



PR 2001/75 - Income tax: Tumbarumba Paulownia Plantation No. 2

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 This document has changed over time. This is a consolidated version of the ruling which was published on *23 May 2001*



Product Ruling

Income tax: Tumbarumba Paulownia Plantation 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

The Australian Taxation Office (ATO) **does not** sanction or guarantee these products as investments. Further, we give no assurance that the products are 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 products. 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 Tumbarumba Paulownia Plantation No. 2, 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 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - Section 82KZM (ITAA 1936);
 - Section 82KZMD (ITAA 1936);
 - Section 82KZME (ITAA 1936);
 - Section 82KZMF (ITAA 1936); and
 - Part IVA (ITAA 1936)

Goods and Services Tax

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

Business Tax Reform

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

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change, those changes will take precedence over the application of this Ruling, and to that extent, this Ruling will be superseded.

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

Note to promoters and advisers

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

Class of persons

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

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

Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangements described in the Ruling are materially different from the arrangements that are actually carried out:

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

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Date of effect

11. This Ruling applies prospectively from 23 May 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).

12. 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

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2004. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

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

- Application for a Product Ruling, dated 19 September 2000, received on 19 September 2000;

- Draft copy of Prospectus for the Tumarumba Paulownia Plantation No. 2, prepared for the Responsible Entity, Tree Owners Plantation Management Limited ('TOPML'), undated, received on 20 November 2000;
- **Draft copy of Constitution and Schedules establishing the Project, undated, received on 19 September 2000;**
- Draft copy of Supplemental Trust Deed No. 1 to the Constitution and Schedules for the Tumarumba Paulownia Plantation No. 2, undated, received on 20 November 2000;
- Draft copy of Supplemental Trust Deed No. 2 to the Constitution and Schedules for the Tumarumba Paulownia Plantation No. 2, undated, received on 20 November 2000;
- **Establishment Agreement between TOPML and the Grower (this agreement forms part of the Schedule to the Constitution);**
- **Subsequent Management Agreement between TOPML and the Grower (this agreement forms part of the Schedule to the Constitution);**
- **Licence Agreement between and STL Financial Services Ltd (STLFSL) and the Grower (this agreement forms part of the Schedule to the Constitution);**
- Lease between the Landowner and TOPML, dated 10 February 1998;
- Draft copy of Memorandum of Variation of Lease between the Landowner and TOPML, undated, received on 19 September 2000;
- Sub-Lease between TOPML and C.J.M Nominees Ltd (CJMNL), dated 10 February 1998;
- Draft copy of Transfer of Lease Mortgage or Charge between TOPML and STLFSL, undated, received on 10 May 2001;
- Draft copy of Memorandum of Variation of Sub-Lease between TOPML and STLFSL, undated, received on 19 September 2000;

- Draft copy of Compliance Plan for the Tumbarumba Paulownia Plantation No 2, undated, received on 19 September 2000;
- Custody Agreement between TOPML and STLFSL, dated 24 August 2000;
- **Draft copy of Secured Loan Agreement between a Grower and Plantation Nurseries Pty Ltd, undated, received on 19 September 2000;**
- Constitution of TOPML, dated 25 February 1994;
- Letter and attachments to ATO from the applicant's representative, dated 20 November 2000;
- E-mail and attachments to ATO from the applicant's representative, dated 7 December 2000, 13 December 2000, 18 December 2000;
- Facsimile and attachments to ATO from the applicant's representative, dated 27 December 2000, 3 January 2001;
- E-mail and attachments to ATO from the applicant's representative, dated 10 January 2001, 15 January 2001, 5 February 2001, 15 February 2001, 19 February 2001, 20 February 2001, 6 March 2001, 9 May 2001; and
- Facsimile and attachments to ATO from the applicant's representative, dated 9 May 2001, 10 May 2001, 14 May 2001 (2), 15 May 2001, 16 May 2001 (3), 21 May 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.

15. The documents highlighted are those the Growers 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, or any associate of the Grower, will be party to, which are part of the arrangement to which this Ruling applies. The effect of these agreements is summarised as follows.

Overview

16. The arrangement is called the Tumbarumba Paulownia Plantation No. 2.

| | |
|--|---|
| Location | Oberne, in the South West area of New South Wales. |
| Type of business each participant is carrying on | Commercial growing and harvesting of Paulownia trees. |
| Number of hectares to be under cultivation | 100 hectares. |
| Size of each Lot | 0.25 hectares. |
| The term of the investment | 14 years. |
| Initial fees per Lot | \$6,050 |
| Ongoing annual fees per Lot | Licence rental and management fees. |
| Other costs | <p>TOPML is to be reimbursed for all costs, expenses and outgoings associated with the harvesting of the timber.</p> <p>TOPML will receive a fee of 15% of the Net Harvest Income.</p> <p>The cost of annual insurance.</p> |
| Minimum investment per application | 1 Lot. |

The Project

17. Under the Prospectus, Growers are invited to develop and operate a Paulownia tree plantation on a property situated near Oberne, in the South West area of New South Wales.

18. The objective is the commercial growing, harvesting and sale of Paulownia trees.

19. The offer is for a minimum of one Lot interest per Grower, with the Application Price for each Lot being \$6,050.

20. An Applicant can be accepted into the Project in either the year ended 30 June 2001 or the year ended 30 June 2002.

21. For the year ending 30 June 2001, TOPML will not accept Growers unless TOPML is in a position to complete establishment duties by 30 June 2001. For the year ending 30 June 2002, TOPML will not accept Growers unless TOPML is in a position to complete establishment duties by 30 June 2002.

22. Growers participating in the Project enter into a Licence Agreement with STLFSL that gives them a licence over an area of

land called a 'Lot'. The initial property, known as 'Bembooka', is situated in New South Wales and is leased by the landowner to Tree Owners Plantation Management Ltd who subleases the land to STLFSL as the custodian for TOPML in its capacity as Responsible Entity. STLFSL, under instruction from TOPML, grants licences to the Growers. The Growers also enter into an Establishment Agreement with TOPML to have certain trees of the paulownia genus planted on the Lot. A Subsequent Management Agreement, entered into at the same time as the Establishment Agreement but commencing on the expiration of the Establishment Agreement, provides that TOPML will maintain and otherwise care for the timber on the Lot for the purpose of eventual felling, milling and sale. The period of the Project is expected to be fourteen years, although felling of timber is planned to occur in years 10, 12 and 14.

23. The total land area for the Project is anticipated to be 100 hectares and there are 400 Lots on offer, each of an area of 0.25 hectares and at a cost of \$6,050. There is no minimum subscription for the Project. Growers execute a power of attorney enabling STLFSL to act on their behalf as required, when they make an application for a Lot.

Establishment Agreement

24. The Establishment Agreement ('the EA') is entered into between TOPML and the Grower for each Lot. Under the EA, each Grower contracts with TOPML to establish the plantation in accordance with present silviculture practice, for a period of three months (cls 2 and 3). The works to be carried out are establishment duties as set out in cl 5, and TOPML undertakes to complete these establishment duties in the financial year in which Applicants are accepted as Growers. Growers are guaranteed a minimum number of growing trees after twelve months and TOPML will harvest any excess on its own account. This Agreement is subject to the terms of the Constitution.

Subsequent Management Agreement

25. In conjunction with the EA, the Subsequent Management Agreement ('the SMA') is entered into between TOPML and the Grower for each Lot. The Lot Number(s) is identified in the Schedule to the SMA and corresponds to the Lot Number(s) for which the Grower has a Certificate. This Agreement commences on the expiration of the Establishment Agreement, namely three months after signing the agreement and reaffirms the Grower's interest in an identified parcel of land (Schedule to the SMA), for the purpose of conducting an afforestation business. The term of the Agreement

extends to the time when all trees produced on the Lot have been sold, the timber is processed and sold and income distributed to Growers. This is expected to be a fourteen year period. The Agreement is subject to the terms of the Constitution.

26. Growers contract with TOPML to establish and maintain the plantation until maturity for an annual management fee (cls 2, 4 and 5). In addition, TOPML will arrange for all marketable logs produced from the Grower's Lot to be processed and sold, on the Grower's behalf (cl 8.1). The time of harvest of the timber will be at the discretion of TOPML (cl 7). Growers will share, on a proportionate basis, the balance of the Net Harvest Income after all payments and deductions have been made in accordance with clause 40.1 of the Constitution (cl 8.3).

Licence Agreement

27. The Licence Agreement ('the LA') is entered into between STLFSL, and the Grower for each Lot. Growers are granted a contract to use the land in the form of a licence to occupy their Lot (identified in the Certificate issued to the Grower), for the purpose of conducting an afforestation business (cls 2 and 3), for an annual rent of \$82.50 per quarter hectare (cl 3, as identified in the Schedule to the LA).

Constitution

28. This Constitution is issued by TOPML. As stated above, TOPML is the Responsible Entity. The Constitution sets out the terms and conditions under which TOPML agrees to act as the Responsible Entity and under which TOPML agrees to manage the Project. Separate accounts and financial records are to be maintained for the Project (cl 42.1 of the Constitution). Growers are bound by the Constitution by virtue of their participation in the Project.

29. Under the Constitution, copies of documents evidencing a Grower's interest in the Project are to be issued to the Grower after execution. The Prospectus indicates, that this documentation will include a certificate. The Lot number of a Grower is shown on the Grower's certificate. TOPML will maintain a register of Growers (cl 36.1). Growers are entitled to assign the Licence and Management Agreements in certain circumstances (cl 29.1). The Establishment Agreement, Subsequent Management Agreement and Licence Agreement must be entered contemporaneously by Applicants signing the Application and Limited Power of Attorney Form in the Prospectus.

Fees

30. In consideration of the services performed and rights granted under the terms of the Establishment, Licence and Subsequent Management Agreements, the fees payable by a Grower per Lot will be:

- Under the EA, a \$6,050 establishment fee is payable on application for the establishment services provided in the first 3 months (cl 4 of the EA);
- Under the LA, a rental fee is payable for the Licence to use the Project Land over the term of the Project (Schedule of the LA).

For the first 12 months of the term of the LA, an amount of \$82.50 shall be paid on the 1 July during those 12 months.

For the second and subsequent years, an amount of \$82.50 is payable in advance on the anniversary of the commencement date of the EA, for services provided over the next 12 months;

- Under the SMA, a management fee is payable for plantation and maintenance services over the term of the Project (cl 4 of the SMA).

If the term of the SMA commences after 30 June 2001 but before 1 October 2001, an amount of \$350.62 is payable in advance on the commencement date of SMA, for services provided in the first 9 months of the SMA (cl 4.1.2 of the SMA).

If the term of the SMA commences after 30 September 2001, but before 1 July 2002, an amount of \$350.62 is payable in arrears on 1 July 2002, for services provided in the first 9 months of the SMA (cl 4.1.2A of the SMA).

If the term of the SMA commences after 30 June 2002 but before 1 October 2002, an amount of \$350.62 is payable in advance on the commencement date of SMA, for services provided in the first 9 months of the SMA (cl 4.1.2 of the SMA).

For the second and subsequent years, an amount of \$467.50 is payable on the anniversary of the commencement date of the EA, for services provided over the next 12 months;

- Under the SMA, TOPML will receive a fee of 15% of the Net Harvest Income generated from the sale of each Grower's timber (cl 8.2 of the SMA);
- Under the SMA, TOPML is to be reimbursed for all costs, expenses and outgoings associated with the harvesting of the timber; and
- Under the SMA, the Grower is liable for the cost of annual insurance premiums effected by TOPML on the Grower's behalf (cl 10 of the SMA).

31. Under the terms of the Constitution, TOPML must deposit all monies it receives from Growers under the EA into a Trust Accounts established for that purpose. These monies will be released to TOPML when it is satisfied of its entitlement as manager to the monies under the terms of the EA (cl 6 of the Constitution). Likewise, all rental received under the LA and management fees received under the SMA will be paid to TOPML and deposited into the appropriate Trust Account established for that purpose (cl 13 of the Constitution).

Establishment and maintenance of the Plantation

32. The management agreements set out the duties that TOPML will carry out to establish and maintain the Plantation. During the first three month period TOPML will be responsible for establishing the plantation and planting Paulownia trees on the Lot (cl 5 of the EA). On expiry of the EA, the SMA commences and takes effect over the term of the Project, whereby TOPML will be responsible for maintain the trees in accordance with good silvicultural practice (cl 6 of the SMA). Harvesting, processing and sale of timber will generally take place in years 10, 12 and 14, 14 years being the expected period of the Project (cl 7 of the SMA). TOPML will be responsible for arranging the marketing and sale of the processed timber (cl 8 of the SMA).

Distribution of Net Harvest Income to Growers

33. The Constitution provides for the distribution of Net Harvest Income. All Harvest Income shall be paid to TOPML and shall be deposited into a Trust Account established by TOPML for that purpose. Within three months of payment of any amounts into the Trust Account, TOPML shall distribute the Income in accordance with clause 39.1 of the Constitution. Clauses 35(c) and 40.1 of the Constitution provide for distribution of:

- payment to TOPML as reimbursement for all costs, expenses and outgoings associated with the harvesting of the timber;

- payment of any outstanding fees owed by the Grower.

The balance remaining of Net Harvest Income is then distributed to Growers on a proportional basis (cl 39.1 of the Constitution).

Finance

34. Growers can fund their investment in the Project themselves, borrow from Plantation Nurseries Pty Ltd (a lender associated with the Responsible Entity) or borrow from an independent lender.

35. This Ruling does not apply if a Grower enters into a finance agreement that includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project other than Plantation Nurseries Pty Ltd, are involved or become involved, in the provision of finance to Growers for the Project.

Ruling

Assessable Income

36. A Grower's share of the gross sales proceeds from the Project, less any GST payable on these proceeds, will be assessable income

under section 6-5. Section 17-5 excludes from assessable income an amount relating to GST payable on a taxable supply.

Section 8-1 – Prepaid fees

37. With the exception of establishment fees payable under the EA, expenditure incurred by a Grower who participates in the Project may be 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 may not be able to 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 (ii) below).

38. 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 prepaid management and Licence rental fees must be calculated by applying the formula to the amount incurred each year by the Grower. The application of this method is shown in the Examples at paragraphs 95 and 96.

Section 8-1

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

For a Grower who is accepted into the Project in the year ended 30 June 2001

39. A Grower who is accepted into the Project in the year ended 30 June 2001 may claim tax deductions using the methods and Table in paragraphs 38 and 39, where the Grower:

- participates in the Project to carry on the business of afforestation;
- incurs the fees shown in paragraph 30; and
- is not registered nor required to be registered for GST.

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| Fee type | ITAA 1997 section | Year 1 ending 30/06/2001 | Year 2 ending 30/06/2002 | Year 3 ending 30/06/2003 | Year 4 ending 30/06/2004 |
|-------------------|-------------------|---|---|---|---|
| Establishment Fee | 8-1 | \$6,050 | Nil | Nil | Nil |
| Rental Fee | 8-1 | Nil | \$82.50 – see notes (i) & (iv) below \$82.50 – see notes (ii) & (iv) below | \$82.50 – see notes (ii) & (iv) below | \$82.50 – see notes (ii) & (iv) below |
| Management Fee | 8-1 | Nil | \$350.62 – see notes (i) & (iv) below \$467.50 – see notes (ii) & (iv) below | \$467.50 – see notes (ii) & (iv) below | \$467.50 – see notes (ii) & (iv) below |
| Interest | 8-1 | As incurred – see notes (ii) (iii) & (iv) below | As incurred – see notes (ii) (iii) & (iv) below | As incurred – see notes (ii) (iii) & (iv) below | As incurred – see notes (ii) (iii) & (iv) below |

Notes:

- (i) These management and Licence rental fees incurred by the Grower are deductible in full in the year incurred. However, if a Grower **chooses** to prepay these fees for the doing of things 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 paragraph 38 unless the expenditure is ‘excluded expenditure’
- (ii) Amounts of less than \$1,000 will be ‘excluded expenditure’. Excluded expenditure is an ‘exception’ to the prepayment rules and is deductible in full in the year in which it is incurred (See Example 3 at paragraph 96). Deductibility of amounts of \$1,000 or more, such as may occur where a Grower acquires a number of interests in the Project, will be determined on the same basis as the prepaid management and Licence rental fees, i.e. using the formula shown above (in paragraph 38).
- (iii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than

Plantation Nurseries Pty Ltd is outside the scope of this Ruling. However, all Growers who finance their participation in the Project other than with Plantation Nurseries Pty Ltd should read carefully the discussion of the prepayment rules in paragraphs 68 – 70 below as those rules may be applicable if interest is prepaid.

- (iv) 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 71 to 73). 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 above.

For a Grower who is accepted into the Project in the year ended 30 June 2002

40. A Grower who is accepted into the Project on 1 July 2001, may claim tax deductions using the methods and Table in paragraphs 38 and 40, where the Grower:

- participates in the Project to carry on the business of afforestation;
- incurs the fees shown in paragraph 30; and
- is not registered nor required to be registered for GST

| Fee type | ITAA 1997 section | Year 1 ending 30/06/2002 | Year 2 ending 30/06/2003 | Year 3 ending 30/06/2004 |
|-------------------|-------------------------|------------------------------------|--|---|
| Establishment Fee | 8-1 | \$6,050 | Nil | Nil |
| Rental Fee | 8-1 | \$82.50 –see note (iv) above | \$82.50 – notes (i) & (iv) above | \$82.50 – see notes (i) & (iv) above |

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| | | | | |
|----------------|-----|---|--|---|
| Management Fee | 8-1 | Nil | 350.62 – see notes (i) & (iv) above \$467.50 – see notes (i) & (iv) above | \$467.50 – see notes (i) & (iv) above |
| Interest | 8-1 | As incurred – see notes (ii) (iii) & (iv) above | As incurred – see notes (ii) (iii) & (iv) above | As incurred – see notes (ii) (iii) & (iv) above |

41. A Grower who is accepted into the Project between 2 July 2001 and 30 June 2002, may claim tax deductions using the methods and Table in paragraphs 38 and 41, where the Grower:

- participates in the Project to carry on the business of afforestation;
- incurs the fees shown in paragraph 30; and
- is not registered nor required to be registered for GST.

| Fee type | ITAA 1997 section | Year 1 ending 30/06/2002 | Year 2 ending 30/06/2003 | Year 3 ending 30/06/2004 |
|-------------------|-------------------|---|---|---|
| Establishment Fee | 8 -1 | \$6,050 | Nil | Nil |
| Rental Fee | 8 -1 | Nil | \$82.50 – see notes (i) & (iv) above \$82.50 – see notes (ii) & (iv) above | \$82.50 – see notes (ii) & (iv) above |
| Management Fee | 8 -1 | Nil | 350.62 – see notes (i) & (iv) above \$467.50 – see notes (ii) & (iv) above | \$467.50 – see notes (ii) & (iv) above |
| Interest | 8 -1 | As incurred – see notes (ii) (iii) & (iv) above | As incurred – see notes (ii) (iii) & (iv) above | As incurred – see notes (ii) (iii) & (iv) above |

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

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

- is accepted into the Project in either the year ended 30 June 2001 or the year ended 30 June 2002;
- participates in the Project to carry on the business of afforestation;
- incurs the fees shown in paragraph 30; and
- is entitled to an input tax credit for the fees

then the tax deductions calculated using the methods and Table(s) above will exclude any amounts of input tax credit (Division 27 of the ITAA 1997). See Example 1 at paragraph 94.

Division 35 – Deferral of losses from non-commercial business activities***Section 35-55 – Commissioner’s discretion***

43. For a Grower who is an individual and who is accepted into the Project during either the year ending 30 June 2001 or the year ending 30 June 2002, the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2001 to 30 June 2009 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.

44. 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 80 in the Explanations part of this Ruling, below).

45. 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.

46. 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

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

Part IVA

48. The relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanations

Section 8-1

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

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

Is the Grower carrying on a business?

50. An afforestation scheme can constitute the carrying on of a business. Where there is a business, or a future business, the gross sale proceeds each year from the timber's sale from the scheme 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 trees.

51. 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 timber;
- 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.

52. For this Project Growers have under the Licence Agreement, rights in the form of a licence over an identifiable area of land consistent with the intention to carry on a business of growing trees. Under the Establishment and Subsequent Management Agreement Growers appoint TOPML to provide services such as planting, cultivating, tending, culling, pruning, fertilising, replanting, spraying, maintaining and otherwise caring for the trees as well as the harvesting of the timber and arranging for its marketing and sale. Growers are considered to have control of their operations.

53. The Licence Agreements provide Growers with more than a chattel interest in the trees. The Project documentation contemplates Growers will have an ongoing interest in the growing trees.

54. Growers have the right to use the land in question for afforestation purposes and to have TOPML come onto the land to carry out its obligations under the management agreements. The Growers' degree of control over TOPML, 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 TOPML's activities. Growers are able to terminate arrangements with TOPML in certain instances, such as cases of default or neglect. The afforestation activities described in the management agreement are carried out on the Growers behalf.

55. 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 provided with the application by TOPML 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.

56. 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.

57. 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.

58. 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 income (from the sale of timber) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Sections 82KZME and 82KZMF – Prepaid fees

59. Any prepaid expenditure by Growers for management and Licence rental 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.

60. In relation to the requirements of subsection 82KZME(1) and (2), the prepaid management and Licence rental 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.

61. 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.

62. Where the prepaid management and Licence rental fees incurred by Growers do not fall within any of the 5 exceptions to section 82KZME, the deduction for each year is determined using the formula in subsection 82KZMF(1). Section 82KZMF overrides section 8-1 and apportions the fees over the period that the services for which the prepayment is made are performed.

63. Any prepaid management and Licence rental 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 lease fees is \$1,000 or more, then the deduction allowable for those amounts will also be subject to apportionment under section 82KZMF.

Interest deductibility

(i) Growers who use Plantation Nurseries Pty Ltd as the finance provider

64. Some Growers may finance their participation in the Project through a loan facility with Plantation Nurseries Pty Ltd.

65. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of management and Licence rental 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's business operations of growing and harvesting of Paulownia trees 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. As the loan facility offered by Plantation Nurseries Pty Ltd does not require a Grower to prepay interest, section 82KZME or 82KZMF will not apply. The interest will be deductible in full in the year in which it is incurred.

66. However, a Grower who, contrary to the requirements of the loan contracts offered by Plantation Nurseries Pty Ltd, chooses to prepay interest will be required to determine any tax deduction under the prepayment provisions of the ITAA 1936.

67. Therefore, unless the prepaid interest is 'excluded expenditure', where a Grower chooses to prepay interest 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 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 shown above in paragraph 39.

(ii) Growers who DO NOT use Plantation Nurseries Pty Ltd as the finance provider

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

69. 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.

70. 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 39 and the method is explained in the Examples at paragraphs 95 and 96.

Prepayments where the eligible service period exceeds 13 months

71. 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 Grower 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.

72. Instead, for a Grower who is a ‘small business taxpayer’ (see paragraphs 74 to 76) 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.

73. 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 39 (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.

Small business taxpayers

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

75. ‘Average turnover’ is determined under section 960-340 by reference to the average of the taxpayer’s ‘group turnover’. The group turnover is the sum of the ‘value of business supplies’ made by the

taxpayer and entities connected with the taxpayer during the year (section 960-345).

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

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

77. 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.

78. 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.

79. 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.

80. 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.

81. 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).

82. 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 is accepted into the Project during either the year ended 30 June 2001 or the year ended 30 June 2002 and 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 2012. Growers who acquire more than one interest in the Project may however, pass one of the tests in an earlier income year.

83. 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.

84. 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 is accepted into the Project during either the year ended 30 June 2001 or the year ended 30 June 2002 and 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) until the year ended 30 June 2009.

85. 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.

86. 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 43), in the manner described in the Arrangement (see paragraphs 14 to 35), 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.

87. 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
- independent, objective, and generally available information relating to the afforestation industry.

Section 82KL - recouped expenditure

88. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' plus the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

89. 'Additional benefit' (see the definition of 'additional benefit' at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit that is additional to the benefit for which the expenditure is ostensibly incurred. The 'expected tax saving' is essentially the tax saved if a deduction is allowed for the relevant expenditure.

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

Part IVA - general tax avoidance provisions

91. 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).

92. The Tumbarumba Paulownia Plantation No. 2 will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 37-42 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.

93. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the eventual harvesting and sale 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'

94. 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).

Example 2 – Apportionment of Fees

95. 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:

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

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

= **\$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.

Example 3 – Apportionment of fees where there is a contractual 'eligible service period' and the fees include expenditure that is 'excluded expenditure'

96. On 1 June 2001 Kevin applies for an interest into the Western Bluegum Project, a prospectus based afforestation project of 12 years. Kevin is accepted into the project and executes a lease and management agreement with the Responsible Entity for the provision of management services and the lease of his Woodlot. The terms of

the lease and management agreement require Kevin to prepay the management fees and the lease fee on or before the 30 June each year for the lease of his Woodlot and the provision of management services between the 1 July and 30 June in the following income year. Kevin pays the first year management fee of \$3,600 and first year lease fee of \$500 on 15 June 2001.

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

Management fee

Even though he paid the \$3,600 in the 2001 income year, because there are no 'days of eligible service period' in that year, Kevin is unable to claim any part of his management fees as a tax deduction in his tax return for the year ended 30 June 2001.

Lease fee

Because the \$500 lease fee is less than \$1,000 it is 'excluded expenditure' and can be claimed in full as a tax deduction in Kevin's tax return for the year ended 30 June 2001.

In the **2002 income year** Kevin can claim a tax deduction for his first year's management fees calculated as follows:

$$\begin{array}{r} \$3,600 \quad \times \quad \frac{365}{365} \\ \hline \end{array}$$

= **\$3,600** (this represents the whole of the first year's management fee prepaid in the 2001 income year but not deductible until the 2002 income year).

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

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Commissioner of Taxation

23 May 2001

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