PR 2001/35 - Income tax: Braidwood Vineyard Project

Product Ruling
Income tax: Braidwood Vineyard Project

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Preamble

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

No guarantee of commercial success

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

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

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

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

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax 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 Braidwood Vineyard Project, or simply as 'the Project'.

Tax law(s)

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

- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- Section 8-1 (ITAA 1997);
- Section 17-5 (ITAA 1997)
- Division 27 (ITAA 1997);
- Section 35-10 (ITAA 1997);
- Section 35-30 (ITAA 1997);
- Section 35-35 (ITAA 1997);
- Section 35-40 (ITAA 1997);
- Section 35-45 (ITAA 1997);
- Section 35-55 (ITAA 1997);
- Section 42-15 (ITAA 1997);
- Section 387-55 (ITAA 1997);
- Section 387-125 (ITAA 1997);
- Section 387-165 (ITAA 1997);
- Section 82KL of the Income Tax Assessment Act 1936 ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- Section 82KZM (ITAA 1936);
- Sections 82KZMB – 82KZMD (ITAA 1936);
- Section 82KZME (ITAA 1936);
- Section 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 (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'.

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 16 to 42) is carried out in accordance with details described in the Ruling. If the arrangement described in this 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 4 April 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 upon 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 on 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, who entered into the specified arrangement prior to the withdrawal of the Ruling. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

Previous Ruling

15. This Ruling applies to the Project that was ruled on in Product Ruling PR 2000/111. Product Ruling PR 2000/111 is withdrawn on and from the date this Ruling is made.

Arrangement

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

- Application for Product Ruling together with attachments dated 23 February 2001;
- Draft Information Memorandum for the Braidwood Vineyard Project ("Information memorandum") received by the ATO on 27 September 2000;
- Supplementary Information Memorandum (to the above "Information Memorandum") received by the ATO on 06 March 2001;
- Draft Project Deed for Braidwood Vineyard Project ("Project Deed"), dated 25 September 2000; and
- Amending Deed (to the above "Project Deed")for Braidwood Vineyard Project ("Amending Deed") received 06 March 2001.
- Draft Memorandum of Lease ("Lease") between Sunburst Holdings Pty Limited ("Sunburst") and the Manager, received by the ATO on 27 September 2000;

- **Draft Licence and Management Agreement between each Grower and the Manager, received by the ATO on 06 March 2001;**
- Draft Constitution of Braidwood Group Ltd, dated 25 September 2000;
- Draft Constitution of Sunburst Holdings Pty Ltd, dated 25 September 2000;
- **Draft Loan Agreement between the Manager and each Grower, received 06 March 2001;**
- Draft Grape Purchase Agreement between Andrew Garrett Vineyard Estates Pty Limited ("AGVE") and the Manager, dated 25 September 2000;
- Draft Vineyard Management Agreement between the Manager and Braidwood Operations Pty Limited (the "Vineyard Manager"), dated 25 September 2000;
- Amending Agreement (to the above Draft Vineyard Management Agreement) between the Manager and Braidwood Operations Pty Limited (the "Vineyard Manager"), dated 20 February 2001;
- Letters from the applicant's representative to the ATO dated 13, 27 and 28 September and 4, 18 and 19 October 2000; and
- Letter from the manager to the ATO dated 19 October 2000.

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

17. The documents highlighted are those Growers enter into for the purpose 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, other than any finance arrangement to which paragraphs 40 to 42 apply. The effect of these agreements is summarised as follows.

Overview of the Project

18. The arrangement is called the Braidwood Vineyard Project.

Location	Nine kilometres south of the township of Mount Compass in the southern Adelaide Hills
Type of business each participant is carrying on	Planting, propagating, cultivating and developing vines on the Grower's Vineyard Lot, for commercial growing and sale of premium quality wine grapes.
Number of hectares under cultivation	81
Name used to describe the Product	Braidwood Vineyard Project.
Size of the leased area	0.5 hectare
Number of vines per half hectare	1,050
Expected production	4.0, 7.0, 11.0 and 13.5 tonnes per hectare for the years ended 30 June 2003, 2004, 2005 and 2006 to 2015 respectively.
The term of the investment in years	15 years
Initial costs per half hectare	$29,535 for the licence and management fee and $5,800 for the issue of shares in Sunburst.
Outgoing costs per half hectare	Licence and management fees for Years 2, 3 and 4 of $4,941, $5,133 and $5,562 respectively. In Year 5, a licence and management fee of $2,099 plus an amount equal to the forecasted Vineyard Operating Costs for that Year. In Years 6 to 15, a licence and management fee of $2,212 (indexed for the greater of inflation or a 2% increase in the licence and management fee for the previous Year annually) plus an amount equal to the forecasted Vineyard Operating Costs for the relevant Year.
Other costs	A performance fee payable to the Manager where the Gross Harvest Proceeds less fees exceed the projected net harvest proceeds.
Minimum subscription	80 vineyard lots

Offers to potential investors

19. There are a number of offers made to potential investors ("**Growers**") under the Information Memorandum. Potential Growers will be offered both:

(a) an interest in the Project together with ordinary shares in Sunburst; and

(b) ordinary shares in BGL.

20. For each Vineyard Lot in the Project, Growers (or their nominee) must subscribe for one ordinary share in Sunburst. It is not a requirement however that Growers accept the offer to subscribe for shares in BGL. Growers may subscribe for 1,000 ordinary shares in BGL for each Vineyard Lot acquired in the Project. The shares in Sunburst will be stapled to a Grower's interest in the Project and may only be sold where the transferee agrees to be bound by the Constitution of Sunburst, the Project Deed and a Licence and Management Agreement. The shares in BGL will be separately transferable.

21. Growers will thus own (via Sunburst) and operate the vineyard and the property on which the vineyard is located.

22. The establishment of the Project is subject to a minimum subscription of 80 Vineyard Lots.

Share subscription

23. Sunburst presently owns the land on which the Project will be conducted. Sunburst will be a wholly owned subsidiary of BGL. Growers will subscribe for ordinary shares in Sunburst and, under the Lease, Sunburst will lease the land to the Manager for 15 years.

24. Investors may also subscribe for ordinary shares in BGL.

Licence and Management Agreement

25. Under the Licence and Management Agreement, the Manager will grant each Grower a licence to use one or more Vineyard Lots with attaching water rights. Each Vineyard Lot is an individually identifiable area of 0.5 hectare of land. The licence will be granted for the purpose of enabling each Grower to use and occupy on their Vineyard Lot for the purpose of growing, cultivating and harvesting wine grapes for sale. The Grower bears the cost of establishing the vine rootlings and trellising system on their Vineyard Lot, together with a proportion of the cost of establishing the dam and irrigation system that will be used to irrigate their Vineyard Lot.

26. Under the terms of the Licence and Management Agreement, Growers will, to the extent permitted by law, own all plant, equipment and other property that is acquired by the Grower (or on its behalf) and which is installed on the Grower's Vineyard Lot. Where such items are fixtures and are thus not owned by the Grower, the Grower will have the right to either:

(a) remove any such fixtures from their Vineyard Lots at maturity of their Licence and Management Agreement; or

(b) receive compensation for the value of such fixtures, which are not removed on maturity of their Licence and Management Agreement.

27. Under Clause 9.1 of the Licence and Management Agreement, the Manager agrees to plant, develop, manage and maintain the vines on the Grower's Vineyard Lot and to harvest and sell the wine grapes produced on the Grower's Vineyard Lot. The Manager is otherwise obliged to generally manage the Grower's Vineyard Lot.

28. Each Grower will appoint the Manager to be their exclusive agent to market and sell the wine grapes produced and for this purpose will authorise the Manager to enter into the Grape Purchase Agreement on their behalf.

29. The Manager may, at its discretion, under Clause 9.2 of the Licence and Management Agreement mix all or some of the produce of one Grower's Vineyard Lot with that of another Grower's Vineyard Lot and sell such produce. The proceeds of any such mixed sales will be derived by each Grower on a proportional basis based on their number of Vineyard Lots. However the Manager may also reject and dispose of any grapes which it deems unsuitable for the production of wine and where the produce from a Grower's Vineyard Lot is of sufficiently reduced quality or quantity, that Grower's share of the mixed sale proceeds may be reduced under clause 24(g)(iv) of the Project Deed.

Grape Purchase Agreement

30. The Manager will, as agent for each Grower, enter into the Grape Purchase Agreement with AGVE. Under this agreement, AGVE will be obliged to acquire 100% of all wine grapes harvested from each Grower's Vineyard Lot.

31. The price payable for the harvested grapes under the Grape Purchase Agreement is calculated under the formula set out in clause 4 of the Grape Purchase Agreement. The effect of this formula is that half of the grapes harvested from a Grower's Vineyard Lot will be sold for $1,600 (indexed for the greater of inflation or at 2% annually)

per tonne and the balance will be sold for the weighted average farmgate price for grapes produced in the Adelaide Hills wine region of comparable quality and variety.

Vineyard Management Agreement

32. The Manager will enter into the Vineyard Management Agreement with the Vineyard Manager. Under this agreement the Vineyard Manager will be obliged to:

(a) establish and develop the vineyard;

(b) maintain and supervise all viticultural activities on the vineyard plots; and

(c) harvest and transport the grapes from the vineyard to the winery.

The Project deed

33. The Manager will be responsible for maintaining records of the activities carried out on behalf of the Grower. The Grower may inspect these records at any time. The Manager under clause 23 of the Project Deed must supply the following reports to each Grower at least once a year:

(a) Annual Experts Viticultural Report;

(b) Annual Report; and

(c) Semi Annual Report.

34. The Project Deed is intended to set out in full the legal relationships between a Grower and the Manager, on acceptance of the Grower into the Project.

35. Each Grower's name will be entered in a Growers' Register. Each Grower's name will be matched with a "uniquely identified" Vineyard Lot of 0.5 hectare.

Fees payable and work to be performed

36. The Licence and Management Fees payable in the first three years of the Project for each Vineyard Lot are as follows:

Work Performed	Year 1 Period ending 30 June 2001	Year 2 Year ending 30 June 2002	Year 3 Year ending 30 June 2003
Vineyard Establishment	$3,792	-	-
Dam	$1,953	-	-
Trellising	$1,514	-	-
Irrigation	$5,390	-	-
Licence Fee	$292	$298	$303
Vineyard Management Fee	$16,594	$4,644	$4,830

37. The Year 1 Licence and Management Fee of $29,535 is for work performed during the period commencing on the Grower entering into the Licence and Management Agreement and ending on 30 June 2001. That fee is payable by the Grower on application, but does not become a presently existing liability until such time as the minimum subscription for the Project is achieved.

38. The Licence and Management fees up to Year 4 are payable in advance by the Grower on 1 July and relate to work done during the 12 month period commencing 1 July and ending on the following 30 June.

39. If the Grower's net harvest proceeds for any of Years 5 to 15 exceed certain projected amounts (which are specified in the Information Memorandum), a performance bonus of 33% of the excess amount is payable to the Manager as an additional fee for the management of the Grower's Vineyard Lot.

Finance

40. Growers can fund their investment in the Project themselves, borrow from the Manager or borrow from an independent lender.

41. The Manager will make a $30,450 loan available to the Growers which will be drawn down in the amounts of $25,000, $2,733, $1,165 and $1,552 on the date of execution and 1 July 2001, 2002 and 2003 respectively. Loans made available by the Manager are for a term of 15 years. For the years ended 30 June 2001 to 30 June 2004 the Growers pay interest only on the principal sum and thereafter make monthly payments of principal and interest. The Manager will take immediate recovery action to secure any outstanding payments.

42. 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 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 payments of 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; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers;
- entities associated with the Project other than the Manager, are involved or become involved, in the provision of finance to Growers for the Project.

Ruling

Assessable income

43. 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.

Minimum subscription

44. A Grower will not incur the fees shown in the Tables below before the minimum subscription for the Project is reached and the Grower's application to enter the Project is accepted (the date the investment is made). Under the information memorandum, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 80 interests, is achieved. Tax deductions are not allowable until these requirements are met.

Deductions where a Grower is <u>not</u> registered nor required to be registered for GST

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

- participates in the Project by 30 June 2001 to carry on the business of growing grapes;
- incurs the fees shown in paragraph 36; and
- is not registered nor required to be registered for GST.

Fee Type	ITAA 1997 Section	Year 1 deductions	Year 2 deductions	Year 3 deductions
Management Fee	8-1	$16,594 – See Note (i) below	$4,644 – See Note (i) below	$4,830 – See Note (i) below
Licence Fee (Rent)	8-1	$292 – See Note (i) below	$298 – See Note (i) below	$303 – See Note (i) below
Interest	8-1	As incurred - See Note (ii) below	As incurred - See Note (ii) below	As incurred - See Note (ii) below

Notes:

(i) Where a Grower incurs the management fees and the licence fees as required by the Licence 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 or the leasing of land) 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 **<u>MUST</u>** be determined using the formula shown in paragraphs 103 to 110 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure', being expenditure of less than $1,000, is an 'exception' to any prepayment rules that apply and is deductible in full in the year in which it is incurred.

(ii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than the Manager (i.e., the internal financier) is outside the scope of this Ruling. However, all Growers who finance their participation in the Project other than with

the Manager should read carefully the discussion of the prepayment rules in paragraph 64 to 66 below as those rules may be applicable if interest is prepaid.

Tax deductions for capital expenses

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

Fee type	ITAA 1997 section	Year 1 deductions	Year 2 deductions	Year 3 deductions
Trellising	42-15	Must be calculated - See note (iii) below	Must be calculated - See note (iii) below	Must be calculated - See note (iii) below
Irrigation costs	387-125	$2,448 – see note (iv) and (v) below	$2,448 - see note (iv) and (v) below	$2,448 - see note (iv) and (v) below
Establishment of horticultural plants	387-165	Nil - see note (vi) below	Nil	Nil

(iii) The tax deduction for depreciation of trellising will depend upon whether or not the Grower is a 'small business taxpayer' (see paragraphs 74 to 76 below).

For a Grower who is a 'small business taxpayer' and who complies with the conditions in section 42-345, the tax deduction for depreciation of **trellising** 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 71 to 73).

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 it 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. Note: This is only applicable to plant acquired after 21 September 1999 (see paragraphs 79 to 81).

In certain circumstances, a Grower who is NOT a 'small business taxpayer' is able to allocate plant to a 'low value pool' (see paragraphs 82 to 86 below). Note: This choice is only available from 1 July 2000.

(iv) A deduction is allowable under section 387-125 for capital expenditure incurred for 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.

(v) A tax offset is available to certain low income primary producers under section 388-55 in respect of expenditure incurred on landcare operations and/or facilities to conserve or convey water. This is an alternative to claiming deductions under sections 387-55 and 387-125.

(vi) A deduction is allowable under section 387-165 for capital expenditure incurred for the acquisition and establishment of the grapevines for use in a horticultural business. The deduction is allowable when the grapevines, as horticultural plants, enter their

first commercial season. If the grapevines have an 'effective life' for the purposes of section 387-185 of greater than '13 but fewer than 30 years', this results in a write-off rate of rate of 13% prime cost. The Project's manager will inform Growers of when the grapevines enter their first commercial season.

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

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

- participates in the Project by 30 June 2001 to carry on the business of growing grapes;
- incurs the fees shown in paragraph 36; 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 at paragraph 118.

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

48. 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 2003 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.

49. 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 95 in the Explanations part of this Ruling, below).

50. Where either the Grower's business activity satisfies one of the objective tests, the discretion in subsection 35-55(1) is exercised, or the Exception in subsection 35-10(4) applies, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that

activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

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

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

52. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Lease 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 103 to 110);
- expenditure by the Grower does not fall within the scope of sections 82KZMB-82KZMD (but see paragraphs 103 to 110);
- expenditure by the Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 103 to 110);
- 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 under a tax law dealt with in this Ruling.

Explanations

Section 8-1

53. Consideration of whether the management fees and the lease fees 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 outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer contractually commits themselves to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

Is the Grower carrying on a business?

54. A viticulture scheme can constitute the carrying on of a business. Where there is a business, or a future business, the Gross Harvest Proceeds each year from grapes from vineyard lots comprising the Project will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income. These operations will be the planting, tending, maintaining and harvesting of the grapes each year from the vineyard lot. Generally, a Grower will be carrying on a business of viticulture where:

- the Grower has an identifiable interest in specific growing vines coupled with a right to harvest and sell the grapes each year from the vines;
- the viticulture 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.

55. For this Project Growers have rights under the Licence and Management Agreement in the form of a licence over an identifiable area of land consistent with the intention to carry on a business of growing vines. Under the Licence and Management Agreement Growers engage the Manager to acquire vine seedlings and plant out the seedlings on the licenced land and to provide ongoing services to care and maintain the vines. Growers are considered to have control of their operations.

56. The Licence and Management Agreement provides Growers with more than a chattel interest in the vines. The Project documentation contemplates Growers will have an ongoing interest in the vines.

57. Growers have the right to use the land in question for viticulture purposes and to have the Manager come onto the land to carry out its obligations under the Licence and Management Agreement. The Growers' degree of control over the Manager as evidenced by the Licence and Management Agreement, and supplemented by the Corporations Law, is sufficient. Under the Project, Growers are entitled to receive regular progress reports on the Manager's activities. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of breach of obligation. The viticulture activities described in the Licence and Management Agreement are carried out on the Growers' behalf.

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 contained in the Information memorandum 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.

59. Growers will engage the professional services of a manager with appropriate credentials. There is a means to identify which vines Growers have an interest in. These services are based on accepted viticulture practices and are of the type ordinarily found in viticulture ventures that would commonly be said to be businesses.

60. Growers have a continuing interest in the vines from the time they are acquired until the cessation of the Project. The viticulture 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' viticulture activities will constitute the carrying on of a business.

61. The licence fees and management fees associated with the viticulture activities will relate to the gaining of income from this business, and hence have a sufficient connection to the operations by which income (from the regular sale of grapes) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Interest deductibility

(i) Growers who use the Manager as the finance provider

62. Some Growers may finance their participation in the Project through a loan facility with the Manager. 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 grapes 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.

(ii) Growers who DO NOT use the Manager as the finance provider

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 the Manager 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 for a period that is wholly or partly outside the income year in which the income is incurred. Unless such prepaid interest is 'excluded expenditure' any tax deduction that may be allowable will be subject to the relevant prepayments provisions of the ITAA. 'Excluded expenditure' is an amount of expenditure of less than $1,000.

66. The prepayments provisions are discussed in detail at paragraphs 103 to 110 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 deduction that is allowable must be determined using the following formula;

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

In the formula, 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 viticultural business that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, the costs of trellising, irrigation, and the establishment of horticultural plants are considered to be capital in nature. The fees for these expenditures are not deductible under section 8-1. However, some of this expenditure falls for consideration under specific write-off provisions of the ITAA 1997.

Section 42-15: depreciation of trellising

68. 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 or quasi-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.

69. 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. Taxation Ruling IT 175 sets out the views of the Tax Office 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.

70. Under section 42-15 Growers in the Project are entitled to depreciation deductions for capital expenditure in relation to the acquisition and installation of trellises on the land. The deduction available, 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 74 to 76).

71. For plant acquired or constructed after 11.45am 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.

72. 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.

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

Small business taxpayers

74. 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.

75. '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).

76. Whether a Grower is a 'small business taxpayer' depends upon the circumstances of each Grower and is beyond the scope of this Product 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'

77. The depreciation deduction for **trellising** available to a Grower who is a 'small business taxpayer' 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.

78. 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.

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

79. 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).

80. 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 Manager will advise Growers of the date that the trellising is installed and begins to be used for the purpose of producing assessable income.

Determination of effective life

81. 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.

Low value pool option

82. 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'

83. 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)).

84. 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.

85. Under the Licence and Management Agreement, for each interest acquired in the Project a Grower incurs expenditure of $3,025 for trellising and will first be entitled to claim a deduction for depreciation in the year ended 30 June 2001.

86. As the cost of trellising exceeds $1,000 for a Grower who acquires a single interest in the Project it will 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

87. Section 387-125 allows a taxpayer, who is carrying on a business of primary production on land in Australia, to claim a deduction for capital expenditure on conserving or conveying water. The deduction is allowed over a three-year period and applies to plant or a structural improvement primarily or principally used for the purpose of conserving or conveying water for use in a primary production business. Irrigation systems of the kind proposed would be covered by this Subdivision.

88. As 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, a deduction would be available to a Grower in the Project at a rate of 33.3 per cent per annum for the cost of the irrigation system.

89. 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 - vines and horticultural provisions

90. Section 387-165 allows capital expenditure on establishing horticultural plants owned and used, or held ready for use, in Australia in a business of horticulture to be written off for tax purposes. A lessee or licensee of land carrying on a business of horticulture is taken to own the plants growing on that land rather than the actual owner of the land (section 387-210).

91. Under this Subdivision, if the effective life of the plant is less than three years, the expenditure can be written off in full. If the effective life of the plant is more than three years, an annual deduction is allowable on a prime cost basis during the plant's maximum write-off period. The period starts from the time the plant enters its first commercial season. The write-off rate is detailed in section 387-185. For a plant, such as the grapevines in this Project, with an effective life of 13 to 30 years, that rate is 13%.

Division 35 - losses from non-commercial business activities

92. 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.

93. 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.

94. Under the loss deferral rule in subsection 35-10(2) the relevant loss is not able to be taken into account in the calculation of taxable income in the year that the loss arose. Instead, in a later year it may be offset against any income from the same or similar business activity, or, if one of the objective tests is passed, or the Commissioner's discretion is exercised, against other income.

95. 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.

96. 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).

97. 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 until the income year ended 30 June 2004. Growers who acquire more than one interest in the Project may however, pass one of the tests in an earlier income year.

98. 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.

99. 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(s) 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) for the term of this Product Ruling.

100. 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.

101. This Product Ruling is issued on a prospective basis (i.e., 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 (see paragraph 48), in the manner described in the Arrangement (see paragraphs 16 to 42), 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.

102. 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 report of the independent viticulturist and additional expert or scientific evidence provided by the Responsible Entity with the application and

subsequently, in further information requested by the Commissioner;

- the binding Grape Purchase Agreement with AGVE for the sale of the grapes setting out prices that realistically reflect the existing market and/or the projected market in the geographical region where the grapes are grown; and
- independent, objective, and generally available information relating to the viticulture industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Prepayments provisions – sections 82KZM, 82KZMA – 82KZMD and 82KZME – 82KZMF

103. The prepayments 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. 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.

104. In this Project, the Management Fee of $16,594 and a Licence Fee of $292 per Vineyard lot will be incurred on execution of the Licence and Management Agreement. The Management Fee and the Licence Fee are charged for providing management services or licencing land to a Grower by 30 June of the year of execution of the Agreements. In particular, the Management Fee is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the Management Fee has been inflated to result in reduced fees being payable for subsequent years.

105. There is also no evidence that might suggest the management services covered by the fee could not be provided within the same year of income as the expenditure in question is incurred. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial fee is for the Manager doing 'things' that are not to be wholly done within the year of income of the fee being incurred. On this basis, provided a Grower incurs expenditure as required by the agreements as set out in paragraph 36, then the basic precondition for the operation of the prepayment provisions is not satisfied and fees will be deductible in the year in which they are incurred.

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

106. Although not required under the Licence 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 105 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.

107. The amount and timing of tax deductions for any prepaid Management Fees or prepaid Licence Fees 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'.

108. 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.

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

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

109. 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 74 to 76) 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 108 above, concerning section 82KZMF.

110. A prepaid management fee and/or a prepaid lease 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, a prepaid fee 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 management fee or a prepaid licence fee is $1,000 or more, then the amount and timing of the deduction allowable must be determined using the formula shown above.

Interest deductibility

111. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier 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.

112. 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. Under the prepayment rules contained in sections 82KZME, 'agreement' (defined in subsection 82KZME(4)) is a broad concept and will encompass activities such as a loan to finance participation in the Project and that loan is not described in the Arrangement or otherwise dealt with in the Product Ruling.

113. Therefore, unless the prepaid interest is 'excluded expenditure', where such a loan facility requires interest to be prepaid and the requirements of section 82KZME are met, relevant Growers will be required to determine any tax deduction using the formula in subsection 82KZMF(1). Where a prepayment is for a more than 13 months, any tax deduction must be determined under section 82KZM (for a 'small business taxpayer') or section 82KZMD (for a taxpayer who is not a 'small business taxpayer'). The relevant formula is the same, or effectively the same as that shown above in paragraph 108 above.

Section 82KL - recouped expenditure

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

Part IVA - general tax avoidance provisions

115. 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).

116. The Braidwood Vineyard Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 45 to 46 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

117. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of the grapes. 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

Entitlement to 'input tax credit'

118. 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

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

Commissioner of Taxation
4 April 2001

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
PR 1999/95; TR 92/1; TR 97/11; TR 97/16; TR 92/20; TR 98/22; IT 175; TD 93/34

Subject references:
- carrying on a business
- commencement of a business
- interest expenses
- harvesting expenses
- management fees
- primary production
- primary production expenses
- producing assessable income
- product rulings
- public rulings
- schemes
- tax avoidance
- tax benefits
- viticultural expenses

Legislative references:
- ITAA 1997 6-5
- ITAA 1997 8-1
- 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 Subdiv 42-C
- 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 42-345
- ITAA 1997 42-455(1)
- ITAA 1997 42-455(3)(b)
- ITAA 1997 42-460(1)
- ITAA 1997 387-55
- ITAA 1997 Subdiv 387-B
- ITAA 1997 Subdiv 387-C
- ITAA 1997 387-125
- ITAA 1997 387-165
- ITAA 1997 387-185
- ITAA 1997 387-210
- ITAA 1997 388-55
- ITAA 1997 960-335
- ITAA 1997 960-340
- ITAA 1997 960-345
- ITAA 1997 960-350
- ITAA 1936 82KL
- 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 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)

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