PR 2001/28 - Income tax: Olea Australis Olive Project

Product Ruling
Income tax: Olea Australis Olive Project Stage II

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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.*

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

No guarantee of commercial success

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

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

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

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

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the Olea Australis Project, Stage II, or simply as 'the Project' or the 'product'.

Tax law(s)

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

- Part 2-25 (of the Income Tax Assessment Act 1997 ('ITAA 1997'));
- Section 6-5 (ITAA 1997);
- Section 8-1 (ITAA 1997);
- Section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Section 42-15 (ITAA 1997);
- Subdivision 387-B (ITAA 1997);
- Subdivision 387-C (ITAA 1997);
- Section 82KL (of the Income Tax Assessment Act 1936 ('ITAA 1936'); and
- Section 82KZL (ITAA 1936);
- Section 82KZM (ITAA 1936);
- Section 82KZMA - 82KZMD (ITAA 1936);
- Section 82KZME - 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

3. In this Ruling all fees and expenditure referred to include Goods and Services Tax ('GST') where applicable. In order for an entity (referred to in this Ruling as a Grower) to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered, or required to be registered for GST and hold a valid tax invoice.

Business Tax Reform

4. The Government is currently evaluating further changes to the tax system in response to the Ralph *Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the laws enacted at the time it was issued, future tax changes may affect the operation of those laws and, in particular, the tax deductions that are allowable. Where tax laws change, those changes will take precedence over the application of this Ruling, and to that extent, this Ruling will be superseded.

5. Taxpayers who are considering investing in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for investors in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that potential investors are fully informed of any changes in tax laws that take place after the Ruling is issued. Such action should minimise suggestions that potential investors have been negligently or otherwise misled

Class of persons

7. 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 (ie., 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'.

8. 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

9. The Commissioner rules on the precise arrangement identified in the Ruling.

10. The class of persons defined in the Ruling may rely on its contents, provided the arrangement (described below at paragraphs 15 to 38) is carried out in accordance with details described in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

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

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Date of effect

12. This Ruling applies prospectively from 28 March 2001, 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).

13. 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

14. This Product Ruling is withdrawn and ceases to have effect after 30 June 2003. 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, for arrangements entered into 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

15. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- application for a product ruling for the Olea Australis Project, dated 14 August 2000;
- draft Constitution of Olea Australis Olive Project Stage II Managed Investment Scheme, dated 31 January 2001;
- Supplemental Deed to Constitution of Olea Australis Stage II, dated 19 March 2001;
- draft Prospectus for Olea Australis –Stage II;
- draft Lease and Management Agreement between Dandaragan Olives Management Ltd (the 'Responsible Entity' or 'Manager'), Dandaragan Olives Management Ltd (the 'Lessor') and the Grower (the 'Lease and Management Agreement'), printed on 8 February 2001;
- draft Lease Agreement between Dandaragan Olive Holdings Ltd and Dandaragan Olives Management Ltd, printed on 2 March 2000 (the 'Head Lease');
- draft Agreement for Sale of Olives between Dandaragan Olives Management Ltd and Dandaragan Olives Processing Ltd, printed on 14 February 2000;
- copy of Custodian Agreement between Hayes Knight GTO Pty Ltd (Custodian) and Dandaragan Olives Management Ltd (Responsible Entity), received on 19 March 2001;
- copy of the Olea Australis Compliance Plan, dated 31 January 2001;
- copy of a finance package available through Australian Agribusiness Finance Pty Ltd;
- Draft Supplementary Prospectus dated 29 May 2001;
- Additional correspondence dated 6 October 2000, 10 October 2000, 15 December 2000, 5 February 2001, 19 February 2001, 23 February 2001, 26 February 2001, 12 March 2001, 19 March 2001, 24 May 2001 and 25 May 2001.

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

16. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of the Grower, will be a party to.

Overview

17. This arrangement is called the 'Olea Australis Olive Project Stage II'.

Location	Dandaragan, approximately 150 kilometres north of Perth in Western Australia
Type of business each participant is carrying on	Planting and cultivating olive trees on their designated 0.2 hectare olive grove(s) and harvesting the olives for sale.
Number of hectares to be put under cultivation	Balance of land from original project - up to 400 hectares
Number of olive trees per hectare	An average of 555 trees
Size of the olive groves	0.2 hectares
Number of olive trees per grove	111, on average
Expected production	First harvest expected in the year ended 30 June 2004. Expected fruit yield is between 1554 and 5600 kilograms per olive grove.
The term of investment in years	Approximately 19 years
Subscription amount per olive grove	$5,075.40 in the first year
Initial share subscription, per olive grove	5000 shares in Olea Australis Limited

18. This arrangement is the second stage of the Olea Australis Project which is the subject of an earlier product ruling, PR 2000/32.

Stage II of the Project seeks participants for the unsold portion of the original Project, and has a closing date of 22 June 2001. The Project is to carry out a large scale planting of olives, principally for the production of olive oil.

19. There is no minimum subscription under this Prospectus. The maximum subscription is 950 Olive Groves representing 190 hectares, 4,750,000 shares and 2,375,000 options in Olea Australia Limited. The Responsible Entity will accept applications for Olive Groves up to 22 June 2001 where it can complete the establishment services for all allotted Olive Groves by 30 June 2001. The Responsible Entity has undertaken that it will not accept any applications after 31 May 2001 for any additional Olive Groves which if added to the completed Groves would necessitate establishing Groves at a rate greater than 10 hectares per day. No more Olive Groves will be allotted after 22 June 2001.

20. Dandaragan Olive Holdings Ltd, a wholly owned subsidiary of Olea Australis Limited, owns the relevant land. Pursuant to a head lease it will lease the land to Dandaragan Olives Management Ltd, the Responsible Entity, for the period of the Project. The Responsible Entity will in turn lease specific 0.2 hectare parcels of land to individual Growers for the life of the Project, in accordance with the Lease and Management Agreement. The minimum holding for a Grower is one Olive Grove. For each Olive Grove subscription, the Grower or his nominee must also subscribe for 5000 shares in Olea Australis Limited. Attached to those shares are also 2,500 free options in Olea Australis Limited. If the price of the shares falls below $0.25 on the ASX at any time after the date of the Prospectus, the directors of Dandaragan Olives Management and Olea Australis Limited may, at their discretion, issue and allot Olive Groves to applicants without issuing shares or options.

21. Under the Lease and Management Agreement the Growers also appoint the Responsible Entity to perform services in relation to the establishment of the olive trees, the trellising and installation of an irrigation system, and the management of their olive groves. Growers will have an option to take possession of their olives after harvest and be responsible for processing and marketing the olives themselves. Where a Grower does not make this election, the Responsible Entity, on behalf of the Growers, will sell the olives to Dandaragan Olives Processing Ltd (‘the Processor’) at market price. The Responsible Entity has entered into a pre-sales agreement with the Processor. The Processor will purchase all of the olives produced by the Groves and marketed by the Responsible Entity.

Lease and Management Agreement

22. Under the Lease and Management Agreement, the Grower leases a defined area (as set out in Item 3 of the Schedule to the Agreement) and pays rent thereon. Under the terms of the Agreement the Grower may only use the land for the purpose of commercial olive horticulture and is not entitled to reside permanently or temporarily on the land or use it for any residential, recreational or tourism purposes.

23. Each Grower has full right, title and interest in the olive trees on its olive grove and the right to have the olives produced from the leased area sold for its benefit. At the expiration of the term the Grower will peaceably surrender and yield up to the Lessor the leased area and fixtures, free and clear of rubbish and in good repair and condition.

24. Unless the Grower has elected otherwise before 30 June 2001, or within 1 month of execution of the Lease and Management Agreement, the Responsible Entity is authorised to enter into a contract as agent of the Grower for the sale of the olives to Dandaragan Olives Processing Ltd.

25. The Grower appoints the Responsible Entity to establish, cultivate, develop, manage and maintain the Grower's olive grove(s) for the duration of the term as set out in the Agreement. The Responsible Entity is required to perform these services in a proper and efficient manner, in accordance with sound commercial practice and good horticultural practice. The Responsible Entity will arrange for the olives to be harvested and delivered up for sale, for non-electing Growers.

26. Under the terms of the Lease and Management Agreement the Manager will also monitor the olive groves in consultation with the Independent Olive Horticulturist in order to determine whether trellising needs to be removed and when, whether some olive trees need to be removed and when, and may sell these at market price.

27. The Responsible Entity will arrange public risk insurance at its own expense. It will also endeavour to arrange insurance against damage or destruction of the olive groves and improvements, on the Growers' behalf and at the Growers' expense.

Fees

28. Under the terms of the Lease and Management Agreement, a Grower will make the following payments per olive grove in the first 3 years of the Project:

Expenses	Year ended 30 June 2001	Year ended 30 June 2002	Year ended 30 June 2003
Management Fee	3,426.50	1,914.00	1,971.20
Irrigation	412.50	412.50	412.50
Olive trees costs	1,016.40	-	-
Trellising	147.40	-	-
Rent	72.60	74.80	77.00
Totals	**5,075.40**	**2,401.30**	**2,460.70**

29. The fees for the initial period up to 30 June 2001, totalling $5,075.40, are payable on application. The services to be provided in return for those fees will be completed by 30 June 2001. Subsequent years' fees will be payable by 30 September in the financial year to which they pertain, such that the fees payable in respect of the financial year ending 30 June 2002 are payable by 30 September 2001, and so on.

30. There will be ongoing costs for Growers consisting of annual management fees and rent, plus any applicable harvesting fees and insurance premiums. From the year ended 30 June 2004, the management fees will be calculated by reference to the previous year's management fee increased by the Consumer Price Index ending on 30 June of the financial year of review (the 'CPI'), or 3%, whichever is the greater. The ongoing rent after the year ended 30 June 2003 is reviewed every three years at which time it may be increased to the greater of the rent in respect of the financial year three years before increased by 3% or increased by the CPI for the 36 months ending 31 March of the financial year of review. Management fees and rent will continue to be payable by 30 September in the financial year to which they pertain.

31. There may also be additional costs for the removal of trellising and/or of trees if the Responsible Entity considers it appropriate in consultation with the Independent Olive Horticulturist, in accordance with the Lease and Management Agreement.

32. The Responsible Entity is entitled to be paid a bonus equal to 50% of the value of the land produce received each year in excess of the projected total returns per grove set out in the Prospectus.

Finance

33. Growers can either fund their investment in the Project themselves, borrow from an independent lender, or may elect to use

proposed financing packages available on a full recourse basis through Australian Agribusiness Finance Pty Ltd.

34. Finance arrangements organised with independent lenders are outside the scope of this Ruling.

35. Where a Grower borrows from Australian Agribusiness Finance Pty Ltd, two finance options are offered:

- a 3 year variable interest only (indicative interest only rate 10.75%) to fund Olive Groves only, as follows:

1st drawdown	$4,614	31 May 2001
2nd drawdown	$2,183	30 Sept 2001
3rd drawdown	$2,237	30 Sept 2002

with indicative monthly repayments of $40.89 up to 30 September 2001, $60.44 up to 30 September 2002 and $80.48 up to 31 May 2004, per Olive Grove; or

- a 3 year variable interest only (indicative interest only rate 10.75%) to fund Olive Groves and shares, as follows:

1st drawdown	$5,864	31 May 2001
2nd drawdown	$2,183	30 Sept 2001
3rd drawdown	$2,237	30 Sept 2002

with indicative monthly repayments of $104.17 up to 30 September 2001, $143.28 up to 30 September 2002 and $183.36 up to 31 May 2004, per Olive Grove.

36. Both options require a minimum subscription of 2 interests, and do not fund any GST payable by the Grower. They both require the Grower to pay a deposit of $100, application fees, stamp duty and any additional registration or legal fees that may apply in certain circumstances. Instalments are payable monthly in arrears from the date of the drawdown.

37. The loans are full recourse and the Lender may in its unfettered discretion give notice demanding the immediate payment of all unpaid loan and interest in the event of a default by the Borrower (clause 8 of the Facility Provisions).

38. 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;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than Australian Agribusiness Finance Pty Ltd, are involved or become involved, in the provision of finance to Growers for the Project.

Ruling

Assessable income

39. A Grower's share of the gross sales proceeds from the Project, less any GST payable on these proceeds, will be assessable income under section 6-5. Section 17-5 excludes from assessable income an amount relating to GST payable on a taxable supply.

40. Where a Grower elects to take possession of the olives after harvest, any olives on hand at the end of the income year will need to be accounted for in accordance with the trading stock provisions contained in Part 2-25 of ITAA 1997.

Deductions where a Grower is not registered nor required to be registered for GST

41. A Grower may claim the tax deductions outlined in the Tables below where the Grower:

- participates in the Project by 22 June 2001 to carry on the business of growing olives;
- incurs the fees shown in paragraph 28 above; and
- is not registered nor required to be registered for GST.

Fee Type	ITAA 1997 Section	Year 2001 deductions	Year 2002 deductions	Year 2003 deductions
Management Fee	8-1	$3426.50 –	$1914.00 – See Note (i) (below)	$1971.20 – See Note (i) (below)
Rent	8-1	$72.60	$74.80 - See Note (i) (below)	$77.00 - See Note (i) (below)
Interest	8-1	See Note (ii) (below)	See Note (ii) (below)	See Note (ii) (below)

Notes:

(i) Where a Grower incurs the management fees as required by the Lease and Management Agreement those fees are deductible in full in the year incurred. However, if a Grower **chooses** to prepay fees for the doing of things (e.g., the provision of management services) that will not be wholly done in the same income year as the fees are incurred, then the prepayments rules of the ITAA may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee **MUST** be determined using the formula shown in paragraphs 113 to 117 unless the expenditure is 'excluded expenditure' such as amounts of less than $1,000.

(ii) Interest incurred on loans, as described in paragraphs 35 to 38 through Australian Agribusiness Finance Pty Ltd to fund participation in the Project will be deductible as incurred. The deductibility or otherwise of interest arising from agreements entered into with other financiers is outside the scope of this Ruling. However, all Growers who finance their participation in the Project should read carefully the discussion of the prepayment rules in paragraphs 110 to 118 below as those rules may be applicable if interest is prepaid.

Tax deductions for capital expenses

42. A Grower who participates in the Project will also be entitled to the following tax deductions:

Fee type	ITAA 1997 section	Year 2001 deductions	Year 2002 deductions	Year 2003 deductions
Trellising	42-15	To be calculated - See note (iii) below	To be calculated - See note (iii) below	To be calculated - See note (iii) below
Irrigation costs	387-125	$412.50 - see note (vi) below	$412.50 - see note (vi) below	$412.50 - see note (vi) below
Establishment of horticultural plants	387-165	Nil - see note (v) below	see note (v) below	see note (v) below

(iii) The tax deduction for depreciation of trellising will depend upon whether or not the Grower is a 'small business taxpayer' (see paragraphs 75 to 77 below). A Grower who is a 'small business taxpayer' and who complies with the conditions in section 42-345, can claim an immediate deduction under section 42-167 for 100% of the cost of **trellising** the cost of which is $300 or less. Alternatively, the tax deduction for depreciation is determined using the rates in section 42-125 and the formula in either subsection 42-160(1) ('diminishing value method') or subsection 42-165(1) ('prime cost method'). The tax deduction calculated under these formulae depends upon the number of 'days owned', being the number of days in the income year in which the Grower owned an interest in the trellising and the extent to which the trellising is installed ready for use during the year. The Project's manager is to advise Growers of relevant details to calculate their depreciation deductions for the year ended 30 June 2001. Depending upon the method the Grower elects to use, the rate for calculating the tax deduction will be 13% prime cost method or 20% diminishing value method. Note: The depreciation deductions for 'small business taxpayers' discussed above apply until the introduction of the Simplified Tax System on 1 July 2001 (see paragraphs 72 to 74). For a Grower who is NOT a 'small business taxpayer' or who is a 'small business taxpayer' who does not satisfy the conditions in section 42-345, the tax deductions for

depreciation of trellising is determined using the formula in either subsection 42-160(3) ('diminishing value method') or subsection 42-165(2A) ('prime cost method'). The tax deduction calculated under these formulae depends upon the number of 'days owned', being the number of days in the income year in which the Grower owned an interest in the trellising and the extent to which each is installed ready for use during the year. The formulae use 'effective life' rather than rate to determine the deduction for depreciation. The Project's manager is to advise Growers of relevant details to calculate their depreciation deductions for the year ended 30 June 2001. A Grower who is NOT a 'small business taxpayer' has the option of allocating the trellising to a 'low value pool' and calculating the depreciation deduction under section 42-470 using the diminishing value method (see paragraphs 85 to 89 below).

(iv) A deduction is allowable under section 387-125 for capital expenditure incurred for the acquisition and installation of the irrigation system. The deduction is calculated on the basis of one third of the capital expenditure in the year in which the expenditure is incurred, and one third in each of the next 2 years of income. The amount of $1237.50 incurred on execution of the agreement is deductible over three years.

(v) A deduction is allowable under section 387-165 for capital expenditure incurred for the acquisition and establishment of the olive trees for use in a horticultural business. The deduction is allowable when the trees, as horticultural plants, enter their first commercial season. If the trees have an 'effective life' for the purposes of section 387-185 of greater than 30 years, this results in a write-off rate of rate of 7% prime cost. The Project's manager will inform Growers of when the olive trees enter their first commercial season and if and when any are removed, so that Growers can calculate their deductions accordingly.

Deductions where a Grower is registered or is required to be registered for GST

43. Where a Grower who is registered or is required to be registered for GST:

- participates in the Project by 22 June 2001 to carry on the business of growing olives;
- incurs the fees shown in paragraph 28; and
- is entitled to an input tax credit for the fees

then the tax deductions shown in the Tables above will exclude any amounts of input tax credit (Division 27 of the ITAA). See Example 1 at paragraph 125.

Section 35-55 – losses from non-commercial business activities

44. For a Grower who is an individual and who enters the Project during the year ended 30 June 2001 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2001 to 30 June 2005 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

45. This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- a Grower's business activity satisfies one of the objective tests in sections 35-30, 35-35, 35-40 or 35-45; or
- the 'Exception' in subsection 35-10(4) applies (see paragraph 102 in the Explanations part of this ruling, below).

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

47. Growers are reminded of the important statement made on Page 1 of the Product Ruling. Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be a commercially viable investment. An assessment of the Project or product from such a perspective has not been made.

Sections 82KZM, 82KZMB - 82KZMD, 82 KZME – 82KZMF, 82KL and Part IVA

48. For a Grower who participates in the Project and incurs expenditure as required by the Lease and Management Agreement the following provisions of the ITAA 1936 have application as indicated:

- expenditure by the Grower does not fall within the scope of section 82KZM (but see paragraphs 110 to 118);
- expenditure by the Grower does not fall within the scope of sections 82KZMB – 82KZMD (but see paragraphs 110 to 118);
- expenditure by the Grower does not fall within the scope of sections 82KZME – 82KZMF (but see paragraphs 110 to 118);
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained by any Grower under a tax law dealt with in this Ruling.

Cost of shares

49. Under section 8-1 of the ITAA 1997 no deduction is allowable to a Grower for the acquisition cost of the shares in Olea Australis Limited. The cost is a capital outgoing and is excluded from deductibility by subsection 8-1(2).

Explanations

Section 8-1 - ITAA 1997

50. Consideration of whether the management fees and the rent are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoing is not deductible under the second limb if it is incurred when the business has not commenced; and
- where a taxpayer merely 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 in determining whether the outgoing in question would have a sufficient connection with activities to produce assessable income.

Is the Grower carrying on a business?

51. A horticultural scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from the Project will constitute gross assessable income in their own right. The generation of business income from such a 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 olive trees and processing of the olives.

52. Generally, a Grower will be carrying on a business of an olive grower where:

- the Grower has an identifiable interest in specific growing trees coupled with a right to harvest and sell the olives produced;
- the olive grove activities are carried out on the Grower'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.

53. Under the Lease and Management Agreement, Growers have rights in the form of a lease over an identifiable area of land consistent with the intention to carry on a business of a commercial olive grower. Under the Lease and Management Agreement, Growers appoint the Responsible Entity, as Manager, to provide services such as planting. The agreement gives Growers full right, title and interest in the olives produced and the right to collect their olives after harvest or have the olives sold for their benefit.

54. Under the Agreement, Growers appoint the Manager to provide services such as planting of olive trees, the installation of trellising and irrigation, and all operations necessary to develop and maintain a mature fruit bearing tree. The Manager is also responsible for harvesting the olives, and for non-electing Growers, selling them.

55. The Lease and Management Agreement gives Growers an identifiable interest in specific trees and a legal interest in the leased

land. Growers have the right personally to process and market the olives attributed to their leased area or they may use the Manager to arrange the sale of the olives for them. Growers have a continuing interest in the trees from the time they are acquired until the end of the Project. There is a means to identify in which trees the Growers have an interest.

56. Under the Lease and Management Agreement Growers appoint Dandaragan Olives Management Ltd to manage the Project. The Manager is to provide services including the establishment and maintenance of an irrigation system and the cultivation, tending, training, pruning, fertilising, replanting, spraying and otherwise caring for the olive trees. The Manager is also responsible for harvesting the olives.

57. Growers have an obligation to use the land in question for the cultivation of olives for the purpose of olive oil production. The activities described in the Lease and Management Agreement are carried out on the Growers' behalf. The Grower's degree of control over the Manager, as evidenced by the Agreement and supplemented by the Corporations Law, is sufficient. Under the Corporations Law, Dandaragan Olives Management Ltd are required to prepare annual reports and send them to Growers within 3 months after the end of the financial year. Growers are able to terminate their agreement with the Manager in specified circumstances, such as a substantial breach by the Manager of a material obligation under the Agreement.

General indicators of a business

58. 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 in the prospectus that suggest the Project should return a 'before-tax' profit to the Growers, that is, a 'profit' in cash terms that does not depend on its calculation, on the fees in question being allowed as a deduction.

59. The outgoings in question have the requisite connection with the operations that more directly gain or produce this income. That is, the fees directly relate to the planting, tending, maintaining and harvesting of the olive trees.

60. Growers have a continuing interest in the trees from the time they are acquired until the end of the 20 year Project. There is a means to identify in which trees the Growers have an interest. The horticultural 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' activities will constitute the carrying on of a business.

61. The lease and management services associated with the grove activities relate to the gaining of income from this business, and hence have a sufficient connection to the operations by which this income is to be gained from this business. They will be deductible under paragraph 8-1(1)(a). The tests of deductibility under that paragraph are met. The exclusions in subsection 8-1(2) do not apply.

Interest deductibility

62. Some Growers may finance their participation in the Project through a loan facility with Australian Agribusiness Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of lease and management fees.

63. The interest incurred for the year ended 30 June 2001 and in subsequent years of income will be in respect of a loan to finance the Project business operations of growing olives and is therefore directly connected with the gaining of business income from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

64. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Australian Agribusiness Finance Pty Ltd is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to and examined by the Tax Office.

65. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Unless such prepaid interest is 'excluded expenditure' any tax deduction that may be allowable will be subject to the relevant prepayment provisions of the ITAA. 'Excluded expenditure' is an amount of expenditure of less than $1000.

66. The prepayments provisions are discussed in detail at paragraphs 110 to 118 of this Ruling. However, in broad terms, where interest is prepaid and the period to which the interest relates is wholly or partly outside the income year in which it is incurred, then any tax deductions that is allowable must be determined using the following formula:

$$\text{Interest} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

where the eligible service period means, generally, the period to which the interest relates.

Expenditure of a capital nature

67. Any part of the expenditure of a Grower entering into a horticultural business 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. In this Project, the cost of the olive trees and their establishment expenditure, and the costs of irrigation and trellising are considered to be capital in nature. The fees for these expenses are not deductible under section 8-1. However, this expenditure falls for consideration under the specific capital write-off provisions of the ITAA 1997.

Section 42-15: trellising expenditure

68. Growers entering into the Project incur expenditure on trellising upon which the trees are attached and are to be used on their behalf in the operation of the business. This is attached to the land as a fixture. This expenditure is of a capital nature.

69. Under section 42-15, a taxpayer can deduct an amount for depreciation of a unit of plant used for the purpose or purposes of producing assessable income where they are the owner of that plant. However, where an item is affixed to land so that it becomes a fixture, at common law it becomes part of the land and is legally, absolutely owned by the owner of the land.

70. It is, however, accepted in certain circumstances that a lessee is entitled to claim depreciation where they are considered to be the owner of those improvements. Income Tax Ruling IT 175 sets out the Australian Taxation Office's (ATO's) views on this issue. Where a lessee is considered to own the improvements under a state law, as detailed in the Ruling, or where they have a right to remove the fixture or are entitled to receive compensation for the value of the fixture, the ATO accepts the lessee is entitled to claim depreciation for the fixture.

71. Under section 42-15 Growers are entitled to depreciation deductions for expenditure relating to the acquisition and installation of trellises on the land. The timing of the deduction, however, will depend upon the date the investment is made, when the plant is installed ready for use and whether or not a Grower is a 'small business taxpayer' (see paragraphs 75 to 77).

72. For plant acquired or constructed after 11:45 a.m. by legal time in the Australian Capital Territory on 21 September 1999, accelerated rates of depreciation are no longer available except to some 'small business taxpayers'. The Government has announced that 'small

business taxpayers' who meet the conditions in section 42-345 will have access to accelerated rates of depreciation until the introduction of the proposed Simplified Tax System on 1 July 2001.

73. The immediate deduction for items of plant costing $300 or less has been removed from 1 July 2000, except for 'small business taxpayers'. The Government has announced that 'small business taxpayers' will be able to claim the immediate deduction until the introduction of the proposed Simplified Tax System.

74. The depreciation of trellising as explained in this Product Ruling is based on existing legislation and may be subject to change.

Section 960-Q: small business taxpayers

75. A 'small business taxpayer' is defined in section 960-335 of the ITAA 1997 as a taxpayer who is carrying on a business and either their 'average turnover' for the year is less than $1,000,000 or their turnover recalculated under section 960-350 is less than $1,000,000.

76. 'Average turnover' is determined under section 960-340 by reference to the average of the taxpayer's 'group turnover'. The group turnover is the sum of the 'value of business supplies' made by the taxpayer and entities connected with the taxpayer during the year (section 960-345).

77. Whether or not a Grower is a 'small business taxpayer' depends upon the individual circumstances of each Grower and is beyond the scope of this Ruling. It is the responsibility of each Grower to determine whether or not they are within the definition of a 'small business taxpayer'.

Depreciation deductions for Growers who are 'small business taxpayers'

78. The depreciation deduction available to a Grower who is a 'small business taxpayer' (see paragraphs 75 to 77) and who complies with the conditions contained in section 42-345 is calculated using the formula in either subsection 42-160(1) or subsection 42-165(1). The depreciation deduction depends on the cost of the trellising and the number of days the trellising was owned by the Grower during the income year. It also depends on the extent to which the trellising is installed ready for use during the year.

79. The deduction is calculated using a rate of 13% prime cost or 20% diminishing value. These accelerated rates of depreciation are shown in section 42-125 and apply to plant with an effective life of between 13 and 30 years. The Project Manager will advise Growers of the date that the trellising is installed and begins to be used for the purpose of producing assessable income.

80. Alternatively, under section 42-167, a Grower who is a 'small business taxpayer' can choose to claim a 100% depreciation deduction for expenditure on depreciable items of plant with a cost of $300 or less.

Depreciation deductions for Growers who are not 'small business taxpayers'

81. A Grower who is NOT a 'small business taxpayer' or is a 'small business taxpayer' who does not satisfy the conditions in section 42-345 will not be able to claim accelerated depreciation on plant used in the Project because of section 42-118. The depreciation deduction for trellising for such a Grower is calculated using the formula in either subsection 42-160(3) or subsection 42-165(2A).

82. The deduction depends on the cost of the plant, the number of days the plant was owned by the Grower during the income year and the 'effective life' of the plant. It also depends upon the extent to which the plant is installed ready for use during the year. The Project Manager will advise Growers of the date that the trellising are installed and begin to be used for the purpose of producing assessable income.

83. Subdivision 42-C provides the choice of methods for determining the 'effective life' of plant. Growers can either self-assess the effective life of plant or use the effective life specified by the Commissioner. In the schedule, the Commissioner has determined that the effective life of trellising is 20 years.

84. The Responsible Entity will advise Growers of the date the trellising is installed and ready to be used for the purpose of producing assessable income. Costs of acquisition and installation of trellises on the land will be eligible for depreciation deduction by the Growers, from that date.

Low value pool option

85. From 1 July 2000 the immediate 100% depreciation deduction for plant costing $300 or less has been replaced by a 'low value pool' arrangement for all taxpayers except 'small business taxpayers'.

86. Under subsection 42-455(1), a Grower who is not a 'small business taxpayer' can choose to allocate 'low cost plant' to a 'low value pool' in the year of acquisition. 'Low cost plant' is plant costing less than $1,000. Once the choice is made to allocate 'low cost plant' to the pool, all 'low cost plant' acquired in that income year and subsequent income years must be included in the pool (subsection 42-460(1)).

87. A 'low value pool' is depreciated using a diminishing value rate of 37.5%. However, low cost plant is depreciated at 18.75% in the year it is allocated to the pool, irrespective of the date it is allocated. The value of plant included in or disposed of from such a pool will be added to or subtracted from the value of the pool.

88. Under the Lease and Management Agreement, for each interest acquired in the Project a Grower incurs expenditure for trellising and will first be entitled to claim a deduction for depreciation in the year ended 30 June 2001. Therefore, a Grower who is not a 'small business taxpayer' will have the option of including trellising in a 'low value pool'.

89. Where a Grower acquires more than one interest in the Project the cost of the trellising could exceed $1,000 and, therefore, the trellising may not qualify as 'low cost plant. However, provided the Grower uses the diminishing value method to depreciate the trellising, the plant can be allocated to a 'low value pool' after it has been depreciated below $1,000 (paragraph 42-455(3)(b)).

Subdivision 387-B: irrigation expenditure

90. Subdivision 387-B 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 would be covered by this Subdivision.

91. The taxpayer who can claim the deduction does not have to actually own the land but can be a tenant, a lessee or licensee who is conducting a primary production business on land in Australia. Accordingly, a deduction would be available to the Growers for the cost of the irrigation system, with one third of the expenditure being allowable in the year that it is incurred and one third in each of the next two years of income (subsection 387-125(2) ITAA 1997).

92. However, a deduction under section 387-125 is denied where the Grower is entitled to claim a water facility tax offset under section 388-55 and chooses to do so. A Grower can only choose a water facility tax offset where:

- had the Grower chosen a deduction instead of the tax offset, the Grower's taxable income for the income year would have been $20,000 or less; and
- the expenditure is incurred before the end of the 2000-01 income year.

Subdivision 387-C: horticultural expenditure

93. Subdivision 387-C allows capital expenditure on establishing horticultural plants for use in an horticulture business to be written off for tax purposes. For the purpose of this Subdivision, a lessee of land carrying on a business of horticulture is treated as owning the plants growing on that land rather than the actual owner of the land.

94. The write-off under Subdivision 387-C may commence on the first day of what is to be the olive trees' first commercial season. The Manager will advise the Growers of this event, which is expected to occur in 2003/04.

95. Establishment expenditure is limited to capital expenditure. The costs of establishing an horticultural plantation may include the costs of acquiring the plants or seeds, the cost of planting the plants or seeds and the costs of ploughing, contouring, top dressing, fertilising and stone removal. Expressly excluded is expenditure incurred on draining swamps or the initial clearing of the land.

96. Under this Subdivision, where the effective life of the plant is more than 3 years, an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period.

97. The effective life of a plant is to be determined objectively and should take into account all relevant circumstances. It is estimated that the olive trees have an effective life in excess of 30 years. The write-off rate for horticultural plants with an effective life of more than 30 years is 7% (section 387-185).

98. Where the effective life of the plant is 3 years or more a deduction will not be available in a year when the plant is not owned and used as required in that year so deductions will cease if and when the plants are removed.

Division 35 – losses from non-commercial business activities

99. Under the rule in subsection 35-10(2) a deduction for a loss incurred by an individual (including an individual in a general law partnership) from certain business activities will not be allowable in an income year unless:

- the 'Exception' in subsection 35-10(4) applies;
- one of four objective tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the objective tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

100. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

101. Losses that cannot be claimed as a tax deduction because of the rule in subsection 35-10(2) are able to be offset to the extent of future profits from the business activity, or are quarantined until one of the objective tests is passed.

102. For the purposes of applying the objective tests, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'Exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than $40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

103. In broad terms, the objective tests require:

(a) at least $20,000 of assessable income in that year from the business activity (section 35-30);

(b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);

(c) at least $500,000 of real property is used on a continuing basis in carrying on the business activity in that year (section 35-40); or

(d) at least $100,000 of certain other assets are used on a continuing basis in carrying on the business activity in that year (section 35-45).

104. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum investment of one interest in the Project is unlikely to pass one of the objective tests before the income year ended 30 June 2006. Growers who acquire more than one interest in the Project may however, pass one of the tests in an earlier income year.

105. Therefore, prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

106. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, for an individual Grower who acquires an interest in the Project, the Commissioner will decide that it would be unreasonable not to exercise the second arm of the discretion in paragraph 35-55(1)(b) up to 30 June 2006.

107. The second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where:

(i) the business activity has started to be carried on; and

(ii) there is an objective expectation that the business activity of an individual taxpayer will either pass one of the objective tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

108. This Product Ruling is issued on a prospective basis (ie, before an individual Grower's business activity starts to be carried on). Therefore, if the Project fails to be carried on during the income years specified above, in the manner described in the Arrangement (see paragraphs 15 to 38), the Commissioner's discretion will not have been exercised, because one of the key conditions in paragraph 35-55(1)(b) will not have been satisfied.

109. In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- the independent market report from Market-Quest Consulting, contained in the Prospectus
- the report of the independent olive expert, Prof. Andrea Fabbri from the Parma University, contained in the Prospectus;
- the binding agreement with Dandaragan Olive Processing Ltd to purchase all the fruit produced in the orchard at market price;
- the binding agreement with Casa Olearia s.p.a. to purchase the oil produced by Dandaragan Olive Processing Ltd at market price
- other binding agreements pertaining to the operation of the Project, provided with the application.

Prepayment provisions - sections 82KZM, 82KZMA – 82KZMD, and 82KZME – 82KZMF

110. The prepayment provisions of the ITAA operate 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 of the ITAA 1997. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g., the performance of management services or the leasing of land) that is not wholly done within the same year of income as the year in which the expenditure is incurred.

111. Under the Lease and Management Agreement the first year's management fee will be incurred on execution of the Agreement. This fee is charged for providing establishment services and management services to a Grower only for the period up to 30 June 2001. Similarly, management fees for subsequent years are incurred by the Growers in the same year in which the respective services are to be provided.

112. For the purposes of this Ruling, no explicit conclusion can be drawn from the description of the arrangement, that the fee had been inflated to result in reduced fees being payable for subsequent years. The fee is expressly stated to be for a number of specified services. There is no evidence to suggest that the services covered by the fee could not be provided within the specified period.

Growers who choose to pay fees for a period in excess of that required by the Project's agreements

113. Although not required under the Lease and Management Agreement, a Grower participating in the Project may choose to prepay fees for a number of years. Where this occurs, contrary to the conclusion reached in paragraph 48 above, the prepayments provisions of the ITAA will operate to apportion the expenditure and allow an income tax deduction over the period that the prepaid benefits are provided.

114. The amount and timing of tax deductions for any prepaid Management Fees or prepaid Rent otherwise deductible under section 8-1 will depend upon when the respective amounts are incurred and what the 'eligible service period' is, as defined in subsection 82KZL(1), in relation to these amounts. The 'eligible service period' means generally, the period over which the services are to be provided. The relevant provision of the ITAA will depend on a number of factors including the amount and timing of the prepayment and, where the 'eligible service period' exceeds 13 months, whether the Grower is a 'small business taxpayer'.

115. Where a Grower participating in this Project incurs expenditure in respect of an eligible service period that ends 13 months or less from the time the expenditure was incurred, but also in respect of the doing of a thing not to be wholly done within the income year in which that expenditure has been incurred, and the other tests in section 82KZME are met, then section 82KZMF will apply in the manner set out in the formula below.

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

116. In the formula, the 'eligible service period' means, generally, the period to which the services are to be provided.

117. Where a Grower participating in this Project incurs expenditure in respect of a period that ends more than 13 months after that expenditure has been incurred, then section 82KZM will apply if the Grower is a 'small business taxpayer' or section 82KZMD if the Grower is not a 'small business taxpayer'. For a 'small business taxpayer' (see paragraphs 75 to 77) the amount and timing of the allowable deductions will then be calculated using the formula in subsection 82KZM(1) and for non-small business taxpayers using the formula in subsection 82KZMD(2). Both formulae are the same, or effectively the same as that shown in paragraph 115 above, concerning section 82KZMF.

118. A prepaid fee of less than $1,000 incurred in an expenditure year is 'excluded expenditure' as defined in subsection 82KZL(1). Subsections 82KZM(1), 82KZME(4) and 82KZMA(4) all provide that 'excluded expenditure' is an exception to the prepayment rules discussed above. Therefore, prepaid rent of less than $1,000 is deductible in full in the year in which it is incurred. However, where a Grower acquires more than one interest in the Project and the quantum of a prepaid rent is $1,000 or more, then the amount and timing of the deduction allowable must be determined using the formula shown above.

Section 82KL - recouped expenditure

119. 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' and the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

120. '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.

121. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefits'. Here, there may be a loan provided to the Grower. The loan will be provided on a full recourse basis, and on commercial terms. Insufficient 'additional benefits' will arise to trigger the application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA – general anti-avoidance provisions

122. For Part IVA to apply there must be a 'scheme' (section 177A of the ITAA 1936), a 'tax benefit' (section 177C), and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D).

123. The Project will be a 'scheme'. The Growers will obtain a 'tax benefit' from entering into the scheme, in the form of the tax deductions per leased area 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.

124. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of the fruit from the trees. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not at 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.

Example

Example 1 – entitlement to 'input tax credit'

125. Margaret, who is registered for GST, invests in the Green Circle Bluegums Project. The management fees are payable on 1 July each year for management services to be provided over the following 12 months. On 1 July 2000 Margaret pays her first year's

management fees of $5,500 and is eligible to claim a tax deduction for the fees in the income year ended 30 June 2001. The extent of her deduction for the management fees however, is reduced by the amount of any 'input tax credit' to which she is entitled. The Project Manager provides Margaret with a 'tax invoice' showing its ABN and the 'price of the taxable supply' for management services as $5,500. Using the details shown on the valid tax invoice, Margaret calculates her input tax credit as:

1/11 x $5,500 = $500

Therefore, the tax deduction for management fees that she can claim in her income tax return for the year ended 30 June 2001 is $5,000 ($5,500 *less* $500).

Detailed contents list

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

Commissioner of Taxation
28 March 2001

Previous draft:	*Related Rulings/Determinations*:
Not previously issued in draft form	PR 1999/95; TR 92/1; TR 92/20; TR 97/11; TR 97/16; TR 98/22; IT 175

Subject references:

- carrying on a business
- commencement of business
- primary production
- primary production expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters

Legislative references:

- ITAA 1997 Part 2-25
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 8-1(1A)
- ITAA 1997 8-1(2)
- ITAA 1997 17-5
- ITAA 1997 Div. 27
- ITAA 1997 Div. 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 42-15
- ITAA 1997 42-118
- ITAA 1997 42-125
- ITAA 1997 42-160(1)
- ITAA 1997 42-160(3)
- ITAA 1997 42-165(1)
- ITAA 1997 42-165(2A)
- ITAA 1997 42-167
- ITAA 1997 42-345
- ITAA 1997 42-455(1)
- ITAA 1997 42-455(3)(b)
- ITAA 1997 42-460(1)
- ITAA 1997 42-470
- ITAA 1997 Subdiv. 42-C
- ITAA 1997 Subdiv. 387-B
- ITAA 1997 Subdiv. 387-C
- ITAA 1997 387-125
- ITAA 1997 387-125(2)
- ITAA 1997 387-165
- ITAA 1997 387-185
- ITAA 1997 960-335
- ITAA 1997 960-340
- ITAA 1997 960-345
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZM(1)
- ITAA 1936 82KZMA
- ITAA 1936 82KZMA(4)
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZMD(2)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZMF
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1936 Part IVA

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