



PR 2000/8 - Income tax: APT Eucalypt Project 2000 and APT Eucalypt Project 2001

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 March 2000*



Product Ruling

Income tax: APT Eucalypt Project 2000 and APT Eucalypt Project 2001

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

Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

No guarantee of commercial success

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

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

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

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

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

Terms of use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the APT Eucalypt Project 2000 and APT Eucalypt Project 2001, or just simply as 'the Projects'.

Tax law(s)

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

- section 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- section 27-5 (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 21 September 1999, the Government announced a number of changes to the tax system as part of the New Business Tax System. A number of those changes could affect the tax laws dealt with in this Ruling. On 11 November 1999 the Government announced further changes, some of which could also affect the tax laws dealt with in this Ruling, especially those to do with 'tax shelters'. Some of the changes apply from the date of the announcement and others are proposed to apply from nominated dates in the future.

4. This Ruling does not deal with the Goods and Services Tax or any associated 'A New Tax System' legislative reforms, including the proposed changes announced as part of 'The New Business Tax System', except certain of those legislative reforms which have now been enacted.

5. This Ruling does not deal with the announced changes which have not been enacted. We cannot rule on those changes until the relevant legislation is passed by Parliamentary process.

Class of persons

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

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

Qualifications

8. If the 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 8 March 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:

- Correspondence dated 1 February 2000;
- The APT Eucalypt Project 2000 and APT Eucalypt Project 2001 Draft Prospectus, undated;
- Constitutions for APT Eucalypt Project 2000 and APT Eucalypt Project 2001, dated 18 January 2000;
- **Lease and Management Agreement for the APT Eucalypt Project 2000 between APT Projects Ltd (the 'Responsible Entity'), APT Land Pty Ltd ('the Lessor') and the Grower, undated;**
- **Management Agreement for the APT Eucalypt Project 2001 between APT Projects Ltd (the 'Responsible Entity'), APT Land Pty Ltd ('the Lessor') and the Grower, undated;**
- **Proforma Lease for the APT Eucalypt Project 2001 between APT Projects Ltd (the 'Responsible Entity'), APT Land Pty Ltd ('the Lessor') and the Grower, undated; and**
- Compliance Plan for APT Projects Ltd as the Responsible Entity, regarding the Projects, undated.

Note: certain information received from APT Projects Ltd 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 37 to 39 apply. The effect of these agreements is summarised as follows.

Overview

15. This arrangement involves two projects, the APT Eucalypt Project 2000 and the APT Eucalypt Project 2001.

Location	South West Region of Western Australia or the Green Triangle region of South East South Australia and South West Victoria
Type of business each participant is carrying on	Commercial growing, and cultivation of <i>Eucalyptus globulus</i> trees (Tasmanian Blue Gums) for the purpose of producing timber for woodchipping and any other suitable product.
Number of hectares under cultivation	*5000 per project.
Names used to describe the product	APT Eucalypt 2000 Project and APT Eucalypt 2001 Project
Size of each Timberlot	1 hectare
Number of trees per hectare	1 000
Expected production	300 cubic metres / hectare
The term of the investment in years	11 approx.
Initial cost	\$5,362 for 2000 project and \$393 for 2001 project
Initial cost per hectare (per project)	\$5,755
Ongoing costs	Insurance to be provided by grower.

*The projects may be expanded to increase the number of hectares under cultivation to up to 6000 hectares per project.

16. Growers applying under the Prospectus dated 18 January 2000 enter into a Lease and Management Agreement for the APT Eucalypt 2000 Project and a Management Agreement and a Lease for the APT Eucalypt 2001 Project. All these arrangements are set out in the Schedule to the Constitutions for each project. These Agreements give a Grower a lease from APT Land Pty Ltd, over an identifiable area of land called a 'Timberlot', until the Project is terminated pursuant to the provisions of the Constitution, or up until the trees are harvested and sold, and net income distributed, whichever happens first. Each Timberlot is one hectare in size.

17. The Project Land is situated in the South West Region of Western Australia or the Green Triangle region of South Australia and Victoria. APT Land Pty Ltd owns the property.

18. APT Land Pty Ltd will lease the Timberlot to the grower to enable the grower to carry on a long term commercial afforestation business. Growers are specifically granted rights to harvest timber on their Timberlot for this purpose.

19. The Prospectus states there is no minimum subscription for both of these Projects and applications made under the Prospectus will not be accepted after 31 May 2000. Each investor may subscribe for a minimum of one Timberlot per project, at a cost of \$5,750 per Timberlot. For each Project 2000 Timberlot applied for, a grower must also apply for one Project 2001 Timberlot. A minimum of 1,000 trees per Timberlot (1,000 trees per hectare) will be planted on or before 31 August 2000 for the APT Eucalypt 2000 Project and on or before 31 August 2001 for the APT Eucalypt 2001 Project, following the execution of the Lease and Management Agreement for the 2000 Project (cl 6.2 of the Constitution), and the Management Agreement and Lease for the 2001 Project (cl 6.2 and 6.4 of Constitution).

20. Possible projected returns for Growers are outlined on page 11 of the Draft Prospectus. The projected returns depend on a range of assumptions and APT Projects Ltd does not give any assurance or guarantee whatsoever in respect of the future success of or financial returns associated with entering into the Project. Based on the example set out on page 11 of the Draft Prospectus, a Grower could expect to achieve an after tax internal rate of return of 7.41% per Timberlot. Growers will execute a Power of Attorney enabling the Responsible Entity, APT Projects Ltd, to act on their behalf as required, when they make an application for a Timberlot.

Constitutions

21. The Constitutions for both projects set out the terms and conditions under which the Responsible Entity agrees to act for the Growers and to manage the Projects. The Responsible Entity will

keep a register of Growers (cl 20). Growers are entitled to assign their Grower's Interest in certain circumstances (cl 21). The Lease and Management Agreements and Management Agreements are annexed to the Constitutions and will be executed on behalf of a grower following them signing the Application and a Power of Attorney Form in the Prospectus. Growers are bound by the Constitutions by virtue of their participation in the Projects.

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 Projects and that the rights of the Growers are protected.

Interest in Land

23. A lease is granted by the Responsible Entity to the Growers under the terms of the Lease and Management Agreement (cl 2) for the APT Eucalypt 2000 Project and under the Lease for the APT Eucalypt 2001 Project (cl.2). Growers are granted an interest in land in the form of a lease to use their Timberlots for the purpose of conducting their afforestation business (cl 5). Growers must pay rent to the Lessor of an amount equal to 10% of the Net Proceeds of Sale of their timber (cl 3). This fee will be paid by the Responsible Entity on behalf of the grower out of the grower's Net Proceeds of Sale. The term of a grower's lease is up to the date the trees on the Timberlots have been harvested and sold and the Responsible Entity pays the proceeds into the Proceeds Fund, which is expected to be approximately 11 years after commencement.

Lease and Management Agreement and Management Agreement

24. Each grower enters into a Lease and Management Agreement with the Responsible Entity for the APT Eucalypt 2000 Project and a Management Agreement with the Responsible Entity for the APT Eucalypt 2001 Project for their Timberlots. The termination of the projects is the date the trees on the Timberlots have been harvested and sold and the Responsible Entity pays the proceeds into the Proceeds Fund (item 6 of schedule) which is expected to be approximately 11 years after the commencement of the projects. Accordingly, for the APT Eucalypt 2000 Project, the year of harvest is expected to be 2011 and for the APT Eucalypt 2001 Project, the harvest is expected to be in the year 2012. Growers contract with the Responsible Entity to establish and maintain the plantation until maturity. Growers pay a Plantation Preparation Services Fee and a

Planting Services Fee for each Timberlot. The total fees payable under the Lease and Management Agreement for the APT Eucalypt 2000 Project is \$5,750 per Timberlot, payable in two instalments. The total fees payable under the Management Agreement for the APT Eucalypt 2001 Project is \$5,750 per Timberlot, payable in three instalments.

25. The Responsible Entity will supply and plant the *Eucalyptus globulus* seeds into planting pots, grow and care for seedlings, rip and mound the Timberlots, fumigate and poison for exterminating and controlling the Timberlots from rabbits, insects and other vermin, spray for weed control, fertilise, cultivate, tend, maintain and otherwise care for the Timberlot as and when required according to good silvicultural and forestry practices.

26. The Responsible Entity will harvest (cl 17) and sell the timber produce on the Growers' behalf, at the maximum practicable price available (cl 19.1). The Grower may elect to take their own Collectable Forest Produce (cl.7). The grower will be responsible for paying for the cost of annual insurance on the Timberlot (cl. 5.4).

27. The Responsible Entity may only be removed from its appointment in accordance with section 601FM of the Corporations Law.

Fees

ATP Eucalypt 2000 Project

28. The initial fee payable under the Lease and Management Agreement for the APT Eucalypt 2000 Project is \$5,362 per Timberlot. This fee comprises the Plantation Preparation Services Fee of \$5,175 and the Planting Services Fee of \$187 for services to be provided by 30 June 2000 (clauses 22 and 23 of the Lease and Management Agreement). This initial fee is payable upon application to the Project. A further amount of \$388 for the balance of the Planting Services Fee is payable on or before 1 February 2001 for planting services that will be performed between 1 July 2000 and 31 August 2000.

ATP Eucalypt 2001 Project

29. The initial fee payable under the Management Agreement for the APT Eucalypt 2001 Project is \$393 per Timberlot. This fee is for Plantation Preparation Services to be performed by 30 June 2000 and is payable on application. A fee of \$4,969, comprising the balance of the Plantation Preparation Services Fee of \$4782 and \$187 for the Planting Service Fee, is payable on or before 1 February 2001 for services which will be performed by 30 June 2001. The balance of the

Planting Service Fee is \$388 and is payable on or before 1 July 2001 for services that will be performed between 1 July 2001 and 31 August 2001.

30. After harvest, growers must pay the Responsible Entity a Harvest and Management Fee of 5% of their Net Harvest Proceeds and 10% of their Net Harvest Proceeds for rental on their Timberlot over the life of the project. These amounts will be withheld by the Responsible Entity from the growers Net Harvest Proceeds before the harvest proceeds are paid out to the growers.

31. The Independent Forester has stated, at page 33 of the Draft Prospectus, that the project should achieve its financial objectives if the forestry regimes set out in this report are followed, good marketing arrangements are put in place, and the international economy and climatic factors (especially rainfall) are favourable.

32. The Application Monies will be banked in the Application Bank Account formed under the Project's Constitutions (cl 5.1).

Planting

33. During the period up to 31 August 2000 the Responsible Entity will be responsible, regarding the APT Eucalypt 2000 Project, for planting *Eucalyptus globulus* trees on the leased area. After 31 August 2000, the Responsible Entity will maintain the trees in accordance with good silvicultural practice. The services to be provided by the Responsible Entity over the term of the APT Eucalypt 2000 Project are outlined in the Lease and Management Agreement (items 10.11 and 12 of schedule).

34. During the period 1 June 2001 to 31 August 2001 the Responsible Entity will be responsible, regarding the APT Eucalypt 2001 Project, for planting *Eucalyptus globulus* trees on the leased area. After 31 August 2001, the Responsible Entity will maintain the trees in accordance with good silvicultural practice. The services to be provided by the Responsible Entity over the term of the APT Eucalypt 2001 Project are outlined in the Management Agreement (items 10.11 and 12 of schedule).

35. The Responsible Entity will be responsible for arranging the marketing and sale of the timber produce. The Harvest shall take place when the forest produce equals or exceeds an average of 300m^{3/ha}, or not later than 11 years after the commencement date, unless the Responsible Entity reasonably believes that it would be in the best interest of all growers for the harvesting to be deferred to a later date.

36. The Proceeds of Sale of the Timber produce will be paid into the Proceeds Fund Bank Account. Proceeds received by the

Responsible Entity are to be distributed in the following order of priority:

- to the Responsible Entity for a Grower's proportional share of the cost of felling and the cost of sale and to reimburse the Responsible Entity for Rental on the Timberlot and the Harvest and Management fee; then
- to the Growers under the Lease and Management Agreement and Management Agreement and Constitutions. (cl 32.1 of Constitutions).

Finance

37. Growers can fund their investment in the Projects themselves, borrow from an independent lender or borrow through finance arrangements offered by APT Finance Pty Ltd, an associate company of APT Projects Ltd.

38. 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;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the 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.

39. APT Finance Pty Ltd will offer Growers a loan to finance 100% of the Lease and Management Fees and Management Fees as applicable. The finance will be provided at a fixed interest rate and all principal and interest must be paid within 5 years of the first

drawdown. The loan will be drawn down progressively as payments are required under the Lease and Management Agreement and Management Agreement. The loans are made on a full recourse basis, and APT Finance Pty Ltd will pursue legal recovery action against defaulting borrowers.

Ruling

Section 8-1

40. For a Grower who invests in the Projects by 31 May 2000, the following deductions will be available for the years ended 30 June 2000 to 30 June 2002:

Deductions available each year

Fee Type	ITAA 1997 Section	Year 1 30/6/2000	Year 2 30/6/2001	Year 3 30/6/2002
Plantation Preparation Fee	8-1	* \$5,568	\$4782	
Planting Services Fee	8-1	\$187	# \$575	\$388

*This amount comprises the Plantation Preparation Services Fee of \$5,175 for the APT Eucalypt 2000 Project and \$393 for the APT Eucalypt 2001 Project.

#This amount comprises the Planting Services Fee of \$388 for the APT Eucalypt 2000 Project and \$187 for the APT Eucalypt 2001 Project

41. Section 27-5 of the ITAA 1997 will apply to fees incurred after 1 July 2000, to deny a deduction that would otherwise be allowable under section 8-1, to the extent that the fee includes an amount relating to a GST input tax credit to which a Grower is entitled.

Sections 82KZM, 82KZMB - 82KZMD and 82KL; Part IVA

42. 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 82 KL 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.

Explanations

Section 8-1

43. 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.

44. 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 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.

45. 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.

46. For this Project Growers have, under the Lease and Management Agreement and Management Agreement, rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the Lease and Management Agreement and Management Agreement Growers appoint APT Projects Ltd, as Responsible Entity, to provide services such as supplying and planting seeds into planting pots, growing and caring for seedlings, ripping and mounding the Timberlot, fumigating and poisoning for exterminating and controlling the Timberlot from rabbits, insects and other vermin, spraying the Timberlot for control of weeds, fertilising, spraying, cultivating, tending and otherwise caring for the trees 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 \$5,362 per hectare (or Timberlot) for the APT Eucalypt 2000 Project with the balance of these services provided by 31 August 2000 at a cost of \$388. For the APT Eucalypt 2001 Project, the specific cost of services provided by 30 June 2000 is \$393 per hectare (or Timberlot). The cost of services to be provided by 30 June 2001 is \$4,969 with the balance of the services to be provided by 31 August 2001 at a cost of \$388.

47. The Lease and Management Agreement and Management Agreement gives Growers the full right, title and interest in the products and the right to have the products sold for their benefit (clause 11.4) until the end of the lease term.

48. Growers have the right to use the land in question for afforestation purposes and to have the Responsible Entity come onto the land to carry out its obligation under the Lease and Management Agreement. The Growers' degree of control over the Responsible Entity, as evidenced by the Agreements and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on APT Project'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 Lease and Management Agreement and Management Agreement are carried out on the Growers' behalf.

49. 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 was that plantation yields will be economically viable.

50. Growers will engage the professional services of a Manager with appropriate credentials. 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.

51. There is a means to identify which trees Growers have an interest in. 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.

52. 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, 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.

53. 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 (after 1 July 2000) includes an amount relating to a GST input tax credit to which a Grower is entitled.

Sections 82KZM and 82KZMB - 82KZMD

54. 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.

55. Under the Lease and Management Agreement and Management Agreement, fees of \$5,750 per Timberlot 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.

56. 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

57. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits'. In the project, there may be a loan provided by APT Finance Pty Ltd 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 deductions otherwise allowable under section 8-1.

Part IVA

58. 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.

59. 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 of a certain magnitude that would attract the operation of Part IVA.

Detailed contents list

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Commissioner of Taxation
8 March 2000

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

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

Subject references:

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

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