



# ***PR 2000/52 - Income tax: Gunns Plantations Woodlot Project 2000***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 May 2000*



# Product Ruling

## Income tax: Gunns Plantations Woodlot Project 2000

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### Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons and Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 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

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 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 Gunns Plantations Woodlot 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);
- 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 those 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 either of the arrangements 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 '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. The Commissioner rules on the precise arrangement identified in this ruling.

9. 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**

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11. This Ruling applies prospectively from 10 May 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).

12. 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).

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## Withdrawal

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13. 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 change in the arrangements or in the persons' involvement in the arrangements.

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## Arrangement

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

- Gunns Plantations Woodlot Project 2000 Application for Product Ruling dated 11 February 2000;
- Draft Prospectus prepared to be issued by Gunns Plantations Limited ('Gunns Plantations' or 'the Responsible Entity') for the Gunns Plantations Woodlot Project 2000, received on 7 April 2000;
- Draft **Management Agreement** between Gunns Plantations (as the Manager) and the Grower, undated, received on 7 April 2000;
- Draft **Sub-Lease Agreement** between Gunns Plantations (as the Sub-Landlord) and the Grower, undated, received on 7 April 2000;
- Gunns Plantations Woodlot Project 2000 Constitution made by Gunns Plantations (as 'the Responsible Entity') dated 31 March 2000;
- Draft Compliance Plan for the Project to be adopted by Gunns Plantations (as 'the Responsible Entity') (Draft 1 of 8 March 2000);
- Draft **Loan Agreement** between Gunns Finance Pty Ltd ('GFPL') and the Borrower, undated;

- Draft Lease Agreement between the Landlord and Gunns Plantations (as the Tenant), received on 7 April 2000;
- Draft **Woodsale Agreement** between Gunns Plantations (as agent for each Grower) and the Purchaser, received on 7 April 2000;
- Draft Custody Agreement between Gunns Plantations and the Custodian, received on 7 April 2000;
- Correspondence from Applicant's advisors dated 7 April 2000;
- Facsimile from Applicant's advisors dated 1 May 2000; and
- Facsimiles from Gunns Plantations dated 7 April 2000, 28 April 2000, 30 April 2000 and 1 May 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.**

15. The documents highlighted are those Growers enter into or become a party to. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate<sup>1</sup> of a Grower, 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**

16. The arrangement is the Gunns Plantations Woodlot Project 2000.

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

**PR 2000/52**

Location	A number of specified parcels of land in Northern Tasmania.
Type of business each participant is carrying on	Commercial growing of trees under one of three options: <b>Option 1:</b> Eucalyptus for Hardwood Pulpwood. <b>Option 2:</b> Eucalyptus for Hardwood Veneer and Pulpwood. <b>Option 3:</b> Radiata Pine for Softwood Veneer and Sawlog.
Number of hectares under cultivation	There is a target of 1,600 hectares under the prospectus, however, oversubscriptions may be accepted.
Name used to describe the product	Gunns Plantations Woodlot Project 2000.
Size of the leased area	One hectare
Number of trees per hectare	Minimum average of 1,100 for options 1 and 2, and 1,000 for option 3.
The term of the investment	Option 1: 15 years Option 2: 20 years Option 3: 25 years
Initial cost per hectare	\$4,750
Ongoing costs	Gunns Plantations is to be paid \$70 (CPI Indexed) as an annual maintenance fee and \$250 (CPI Indexed) as an annual rental fee, payable annually in arrears.
Other costs	Growers will be charged for the costs of applicable pruning and thinning, sales commission and the cost of all insurance except Public Liability Insurance.

17. Gunns Plantations has acquired the land to be used for the project. In selecting the land for acquisition, Gunns Plantations applied land selection criteria as outlined in paragraph 7.3 of the Draft Prospectus. The forester has inspected all of the project land with reference to the land selection criteria and concludes that the land selected has the capacity to produce commercially viable eucalyptus and radiata pine plantations.

18. Growers participating in the Project enter into a Sub-Lease Agreement with Gunns Plantations as the Sub-Landlord which gives them a lease over an identifiable area of land called a Woodlot from Gunns Plantations for approximately 15 to 25 years, depending on which option is chosen. The Growers will also contract with Gunns Plantations as the Responsible Entity, under a Management Agreement, to have eucalyptus or radiata pine planted on their leased land for the purpose of eventual felling and sale in approximately 15 or 20 years in the case of eucalyptus or 25 years in the case of radiata pine.

19. Approximately 1,100 trees per hectare for options 1 and 2, and 1,000 trees per hectare for option 3, will be planted following execution of the Sub-Lease and Management Agreements and prior to 30 June 2000. Under the Prospectus, the Responsible Entity undertakes to ensure that all Establishment Services are provided in relation to each Woodlot by 30 June 2000. From 1 June 2000, Gunns Plantations will not accept applications for any Woodlots where it is reasonably apparent that they will not be able to complete all of the Establishment Services in relation to those Woodlots by 30 June 2000. Gunns Plantations will be monitoring on a daily basis its ability to complete the establishment services by 30 June 2000.

20. Under the prospectus, Gunns Plantations will offer Woodlots of one hectare for an initial cost of \$4,750. Gunns Plantations has the right to accept oversubscriptions. There is no minimum amount that must be raised under the Prospectus. The land for the Project has been leased by Gunns Plantations either from Gunns Limited or a third party land owner. Gunns Plantations is a wholly owned subsidiary of Gunns Limited.

21. Possible projected returns for the Project depends on a range of assumptions and Gunns Plantations does not give any assurance or guarantee whatsoever in respect of the future success of or financial returns associated with entering into the Sub-Lease and Management Agreements in question. The financial projections set out in section 6 of the Prospectus show a 'before-tax' profit to the Growers over the term of the arrangement.

### **Sub-Lease and Management Agreements**

22. Under the Sub-Lease and Management Agreements, Growers enter into a 15 to 25 year lease for one or more Woodlots and contract with Gunns Plantations to establish and maintain the plantation until maturity. Clause 3 of the Sub-Lease Agreement grants an interest in the land to the Grower. Growers are not entitled to assign their rights under the Sub-Lease and Management Agreements, except in certain circumstances (cl 25.3 of the Management Agreement). Statements of interest are issued to Growers. Gunns Plantations keeps a register of

Growers. Growers execute a power of attorney enabling Gunns Plantations to act on their behalf as required.

23. Growers may elect to harvest their own timber produce (cl 18 of the Management Agreement), or have Gunns Plantations, acting as their agent, sell the timber produce on the Grower's behalf (cl 11.1 of the Management Agreement), for the best possible commercial price (cl 5 of the Wood Sale Agreement). Gunns Limited has the first right of refusal to purchase the timber produce. In accordance with the Management Agreement and the Constitution, each Non-Electing Grower is entitled to a distribution of that Grower's proportional interest in the Wood Sales Proceeds less costs and any unpaid expenses applicable to that particular Grower.

#### **Establishment and Maintenance of the Plantation**

24. During the period commencing upon execution of the Sub-Lease and Management Agreements Gunns Plantations will be responsible for planting eucalyptus or radiata pine on the Woodlots. Gunns Plantations has the capacity and resources to carry out the establishment and planting program prior to 30 June 2000. From this period on, Gunns Plantations will maintain the trees in accordance with good silvicultural practice. The services to be provided by Gunns Plantations over the term of the Project are defined in clauses 4, 5 and 6 of the Management Agreement. Gunns Plantations will also be responsible for the maintenance of access roads and fire breaks, and is required to keep the Woodlots free from vermin.

25. Gunns Plantations will also be responsible for arranging the marketing and sale of the timber produce (clause 11.1 of the Management Agreement). The time for harvest will vary depending on the option selected and will be determined according to set criteria including growth rates, market demand, and volume of wood on the Woodlot (clauses 7 and 9 of the Management Agreement). Gunns Plantations will provide ongoing reports to the Growers on the progress of the plantation.

26. Gunns Plantations will ensure that the gross Wood Sale Proceeds and gross Carbon Rights Proceeds of each option are paid into the relevant portion of the Fund. The Non-Electing Growers' proportional shares of the costs of felling and costs of sale, will be paid to Gunns Plantations from the gross Wood Sale Proceeds. Gunns Plantations will receive from the Wood Proceeds Portion an amount equal to 3% of the gross Wood Sale Proceeds, as Sales Commission. This percentage has been calculated to ensure that Gunns Plantations makes a profit in providing these services. Growers' proportional share of costs of sale of Carbon Rights will be met out of the gross Carbon Rights Proceeds. 50% of the Net Carbon Rights Proceeds are paid to Gunns Plantations. The balance of the Wood Sale Proceeds

and Net Carbon Rights Proceeds for each option will be held in the Fund on trust for the Growers.

### **Fees**

27. The total establishment fees payable under the Sub-Lease and Management Agreements are \$4,750 for each Woodlot.

28. The independent forester considers that the Gunns Plantations Project has the potential to meet its financial objectives if the intensive forestry regimes proposed for the three options are followed and appropriate marketing arrangements are put in place.

29. The Application Monies will be banked into the Applications Portion reflecting the planting options chosen. These monies will be released to Gunns Plantations when certain specified criteria have been met (cls 8 and 9 of the Constitution).

30. Following provision of the establishment services by Gunns Plantations, Growers pay an annual maintenance cost of \$70 (CPI indexed) and annual rental of \$250 (CPI indexed) until final harvest. These fees are paid annually in arrears.

### **Finance**

31. Growers can choose to fund their investment themselves, borrow from an unassociated lending body or borrow through a finance arrangement offered by Gunns Finance Pty Ltd (GFPL). The finance to be offered by Gunns Finance Pty Ltd will be on commercial terms. Interest will be calculated daily and payable monthly.

32. The provision of finance involves full recourse loans and GFPL will pursue legal action against defaulting borrowers.

33. This Ruling does not apply if a Grower enters into a finance agreement that includes 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, other than GFPL, provide finance to growers for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrowers risk;
- additional benefits 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-arms length;
- repayments of the 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, or a genuine intention, to take legal action against defaulting borrowers.

## Ruling

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### Section 6-5 – Assessability of income from the Project

34. For a Grower who invests in the Project, all income received or receivable by them from the sale of their timber and carbon rights will be assessable income to them under section 6-5 of the ITAA 1997.

### Section 8-1

35. Section 8-1 of the ITAA 1997 will apply to Growers entering the Project as follows:

- (i) to allow a deduction of \$4,750 per Woodlot, incurred on execution of the Sub-Lease and Management Agreements on or before 30 June 2000, for the year of income ending 30 June 2000 where the establishment services are wholly provided to the Grower by 30 June 2000;
- (ii) to allow a deduction for the fee of \$70 (CPI indexed) payable under the Management Agreement on or about 31 May 2001 and 31 May 2002 for the years ended 30 June 2001 and 30 June 2002 respectively;
- (iii) to allow a deduction for the rental of \$250 (CPI indexed) payable under the Sub-Lease Agreement on or about 31 May 2001 and 31 May 2002 for the years ended 30 June 2001 and 30 June 2002 respectively;
- (iv) to allow a deduction for interest incurred during the year ending 30 June 2000, 30 June 2001 and 30 June 2002 in respect of finance provided by Gunns Finance Limited for each of those years respectively.

**Sections 27-5 and 27-30 - Goods and Services Tax**

36. 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.

**Sections 82KL, 82KZM, 82KZMB – 82KZMD and Part IVA**

37. For a Grower who invests in 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; and
- (ii) the expenditure by Growers does not fall within the scope of sections 82KZM or 82KZMB – 82KZMD;
- (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.

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**Explanations**

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**Section 6-5**

38. For a Grower who invests in the Project, all income received or receivable by them from the sale of their timber and carbon rights will be assessable income to them under section 6-5 of the ITAA 1997.

**Section 8-1**

39. Consideration of whether lease and management fees 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 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. 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.

40. 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.

41. Growers have, under the Sub-Lease and Management Agreements, 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 Gunns Plantations, as Manager, to provide services such as planting, cultivating, tending, thinning, pruning, fertilising, replanting, spraying, maintaining and otherwise caring for the trees. Growers are considered to have control of their investment. The specific cost to the Grower of these services provided during the period of provision of establishment services and rental up to 30 June 2000 is \$4,750. Growers may either collect the Wood and arrange for its sale themselves or they have the option of Gunns Plantations arranging marketing and sale in return for a proportion of the sale proceeds.

42. The Sub-Lease Agreement gives Growers full right, title and interest in the *trees* and the right to have the *wood* sold for their benefit (cl 4.2 of the Sub-Lease Agreement). Growers will also own the carbon rights (if any) associated with the trees. The relevant documentation contemplates that Growers will have an ongoing

interest in the growing trees. The trees belong to the Growers in the sense that they have an interest in the land on which they are growing and a profit à prendre in respect of the timber produce, which confers an equitable interest in the trees upon the Grower.

43. Growers have the right to use their Woodlots for afforestation purposes and to have Gunns Plantations come onto the land to carry out its obligations under the Sub-Lease and Management Agreements. The Grower's degree of control over Gunns Plantations, as evidenced by the Management Agreement, and supplemented by the Corporations Law, is sufficient. Under the Project documentation, Growers are entitled to receive regular progress reports on Gunns Plantations' activities. Growers are able to terminate arrangements with Gunns Plantations in certain instances, such as cases of default or neglect. The afforestation activities described in the Sub-Lease and Management Agreements are therefore carried out on the Grower's behalf.

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. The independent forester's report is that the Project has the potential to meet its financial objectives if the intensive forestry regimes proposed are followed. 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.

45. 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.

46. 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.

47. 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. No capital component is identifiable. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

## **Sections 27-5 and 27-30 - Goods and Services Tax**

48. 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 after 1 July 2000.

49. Section 27-5 of the ITAA 1997 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 an input tax credit to which a Grower is entitled or a decreasing adjustment that a Grower has.

## **Section 82KL**

50. 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 GFPL to the Grower. The loan is 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.

## **Section 82KZM and sections 82KZMB – 82KZMD**

51. 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.

52. Under the Sub-Lease and Management Agreements the fee of \$4,750 per Woodlot will be incurred on execution of the Agreements. This fee is charged for providing services to a Grower by 30 June 2000. 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.

53. 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. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial fee is for Gunns Plantations 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 by the Grower.

54. New sections 82KZMB to 82KZMD also have no effect on the amount and timing of the deductions in relation 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.

#### **Part IVA**

55. 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).

56. The Project will be a 'scheme' commencing generally on the date when the Prospectus was issued. The Growers will obtain a '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.

57. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting of the trees. Further, there are no features of the Project, for example, such as the Lease and Management fees being 'excessive', and uncommercial, predominantly financed by a non-recourse loan, and resulting in insufficient 'real money' coming into the Responsible Entity's hands, that might suggest the Project were so 'tax driven', and so designed to produce a tax deduction of a certain magnitude that would attract the operation of Part IVA. No ruling is given on the application of Part IVA to financing arrangements entered into between investors and other financiers in respect of lending arrangements to invest in the project.

#### **Interest deductibility**

58. This Ruling deals only with the deductibility of interest by Growers who intend to finance the investment through the loan facility offered by GFPL. Whether the resulting interest fees are deductible under section 8-1 depends on the same reasoning as that applied to whether the Lease and Management fees are deductible. The interest fees will be in respect of a loan to finance the operations - the planting, tending, maintenance and harvesting of the trees - 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**

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

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*Previous draft:*

Not previously issued in draft form

- schemes and shams
- taxation administration
- tax avoidance

*Related Rulings/Determinations:*

TR 92/1; TR 92/20; TD 93/34;  
TR 97/11; TR 97/16; TR 98/22;  
PR 1999/95

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 82KZM
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
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*Subject references:*

- carrying on a business
  - commencement of business
  - fee expenses
  - interest expenses
  - management fees expenses
  - producing assessable income
  - product rulings
  - public rulings
- 

## ATO references:

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