



# ***PR 2001/54 - Income tax: Kiri Park Project No. 2***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *2 May 2001*



## Product Ruling

### Income tax: Kiri Park Project No. 2

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

#### **Preamble**

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

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

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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**

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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 Kiri Park Project No. 2, or just simply as 'the Project'.

### Tax law(s)

2. The tax law(s) dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
  - section 8-1 (ITAA 1997);
  - section 17-5 (ITAA 1997);
  - Division 27 (ITAA 1997);
  - Division 35 (ITAA 1997);
  - section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
  - section 82KZL (ITAA 1936);
  - section 82KZM and sections 82KZMB - 82KZMD (ITAA 1936);
  - sections 82KZME – 82KZMF (ITAA 1936); and
  - Part IVA (ITAA 1936).

### Goods and Services Tax

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

### Business Tax Reform

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the laws enacted at

the time it was issued, future tax changes may affect the operation of those laws and, in particular, the tax deductions that are allowable. Where tax laws change, those changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

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

### **Note to promoters and advisers**

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

### **Class of persons**

7. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (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 15 to 49) is carried out in accordance with the details described in the Ruling. If the arrangement is materially different from the arrangement that is carried out:

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

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## Date of effect

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12. This Ruling applies prospectively from 2 May 2001, the date the Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

13. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, the Product Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

## Withdrawal

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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 change in the arrangement or in the persons' involvement in the arrangement.

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## Arrangement

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

- Application for Product Ruling dated 15 January 2001;
- The Kiri Park Project No. 2 Draft Prospectus, undated;
- Draft Constitution of the Kiri Park Project No. 2;
- Draft Responsible Entity Services Agreement for the Kiri Park Project No. 2 between Environmental Forest Farms Management Ltd (the “Manager”) and Primary Securities Ltd (the “Responsibility Entity”), undated;
- Draft Head Lease between Powton Land Holdings Ltd (the “Lessor”) and Environmental Forest Farms Management Ltd (the “Lessee”);
- **Draft Management Agreement for the Kiri Park Project No. 2 between each Grower and Environmental Forest Farms Management Ltd (the “Manager”), Primary Securities Ltd (the “Responsible Entity”) and Primary Securities Ltd (the “Bare Trustee”);**
- **Draft Sub-Lease Agreement for the Kiri Park Project No.2 between Environmental Forest Farms Management Ltd (the “Sub-lessor”), Primary Securities Ltd (the “Responsible Entity”) and each Grower;**
- **Offer of Loan between Powton Land Holdings Ltd (the “Lender”) and the Grower, undated;**
- **Finance Agreement between EFF Ltd (the “Lender”) and the Borrower, undated;**
- The Custodian Agreement dated 8 February 2000 between Primary Securities Ltd (the “Responsible Entity”) and Hayes Knight GTO Pty Ltd (the “Custodian”);
- Draft Compliance Plan for the Kiri Park Project No. 2 and other Paulownia Projects, undated;
- Additional correspondence dated 30 March 2001 and 12 April 2001; and
- Additional information dated 8 April 2001 and 17 April 2001.

**Note:** certain information received from Primary Securities Ltd 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 the Growers enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of the Grower, will be a party to, with the exception of finance agreements, to which paragraphs 46 to 49 apply. The effect of these agreements is summarised as follows.

### Overview

17. This arrangement is known as the Kiri Park Project No. 2.

Location	150 kms north of Perth in Western Australia in the Shire of Gingin.
Type of business each participant is carrying on	Commercial growing and cultivation of Paulownia trees for the purpose of producing high quality commercial timber.
Number of hectares under cultivation	169
Name used to describe the product	Kiri Park Project No. 2
Size of each Woodlot	A minimum of 0.135 hectares
Number of trees per hectare	A maximum of 740 trees
Expected production	70.8 cubic metres of timber in sawn form / Woodlot
The term of the investment	10 years
Initial cost	\$8,663.60 plus \$600 to acquire shares in the Lessor.
Initial cost per hectare	\$64175
Ongoing costs	Sub-Lease and Management Fees.

18. Growers applying under the Prospectus enter into a Sub-Lease Agreement and a Management Agreement for the Kiri Park Project No. 2. The Sub-Lease Agreement provides for the sub-lease of the project land known as Kiri Park being:

- (a) Lot M 1254 of diagram 5564 contained in Certificate of Title volume 1807 Folio 985.

19. Under this arrangement Growers sub-lease an area of land called a 'Woodlot' until the final distribution of sale proceeds is made to the Grower or until the Project is terminated. Each Woodlot is 0.135 hectares in size and will be planted with at least 100 trees (740 per hectare).

20. Overall, it is proposed to plant 169 hectares representing 1,250 Woodlots. These woodlots are separately identified in a plan of the Plantation. There is no minimum subscription for the Project. Growers wishing to participate in the Project during the 2000/2001 income year must apply by 31 May 2001. From 1 June 2001 Primary Securities Ltd will not accept applications for any Woodlots where it is apparent that they will not be able to complete all of the services by 30 June 2001. Primary Securities Ltd will be monitoring on a daily basis its ability to complete the services by 30 June 2001. Applications of Growers processed on or after 1 July 2001 and prior to the closing date of the Prospectus will commence participation in the Project in the 2001/2002 income year.

21. The Project Land is situated 150 kms north of Perth in the Shire of Gingin in Western Australia. Powton Land Holdings Ltd owns the property.

22. Powton Land Holdings Ltd will lease the land to Environmental Forest Farms Management Ltd which will sub-lease the Woodlot to the Grower to enable the Grower to carry on a long term commercial afforestation business. Growers are specifically granted rights to harvest timber on their Woodlot for this purpose.

23. Growers must also subscribe for shares in the land owning company, Powton Land Holdings Ltd. Applications must be made for a minimum of 6 shares at \$100 each. Growers may not hold more than 54% of the shares on issue in Powton Land Holdings Ltd.

24. Growers will execute a Power of Attorney enabling the Responsibility Entity, Primary Securities Ltd, to act on their behalf as required, when they make an application for Woodlots.

25. Growers will also enter into a contract with the Manager for the management of their Woodlot. The Manager will be responsible for establishing and cultivating the trees and harvesting, processing and selling the timber. The Project is for a 10 year term with thinning to occur from year 7. At year 10 the remaining trees will be harvested and processed to rough sawn timber lengths. Growers may elect, on or by 30 June 2002, to take their own Collectable Product by giving written notice to the Manager and thereby becoming an Electing Grower (cl 10.1). The Manager will sell the forest produce on behalf of the Non-electing Growers for the highest price practicable (cl 9).



## **Constitution**

26. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which Primary Securities Ltd agrees to act as the Responsible Entity and to manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. The Responsible Entity will maintain a register of Growers. Growers are entitled to assign their Grower's Interest in certain circumstances (definition of Grower in Constitution).

## **Compliance plan**

27. As required by the Corporations Law a Compliance Plan has been prepared by Primary Securities Ltd. Its purpose is to establish a Compliance Committee to ensure the Responsible Entity meets its obligations as the Responsible Entity of the Project and that the rights of the Growers are protected.

## **Interest in land**

28. A lease is granted by the land owner to the Manager under a Head Lease Agreement. Growers participating in the arrangement will enter into a Sub-Lease Agreement with Environmental Forest Farms Management Ltd (the Sub-Lessor) and Primary Securities Ltd (the Responsible Entity) (cl 2.1). Growers are granted an interest in land in the form of a sub-lease to use their Woodlots for the purpose of conducting their afforestation business.

29. Each Grower must pay rent to the Sub-Lessor for each year of the Project in an amount specified in clause 4 of the Sub-Lease Agreement. The rent is payable on or before 1 June preceding the financial year to which it relates. The term of the Sub-Lease is from the date of commencement until 30 June 2011.

30. Some of the conditions of the sub-lease are that the Grower :

- will not permit the Sub-Leased Area to be used for a purpose other than that of commercial silviculture; and
- must not install upon or remove anything from the Sub-Leased Area.

## **Management Agreement**

31. Each Grower enters into a Management Agreement with the Manager and the Responsible Entity for their Woodlots. The

Management Agreement provides that each Grower appoints the Manager to perform services under the agreement. Clause 5 and Part 3 of the Schedule specify the services to be performed by the Manager. The Manager will supervise and manage all silvicultural activity on behalf of the Grower and must:

- carry out weed control, surveying and ground preparation of the Sub-Leased Area;
- plant at least 100 Paulownia seedlings per Woodlot on the Sub-Leased Area;
- irrigate, cultivate, tend, cull, prune, fertilise, replant, spray, maintain and otherwise care for the trees;
- keep access roads in good repair and the Sub-Leased Area free from rabbits and other vermin; and
- maintain the Sub-Leased Area according to good silvicultural and forestry practices.

32. A Grower may elect to sell their own Harvested Timber (cl 10). However, where no election is made, the Manager will harvest (cl 8) and sell the timber produce on the Grower's behalf, for the highest price practicable (cl 9.2). The Manager will be responsible for paying for the cost of annual insurance on the Woodlot (cl 5(n)).

### **Fees**

33. The amount payable on application under the Sub-Lease Agreement and the Management Agreement on a per Woodlot basis is as follows:

#### **2001 Growers**

- Woodlot Preparation Fee of \$7,205 payable to the Manager on application for the period from the Commencement Date to 30 June 2001;
- A pre-paid Tree Planting Fee of \$495 payable to the manager upon application;
- Management Fee of \$850.30 for managing and maintaining the Woodlot for the 12 months commencing 1 July 2001 payable on application;
- Management Fee of \$875.60 for managing and maintaining the Woodlot for the 12 months commencing 1 July 2002 payable on or before 1 June 2002;
- Management Fee of \$600.60 for managing and maintaining the Woodlot for the 12 months

commencing 1 July 2003 payable on or before 1 June 2003;

- An annual fee for Management commencing 1 July 2004 of \$600.60 plus annual indexation in each subsequent year payable on or before 1 June of each year;
- An annual Sub-Lease Fee (described as 'Rent' in clause 4 of the Sub-Lease Agreement) of \$113.30 payable to the Lessor on application for the period commencing 1 July 2001; and
- For each subsequent financial year the Rent will be set at the amount of the fee in the prior year indexed at the indexed rate, payable on or before 1 June preceding the financial year to which the rent relates.

## **2002 Growers**

- Woodlot Preparation Fee of \$7,205 payable to the Manager on application for the period from the Commencement Date to 30 June 2002;
- Tree Planting Fee of \$495 payable to the Manager upon application;
- Management Fee of \$850.30 for managing and maintaining the Woodlot for the 12 months commencing 1 July 2001 payable on application;
- Management Fee of \$875.60 for managing and maintaining the Woodlot for the 12 months commencing 1 July 2002 payable on or before 1 June 2002;
- Management Fee of \$600.60 for managing and maintaining the Woodlot for the 12 months commencing 1 July 2003 payable on or before 1 June 2003;
- An annual fee for Management commencing 1 July 2004 of \$600.60 plus annual indexation in each subsequent year payable on or before 1 June of each year;
- An annual Sub-Lease Fee (described as 'Rent' in clause 4 of the Sub-Lease Agreement) of \$113.30 payable to the Lessor on application for the period commencing 1 July 2001; and

- For each subsequent financial year the Rent will be set at the amount of the fee in the prior year indexed at the indexed rate, payable on or before 1 June preceding the financial year to which the rent relates.

34. The Manager is also entitled to the following amounts that will be deducted from the sales proceeds:

- an amount equal to 5.5% of the Net Proceeds of Sale for additional management and administration costs associated with harvesting and marketing (clause 4); and
- an Incentive Fee equal to 27.5% of the amount by which the Net Proceeds of Sale exceed the Net Harvest Return per Woodlot estimated in the Prospectus.

35. The Manager will use its best endeavours, if so requested, to arrange insurance on behalf of the Grower to cover against fire and other usual risks of the relevant Grower's proportional share of the forest produce.

36. Under the terms of the Constitution, all moneys received from applications will be paid to the Responsible Entity. The Responsible Entity shall deposit those moneys into the Application Fund in the name of the Responsible Entity. The application moneys will be released by the Responsible Entity when it is reasonably satisfied that certain specified criteria in the constitution have been met (cl 12 of the Constitution).

37. The Application Monies will be banked in the Trust Account for the Subscription Money held by the Custodian as agent for the Responsible Entity under the Custodian Agreement (cl 6.1).

### **Planting**

38. The Manager will be responsible for planting suitable Paulownia trees on the Woodlot. A sufficient number of trees will be planted which would be reasonably expected to meet the projected timber production. The Manager will then maintain the trees in accordance with good silvicultural practice. The services to be provided by the Manager over the term of the Project are outlined in clause 5 and Part 3 of the Schedule to the Management Agreement.

### **Harvesting**

39. At all times the Grower has full right, title and interest in the forest produce and the right to have the forest produce sold for their benefit (clause 2.5 of the Sub-Lease Agreement). Unless the Grower

elects to take possession of their timber, the Manager will be responsible for arranging the marketing and sale of the forest produce.

40. The harvest will take place as and when deemed appropriate by the Manager in keeping with sound forestry practice. The timing of the harvest may be altered or deferred by the Manager notwithstanding that it may differ from any timing proposed in the Prospectus. The Manager will be responsible for arranging the marketing and sale of the timber produce.

41. Harvesting and processing of trees will generally take place from year 7 to year 10.

42. The gross proceeds of the timber of Non-Electing Growers may be pooled and the Manager is appointed to sell the harvested timber. The Manager is to ensure that all sale proceeds will be paid in full to the Trust Account maintained by the Custodian for the Growers (clause 9 of the Management Agreement and clause 14.3 of the Compliance Plan). All Grower distributions are to be calculated by the Manager and are to be checked by a suitably qualified staff member of the Responsible Entity. Proceeds received are to be distributed in the following order of priority:

- to pay the Adjusted Prescribed Proportion of the costs of sales as advised by the Manager;
- to the Responsible Entity any outstanding Project Fees or other fee, costs, interest or taxes owing by the Grower to the Responsible Entity;
- to the Responsible Entity such amount as the Responsible Entity on the advice of the Manager reasonably estimates may be required within the following 12 months to pay for any estimated Project Fees which will become payable by the Grower;
- to pay the Manager any outstanding fees, costs or interest owing by the Grower to the Manager under the Management Agreement;
- to pay the Lessor any outstanding Rent or other fees, costs, interest, expenses or taxes owing by the Grower to the Lessor under the Lease; then
- to the Growers provided that if the aggregate sum to be distributed is less than \$1,000, then at the discretion of the Responsible Entity, distribution to Growers may be postponed. (cl 12 of Constitution).

43. If the Grower is an "Electing Grower" (clause 10 of the Management Agreement), the Responsibility Entity will provide the Grower with a statement setting out the Harvest Fee and the Manager

will provide the Grower with a schedule setting out all other fees, together with details as to the location of the Grower's Produce. Clause 10.6 stipulates that all the outstanding fees must be paid prior to the collection and removal of the Grower's timber and such removal must occur within 14 days of the Grower being advised of the place and time for collection.

### **Finance**

44. Growers can fund their investment in the Project themselves, borrow from Powton Land Holdings Ltd or EFF Ltd (lenders associated with the Responsible Entity or Manager) or borrow from an independent lender.

45. 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;
- entities associated with the Project, other than Powton Land Holdings Ltd or EFF Ltd, 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' are or will be granted to the borrowers, for the purposes of section 82KL, or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Projects;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

46. Powton Land Holdings Ltd will offer Growers a loan to finance the Sub-Lease Fees and the Management Fees. The finance will be provided at a fixed interest rate of 11.5% for loans of up to

\$5,000 per Woodlot and 12.0% for loans greater than \$5,000 per Woodlot. Interest is payable annually in advance.

47. The Principal Repayments are set out in Item 5 of the Loan Schedule. Under this item 100% repayment of the Principal outstanding on 1 June 2007 is payable no later than 29 June 2007. The loans are made on a full recourse basis, and Powton Land Holdings Ltd will pursue legal recovery action against defaulting borrowers to recover any loss suffered under the agreement.

48. EFF Ltd, the parent company of the Manager, will offer Growers finance to provide bridging or short term finance to finance the application moneys for the Woodlots and the shares for which the Grower subscribed. The finance will be bridging finance or short term finance on the terms set out in clause 2.3 of the Agreement.

49. The Bridging Finance requires a deposit on application of \$2,100 per Woodlot plus a payment of \$7,263.60 per Woodlot within 30 days of signing the Agreement. The cost of using this Bridging Finance is \$100. The effective annual interest is 0%. The Short Term Finance requires a deposit of \$2,100 per Woodlot upon signing the Agreement, which includes a \$100 application fee, eleven monthly repayments of \$653.72 per Woodlot and a final repayment of \$653.71 per Woodlot. The effective annual interest rate is 8.0 %.

## **Ruling**

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### **Assessable income**

50. 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 of the ITAA 1997. Section 17-5 of the ITAA 1997 excludes amounts relating to GST payable on a taxable supply.

### **Section 8-1**

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

##### *2001 Growers*

51. A Grower may claim tax deductions per Woodlot in the Table below where the Grower:

- participates in the Project by 30 June 2001 to carry on the business of afforestation;
- incurs the fees shown in paragraph 33 ('2001 Growers'); and

- is not registered nor required to be registered for GST.

### *Section 8-1 – prepaid fees*

52. Expenditure incurred by a Grower who participates in the Project is subject to the prepayment rules contained in sections 82KZME and 82KZMF. Therefore, a Grower who prepays fees that are otherwise allowable under section 8-1 cannot claim a tax deduction for the full amount of the fees in the year in which the expenditure is incurred unless it is 'excluded expenditure' (see note 2 below).

53. The amount and timing of tax deductions allowable each year for such fees must be determined using the formula in subsection 82KZMF(1). In that formula, which is shown below, the 'eligible service period' means, generally, the period over which the services are to be provided.

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

In this Project, the tax deductions allowable for the Management Fees (detailed at paragraph 33 in the Arrangement) must be calculated by applying the formula to the amount incurred each year by the Grower. The application of this method is shown in Example 2 at paragraph 108.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>30/06/2001</b>	<b>30/06/2002</b>	<b>30/06/2003</b>
<b>Woodlot Preparation Fee</b>	8-1	\$7,205		
<b>Tree Planting Fee</b>	8-1	Amount must be calculated – see notes (i) and (ii)	Amount must be calculated - see note (i)	
<b>Management Fee</b>	8-1	Amount must be calculated - see notes (i) and (iii)	Amount must be calculated - see notes (i) and (iii)	Amount must be calculated - see notes (i) and (iii)
<b>Sub-Lease Fee</b>	8-1	Amount must be calculated	Amount must be calculated	Amount must be calculated



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<b>(Rent)</b>		—see notes (i) and (iii)	—see notes (i) and (iii)	—see notes (i) and (iii)
<b>Interest</b>		As incurred - see notes (ii) and (iii)	As incurred - see notes (ii) and (iii)	As incurred - see notes (ii) and (iii)

**Notes:**

- (i) Where a Grower acquires one Interest in the Project and incurs the Tree Planting Fee, Management Fee and Sub-Lease Fee as required by the Management Agreement and Sub-Lease Agreement, those fees are deductible in the year incurred as ‘excluded expenditure’. Excluded expenditure, being expenditure of less than \$1,000 is an exception to any prepayments rules that apply and is deductible in full in the year in which it is incurred. Where a Grower acquires more than one interest in the Project, then the amount and timing of the deduction allowable must be determined using the formula shown in paragraph 53 unless the expenditure is ‘excluded expenditure’.
- (ii) The deductibility or otherwise of interest arising from agreements that Growers enter into with financiers other than Powton Land Holdings Ltd or EFF Ltd is outside the scope of this Ruling. However, all Growers who finance their participation in the Project other than with Powton Land Holdings Ltd or EFF Ltd should read carefully the discussion of the prepayment rules in paragraph 83 to 85 below as those rules may be applicable if interest is prepaid.
- (iii) Where a Grower **chooses** to prepay fees beyond 13 months, sections 82KZME and 82KZMF will not apply to set the amount and timing of that Grower’s tax deductions. Instead, unless the expenditure is ‘excluded expenditure’, the amount and timing of the tax deductions is determined under either subsection 82KZM(1) or subsection 82KZMD(2) (see paragraphs 86 to 88). To apportion the expenditure over the eligible service period, these provisions, which apply respectively to ‘small business taxpayers’ and taxpayers who are not ‘small business taxpayers’, effectively use the same formula as that shown in paragraph 53 above.

*2002 Growers*

54. A Grower may claim tax deductions in the Table below where the Grower:

- participates in the Project by 30 June 2002 to carry on the business of afforestation;
- incurs the fees shown in paragraph 33 ('2002 Growers'); and
- is not registered nor required to be registered for GST.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>30/06/2002</b>	<b>30/06/2003</b>
<b>Woodlot preparation fee</b>	8-1	\$7,205	
<b>Tree planting fee</b>	8-1	\$495	
<b>Management fee for year ended 30 June 2002</b>	8-1	\$850.30	
<b>Management fee prepaid for subsequent year</b>	8-1	Amount must be calculated – see notes (i) and (iii) above	Amount must be calculated – see notes (i) and (iii) above
<b>Sub-lease fee (rent) for year ended 30 June 2002</b>	8-1	\$113.30	
<b>Sub-Lease fee (rent) Prepaid for Subsequent year</b>	8-1	Amount must be calculated – see notes (i) and (iii) above	Amount must be calculated – see notes (i) and (iii) above
<b>Interest</b>		As incurred - see notes (ii) and (iii) above	As incurred - see notes (ii) and (iii) above

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

55. Where a Grower 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 afforestation;

- incurs the relevant fees shown in paragraph 33; and
- is entitled to an input tax credit for the fees,

then the tax deductions shown in the Tables above will exclude any amounts of input tax credit (Division 27 of the ITAA). See Example 1 at paragraph 107.

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

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

56. For a Grower who is an individual and who enters the Project during the years ended 30 June 2001 and 2002 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project.

57. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2001 to 30 June 2006 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.

58. 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).

59. 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.

60. 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 assessment of the Project or the product from this perspective has not been made.

**Section 82KL**

61. Section 82KL does not apply to deny the deduction otherwise allowable.

**Part IVA**

62. 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.

**Part 3-1: capital gains tax**

63. To enter the Project, each Grower or an associate will subscribe for 6 ordinary \$100 shares in respect of each Woodlot participation interest of the Grower. Unless any shares in the Lessor are trading stock of the Grower or otherwise assessable on revenue account to the Grower, a capital gain or loss will arise on the sale of those shares.

64. In the event that the Lessor is liquidated at the conclusion of the Project, further taxation considerations arise for the Grower holding shares in the Lessor. Any distribution made to a Grower on liquidation of the Lessor would be deemed to be a dividend to the Grower, to the extent of the undistributed profits of the Lessor. This dividend would be assessable as a normal dividend and may have franking credits attached. Further, a capital gain or loss could arise, based on the difference between the Grower's indexed cost base and the amount distributed in accordance with the provisions of Part 3-1 of the ITAA 1997.

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**Explanations****Section 8-1**

65. Consideration of whether the Woodlot Preparation Fee, Tree Planting Fee, Sub-Lease Fees and Management Fees are deductible under section 8-1, begins with paragraph 8-1(1)(a) on the following basis:

- the outgoings in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under paragraph 8-1(1)(b) if they are incurred when the business has not commenced; and

- where all that happens in a year of income is a taxpayer contractually commits themselves to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether paragraph 8-1(1)(b) applies. However, that does not preclude the application of paragraph 8-1(1)(a), and determining whether the outgoings in question have a sufficient connection with activities to produce assessable income.

**Is the Grower carrying on a business?**

66. An afforestation scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds from the sale of the timber produce from the scheme, will constitute assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income. These operations will be the planting, tending, maintaining and harvesting of the trees.

67. Generally, a Grower will be carrying on a business of afforestation where:

- the Grower has an identifiable interest in specific growing trees coupled with a right to harvest and sell the produce from the trees;
- the afforestation 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.

68. For this Project Growers have, under the Sub-Lease Agreement and Management Agreement, rights in the form of a sub-lease over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under these agreements Growers appoint the Manager to provide services such as planting, cultivating, tending, culling, pruning, fertilising, replanting, spraying, maintaining and otherwise caring for the trees as and when required that is consistent with good afforestation practice and to use all reasonable measures to keep the Leased Area free from vermin, noxious weeds, pests and diseases. Growers are considered to control their investment.

69. The Sub-Lease Agreement and Management Agreement give Growers an identifiable interest in specific trees and a legal interest in

sub-leased land. Growers have the right to personally market and sell the timber attributable to their Woodlots or they may appoint the Manager to arrange the marketing and sale of the timber for them. Growers will have an ongoing interest in the trees.

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

71. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the arrangement's description for all the indicators. Growers to whom this Ruling applies intend to derive assessable income from the Project. This intention is related to projections contained in the Draft Prospectus that suggest the Project should return a 'before-tax' profit to the Growers, i.e., a 'profit' in cash terms that does not depend in its calculation, on the fees in question being allowed as a deduction.

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

73. Growers have a continuing interest in the trees from the time they are acquired until harvest. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. The Growers' afforestation activities will constitute the carrying on of a business.

74. The fees associated with the afforestation activities will relate to the gaining of income from this business and, hence, have a sufficient connection to the operations by which this income (from the sale of timber) is to be gained from this business. They will, therefore, come within paragraph 8-1(1)(a). Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. No capital component is identifiable. The tests of deductibility under section 8-1 are met. The exclusions do not apply.

**Sections 82KZME and 82KZMF – prepaid fees**

75. Expenditure prepaid by Growers for management fees, sub-lease fees and tree planting fees meets the requirements of subsections 82KZME(1) and (2) and the expenditures are incurred under an ‘agreement’ as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies to the expenditures, the amount and timing of tax deductions for those expenditures are determined under section 82KZMF.

76. In relation to the requirements of subsection 82KZME(1) and (2), the prepaid management, sub-lease and tree planting fees incurred by a Grower who participates in the Project:

- are otherwise deductible under section 8-1; and
- have ‘eligible service periods’ (for each of the fees) that end not more than 13 months after the Grower incurs the expenditure; and
- are incurred in return for the doing of a thing under the agreement that is not wholly to be done within the expenditure year.

The ‘eligible service period’ (defined in subsections 82KZL(1)) means, generally, the period over which the services are to be provided.

77. In relation to an ‘agreement’ referred to in subsection 82KZME(3), the Project is an ‘agreement’ (this being a broad concept under subsection 82KZME(4)), where, during the term of this Product Ruling:

- The Grower’s allowable deductions attributable to the Project for each expenditure year exceeds the Grower’s assessable income from the Project (if any) for the expenditure year; and
- The Grower does not have day-to-day control over the operation of the Project; and
- there is more than one Grower participating in the Project.

78. The prepaid management fees, sub-lease fees and tree planting fees, being amounts of less than \$1,000 in each expenditure year, constitute ‘excluded expenditure’ as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) ‘excluded expenditure’ is not subject to section 82KZMF and is, therefore, 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 prepaid fees is \$1,000 or more, then the deduction allowable for those amounts will be subject to apportionment under section 82KZMF.

**Interest deductibility*****(i) Growers who use Powton Land Holdings Ltd or EFF Ltd as the finance provider***

79. Some Growers may finance their participation in the Project through a loan facility with Powton Land Holdings or EFF Ltd. Under the terms of the Loan Agreement to be entered into between those Growers and Powton Land Holdings Ltd, interest must be paid in advance each year.

80. 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. 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 timber 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, subject to the operation of sections 82KZME and 82KZMF.

81. The loan agreement under which the interest is incurred is directly related to all of the activities that are carried out under the Project, and so is a part of the 'agreement' (subsection 82KZME(4)). Consequently, as with the management fees and the lease fees, the interest will satisfy the requirements of subsection 82KZME(1), and be subject to section 82KZMF, unless one of the exceptions applies. For a Grower acquiring a single interest in the Project the prepaid interest will be less than \$1,000 and is therefore 'excluded expenditure' and Exception 3 (subsection 82KZME(7)) will apply. Therefore, the interest is deductible in full in the year in which it is incurred.

82. However, as with the lease fee, where a Grower acquires more than one interest in the Project and the quantum of the interest is \$1,000 or more, the tax deduction each year must be determined in the same manner as the management fees, using the formula in subsection 82KZMF(1).

***(ii) Growers who DO NOT use Powton Land Holdings or EFF Ltd as the finance provider***

83. The deductibility of interest incurred by a Grower who finance their participation in the Project through a loan facility with a bank or financier other than Powton Land Holdings or EFF Ltd is outside the scope of this Ruling. Product Rulings only deal with arrangements



where all details and documentation have been provided to, and examined by, the Tax Office.

84. 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 section 82KZME, 'agreement' (defined in subsection 82KZME(4)) is a broad concept and includes all activities that relate to the agreement including those that give rise to deductions or assessable income. It will encompass activities not described in the Arrangement or otherwise dealt with in the Product Ruling, such as a loan to finance participation in the Project.

85. 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). The relevant formula is shown above in paragraph 53 and the method is explained in the example at paragraph 108.

***Prepayments where the eligible service period exceeds 13 months***

86. Although not required under the Arrangement described in this Product Ruling, some Growers may choose to prepay some or all of their fees for periods longer than the agreements require. Specifically, this will occur when the 'eligible service period' relating to the prepaid amount ends more than 13 months after the Growers incurs the expenditure. Where the 'eligible service period' exceeds 13 months sections 82KZME and 82KZMF will not apply, as the requirement of paragraph 82KZME(1)(b) is not met.

87. Instead, for a Grower who is a 'small business taxpayer' (see paragraphs 89 to 91) subsection 82KZM(1) applies to apportion the expenditure and determine the amount and timing of the deductions. Alternatively, for a Grower who is not a 'small business taxpayer' subsection 82KZMD(2) applies to apportion the expenditure and determine the amount and timing of the deductions.

88. Both of these provisions, although slightly different in form, apportion deductible expenditure over the 'eligible service period' in the same way as the formula contained in paragraph 53 (above). However, expenditure, which is 'excluded expenditure', is an exception to both provisions (subparagraph 82KZM(1)(b)(ii) and subsection 82KZMA(4) respectively). A tax deduction for 'excluded expenditure' can be claimed in full in the year in which the expenditure is incurred.

**Subdivision 960-Q - small business taxpayers**

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

90. A 'small business taxpayer' is defined in section 960-345 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.

91. '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).

**Division 35 – deferral of 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 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.

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 2007. 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 57 above), in the manner described in the Arrangement (see paragraphs 15 to 49), 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 Forester and additional evidence provided with the application by the Responsible Entity; and
- the independent, objective and generally available information relating to the plantation timber which substantially supports cash flow projections and other claims, including the prices and costs, in the Project ruling application submitted by the Responsible Entity.

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

103. 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**

104. 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).

105. The Kiri Park Project No. 2 will be a 'scheme' commencing with the issue of the Prospectus. A Grower will obtain an initial 'tax benefit' from entering into the scheme, in the form of tax deductions per Woodlot, allowable under section 8-1, 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.

106. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the

eventual harvesting of the trees. 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.

## **Examples**

### **Example 1 – entitlement to 'input tax credit'**

107. 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 March 2001 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).

### **Example 2 – apportionment of fees**

108. Murray decides to invest in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are \$5,000 in the first year and \$1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date. The project is subject to a minimum subscription of 300 interests. Murray provides the Project Manager with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other

relevant agreements on his behalf. On 5 June 2001 the Project Manager informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

Murray, who is not registered nor required to be registered for GST calculates his tax deduction for management fees for the **2001 income year** as follows:

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

$$\$5,000 \times \frac{26}{365}$$

= **\$356** (this is Murray's total tax deduction in 2001 for the Year 1 prepaid management fees of \$5,000. It represents the 26 days for which management services were provided in the 2001 income year).

In the **2002 income year** Murray will be able to claim a tax deduction for management fees calculated as the sum of two separate amounts:

$$\$5,000 \times \frac{339}{365}$$

= **\$4,643** (this represents the balance of the Year 1 prepaid fees for services provided to Murray in the 2002 income year).

$$\$1,200 \times \frac{26}{365}$$

= **\$85** (this represents the portion of the Year 2 prepaid management fees for the 26 days during which services were provided to Murray in the 2002 income year).

**\$4,643 + \$85 = \$4,728** (The sum of these two amounts is Murray's total tax deduction for management fees in 2002).

Murray continues to calculate his tax deduction for prepaid management fees using this method for the term of the Project.

## Detailed contents list

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

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**Commissioner of Taxation**

2 May 2001

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*Previous draft:*

Not previously issued in draft form

- taxation administration

- tax avoidance

- tax benefits under tax avoidance schemes

*Related Rulings/Determinations:*

PR 1999/95; TR 92/1; TR 92/20;

TR 97/11; TR 97/16; TR 98/22;

TD 93/34

- tax shelters

- tax shelters project

*Subject references:*

- carrying on a business

- commencement of business

- primary production

- primary production expenses

- management fee expenses

- producing assessable income

- product rulings

- public rulings

- schemes and shams

*Legislative references:*

- ITAA 1997 Part 3-1

- ITAA 1997 6-5

- ITAA 1997 8-1

- ITAA 1997 8-1(1)(a)

- ITAA 1997 8-1(1)(b)

- 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 1936 82KZMB       |
| - ITAA 1997 35-30           | - ITAA 1936 82KZMC       |
| - ITAA 1997 35-35           | - ITAA 1936 82KZMD       |
| - ITAA 1997 35-40           | - ITAA 1936 82KZMD(2)    |
| - ITAA 1997 35-45           | - ITAA 1936 82KZME       |
| - ITAA 1997 35-55           | - ITAA 1936 82KZME(1)    |
| - ITAA 1997 35-55(1)        | - ITAA 1936 82KZME(1)(b) |
| - ITAA 1997 35-55(1)(a)     | - ITAA 1936 82KZME(2)    |
| - ITAA 1997 35-55(1)(b)     | - ITAA 1936 82KZME(3)    |
| - ITAA 1997 Subdiv 960-Q    | - ITAA 1936 82KZME(4)    |
| - ITAA 1997 960-340         | - ITAA 1936 82KZME(7)    |
| - ITAA 1997 960-345         | - ITAA 1936 82KZMF       |
| - ITAA 1997 960-350         | - ITAA 1936 82KZMF(1)    |
| - ITAA 1936 82KL            | - ITAA 1936 Pt IVA       |
| - ITAA 1936 82KZL           | - ITAA 1936 177A         |
| - ITAA 1936 82KZL(1)        | - ITAA 1936 177C         |
| - ITAA 1936 82KZM           | - ITAA 1936 177D         |
| - ITAA 1936 82KZM(1)        | - ITAA 1936 177D(b)      |
| - ITAA 1936 82KZM(1)(b)(ii) |                          |
| - ITAA 1936 82KZMA(4)       |                          |
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