



# ***PR 2000/41 - Income tax: The Boundary Bend Estate (J.V.Two) Project***

 This cover sheet is provided for information only. It does not form part of *PR 2000/41 - Income tax: The Boundary Bend Estate (J.V.Two) Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *12 April 2000*



## Product Ruling

### Income tax: The Boundary Bend Estate (J.V.Two) Project

---

Contents	Para
<b>What this Product Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>7</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
<b>Ruling</b>	<b>30</b>
<b>Explanations</b>	<b>36</b>
<b>Detailed contents list</b>	<b>67</b>

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**, **Previous Rulings**, **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.*

#### **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 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 laws' identified below apply to the defined class of persons, who take part in the arrangements to which this Ruling relates. In this Ruling these arrangements are sometimes referred to as The Boundary Bend Estate (J.V.Two) Project, or just simply as 'the Project' or the 'product'.

### Tax law(s)

2. The tax law(s) dealt with in this Ruling are as follows:
- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - Subdivision 43-A (ITAA 1997);
  - Subdivision 387-B (ITAA 1997);
  - Subdivision 387-C (ITAA 1997);
  - section 92 of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - section 82KL (ITAA 1936);
  - section 82KZM (ITAA 1936);
  - sections 82KZMA to KZMD (ITAA 1936); and
  - Part IVA (ITAA 1936).

### Class of persons

3. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the relevant 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 'Participants'.

4. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangements 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

5. 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.

6. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. 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

7. This Ruling applies prospectively from [12 April 2000](#), 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).

8. 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

9. 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 arrangements during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangements prior to withdrawal of the Ruling. This is subject to there being no material difference in the arrangements or in the persons' involvement in the arrangements.

---

## Arrangement

---

10. The arrangements that are the subject of this Ruling are described below. The relevant documents or parts of documents incorporated into this description of the arrangements are:

- Application for a Product Ruling dated 17 January 2000;
- December 1999 Draft of Olive Development Information Memorandum 2000 prepared for Olive Management Pty Ltd which incorporates the Valuation of Boundary Bend Estate Olive Grove Project, Stage II;
- Draft **Joint Venture Agreement** dated 17 December 1999 and draft amendments sent on 27 March 2000;
- Draft **Olive Grove Management Agreement** dated 15 December 1999 and draft amendments sent on 27 March 2000;
- Draft Contract of Sale of the Land dated 15 December 1999 and draft amendments sent on 27 March 2000;
- Letter from Pitcher Partners dated 8 March 2000; and
- Electronic mails from Pitcher Partners dated 22 March 2000, 23 March 2000, 27 March 2000 and 4 April 2000.

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

11. The documents highlighted are those Participants enter into or become a party to. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Participant, or any associate<sup>1</sup> of a Participant, will be a party to, which are part of the arrangements to which this Ruling applies. The effect of these agreements is summarised as follows.

### Overview

12. The arrangement is called the Boundary Bend Estate (J.V.Two) Project. The Project is briefly described in Table 1 below.

---

<sup>1</sup> In this Ruling 'associate' has the meaning as defined in section 318 of the ITAA 1936.

**Table 1. Project Summary**

Location	<p>The property is situated in the northwestern region of Victoria, close to the River Murray border with New South Wales and 100km east and south of Mildura.</p> <p>The subject property is allotment 3 in plan of subdivision 428335G, portion of Crown allotment 17 in the Parish of Narrung, and being portion of the land contained in certificate of title volume 10456 folio 931.</p>												
The Joint Venture Business	Establish olive tree plantation and produce olives and olive products.												
The Project Manager	Olive Management Pty Ltd ACN 080 184 925												
Number of hectares under cultivation	Minimum subscription of \$3.56 million sufficient for 100 hectares. The maximum subscription is \$17.8 million sufficient for 500 hectares.												
Term of the project	15 years												
Minimum Cost for a Participant (refer to paras 22-25)	<p>Initial Contribution of \$178,000 payable as follows:</p> <table> <tr> <td>Upon application</td><td>\$10,000;</td></tr> <tr> <td>1<sup>st</sup> June 2000</td><td>\$76,000;</td></tr> <tr> <td>1<sup>st</sup> Dec 2000</td><td>\$15,000;</td></tr> <tr> <td>1<sup>st</sup> June 2001</td><td>\$25,000;</td></tr> <tr> <td>1<sup>st</sup> Dec 2001</td><td>\$25,000; and</td></tr> <tr> <td>1<sup>st</sup> June 2002</td><td>\$27,000.</td></tr> </table>	Upon application	\$10,000;	1 <sup>st</sup> June 2000	\$76,000;	1 <sup>st</sup> Dec 2000	\$15,000;	1 <sup>st</sup> June 2001	\$25,000;	1 <sup>st</sup> Dec 2001	\$25,000; and	1 <sup>st</sup> June 2002	\$27,000.
Upon application	\$10,000;												
1 <sup>st</sup> June 2000	\$76,000;												
1 <sup>st</sup> Dec 2000	\$15,000;												
1 <sup>st</sup> June 2001	\$25,000;												
1 <sup>st</sup> Dec 2001	\$25,000; and												
1 <sup>st</sup> June 2002	\$27,000.												
Other Costs	Further contribution to the joint venture may be required.												
Interest in the Project	Proportionate interest in the Joint Venture Property that includes the land, water rights attached to the ownership of the land, olive trees and olives produced from the olive trees.												

## *The Joint Venture Agreement*

13. The Joint Venture will be an unincorporated joint venture constituted by a Joint Venture Agreement. The agreement will be between the Participants, Junction Nominees (No. Two) Pty Ltd ("JNPL") and Olive Management Pty Ltd ("OMPL").

14. JNPL, as a bare Trustee, will purchase the land on which the project will be established. The copy of the Contract of Sale of the land provides that the sale is conditional upon JNPL being satisfied not later than 31 May 2000 that the minimum subscription has been reached. All Participants shall receive an allocation of ordinary shares in JNPL in proportion to their equity in the Joint Venture (Cl 9.3).

15. OMPL will be contracted by the Joint Venture as the initial Project Manager (Cl 16.1) As one of the Participants, OMPL will not be obliged to make the initial contribution of \$178,000. (Cl 11.2)

16. The Joint Venture Agreement establishes a Committee of Management consisting of Representatives. The manner of appointment and removal of Representatives and the procedural matters in running the Committee are provided in the Agreement (CIs 10 & 14). While the Committee is charged with the management of the affairs of the Joint Venture, the day to day management must be delegated to the Project Manager (Cl 15). The Committee approves the annual projects and budgets based on the Project Manager's recommendations (Cl 22). The Joint Venture may resort to external borrowing subject to terms and conditions approved by the Committee (Cl 28.1). A Participant may dispose of its interest in the manner provided in the Joint Venture Agreement (Cl 29).

## *The Olive Grove Management Agreement*

17. The Olive Grove Management Agreement will be between the Participants and Olive Management Pty Ltd ("OMPL").

18. This Agreement binds OMPL to procure, at the cost and expense of the Participants, the establishment of an olive grove (Cl. 3.1). The establishment works include as follows:

- preparation of that part of the Land which is capable of being used for the satisfactory growing of olive trees (to be determined by the Project Manager in accordance with good horticultural practices);
- choosing healthy olive tree varieties for planting;
- planting olive trees on the Land and staking and spacing each in a manner which accords with good horticultural practices and in order that the olives from the trees may be commercially harvested; and

- overseeing the installation of irrigation and supply systems (Cl 3.2).

19. The Project Manager is also obliged to have mature olives harvested and loaded for transport in accordance with good horticultural practices (Cl 6.1) and to market and sell the olives at a price decided by a majority vote of an olive price sub-committee (Cl 7).

20. In consideration for the services, each Participant must pay OMPL at the execution of this agreement \$3,000 for the period up to 30 June 2000. For subsequent financial years, each Participant will pay OMPL an amount agreed between the Project Manager and the Participants or, in the absence of agreement, the sum of \$3,000 indexed to the increase in the Melbourne Consumer Price Index (all Groups) during the preceding period of twelve months. This latter amount must be paid by 1 July in advance in each year (Cls 10.1 & 10.2).

21. The Olive Grove Management Agreement may be terminated by either party in accordance with Clause 13.

### ***Fees***

22. Based on the Financial Forecast provided in the Information Memorandum, the allocation of the minimum initial contribution is shown in Table 2 below.

**Table 2. Allocation of the \$178,000 Initial Contribution**

<b>Fee type</b>	<b>30/6/2000</b>	<b>30/6/2001</b>	<b>30/6/2002</b>	<b>30/6/2003</b>
Management fee	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
General operating costs	\$11,198.33	\$17,649.83	\$18,404.50	\$16,650.24
Irrigation	\$29,285.00	\$ 0.00	\$ 0.00	\$ 0.00
Trees	\$ 4,561.50	\$13,750.60	\$ 0.00	\$ 0.00
Roads	\$ 625.00	\$ 0.00	\$ 0.00	\$ 0.00
Land purchase	\$ 9,750.00	\$ 0.00	\$ 0.00	\$ 0.00
Water purchase	\$ 0.00	\$15,000.00	\$10,000.00	\$10,000.00
Capital raising	\$ 9,125.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>Totals</b>	<b>\$67,544.83</b>	<b>\$49,400.43</b>	<b>\$31,404.50</b>	<b>\$29,650.24</b>

23. This allocation was based on costs estimated for a 200-hectare olive grove development. The Information Memorandum equates this initial contribution to a 2.5% interest in the Joint Venture property and this interest represents about 4.5 hectares.

24. It should be noted that Participants' contribution to the expenditures of the Joint Venture will be in proportion to their respective equity in the Joint Venture. Therefore, with the exception of the management fee, these amounts may vary depending on the actual number of Participants who are accepted into the Joint Venture, and depending on the level of actual expenditure incurred by the Joint Venture.

25. All services to be provided to the Joint Venture in return for management fees, and services provided as part of 'General Operating Expenses,' will be provided by 30 June 2000 provided Minimum Subscription is achieved by 31 May 2000.

## ***Income***

26. As per the Joint Venture Agreement, the income of the Project will be derived by the Participants. Participants will jointly own the products. The Joint Venture may have trading stock on hand at the end of an income year. It will be a partnership for tax law purposes, and will be required to lodge a partnership tax return.

## ***Finance***

27. Participants can fund their investment in the Project themselves or borrow from an independent lender.

28. Finance arrangements organised directly by a Participant with an independent lender will be a private arrangement between the Participant and the lender. Such arrangements are outside the arrangement to which this Ruling applies. In addition, this Ruling does not apply to a Participant who enters into a loan arrangement with any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- entities associated with the Project are involved in the provision of finance for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the Participant's risk;
- additional benefits will be granted to the Participant for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA applies;
- the loan is non-arm's length;

- repayments of principal and 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) back to the lender or any associate; or
- lenders do not have the capacity under the loan agreement, nor have a genuine intention, to take legal action against a defaulting Participant.

29. This Product Ruling does not apply unless Minimum Subscription is achieved by 31 May 2000.

## **Ruling**

---

### **Partnership**

30. The Joint Venture is a partnership for the purposes of Division 5 of Part III of the ITAA 1936 (see definition of 'partnership' in section 995-1 of the ITAA 1997). A partnership return will be required to be forwarded for each year of income, as required by section 91 of the ITAA 1936.

31. Each Participant will be a partner in a partnership and in accordance with section 92 of the ITAA 1936, where the Participant is a resident, will be required to include his or her individual interest in the net income of the partnership in his or her assessable income. Where the Participant is a non-resident, he or she is required to include in his or her assessable income, his or her individual interest in the net income of the partnership as is derived from a source in Australia.

32. Each Participant will be entitled to a deduction under section 92 of so much of his or her individual interest in any loss of the partnership as is attributable to a period when he or she was a resident. Where the Participant is a non-resident, he or she will be entitled to a deduction for so much of his or her individual interest in the partnership loss as is attributable to a period when he or she was a resident.

### **Section 8-1 ITAA 1997**

33. Table 3 below shows the deductions available under section 8-1 of the ITAA 1997 for the Joint Venture, calculated on a single Participant basis, and assuming the Joint Venture incurs the expenditure set out in paragraph 22.

**PR 2000/41****Table 3. Section 8-1 ITAA 1997 Deductions For The Years Ended 30 June 2000 to 30 June 2002, Inclusive**

<b>Fee type</b>	<b>Year 1 (yr ended 30/6/2000)</b>	<b>Year 2 (yr ended 30/6/2001)</b>	<b>Year 3 (yr ended 30/6/2002)</b>
Management fee	\$3,000.00	\$3,000.00	\$3,000.00
General operating costs	\$11,198.33	\$17,649.00	18,404.50

**Notes:**

- (i) The expenditures in the table above are estimates for a Participant who enters the Project on or before 1 June 2000;
- (ii) For Participants who are accepted into the Project after 1 June 2000, the total Participant contribution will not translate into deductible amounts as far as the partnership general operating costs are concerned. The Project Manager will notify each Participant of the deductible and non-deductible components of the general operating costs;
- (iii) A deduction for management fees and general operating costs is not allowed under section 8-1 before the minimum subscription is reached, the Participant's application is accepted and the Joint Venture and Olive Grove Management Agreements executed. Until this point there is not an 'outgoing incurred' by the Participant;
- (iv) Actual Joint Venture expenditures may vary from projected expenditures. The Project Manager will notify each participant if this is the case.

**Capital expenditures**

34. The deductibility of capital expenditures are shown in Table 4 below.

**Table 4. Deductibility Of Capital Expenditures**

Fee type	ITAA 1997 section	Year 1 (yr ended 30/6/2000)	Year 2 (yr ended 30/6/2001)	Year 3 (yr ended 30/6/2002)
Irrigation	387-125 (see Note i below)	\$9,761.00	\$9,761.00	\$9,761.00
Trees	387-125	Expected to be deductible from 30/6/2004 (see Note ii below)		
Roads	43-10, 43-20	Non-deductible (see Note iii below)		
Land purchase	8-1	Non-deductible (see Note iv below)		
Water purchase	8-1	Non-deductible (see Note iv below)		
Capital raising	8-1	Non-deductible (see Note iv below)		

Notes:

- (i) Deductibility under section 387-125 of the ITAA 1997 is calculated on the basis of one-third of the capital expenditure in the year in which the expenditure is incurred one-third in each of the next 2 years of income;
- (ii) A deduction of 7% of the capital cost will be available to the Participant under section 387-185 of the ITAA 1997, calculated from the year in which the tree enters its first commercial season;
- (iii) Section 43-10 of the ITAA 1997 allows deduction for capital works. As the Project plans to construct dirt roads, this capital work is specifically excluded under section 43-20 of the ITAA 1997;
- (iv) These expenditures are capital or capital in nature and therefore not allowable under section 8-1 ITAA 1997. Furthermore, these expenditures do not fall for consideration under any specific write-off provision of the ITAA 1997.

**Sections 82KL and 82KZM; Part IVA**

35. For Participants who are accepted into the Project the following provisions of the ITAA 1936 have application as indicated:

- (i) section 82KL does not apply to deny the deductions otherwise allowable;

- (ii) the expenditure by Participants does not fall within the scope of section 82KZM or sections 82KZMA to 82KZMD; and
- (iii) 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

36. Consideration of whether the management fee and general operating costs are deductible under section 8-1, begins with paragraph 8-1(1)(a) 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 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 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.

### *Is the joint venture carrying on a business?*

37. A business includes a 'primary production business', which is defined under subsection 995-1(1) to include a business of propagating and cultivating plants. The growing of olive trees can constitute the carrying on of a primary production business.

38. Where there is a business, or a future business, the gross sale proceeds from the sale of the olives or olive products from the Project 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 and maintaining of the olive trees and harvesting the produce.

39. The Joint Venture is considered to be carrying on a business of growing olive trees for eventual sale of olives or olive products from the Project if:

- the Participants have a collective interest in the production and gross income of the business;
- the horticultural activities are carried out on the Participant's behalf; and
- the weight of the general indicators of a business, as developed by the Courts, point to them carrying on a business.

40. Under the Joint Venture Agreement, the Participants delegate the day to day management to OMPL as Project Manager. Services to be provided by OMPL include planting, cultivating, tending, pruning, fertilising, spraying, maintaining and otherwise caring for the olive trees. The Joint Venture Agreement gives Participants in common, full right, title and interest in the land, the water rights attached to the ownership of the land, and the olive trees and their produce, and the right to have the olives and/or olive products sold for the Participants' benefit.

41. The Joint Venture Agreement does not specify an actual allocation of product according to each Participant's interest. The Joint Venture arrangement constitutes a partnership for income tax purposes (see the definition of 'partnership' in section 995-1 ITAA 1997). Consequently, Division 5 of Part III of ITAA 1936 applies to include as income, each participant's individual interest in the net income of the Joint Venture for each year of income.

42. Further, where a partnership loss is incurred by a partnership in a year of income, there shall be an allowable deduction to a partner in the partnership based on their individual interest in the partnership.

43. Accordingly, a partnership return will be required to be furnished for each year of income, as required by section 91 of the ITAA 1936. The Participants will be required to disclose their share of the partnership net income or loss in their returns of income as required by section 92 of the ITAA 1936.

44. 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 discussed in that Ruling. Participants to whom this Ruling applies intend to derive assessable income from the Joint Venture Project. This intention is related to projections contained in the Draft Information Memorandum that suggest the Joint Venture Project

should return a 'before tax' profit to the Participants, i.e., a 'profit' in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

45. The Joint Venture will engage the professional services of a Project Manager with appropriate credentials. These services are based on accepted commercial agricultural practices and are of the type ordinarily found in ventures that would commonly be said to be businesses.

46. Participants have a continuing interest in the Project from the time they enter into the Joint Venture. The 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 Participants' activities of conducting in joint venture the growing of olive trees for producing olives or olive products for commercial sale will constitute the carrying on of a business.

### **Expenditure of a capital nature**

47. Any part of the expenditure of the Joint Venture entering into a primary production 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. The Project documentation has identified these capital expenditures to be for irrigation, trees, roads, land purchase, water purchase and capital raising.

### **Subdivision 387-B: irrigation expenditure**

48. 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 by this Project would be covered by Subdivision 387-B.

49. Under subsection 387-150(3) these deductions are to be disregarded when working out the net income or partnership loss of the Partnership under section 90 of the ITAA 1936. Each Partner claims a deduction as agreed between them or an amount equal to their proportionate interest in the Partnership.

50. The expenditure identified as applicable to the conserving or conveying of water for the olive grove that meets the requirements of section 387-130 amounts, nominally, to \$29,285 per participation.

**Subdivision 387-C: horticultural plant expenditure**

51. Section 387-165 allows capital expenditure on establishing horticultural plants for use in a horticultural business to be written off for tax purposes. Under subsection 387-170(3), the definition of 'horticulture' includes the cultivation of olive trees.

52. Horticultural establishment expenditure 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 the clearing of land. The Joint Venture's cost of olive grove establishment has been identified, nominally, as \$4,561.50 and \$13,750.60 per participation for the years ended 30 June 2000 and 2001 respectively.

53. The rate of the write-off will be 7% per year on a prime cost basis, assuming the effective life of the trees is 30 years or more (section 387-185).

54. The write-off commences from the date the olive trees are used or held ready for use for the purpose of producing assessable income in a horticultural business (sections 387-165 and 387-170). It is anticipated that the olive trees will enter their first commercial season and, hence, begin to be used for the purpose of producing assessable income in a horticultural business in the year ended 30 June 2004. The Joint Venture's cost of olive grove establishment will be eligible for write-off deductions at a rate of 7% from this date.

**Division 43: Road expenditure**

55. A deduction for structural improvements is available under Division 43 of the ITAA 1997. In this Project the road expenditure identified relates to the construction of dirt road. As this type of structural improvement is excluded under subsection 43-20(4), this expenditure cannot be written-off.

**Section 82KL: recouped expenditure**

56. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' plus the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

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

speaking, a benefit that is additional to the benefit for which the expenditure is ostensibly incurred. The 'expected tax saving' is essentially the tax saved if a deduction is allowed for the relevant expenditure.

58. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

### **Section 82KZM**

59. 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 the 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.

60. Under the Agreements to which each Participant will become a party to, the initial management fee of \$3,000 will be incurred on execution of these Agreements. This fee is charged for providing services to the Joint Venture by 30 June 2000. 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 also no evidence that might suggest the services covered by the fee could not be provided within the same year of income as the expenditure in question is incurred.

61. With regard to the Participants' contribution to general operating costs for 30 June 2000, this will be deductible in full if a Participant is accepted into the Project on or before 1 June 2000. For this Ruling's purposes, no explicit conclusion can be drawn from the arrangement's description that the budgeted general operating expenditure for the Joint Venture have been inflated to result in reduced contributions being made for subsequent years. There is also no evidence that might suggest that the Joint Venture will not incur the expenditure items identified.

62. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial management fee and contribution to general operating costs is for doing 'things' that are not to be wholly done within the year of income of the fee or contribution being incurred. On this basis, the basic precondition for the operation of section 82KZM is not satisfied and it will not apply to the expenditures incurred by Participants.

63. New sections 82KZMB, 82KZMC and 82KZMD also do not apply to this project as the services to be provided in respect of the fees in question are completed in the same year of income as the expenditure is incurred (see paragraph 82KZM(3)(c)).

#### **Part IVA: general tax avoidance provisions**

64. 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).

65. The Boundary Bend Estate (J.V.Two) Project will be a 'scheme'. The Participants will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 33 and 34, 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.

66. Participants to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of olives and olive products. There are no facts that would suggest that Participants have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no financing involved or round robins present, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b), it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

### **Detailed contents list**

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

	<b>Paragraph</b>
<b>What this Product Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	5
<b>Date of effect</b>	<b>7</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>

**PR 2000/41**

Overview	12
<i>The Joint Venture Agreement</i>	13
<i>The Olive Grove Management Agreement</i>	17
<i>Fees</i>	22
<i>Income</i>	26
<i>Finance</i>	27
<b>Ruling</b>	<b>30</b>
Partnership	30
Section 8-1 ITAA 1997	33
Capital expenditures	34
Sections 82KL and 82KZM; Part IVA	35
<b>Explanations</b>	<b>36</b>
Section 8-1	36
<i>Is the joint venture carrying on a business</i>	37
Expenditure of a capital nature	47
Subdivision 387-B: Irrigation expenditure	48
Subdivision 387-C: horticultural plant expenditure	51
Division 43: Road expenditure	55
Section 82KL: recouped expenditure	56
Section 82KZM	59
Part IVA: General tax avoidance provisions	64
<b>Detailed contents list</b>	<b>67</b>

**Commissioner of Taxation**

12 April 2000

<i>Previous draft:</i>	- fee expenses
Not previously issued in draft form	- management fees expenses
	- producing assessable income
<i>Related Rulings/Determinations:</i>	- product rulings
TD 93/34; TR 92/1; TR 92/20;	- public rulings
TR 97/11; TR 97/16; TR 98/22;	- schemes and shams
PR 1999/95	- taxation administration
	- tax avoidance
<i>Subject references:</i>	<i>Legislative references:</i>
- carrying on a business	- ITAA 1936 91
- commencement of business	

- 
- ITAA 1936 92
  - ITAA 1936 82KH(I)
  - ITAA 1936 82KH(IF)(6)
  - ITAA 1936 82KL
  - ITAA 1936 82KZM
  - ITAA 1936 82KZMA
  - ITAA 1936 82KZMB
  - ITAA 1936 82KZMC
  - ITAA 1936 82KZMD
  - ITAA 1936 Pt IVA
  - ITAA 1936 177A
  - ITAA 1936 177C
  - ITAA 1936 177D
  - ITAA 1936 318
  - ITAA 1997 8-1
  - ITAA 1997 Subdivision 43-A
  - ITAA 1997 43-10
  - ITAA 1997 43-15
  - ITAA 1997 43-20
  - ITAA 1997 Subdivision 387-B
  - ITAA 1997 387-125
  - ITAA 1997 387-130
  - ITAA 1997 387-150
  - ITAA 1997 Subdivision 387-C
  - ITAA 1997 387-165
  - ITAA 1997 387-170(3)
  - ITAA 1997 387-175
  - ITAA 1997 387-185
  - ITAA 1997 995-1
- 

## ATO references:

NO 2000/486

BO

FOI number: I 102561

ISSN: 1441-1172