

PR 2000/30 - Income tax: Forest Rewards Sandalwood Project 2000

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 This document has changed over time. This is a consolidated version of the ruling which was published on *18 June 2001*



Product Ruling

Income tax: Forest Rewards Sandalwood Project 2000

Contents	Para
What this Ruling is about	1
Date of effect	10
Withdrawal	12
Arrangement	13
Ruling	38
Explanations	41
Detailed contents list	59

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

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.

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 to confirm the arrangement has been implemented as described below and to ensure that the 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 'Forest Rewards Sandalwood Project 2000', or just simply as 'the Project'.

Tax law(s)

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

- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- section 8-1 (ITAA 1997);
- section 27-5 (ITAA 1997);
- section 27-30 (ITAA 1997);
- section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- section 82KZM and sections 82KZMB - 82KZMD (ITAA 1936); and
- Part IVA (ITAA 1936).

3. On 11 November 1999, the Government announced further changes to the tax system as part of the New Business Tax System. A number of those changes, especially those to do with 'tax shelters', 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.

4. Although this Ruling mentions certain of those announced changes, the information given on the treatment of expenditure which may be affected by them is not binding on the Commissioner. Legally binding advice in respect of those changes cannot be given until the relevant law(s) are enacted.

5. However, if the changes become law the operation of that law will take precedence over the application of this Ruling, and to that extent, this Ruling will be superseded. If requested, when the relevant

law(s) are enacted, the Commissioner will formalise the non-binding information shown in this Ruling by issuing a new Product Ruling that describes the operation of those law(s).

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. Neither does it include persons or entities who are associates, as that term is defined in subsection 82KH(1) of the ITAA 1936, of any of the entities involved in the arrangement.

Qualifications

8. If the arrangements described in the Ruling are materially different from the arrangements that are actually carried out:

- the Ruling has no binding effect on the Commissioner, as the arrangements entered into are not the arrangements ruled upon; and
- the Ruling will be withdrawn or modified.

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Date of effect

10. This Ruling applies prospectively from 5 April 2000, the date the 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, the Product 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:

- Application for Product Ruling dated 3 February 2000;
- Draft Prospectus for Forest Rewards Sandalwood Project 2000, dated 2 March 2000;
- **Draft Constitution for Forest Rewards Sandalwood Project 2000;**
- **Draft Management Agreement between Forest Rewards Management Pty Ltd ('the Manager'), Forest Rewards Ltd ('the Responsible Entity') and each Grower, dated 2 March 2000;**
- **Draft Sub-Lease Agreement between Forest Lands Pty Ltd ('the Lessor'), Forest Rewards Ltd ('the Responsible Entity') and each Grower, dated 2 March 2000;**
- Additional correspondence dated 2 March 2000.

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

14. The documents highlighted are those the Growers enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of the Grower, will be a party to, with the exception of finance agreements, to which paragraphs 36 to 37 apply. The effect of these agreements is summarised as follows.

Overview

15. This arrangement is called the 'Forest Rewards Sandalwood Project 2000'.

Location	North Western Australian Wheatbelt, Western Australia
Type of business each participant is carrying on	Commercial growing, and cultivation of <i>Santalum spicatum</i> (Western Australian Sandalwood) for the purpose of producing sandalwood for oil extraction and timber
Number of hectares under cultivation	800
Names used to describe the product	Forest Rewards Sandalwood Project 2000
Size of each Woodlot	1 hectare
Number of trees per hectare	450
Expected production	Average 278 kg / hectare
The term of the investment in years	19 approx.
Initial cost (1 woodlot minimum)	\$5,000
Initial cost per hectare	\$5,000
Ongoing costs	Insurance costs to be paid by Growers.

16. Growers applying under the Draft Prospectus dated 2 March 2000 enter into a Management Agreement and a Sub-Lease Agreement. The Sub-Lease Agreement gives a Grower a sub-lease from Forest Lands Pty Ltd ('the Lessor'), over an identifiable area of land called a 'Woodlot', until the completion of the final harvest and all land restoration work (Item 4, Schedule to Sub-Lease Agreement). Each Woodlot is one hectare in size.

17. The Project Land is situated near New Norcia in Western Australia. Forest Lands Pty Ltd has entered into a Lease Agreement with the land owners for a period of 18 years with options to extend the term for a further 3 years. Forest Lands Pty Ltd will sub-lease woodlots to the Growers to enable the Growers to carry on a long term commercial afforestation business. Growers are specifically granted rights to harvest timber on their woodlots for this purpose.

18. The establishment of the Project is subject to a minimum subscription of 250 Woodlots. This Ruling does not apply if minimum subscription is not reached.

19. Each investor must subscribe for a minimum of one woodlot at a cost of \$5,000 per Woodlot. Growers may invest in Year 2000 Woodlots, where all initial services will be completed on or before 30 June 2000, or Year 2001 Woodlots, where all initial services will be completed on or before 30 June 2001. Applications for Year 2000 Woodlots will not be accepted after 1 June 2000 unless the initial services will be completed by 30 June 2000. The initial services to be provided include land preparation, eradication of weeds and pests and planting of host trees. Sowing of the Sandalwood seeds will occur within 12 months of the planting of the Host Trees (Annexure C to the Management Agreement).

20. Possible projected returns for Growers are outlined on page 14 of the Draft Prospectus. The projected returns are based largely on judgement and expert opinion and there are inherent risks in primary production due to matters beyond the control of Forest Rewards Management Pty Ltd such as adverse weather conditions and variable market conditions. Accordingly, Forest Rewards Management Ltd does not guarantee the performance or success of the Project, or any particular rate of return on funds invested. However, based on the information set out on page 14 of the Draft Prospectus, a Grower could expect to achieve an after tax internal rate of return of 12.1% per Woodlot.

Constitution

21. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers and to manage the Project. Growers are entitled to assign

their Growers Interests in certain circumstances (cl.1). Under the Constitution, Growers appoint Forestry Rewards Ltd as a sole and exclusive agent in relation to the Project. The Sub-Lease Agreement and Management Agreement will be executed on behalf of a Grower following them signing the Application Form in the Prospectus. Under the Constitution, the Grower must pay to the Responsible Entity in Year 1 an administration fee of \$500 per woodlot and \$20, indexed annually from Year 3, for each subsequent year until the termination of the Project. Growers are bound by the Constitution by virtue of their participation in the Project.

Compliance Plan

22. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Law. Its purpose is to ensure that the Responsible Entity meets its obligations as the Responsible Entity of the Project and that the rights of the Growers are protected.

Interest in Land

23. A sub-lease is granted by Forest Lands Pty Ltd (Lessor) to the Grower under the terms of the Lease Agreement. Growers are granted an interest in land in the form of a sub-lease to use their Woodlots for the purpose of conducting their afforestation business (cl.2.2). Growers must pay for rent to the Lessor an amount equal to \$120 per Woodlot per annum (Item 5 Schedule to Sub-Lease Agreement). This fee is indexed annually. The initial lease fee of \$120 is payable on 31 May 2001 and is for the period from the date of execution until 30 June 2001. The term of the lease is up until completion of final harvest and all land restoration work (Item 4, Schedule 1). A Grower will be responsible for paying for the cost of annual crop insurance on the Woodlot (cl.2.4 of the Management Agreement).

Management Agreement

24. Each Grower enters into a Management Agreement with Forest Rewards Management Pty Ltd ('the Manager') for each Woodlot. The term of the Agreement is until the date the trees upon the Woodlots have been harvested and sold and the Net Income distributed to the Growers (cl.3.1). Growers contract with the Project Manager to establish and maintain the plantation until maturity. Growers pay the Management Fees for the term of the Project. The initial Management fee, described as an Establishment fee, is \$4,500 per woodlot for plantation preparation and establishment costs including the provision and planting of host trees. For those Growers who invest in Year 2000 Woodlots, these services will be performed

PR 2000/30

by 30 June 2000 (cl.1 and Annexure B). The annual management fee is \$460 for Year 2 of the Project, payable on 31 May 2001 and \$160 for subsequent years, indexed annually and payable on 31 May of the relevant year.

25. The Project Manager will initially supply the host trees, provide services such as land preparation, eradication of weeds and pests, and planting. The annual services to be provided by the Manager include sowing the Sandalwood seeds within 12 months of planting of the host trees, maintenance of roads and fences, and maintaining the plantation according to good forestry practice.

26. The Project Manager will harvest and sell the timber produce on the Growers' behalf, at the highest price possible for the timber produce (cl.8.3). A Grower may elect to harvest and sell their own Timber Produce (cl.10.1).

Fees

27. Growers who invest in the Project will pay the following fees (per Woodlot) for the first three years:

	Year 1	Year 2	Year 3
Management Fee	4,500	460	160
Administration fee	500	20	20 (indexed)
Lease fee	nil	120	120 (indexed)
Total	5,000	600	300

(Note: All figures shown are exclusive of GST)

28. The initial Management fee, described as an Establishment fee of \$4,500, is for plantation preparation and establishment costs, including the provision and planting of host trees. An initial administration fee of \$500 is payable to the Responsible Entity for the establishment of the Project. These initial fees are payable upon application to the Project.

29. For those Growers who invest in Year 2000 Woodlots, an annual Management fee of \$460 for Year 2 is payable in arrears by 31 May 2001. The initial lease fee is \$120 and is payable in arrears on 31 May 2001 for the period from execution of the agreement until 30 June 2001.

30. The annual Management Fee, commencing from Year 3, is \$160, the annual lease fee commencing from Year 2 is \$120, and the

annual administration, commencing from Year 2 is \$20. All of these fees are payable in arrears by 31 May of each year, and will be increased yearly by the percentage increase in the Consumer Price Index (All Groups) from the immediately preceding year. The annual Management fee is in respect of management of the crop including weed and pest control, insurance and maintaining roads and fences.

31. The Independent Forester has stated, at page 34 of the Draft Prospectus that the management proposals contained in the Prospectus for the establishment of Sandalwood plantations are realistic, subject to the normal risks associated with afforestation operations, and are capable of producing the yields predicted.

Planting

32. For Growers who invest in Year 2000 Woodlots, the Manager will be responsible for planting host trees on each Woodlot on or before 30 June 2000. For Growers who invest in Year 2001 Woodlots, the Manager will be responsible for planting host trees on each woodlot on or before 30 June 2001.

33. The services to be provided by the Manager over the Project's term are outlined in the Management Agreement (Annexure C). The Manager will be responsible for arranging the marketing and sale of the timber produce. The Harvest shall take place when considered appropriate by the Manager in accordance with sound forestry practice (cl.8.1). It is anticipated that the harvest will occur in Years 10, 14 and 18 of the Project (pg 12 Draft Prospectus).

34. Growers are responsible for all costs of and incidental to the harvest (cl 8.3). Growers will pay a Harvest and Sale Management fee of 5% of gross sale proceeds from each harvest to the Manager (Item 5, Schedule 1). The Manager is entitled to a Performance fee of 20% of the amount by which the net return of each harvest exceeds the forecasts in the Prospectus (Item 6, Schedule 1).

35. The Proceeds of Sale of the Timber produce will be paid to the Custodian and placed into the Project Trust Account. Proceeds received by the Custodian are to be distributed in the following order of priority:

- pay as directed by the Responsible Entity any outstanding project fees payable by the Grower;
- pay as directed by the Responsible Entity such amount as is reasonably estimated may be required within the following 12 months to pay any project fees payable by the Grower; and

- distribute the balance to the Growers under each Project Agreement and the Constitution (cl 13.1.3 Constitution).

Finance

36. Growers can fund their investment in the Projects themselves, or borrow from an independent lender.

37. This Ruling does not apply if a Grower enters 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 purposes of section 82KL, or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- terms or conditions are non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Projects;
- 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; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

Ruling

Goods and Services Tax

38. For a Grower who invests in the Project, sections 27-5 or 27-30 of the ITAA 1997 will apply to reduce the amount of any deduction allowable by any GST input tax credit to which the Grower is entitled or, in the case of section 27-5, a decreasing adjustment that a Grower has.

Section 8-1 ITAA 1997

39. For a Grower who invests in the Project, the following deductions will be available in the year in which they are incurred:

Fee Type	Legislation ITAA 1997	Year 1	Year 2	Year 3
Management Fee	8-1	\$4,500	\$460	\$160
Administration fee	8-1	\$500	\$20	\$20
Lease Fee	8-1	nil	\$120	\$120
Total		\$5,000	\$600	\$300

(Note: All figures shown are exclusive of GST)

Sections 82KZM, 82KZMB – 82KZMD, 82KL and Part IVA ITAA 1936

40. For a Grower who invests in the Projects the following provisions of the ITAA 1936 have applications as indicated:

- (i) the expenditure by the Growers does not fall within the scope of section 82KZM;
- (ii) the expenditure by the Growers does not fall within the scope of sections 82KZMB-82KZMD;
- (iii) section 82KL does not apply to deny the deductions otherwise allowable; and
- (iv) 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.

Division 35 – deferral of losses from non-commercial business activities**Section 35-55 – Commissioner’s discretion**

40.1 For a Grower who invests in year 2000 Woodlots, who is an individual and who entered the Project on or after 5 April 2000 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 2010 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 Grower who invests in

year 2001 Woodlots, who is an individual and who entered the Project on or after 5 April 2000 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 2011 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.

40.2 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.

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

40.4 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.

Explanations

Section 8-1 ITAA 1997

41. Consideration of whether lease and management fees are deductible under section 8-1 begins with paragraph 8-1(1)(a) 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 paragraph 8-1(1)(b) if they are incurred when the business has not commenced; and
- where all that happens in a year of income is 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 paragraph 8-1(1)(b) applies. However, that does not preclude the application of paragraph 8-1(1)(a), and determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

42. 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 under section 6-5 of the ITAA 1997. 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.

43. 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.

44. For this Project Growers have, under the Sub-Lease 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 Management Agreement Growers appoint Forest Rewards Management Pty Ltd, as Manager, to supply the Sandalwood seeds and grow and care for seedlings, rip and mound the leased premises, spray the leased premises for the control of weeds, fumigate and poison to exterminate or control pests and vermin on the leased premises, and fertilise, spray and otherwise care for the Leased Premises as and when required according to good silvicultural and forestry practices. Growers are considered to control their investment.

The specific cost of these services provided by 30 June 2000 is \$4,500 per hectare (or Woodlot).

45. The Sub-Lease Agreement gives Growers the full right, title and interest in the products and the right to have the products sold for their benefit (clause 2.4) until the end of the sub-lease term.

46. Growers have the right to use the land in question for afforestation purposes and to have the Manager come onto the land to carry out its obligation under the Management Agreement. The Growers' degree of control over the Responsible Entity, as evidenced by the Agreement and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on Forest Rewards Management Pty Ltd's activities. Growers are able to terminate arrangements with the Responsible Entity in certain instances, such as where the Responsible Entity has failed to perform any of its duties with due care and diligence. The afforestation activities described in the Management Agreement are carried out on the Growers' behalf.

47. 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 Draft 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 is that plantation yields will be economically viable.

48. 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 businesses.

49. 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.

50. 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 the business. They will, therefore, come within paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. No

capital component is identifiable. The tests of deductibility under section 8-1 are met. The exclusions do not apply.

Goods and Services Tax

51. Section 27-30 of the ITAA 1997 operates to deny a deduction that would be otherwise available under section 8-1 for the year ended 30 June 2000 to the extent that the loss or outgoing (incurred after 30 November 1999 and on or before 1 July 2000) includes an amount relating to an input tax credit to which a Grower will be entitled on or after 1 July 2000

52. Section 27-5 operates to deny a deduction that would otherwise be available under section 8-1, to the extent that the loss or outgoing incurred (on or after 1 July 2000) includes an amount relating to a GST input tax credit to which a Grower is entitled or a decreasing adjustment that a Grower has.

Sections 82KZM and 82KZMB - 82KZMD ITAA 1936

53. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure that would otherwise be immediately deductible, in full under section 8-1. The section applies to certain expenditure incurred under an agreement in return for doing of a thing under the agreement that is not wholly done within the same year of income as the execution of the relevant agreement.

54. Under the Management Agreement, fees of \$4,500 per Woodlot will be incurred on the execution of that Agreement. The fee is charged for providing services to a Grower by 30 June of the year of execution of the Agreement. The fee is expressly stated to be for a number of specified 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.

55. There is also no evidence that might suggest the services covered by the fee could not be provided in the same year of income as the expenditure in question is incurred. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial fee is for the Project Manager doing 'things' that are not to be wholly done within the year of income 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 incurred by the Grower. New sections 82KZMB, 82KZMC and 82KZMD also have no application to this Project since the services to be provided in respect of the initial fee are completed in the same year of income as the expenditure is incurred (see paragraph 82KZMA(3)(c)).

Section 82KL ITAA 1936

56. The operation of section 82KL depends, among other things, on the identification of a certain quantum of ‘additional benefits’. There are no loans provided to the Grower by the Manager or any related party. No ‘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 ITAA 1936

57. 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 Project will be a ‘scheme’ commencing when the Prospectus is issued. The Growers will obtain an initial ‘tax benefit’ from entering into the scheme, in the form of the deduction for the initial fee, allowable under section 8-1, 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.

58. 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. The Independent Forester’s Report contained in the Prospectus states that the Project should achieve its financial objective if the forestry regimes set out in the report are followed, good marketing arrangements are put in place and the international economy and climatic factors (especially annual rainfall) are favourable. There are no features of the Project that might suggest the Project was so ‘tax driven’, and so designed to produce a tax deduction that it would attract the operation of Part IVA.

Detailed contents list

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

	Paragraph
What this Ruling is about	1
Tax law(s)	2
Class of persons	6
Qualifications	8
Date of effect	10
Withdrawal	12

Arrangement	13
Overview	15
Constitution	21
Compliance Plan	22
Interest in Land	23
Management Agreement	24
Fees	27
Planting	32
Finance	36
Ruling	38
Goods and Services Tax	38
Section 8-1 ITAA 1997	39
Section 82KZM, 82KZMB – 82KZMD, 82KL and Part IVA ITAA 1936	40
Division 35 – deferral of losses from non-commercial business activities	40.1
Section 35-55 – Commissioner’s discretion	40.1
Explanations	41
Section 8-1 ITAA 1997	41
Goods and Services Tax	51
Sections 82KZM and 82KZMB – 82 KZMD ITAA 1936	53
Section 82KL ITAA 1936	56
Part IVA ITAA 1936	57
Detailed contents list	59

Commissioner of Taxation

 5 April 2000

Previous draft:

Not previously issued in draft form

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