



# ***PR 2001/47 - Income tax: Barkworth Olives Project No. 5***

 This cover sheet is provided for information only. It does not form part of *PR 2001/47 - Income tax: Barkworth Olives Project No. 5*

 This document has changed over time. This is a consolidated version of the ruling which was published on *26 April 2001*



## Product Ruling

### Income tax: Barkworth Olives Project No. 5

---

Contents	Para
What this Product Ruling is about	1
Date of effect	12
Withdrawal	14
Arrangement	15
Ruling	40
Explanations	52
Example	106
Detailed contents list	107

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

#### **Preamble**

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

#### **No guarantee of commercial success**

---

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

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

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

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

Potential investors should be aware that the ATO will be undertaking review activities 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 Barkworth Olives Project No. 5, 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);
- Division 35 (ITAA 1997);
- Section 42-15 (ITAA 1997);
- Section 387-55 (ITAA 1997);
- Section 387-125 (ITAA 1997);
- Section 387-165 (ITAA 1997);
- Section 388-55 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- Section 82KZMB (ITAA 1936);
- Section 82KZMC (ITAA 1936);
- Section 82 KZMD (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 or a Grower/Processor) 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 their involvement as a result (as set out in the description of the arrangement). This Ruling only applies to Growers who enter into a Management Agreement with Barkworth Olives Management Limited ("BOML") and who are referred to as Growers or Grower/Processors. The Ruling does not apply to those Growers or Grower/Processors who do their own weeding, harvest their own trees or market their own olives. Moreover this Product Ruling does not apply to any Grower or Grower/Processor who receives a refund of the amount paid as harvesting/processing fees where the Responsible Entity does not process the Olives Attributable to the Grower's Farm or olives sourced externally under clause 4 of the Management Agreement.

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 the Project.

#### **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 is carried out in accordance with the 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.

11. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no Product Ruling may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601

## **Date of effect**

---

12. This Ruling applies prospectively from 26 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 on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

## **Withdrawal**

---

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, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no material difference 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 incorporates the following documents:

- Application for Product Ruling dated 21 December 2000;
- Memorandum & Articles of Association of Barkworth Olive Groves Limited (“BOGL”) dated 20 February 1997;
- Draft Prospectus for Barkworth Olives Project No 5 (“the Prospectus”) received 17 April 2001;
- **Final Management Agreement of Barkworth Olives Project No. 5 between BOML and Grower/Processors (“the Management Agreement”) dated 30 November 2000;**
- Draft Barkworth Olives Project No. 5 Constitution dated 13 December 2000;
- Barkworth Olives Project No. 5, Compliance Plan dated 19 February 2001;
- Final draft Factory Access Agreement between BOGL and Inglewood Olive Processors Limited (“the Factory Access Agreement”) dated 21 December 2000;
- Lease between BOGL (as lessor) and ARG (as lessee) (“the Lease”) executed on 15 December 1999;
- Sublease between ARG (as lessor) and BOGL (as lessee) (“the Sublease”) executed on 15 December 2000;
- **Loan Agreement between Barkworth Finance Pty Ltd (“BFPL”) and an applicant undated;**
- Additional correspondence received from the Applicant up to and including correspondence received on 2<sup>nd</sup>, 8<sup>th</sup> and 28<sup>th</sup> February 2001, 4<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> March 2001 and 3<sup>rd</sup>, 4<sup>h</sup> and 17<sup>th</sup> April 2001.

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

16. The documents highlighted are those Growers/Processors enter into or become a party to. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower/Processor, or any associate of a Grower/Processor, will be a party to, which are part of the arrangements to which this Ruling applies. The effect of these agreements is summarised as follows:

### Salient features of the project

17. This arrangement is called “Barkworth Olives Project No. 5”.

Location	see paragraph 20 below
Type of business each participant is carrying on	Commercial olive growing and olive oil production

Number of hectares under cultivation	78 hectares
Size of each grove	0.08 hectare
Minimum subscription	100 olive groves
Number of trees per hectare	250
The term of the investment	20 years
Initial cost for the period to 30 June 2002	\$7,189.60 plus \$250 for shares in the Land Owner
Initial cost per hectare	\$89,870
Ongoing costs for management, harvesting and processing	\$2,585 for year ending 30 June 2003 and a percentage of sales in each year thereafter until the project ends.

An applicant must apply for 250 \$1 "E" Class shares in Barkworth Olive Groves Limited ("BOGL"). This shareholding will entitle the applicant to a right to farm an identified area of cleared land owned by BOGL. Each farm will be approximately 0.08 hectare and will be suitable for the growing of 20 olive trees. Applicants who take up this offer will be called members. Each member will also obtain a right to process up to 1.5 tonnes of olives per annum

18. Once accepted into the project, the member may (but is not required to) appoint Barkworth Olives Management Limited ("BOML") to manage that member's farm. A member who appoints BOML is known as a Grower or a Grower/Processor.

19. The Project will not proceed unless the minimum subscription of 25,000 'E' Class shares (i.e., 100 applications) is achieved. If the minimum subscription is not achieved within four months of the date of the Prospectus shares will not be allotted and all application money will be returned within 7 days of that date. BOML will not accept applications from more than 980 interests unless there is sufficient water available.

20. The property owned by BOGL and intended to be used in this Project is comprised of 1680 hectares and is located in the Carathool Shire in the Griffith region of New South Wales. The Properties are known as Barasso (796 hectares) and Kingston Park (884 hectares). The Property Description is as follows:

AREA	DESCRIPTION	PARISH	COUNTY	TITLE REFERENCE
796	Lot 6 & 11 DP755136	Beaconsfield	Nicholson	Certificate of Title Auto Consol 14258-96
	Lot 58 DP755136	Beaconsfield	Nicholson	Certificate of Title Identifier 58/755136
	Lot 2 DP802334	Beaconsfield	Nicholson	Certificate of Title Identifier 2/802334
884	Lot 9 DP756043	Carrego	Sturt	Certificate of Title Identifier 9/756043

	Portion 11 and Part of Portion 10	Carrego	Sturt	Certificate of Title Volume 14258 Folio 97
	Lots 1 and 2 DCP133890	Carrego	Sturt	Certificate of Title Auto Consol 10866-154

### Constitution

21. The Constitution of BOGL sets out the rights of “E” Class members. These rights include the following:

- A Grower shall have a right to occupy a section of the land owned by BOGL and specified in the Company’s Constitution subject to that grower paying administration fees to BOGL.
- A Grower shall have a right to an annual processing allocation of up to 1.5 tonnes of olives, subject to that grower paying factory access fees to BOGL.
- A Grower shall be entitled to use the agricultural infrastructure necessary for the Grower’s business, including but not limited to access to irrigation mains, storage areas and access roads.
- A Grower shall be entitled to use the processing infrastructure necessary for the Grower’s business, including but not limited to loading and unloading equipment, storage areas, grading and sampling equipment.

22. A Grower may conduct that Grower’s business personally, appoint an agent or contractor to manage the business, or appoint BOML to manage the business in accordance with the Management Agreement. This Ruling only applies to a Grower who appoints BOML to manage his/her business and is a “Grower/Processor.”

23. The “E” class shares will convert to ordinary shares on 1 July 2021. At that time, the benefit of and the responsibility for the olive trees situated on a Grower’s farm will pass to BOGL. The Grower will no longer have a right to farm the land and his/her interest will only be the rights attaching to that Grower’s ordinary shares in BOGL. The taxation consequences, flowing from the events occurring after that time, do not form part of this Ruling.

### Compliance Plan

24. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Law. Its purpose is to ensure that the Responsible Entity meets its obligations as the Responsible Entity of the Project and that the rights of Growers are protected. The Compliance Plan sets out, among other things, complaints handling procedures, and the appointment, monitoring and replacement of the Custodian.

**Custodian Agreement**

25. Australian Rural Group Limited (ARGL) has agreed to act as Custodian for the Project. ARGL, as Custodian, agrees to hold the project property as agent for BOML and to observe all of the duties and obligations of an agent acting in the best interest of its principal and in a professional and business like manner. The Custodian will hold all application monies pending acceptance of an applicant into the project. The Custodian will also hold cash generated from the sale of produce prior to distribution to Grower/Processors.

**Lease Agreement**

26. Each property being the project land is covered by a lease entered into between the land owner and Australian Rural Group Limited (ARGL) as lessee. ARGL has entered into sub-leases with BOGL in order to secure the two properties for the project. The terms of the two sub-leases run until 30 June 2021.

**Licence to Use Farm**

27. By becoming a shareholder in BOGL, the Grower/Processor obtains a right to farm an identified area of cleared land of approximately 0.08 hectares. These rights contained in Clause 3.1 of Schedule 10-E of the Constitution of BOGL are reproduced on the reverse side of the Share Certificate issued to Growers by BOGL.

**Management Agreement with BOML**

28. Growers may elect to enter into a Management Agreement with BOML. Growers who do not enter into Management Agreements with BOML do not fall within the defined "Class of persons" for the purposes of this Ruling.

29. The Management Agreement is signed by BOML and the Grower/Processor (or BOGL on behalf of the Grower/Processor). The commencement date of the Management Agreement will be the date the last party to the agreement signs, however the date will not be earlier than 1 July 2001 in respect of any applicant making application after 31 May 2001.

30. Under the Management Agreement, the manager agrees to carry out duties that relate to:

- soil conditioning, fertilising and drainage of the land, planting, maintaining and marketing on the Grower/Processor's behalf; and
- ongoing management, harvesting and processing.

31. Prior to a Grower/Processor's own olives being of marketing quality, a Grower/Processor will have unused processing allocation time. Accordingly as per sub-clauses 4.1(j) and 4.3(i) of the Management Agreement BOML will endeavour to source olives from external sources to be processed during the Grower/Processor's idle processing allocation time. Where this occurs, BOML must account to the Grower/Processor for the proceeds derived during the

processing time attributable to the Grower's processing time allocation.

32. The Management Agreement also provides for the possibility that short supply of Australian grown olives may result in high prices which make some processing activities unattractive. In such a situation the Manager reserves the right to supplement its processed product by marketing imported product to provide a return to Grower/Processors which the Manager reasonable believes is most favourable. Where in any income year, no processing of raw olives is carried out during a Grower/Processor's processing allocation time, the Manager may refund the processing fee to the Grower/Processor. If this occurs, this Ruling does not apply to the Grower/Processor as he/she is not within the Class of Persons to which this Ruling applies.

33. Grower/Processors who appoint BOML may still elect to take control of the following activities on their farms:

- weeding;
- harvesting trees; and
- marketing olives and olive products.

In the event that a Grower/Processor makes any of the above elections, the management fees payable to BOML may be reduced. However, as the tax implications may be different for Grower/Processors who elect to harvest and/or market their own olives and olive products, this Ruling does not apply to any Grower/Processor who makes any of the elections noted above.

### **Fees payable**

34. The amounts to be paid under the Management Agreement by a Grower/Processor who appoints BOML as manager and does not elect to weed, harvest his/her own olives or market his/her own olives, are as follows :

#### **For a Single Grower/Processor subscribing on or before 31 May 2001**

	To BOGL	To BOML	TOTAL
<b><u>PAYABLE ON APPLICATION</u></b>	\$	\$	\$
250 \$1 shares in BOGL	<u>250.00</u>		250.00
Payment for Olive Trees		<u>99.00</u>	<u>99.00</u>
<b>Total Payable on application:</b>	<b>250.00</b>	<b><u>99.00</u></b>	<b><u>349.00</u></b>

#### **PAYABLE ON 31 MAY 2001 (for the period to 30 June 2001)**

	\$	\$	\$
Management Fee to 30 June 2001		2,538.80	2,538.80
Landcare		110.00	110.00
Planting costs		165.00	165.00
Irrigation System		<u>1127.50</u>	<u>1127.50</u>
<b>Total Payable on 31 May 2001:</b>		<b><u>3,941.30</u></b>	<b><u>3,941.30</u></b>

#### **PAYABLE ON 1 JULY 2001 (for Year 1 i.e., year ended 30 June 2002)**

	\$	\$	\$
Management Fee		962.50	962.50

Processing/Marketing Fee		1,292.50	1,292.50
Brand Licence Fee		<u>550.00</u>	550.00
Farm Administration Fees	96.80		96.80
Factory Access Fees	<u>247.50</u>		<u>247.50</u>
<b>Total Payable on 1 July 2001:</b>	<b><u>344.30</u></b>	<b><u>2,805.00</u></b>	<b><u>3,149.30</u></b>

**PAYABLE ON 1 JULY 2002** (for Year 2 i.e., year ended 30 June 2003)

	\$	\$	\$
Management Fees		962.50	962.50
Processing/Marketing Fee		<u>1,292.50</u>	1,292.50
Brand Licence Fee (see note (a) below)			
Farm Admin Fees	82.50		82.50
Factory Access Fees	<u>247.50</u>		<u>247.50</u>
<b>Total Payable on 1 July 2002:</b>	<b><u>330.00</u></b>	<b><u>2,255.00</u></b>	<b><u>2,585.00</u></b>

**TOTAL PAYABLE**

for the period to 30 June 2003:	<u>\$924.30</u>	<u>\$9,100.30</u>	<u>\$10,024.60</u>
---------------------------------	-----------------	-------------------	--------------------

**For a Single Grower/Processor investing after 31 May 2001 the commencement date of Management Agreement will not be earlier than 1 July 2001 and the following amounts will be payable**

	To BOGL	To BOML	TOTAL
<b><u>PAYABLE ON APPLICATION</u></b>	\$	\$	\$
250 \$1 shares in BOGL	<u>250.00</u>		250.00
Payment for Olive Trees		<u>99.00</u>	<u>99.00</u>
<b>Total Payable on application:</b>	<b><u>250.00</u></b>	<b><u>99.00</u></b>	<b><u>349.00</u></b>

**PAYABLE WITHIN 2 MONTHS OF APPLICATION**

<b>(for the period to 30 June 2002)</b>	\$	\$	\$
Management Fee		3,501.30	3,501.30
Processing/Marketing Fee		1,292.50	1,292.50
Landcare		110.00	110.00
Planting costs		165.00	165.00
Brand Licence Fee		550.00	550.00
Irrigation System		<u>1,127.50</u>	1,127.50
Farm Admin Fees	96.80		96.80
Factory Access Fees	<u>247.50</u>		<u>247.50</u>
<b>Total Payable w/i 2 mths of application:</b>	<b><u>344.30</u></b>	<b><u>6,746.30</u></b>	<b><u>7,090.60</u></b>

**PAYABLE ON 1 JULY 2002** (for the period to 30 June 2003)

	\$	\$	\$
Management Fees		962.50	962.50
Processing/Marketing Fee		<u>1,292.50</u>	1,292.50
Brand Licence Fee (see note (a) below)			
Farm Admin Fees	82.50		82.50
Factory Access Fees	<u>247.50</u>		<u>247.50</u>
<b>Total Payable on 1 July 2002:</b>	<b><u>330.00</u></b>	<b><u>2,255.00</u></b>	<b><u>2,585.00</u></b>

**TOTAL PAYABLE**

for the period to 30 June 2003:                      \$925.30                      \$9,100.30                      \$10,024.60

**Notes:**

- (i) Brand Licence Fee for year ended 30 June 2003 is the lesser of \$550 or the gross income generated from the sale of processed olives attributable to the Grower/Processor's allocation.

**Additional fees payable to Land Owner (BOGL) for years ended 30 June 2004 to 2021**

Farm administration fee	10% of the gross income generated from the sale of raw olive produce from the Grower's farm plus GST
Factory access fee	15% of the gross income generated from the sale of olive products processed under the member's processing allocation plus GST

**Additional fees payable to Olive Grove Manager (BOML) for the years as specified****Year ended 30 June 2004**

Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's allotment
------------------------------	--

**Years ended 30 June 2005 to 30 June 2006**

Management fee	90% of gross income generated from the sale of the raw olives attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's processing allocation

**Year ended 30 June 2007**

Management fee	60% of gross income generated from the sale of the raw olives attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's processing allocation

**Year ended 30 June 2008**

Management fee	50% of gross income generated from the sale of the raw olives
----------------	---

	attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's processing allocation

**Years ended 30 June 2009 to 30 June 2021**

Management fee	40% of gross income generated from the sale of the raw olives attributable to the Grower/Processor's allotment
Processing and marketing fee	70% of gross income generated from the sale of processed olives attributable to the Grower/Processor's processing allocation

**Finance**

35. A Grower may finance his or her participation from:

- the Grower's own cash reserves/resources;
- funds borrowed by the Grower from such external sources which the Grower arranges; or
- funds borrowed (by approved applicants) from Barkworth Finance Pty Ltd ("BFPL").

Funds from all loans approved and advanced by BFPL in relation to Grower/Processors in this project will be disbursed to BOML and BOGL on the Grower/Processor's behalf in payment of the fees payable. This finance will be offered with a maximum term of 4 years and an interest rate of 7.5% per annum will apply. A minimum cash payment or deposit of \$1,000 per interest will be required. The principle and interest will be repayable by monthly instalments over the term of the loan. The loan will be on a "full recourse" basis. Interest will be payable monthly in arrears and will not be prepaid.

36. This Ruling does not apply if a Grower/Processor enters into a finance agreement that includes any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- entities associated with the Project, other than BFPL, are involved in the provision of finance for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- additional benefits will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-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) back to the lender or any associate; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

### **Income**

37. Under the arrangement income will be received from two activities and from dividends paid on the BOGL “E” Class Shares. Income from the sale of raw olives, processed olives and pickled olives produced from the Grower/Processor’s own olives, is derived from a business of primary production. Income received from processing carried out during the Grower/Processor’s unused processing time allocations may be attributable to olives from other sources. Such income will not be income from Primary Production.

38. BOML will advise Grower/Processors within a reasonable time after the end of each financial year of the amount attributable to each type of income.

### **Trading Stock**

39. A Grower/Processor who elects to do his/her own harvesting or processing or has entered into the Management Agreement with BOML to process and market the olives attributable to his/her own olive grove may have trading stock on hand at the end of the financial year. Externally sourced olives processed during a Grower/Processor’s processing allocation time will not be trading stock of the Grower/Processor.

## **Ruling**

---

### **Assessable Income**

40. A Grower/Processor’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. Dividends from “E” Class Shares in BOGL will constitute assessable income under section 44 of the ITAA 1936

### **Minimum subscription**

41. A Grower/Processor will not incur the fees shown in the Table(s) 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 prospectus, a Grower/Processor’s application will not be accepted and the Project will not proceed until the minimum

subscription of 100 interests is achieved. Tax deductions are not allowable until these requirements are met. If the Project's minimum subscription requirements (described above) are reduced or altered in any way (for example, through the issue of a supplementary prospectus), this Product Ruling, including the deductions it describes, will have no application to any Grower/Processor.

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

42. A Grower/Processor may claim tax deductions in the Table(s) below where the Grower/Processor:

- participates in the Project by 31 May 2001 to carry on the business of growing olives;
- incurs the fees shown in paragraph 34;
- does not elect to weed his/her own farm, harvest his/her own olives or market his/her own olives; and
- is not registered nor required to be registered for GST.

Paid to	Fee Type	ITAA 1997 Section	30/6/2001	30/6/2002	30/6/2003
BOML	Management Fee	8-1	\$2,538.80	\$962.50 See Note (i) below	\$962.50 See Note (i) below
	Processing & Marketing	8-1		\$1,292.50 See Note (i) below	\$1,292.50 See Note (i) below
	Brand Licence	8-1		\$550.00 See Note (i) below	See notes (i) and (ii) below
BOGL	Farm Administration	8-1		\$96.80 See Note (i) below	\$82.50 See Note (i) below
	Factory Access	8-1		\$247.50 See Note (i) below	\$247.50 See Note (i) below
	Interest	8-1	As incurred - See Note (iii) below	As incurred - See Note (iii) below	As incurred - See Note (iii) below

43. A Grower/Processor may claim tax deductions in the Table(s) below where the Grower:

- participates in the Project after 1 June 2001 to carry on the business of growing olives (the Management Agreement commences on or after 1 July 2001);
- incurs the fees shown in paragraph 34;
- does not elect to weed his/her own farm, harvest his/her own olives or market his/her own olives; and
- is not registered nor required to be registered for GST.

Paid to	Fee Type	ITAA 1997 Section	30/6/2001	30/6/2002	30/6/2003
BOML	Management Fee	8-1		\$3,501.30 See Note (i) below	\$962.50 See Note (i) below
	Processing & Marketing	8-1		\$1,292.50 See Note (i) below	\$1,292.50 See Note (i) below
	Brand Licence	8-1		\$550.00 See Note (i) below	See notes (i) and (ii) below
BOGL	Farm Administration	8-1		\$96.80 See Note (i) below	\$82.50 See Note (i) below
	Factory Access	8-1		\$247.50 See Note (i) below	\$247.50 See Note (i) below
	Interest	8-1	As incurred - See Note (iii) below	As incurred - See Note (iii) below	As incurred - See Note (iii) below

**Notes:**

- (i) Where a Grower/Processor incurs the management fees and other fees as required by the Management Agreement those fees are deductible in full in the year incurred. However, if a Grower/Processor **chooses** to prepay fees for the doing of things (e.g., the provision of management services or the processing and marketing of olives) 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 87 to 94 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. However, where a Grower acquires more than one interest in the Project and the quantum of a prepaid management fee or a prepaid lease fee is \$1,000 or more, then the amount and timing of the deduction allowable must be determined using the formula shown in paragraph 92 below.

- (ii) The Brand Licence Fee for the year ended 30 June 2003 is the lesser of \$550 or the gross income generated from the sale of processed olives attributable to the Grower/Processor's allocation.
- (iii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than Barkworth Finance Pty Ltd (BFPL) is outside the scope of this Ruling. However, all Grower/Processors who finance their participation in the Project other than with BFPL should read carefully the discussion of the prepayment rules in paragraph 63 to 65 below as those rules may be applicable if interest is prepaid.

### **Tax deductions for capital expenses**

44. A Grower/Processor who participates in the Project by 31 May 2001 will also be entitled to the following tax deductions:

<b>Fee type</b>	<b>ITAA 1997 section</b>	<b>Year 1 deduction s30/6/2001</b>	<b>Year 2 deduction s30/6/2002</b>	<b>Year 3 deduction s30/6/2003</b>
Landcare operations	387-55	\$110 see note (iv) and (vi) below		
Irrigation costs	387-125	\$376 see note (v) and (vi) below	\$376 see note (v) and (vi) below	\$376 see note (v) and (vi) below
Establishment of horticultural plants	387-165	Nil - see note (vii) below	Nil - see note (vii) below	Nil - see note (vii) below

Where a Grower/Processor joins after 31 May 2001, the Management Agreement will be signed on or after 1 July 2001. In these circumstances the deductions listed above will be moved forward one year, with Year 1 deductions equating with the Year ended 30 June 2002 etc.

### **Notes:**

- (iv) A deduction is allowable under section 387-55 for capital expenditure incurred for landcare operations.

- The deduction is allowed in the year that the expenditure is incurred.
- (v) 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.
  - (vi) 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.
  - (vii) A deduction is allowable under section 387-165 for capital expenditure incurred for the acquisition and establishment of olive trees for use in a horticultural business. The deduction is allowable when the olive trees, as horticultural plants, enter their first commercial season. If the olive trees 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 7% prime cost. The Project's manager will inform Grower/Processors of when the olive trees enter their first commercial season.

### **Deductions where a Grower/Processor is registered or is required to be registered for GST**

45. Where a Grower/Processor who is registered or is required to be registered for GST:

- participates in the Project by 30 June 2002 to carry on the business of growing olives;
- incurs the fees shown in paragraph 34;
- does not elect to weed, harvest their own olives or market their own olives; and
- is entitled to an input tax credit for the fees

then the tax deductions shown in the Table(s) above will exclude any amounts of input tax credit (Division 27 of the ITAA). See Example 1 at paragraph 106.

### **Division 35 – Deferral of losses from non-commercial business activities**

#### **Section 35-55 – Commissioner's discretion**

46. For a Grower/Processor who is an individual and who is accepted into the Project the rule in section 35-10 may apply to the business activity comprised by his/her 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 for Grower/Processors who are accepted both before and after 31 May 2001 provided that the Project is carried out in the manner described in this Ruling.

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

- a Grower/Processor'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 79 in the Explanations part of this ruling, below).

48. Where either the Grower/Processor'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/Processor 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.

49. Grower/Processors are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Grower/Processors 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 the product from this perspective has not been made.

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

50. For a Grower/Processor 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 87 to 94);
- expenditure by the Grower does not fall within the scope of sections 82KZMB-82KZMD (but see paragraphs 87 to 94);
- expenditure by the Grower does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 87 to 94);
- 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.

### **Trading Stock**

51. The value of all unsold table olives, raw olives, processed olives, pickled olives, olive oil and any other oil extraction on hand at the end of the financial year must be brought to account as trading stock of the Grower/Processor where the Grower/Processor has a dispositive power over the produce.

## **Explanations**

### **Section 8-1**

52. Consideration of whether the management fee, processing and marketing fee, brand licence fee, farm administration fee and factory access 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 himself/herself 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?**

53. Olive growing activities can constitute the carrying on of a primary production business. Where there is a business, or a future business, the gross sale proceeds each year from olives and/or olive oil from a Grower/Processor's own olive grove 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 olives each year from the olive grove. Generally, a

Grower/Processor will be carrying on a business of growing olives where:

- the Grower has an identifiable interest in specific growing olive trees coupled with a right to harvest and sell the olives produced each year;
- the olive growing 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.

54. The Constitution of BOGL confers rights associated with the "E" Class Shares in BOGL. Grower/Processors have rights to use and occupy an identifiable area of land ("grove") consistent with the intention to carry on a business of commercial olive growing and the right to have olives processed into olive oil.

55. Under the Management Agreement, Grower/Processors appoint the Responsible Entity (BOML) as manager to provide services such as cultivating and harvesting the olives and marketing the olive oil.

56. Under the Constitution, Grower/Processors have the right to use the land in question for the cultivation of olives for the purpose of olive oil production. The activities described in the Management Agreement are carried out on the Growers/Processor's behalf. The Grower/Processors' degree of control over the Manager, as evidenced by the Management Agreement and supplemented by the Corporations Law, is sufficient. Under the Corporations Law, the Responsible Entity is 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 which is not remedied within 3 months after the Grower serves a notice requiring it to be remedied.

57. 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 Prospectus that suggest the Project should return a 'before-tax' profit to the Grower/Processor, i.e., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

58. Grower/Processors will engage the professional services of a manager with appropriate credentials. There is a means to identify the grove in which Grower/Processors have an interest. These services are based on accepted horticultural practices and are of the type

ordinarily found in horticultural ventures that would commonly be said to be businesses.

59. Grower/Processors have a continuing interest in their grove from the time they are acquired until the cessation of the Project. The olive growing 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 Grower/Processors' olive growing activities will constitute the carrying on of a business.

60. The brand licence fees, management fees, processing and marketing fees, farm administration fee and factory access fee associated with the olive 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 olives) 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 fees appear 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, and the exclusions do not apply. Revenue derived from the throughput of externally sourced olives during a Grower/Processor's processing time allocation would be considered to be non-primary production business income.

### **Interest deductibility**

#### ***(i) Grower/Processors who use BFPL as the finance provider***

61. Some Growers may finance their participation in the Project through a loan facility with BFPL. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of management fees.

62. 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.

#### ***(ii) Grower/Processors who DO NOT use BFPL as the finance provider***

63. The deductibility of interest incurred by Grower/Processors who finance their participation in the Project through a loan facility with a bank or financier other than BFPL 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 Australian Tax Office.

64. 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 interest 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.

65. The prepayment provisions are discussed in detail at paragraphs 87 to 94 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**

66. Any part of the expenditure of a Grower/Processor entering into an olive grove 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 landcare, 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, expenditure on these aspects falls for consideration under specific write-off provisions of the ITAA 1997.

### **Subdivision 387-A - Expenditure for landcare operations**

67. Section 387-55 allows a taxpayer a deduction for capital expenditure incurred on a landcare operation for land used to carry on a primary production business. Grower/Processors need not own the land to qualify for the deduction, so long as it is used by them to carry on a primary production business.

68. 'Landcare operation for land' includes construction of surface and subsurface drainage works on the land primarily and principally for controlling salinity or assisting in drainage control

69. Under the Management Agreement a Grower incurs expenditure for landcare operations on the Olive Groves. In this Project there will be no delay between the execution of the relevant agreements and the commencement of 'business operations' on the Grower/Processor's behalf. Accordingly, a Grower/Processor's primary production business will have commenced at the time the expenditure in question has been incurred, and the requirements of section 387-55 will have been satisfied.

70. However, a deduction under section 387-55 is denied where the Grower/Processor is entitled to claim a landcare tax offset under section 388-55 and chooses to do so. A Grower/Processor can only choose a landcare tax offset where:

- had the Grower/Processor chosen a deduction instead of the tax offset, the Grower/Processor'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-B – Irrigation expenditure**

71. 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.

72. 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/Processor in the Project at a rate of 33.3 per cent per annum for the cost of the irrigation system.

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

- had the Grower/Processor chosen a deduction instead of the tax offset, the Grower/Processor'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 - Olive trees and horticultural provisions**

74. 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 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).

75. 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 olive trees in this Project, with an effective life of 30 years or more, that rate is 13%.

**Division 35 – Deferral of losses from non-commercial business activities**

76. 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.

77. 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.

78. Under the loss deferral rule in subsection 35-10(2) the relevant loss is not to be taken into account in the calculation of taxable income in the year that 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 exercised, against other income.

79. 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.

80. 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).

81. A Grower/Processor 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/Processor 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 2006 for Grower/Processors who invest both before and after 31 May 2001.

82. 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/Processor's participation in the Project.

83. 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/Processor 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.

84. 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.

85. 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 and in the manner described in the Arrangement, 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.

86. 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 expert provided with the application by the Responsible Entity;
- the Report of a Market Study of the Olive Industry provided with the application by the Responsible Entity;
- independent, objective, and generally available information relating to the olive 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**

87. 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.

88. In this Project, the Management Fee of \$2538.80 per olive grove will be incurred on execution of the Management Agreement. The Management Fee is charged for providing management services 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.

89. 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/Processor incurs expenditure as required by the agreements 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.

**Grower/Processors who choose to pay fees for a period in excess of that required by the Project's agreements**

90. Although not required under the Management Agreement, a Grower/Processor participating in the Project may choose to prepay fees for a number of years. Where this occurs, contrary to the conclusion reached in paragraph 89 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.

91. The amount and timing of tax deductions for any prepaid 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/Processor is a 'small business taxpayer'.

92. Where a Grower/Processor 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.

Expenditure x Number of days of eligible service period in the year of income

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.

93. Where a Grower/Processor 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/Processor is a 'small business taxpayer' or section 82KZMD if the Grower/Processor is not a 'small business taxpayer'. For a 'small business taxpayer' (see paragraphs 95 to 97) 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 92 above, concerning section 82KZMF.

94. A prepaid management fee, processing and marketing fee, brand licence fee, farm administration fee and factory access fee of less than \$1,000 incurred in an expenditure year is 'excluded expenditure' as defined in subsection 82KZL(1). Subsections 82KZM(1), 82KZME(7) 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/Processor acquires more than one interest in the Project and the quantum of a prepaid management fee or a prepaid lease fee is \$1,000 or more, then the amount and timing of the deduction allowable must be determined using the formula shown in paragraph 92 above.

### **Small business taxpayers**

95. 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.

96. '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).

97. Whether a Grower/Processor 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/Processor to determine whether or not he/she are within the definition of a 'small business taxpayer'.

### **Interest deductibility**

98. The deductibility of interest incurred by Grower/Processors 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.

99. 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.

100. 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 92 above.

#### **Section 82KL - recouped expenditure**

101. 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**

102. 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).

103. The Barkworth Olives Project No 5 will be a 'scheme'. A Grower/Processor will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 42 to 45 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.

104. Grower/Processors 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 olives and/or olive oil production. 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.

**Trading Stock**

105. Olives are not trading stock until severed from the tree. Grower/Processors retain dispositive power over their produce. Once harvested and/or processed, any unsold produce on hand at the end of each financial year must be brought to account by the Grower/Processor as trading stock.

**Example****Example 1 – Entitlement to ‘input tax credit’**

106. 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:

$$1/11 \times \$5,500 = \$500$$

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**

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Tax law(s)	2
Goods and Services Tax	3
Business Tax Reform	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
<b>Date of effect</b>	<b>12</b>
<b>Withdrawal</b>	<b>14</b>

<b>Arrangement</b>	<b>15</b>
Salient features of the project	17
Constitution	21
Compliance plan	24
Custodian Agreement	25
Lease Agreement	26
Licence to Use Farm	27
Management Agreement with BOML	28
Fees payable	34
Finance	35
Income	37
Trading Stock	39
<b>Ruling</b>	<b>40</b>
Assessable Income	40
Minimum Subscription	41
Deductions where a Grower is not registered nor required to be registered for GST	42
Tax deductions for capital expenses	44
Deductions where a Grower is registered or required to be registered for GST	45
Division 35 – Deferral of losses from non-commercial business activities	46
Section 35-55 – Commissioner’s discretion	46
Sections 82KZM, 82KZMB - 82KZMD, 82KZME and 82KZMF, 82KL and Part IVA	50
Trading Stock	51
<b>Explanations</b>	<b>52</b>
Section 8-1	52
Is the Grower carrying on a business?	53
Interest deductibility	61
<i>(i) Grower/Processors who use BFPL as the finance provider</i>	61
<i>(ii) Grower/Processors who DO NOT use BFPL as the finance provider</i>	63
Expenditure of a capital nature	66
Subdivision 387-A – Expenditure for landcare operations	67
Subdivision 387-B – Irrigation expenditure	71
Subdivision 387-C – Olive trees and horticultural provisions	74
Division 35 – Deferral of losses from non-commercial business activities	76
Prepayment provisions - Section 82KZM, 82KZMA to 82KZMD, 82KZME and 82KZMF	87
Grower/Processors who choose to pay fees for a period in excess of that required by the Project’s agreements	90

Small business taxpayers	95
Interest deductibility	98
Section 82KL – recouped expenditure	101
Part IVA – general tax avoidance provisions	102
Trading Stock	105
<b>Examples</b>	<b>106</b>
Example 1 – Entitlement to ‘input tax credit’	106
<b>Detailed contents list</b>	<b>107</b>

**Commissioner of Taxation**

26 April 2001

<i>Previous draft:</i>	- ITAA 1936 82KZME(4)
Not previously issued in draft form.	- ITAA 1936 82KZME(7)
	- ITAA 1936 82KZMF
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZMF(1)
PR 98/1; PR 1999/27; PR 2000/39;	- ITAA 1936 Pt IVA
TR 92/1; TR 92/20; TR 94/13;	- ITAA 1936 177A
TR 95/33; TR 97/11; TR 97/16; TD	- ITAA 1936 177C
93/34; TR 98/22 ; TR 2000/8	- ITAA 1936 177D
	- ITAA 1936 177D(b)
<i>Subject references:</i>	- ITAA 1997 6-5
- carrying on a business	- ITAA 1997 8-1
- commencement of business	- ITAA 1997 17-5
- fee expenses	- ITAA 1997 Div 27
- interest expenses	- ITAA 1997 27-5
- management fees	- ITAA 1997 Div 35
- producing assessable income	- ITAA 1997 35-10
- product rulings	- ITAA 1997 35-10(2)
- public rulings	- ITAA 1997 35-10(3)
- taxation administration	- ITAA 1997 35-10(4)
- tax avoidance	- ITAA 1997 35-30
- tax benefits under tax avoidance schemes	- ITAA 1997 35-35
- tax shelters	- ITAA 1997 35-40
- tax shelters project	- 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)
<i>Legislative references:</i>	- ITAA 1997 Subdiv 387-A
- ITAA 1936 44	- ITAA 1997 387-55
- ITAA 1936 82KL	- ITAA 1997 Subdiv 387-B
- ITAA 1936 82KZL	- ITAA 1997 387-125
- ITAA 1936 82KZL(1)	- ITAA 1997 387-C
- ITAA 1936 82KZM	- ITAA 1997 387-165
- ITAA 1936 82KZM(1)	- ITAA 1997 387-185
- ITAA 1936 82KZMA	- ITAA 1997 387-210
- ITAA 1936 82KZMA(4)	- ITAA 1997 388-55
- ITAA 1936 82KZMB	- ITAA 1997 Subdiv 960-Q
- ITAA 1936 82KZMC	- ITAA 1997 960-335
- ITAA 1936 82KZMD	- ITAA 1997 960-340
- ITAA 1936 82KZMD(2)	- ITAA 1997 960-345
- ITAA 1936 82KZME	

- ITAA 1997 960-350

---

ATO references:

NO 2001/000907

BO

FOI number: I 1024725

ISSN: 1441 1172