$2,140 per hectare, allowable under section 8-1, 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.

49. 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 Lease and Management fee being 'excessive', and uncommercial, and predominantly financed by a non-recourse loan, that might suggest the Project was so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that would attract the operation of Part IVA.

Interest deductibility

50. Some Growers may finance the investment through a loan facility. Whether the interest fees are deductible under section 8-1 depends on the same reasoning as that applied to whether the rent and services fees incurred in the year ended 30 June 1999 will be deductible. The interest fees incurred in the years ended 30 June 2000, 30 June 2001 and 30 June 2002 will be in respect of a loan to finance the operations - the tending, maintenance and harvesting of the trees, and the lease of the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. These fees will, thus, also have a sufficient connection with the gaining of assessable income. No capital, private or domestic component is identifiable in respect of them.

Detailed contents list

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

	Paragraph
What this Product Ruling is about	1
Tax law(s)	2

Class of persons	6
Qualifications	8
Date of effect	10
Withdrawal	12
Arrangement	13
Lease and Management Agreement	17
Constitution	20
Compliance Plan	21
Services and Fees	22
Planting	27
Finance	29
Ruling	30
Section 8-1	30
Division 35 – Deferral of losses from non-commercial business activities	31.1
Section 35-55 – Commissioner’s discretion	31.1
Section 82KZM	32
Section 82KL	33
Part IVA	34
Explanations	35
Section 8-1	35
Section 82KZM	46
Section 82KL	47
Part IVA	48
Interest deductibility	50
Detailed contents list	51

Commissioner of Taxation

10 November 1999

Previous draft:

Not previously released to the public in draft form

Related Rulings/Determinations:
PR 1999/95; TD 93/34, TR 92/1;
TR 92/20, TR 97/11, TR 97/16,
TR 98/22

PR 1999/98

Subject references:

- afforestation
 - carrying on a business
 - commencement of business
 - fee expenses
 - interest expenses
 - management fees expenses
 - primary production
 - primary production expenses
 - producing assessable income
 - product rulings
 - public rulings
 - schemes and shams
 - taxation administration
 - tax avoidance
 - tax benefits under tax avoidance schemes
 - tax shelters
 - tax shelters project
- ITAA1936 177A
 - ITAA1936 177C
 - ITAA1936 177D
 - ITAA1997 6-5
 - ITAA1997 8-1
 - 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)
 - TAA 1953 Pt IVAAA
 - Copyright Act 1968

Legislative references:

- ITAA1936 82KL
- ITAA1936 82KZM
- ITAA1936 Pt IVA

Case references:

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

ATO references:

NO 99/7805-4

BO

FOI Index detail: I 1020850

ISSN: 1039-0731