



PR 2002/118 - Australian Cricket Bat Willow Project - Prospectus 2002

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 This document has changed over time. This is a consolidated version of the ruling which was published on *2 October 2002*



Product Ruling

Income tax: Australian Cricket Bat Willow Project – Prospectus 2002

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Preamble

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

No guarantee of commercial success

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product. 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.

Participants 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 participants 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, participants lose the protection of this Product Ruling. Participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Participants 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 laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the Australian Cricket Bat Willow Project – Prospectus 2002, or simply as 'the Project'.

Tax laws

2. The tax laws 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);
 - Section 25-25 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - Section 82KZL (ITAA 1936);
 - Section 82KZME (ITAA 1936);
 - Section 82KZMF (ITAA 1936);
 - Section 82KZMG (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.

Changes in the Law

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 taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers who are considering participating 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 participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified 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. 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 arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

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Date of effect

11. This Ruling applies prospectively from 2 October 2002, 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 that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, 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 2005. 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 arrangement specified below. 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 person's involvement in the arrangement.

Arrangement

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

- Revised Application for Product Ruling for the Australian Cricket Bat Willow Project - Prospectus 2002, dated 26 June 2002;
- Draft Prospectus for the Australian Cricket Bat Willow Project - Prospectus 2002, dated 26 August 2002 received in the ATO 26 August 2002;
- **Constitution** of Australian Cricket Bat Willow Plantation Management Services Ltd ('Responsible Entity') establishing the Australian Cricket Bat Willow Project;
- Revised '**Plantation Management Agreement**' between the Grower and Australian Cricket Bat Willow Plantation Management Services Ltd ('Manager'), received in the ATO 27 June 2002;
- Deed of Assignment of Head Lease (Koraleigh Property) between Australian Willow Plantation Pty Ltd ('Lessee') and registered proprietors, dated 12 June 1998;
- '**Plantation Lease**' between the Grower and Australian Cricket Bat Willow Plantation Management Service Limited ('Landholder'), undated;
- 'Plantation Services Agreement' between Manager and Murray Valley Nurseries Pty Ltd ('Contractor'), undated;
- **Loan Agreement 2000** between Australian Plantation Finance Pty Ltd ('Financier') and Grower undated;
- Custody Agreement between Manager and Sandhurst Trustees Limited ('Custodian'), undated;
- Forestry Advisers Agreement between Manager and Forestry Adviser, undated;
- Administrative Services Agreement between Manager and Calculum Pty Ltd, undated,;
- Supply of Rootstock Agreement between Manager and Australian Cricket Willow Pty Ltd, dated 3 July 2002; and

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- Correspondence (including e-mails from the applicant or the applicant's representative to the Tax Office, dated 15 April 2002, 31 May 2002, 3 June 2002, 4 June 2002, 25 June 2002, 26 June 2002, 3 July 2002, 13 August 2002, 26 August 2002, 27 August 2002, 17 September 2002 and 19 September 2002.

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

15. The documents highlighted are those that the Growers enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or an associate of the Grower will be a party to that are part of the arrangement to which this Ruling applies.

16. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of the agreements may be summarised as follows.

Overview

17. The arrangement is called the Australian Cricket Bat Willow Project – Prospectus 2002

Location	Koraleigh, Murray Valley Region, South Western New South Wales.
Type of business each participant is carrying on	Commercial growing, and cultivation of Cricket Bat Willow Trees (<i>Salix Alba Var. Caerulea</i> trees) for the purpose of producing timber for manufacture into Cricket Bats.
Number of hectares offered for cultivation	This Prospectus provides for 20 hectares to be planted, however, oversubscriptions may be accepted.
Size of each Allotment	Minimum of 150m ² (2 Allotments of 75m ² each) additional areas available in multiples of 75m ²
Number of trees per Hectare	625 stems
Expected production	300 clefts per 75m ²
Term of the Project	Approximately 10-12 years
Initial cost	\$2,650 per 75m ² (consisting of \$2622.50 Plantation Establishment Services and \$27.50 Rent)
Per minimum investment	\$5,300 – Plantation Allotment of 150 m ²

Ongoing costs	Growers are required to pay annual management fee of \$110 per 75m ² indexed on 30 June each year commencing 1 July 2003. Rent of \$27.50 per 75m ² Leased Area, indexed annually as at 30 June each year commencing 1 July 2003.
Other costs	<ul style="list-style-type: none"> • Growers will be charged for the cost of insurance against fire. The Manager will charge a fee of 10% of the premium for this service. • Growers will pay the cost of harvesting the willow trees calculated on a pro rate basis. • Marketing fee equal to 20% of the amount by which the net proceeds of sale of the Plantation exceeds the base price of \$9000 (indexed from 30 June each year from the Commencement Date) for each 75m² of the Plantation Allotment.

18. The Project consists of an arrangement between Growers and Australian Cricket Bat Willow Plantation Management Services Ltd ('Manager') for the growing of Willow Trees (*Salix Alba* *Var. Caerulea* trees) to produce timber for manufacturing into Cricket Bats. The Project will be established for between 10 –12 years. There is no minimum subscription for the Project however, Growers will be required to acquire a minimum interest of one Plantation Allotment, which is equivalent to 2 units of an area of 150m². Additional units may be acquired by increments of 75m². Growers will be provided with a report in relation to progress and /or developments in relation to the Project following completion of the establishment of the Plantations. Annual reports will follow no later than 31 March in each year detailing any changes and actual operations performed to the Project Land.

19. This Project offers applicants to participate in Stage 3 of the Project under which it is intended to plant approximately 20 hectares of Willow Trees on the Koraleigh Site being part of the land described in Certificate of Title Volume 6708 Folio 28. The Manager may secure an alternative site in the near vicinity of Stage 3 in the event that Stage 3 is oversubscribed or significantly under subscribed so that the Koraleigh Site will not be fully utilised.

20. Based on the Plantation Management Agreement, intending participants who subscribe to an offer made in the Prospectus may be accepted as:

- Pre 31 May 2003 Growers;
 - Growers whose application is accepted in the Project on or before 31 May 2003 and the Manager will have completed the Plantation Establishment Services by 30 June 2003;

- Prepaid Growers – Growers whose application is accepted in the Project on or after 1 June 2003 and before 30 June 2003 and the Manager will have completed the Plantation Services by 31 August 2003.
- 2004 Growers – Growers whose application is accepted in the Project on or after 1 July 2003 and before the expiry date of the Prospectus the Manager will have the Plantation Services completed within 30 days after the expiry date of the Prospectus.

Plantation Management Agreement and Schedule

21. The Grower will engage the Manager pursuant to a Plantation Management Agreement to perform Plantation Services during the Term. The Plantation Services include the services required to establish the Grower's Plantation ('Plantation Establishment Services'), to manage and maintain the Plantation until maturity, and to harvest the Plantation upon maturity.

22. The Plantation Establishment Services are listed in the Schedule of the Plantation Management Agreement - Part 1 of the Management Plan and include the following services;

- The Plantation Allotment is cleared and prepared for planting with initial spraying of herbicides, deep ripping and ploughing,
- The supply and maintenance of *Salix Alba* *Var. Caerulea* rootstock (stems),
- Planting the Willow Trees in rows to achieve a stocking rate of ten trees per 75m².

23. For a Grower who acquires an Interest in the Project, the Manager will complete the Plantation Establishment Services by the Plantation Establishment Date.

24. For an annual management fee the Manager will provide the following Plantation Services;

- The Plantation is tended, maintained, monitored and cared for including, when appropriate, by application of fertilisers and herbicides,
- Security measures are taken as appears appropriate to protect the Plantation,
- Measures to prevent or combat land degradation are taken,

- All acts and regulations, by-laws, orders, ordinances and rules made in respect of or applying to the use or occupancy of the Project Land are complied with,
- Insurance policies for fire and public liability are maintained as agreed,
- All reasonable care is used to avoid causing any unreasonable interference to the owners or occupiers of abutting land,
- The Plantation is harvested at maturity and processed into timber clefts suitable for use in the manufacture of cricket bats,
- Reports are issued to the Growers regarding the Plantation Allotment as agreed.

25. The Plantation Management Agreement shall commence on the Commencement Date and will continue until the Plantation has been Harvested and the Timber sold.

26. The Willow Trees planted will be harvested by the Manager when the trees attain commercial maturity at approximately 10 years. Pursuant to the Plantation Management Agreement the Grower must pay the Manager for the reasonable cost of harvesting the Willow Trees and, if it is required by the terms of the Timber Sale Agreement, processing the harvested timber into clefts. Each Grower authorises the Manager to enter into Timber Sale Agreements on behalf of the Grower in respect of the Timber.

Plantation Lease and Schedule

27. The parties to the Plantation Lease are Australian Cricket Bat Willow Plantation Management Services Limited (the Landholder) and the Grower named and describe in Item 1 of the Schedule. Under the terms of the lease, the Grower is granted an interest over an identifiable interest of land called the Plantation Allotment consisting of at least two Leased Areas, each of 75m², for the purposes of carrying on a business of establishing, maintaining and harvesting of Willow Trees.

28. The Grower will sublease a Plantation Allotment from the Landholder pursuant to a Plantation Lease for a Term of 10 years expiring 25 June 2013. However, as the Willow Trees may take longer to attain a suitable size and density for the production of clefts, the Grower will be granted an option to extend the term of the Plantation Lease for an additional 4 years or until the earlier harvesting of the Willow Trees.

29. The Plantation Lease sets out the purpose for which the Grower may use the land, and the Grower's covenants (clause 6), the Landholder's covenants (clause 7) and Mutual covenants (clause 8).

30. Pursuant to the Plantation Lease, the Grower is required to pay Rent for the Plantation Allotments and rent is inclusive of water consumption and the cost of leasing irrigation equipment. Clause 7.13 and 7.14, provides for the Landholder to install and maintain a trickle irrigation system to water the Plantation Allotments contained within the area of the Head Lease of up to 6 megalitre of water per hectare per annum.

Constitution

31. The Constitution details the rights and liabilities of the Manager, as Responsible Entity, and each Grower who acquires an Interest in the Project. The Constitution is registered by Australian Securities Commission and is legally binding upon the Manager and each Grower.

32. Among other things, the Constitution sets out in detail the following:

- The appointment of Australian Cricket Bat Willow Plantation Management Service Limited as Responsible Entity of the Project (clause 2),
- The Responsible Entity will appoint a Sandhurst Trustees Limited ('Custodian') to hold the Project Property subject to the terms of the Constitution (clause 4.2),
- The opening of bank accounts for the purposes of a Project Trust Account to hold Growers Contributions and Management Income (clause 5 and 6),
- The Rent shall be payable by the Grower directly to the Lessor in accordance with the terms of the Lease (clause 7),
- Harvest Income due to Growers is payable to the Responsible Entity and deposited into the Harvest Trust Account (clause 8.1).
- Within 21 days the Responsible Entity is required to distribute the Harvest Income as follows;
 - firstly the Responsible Entity is to be reimbursed for all costs, expenses and outgoings in carrying out thinning or clear fall on the relevant Plantations (clause 8.1(a)),

- secondly the product marketing fee as specified in the Plantation Management Agreement (clause 8.1(b)), and
- subject to Clause 8.2 the balance of the Harvest Income is to be distributed to the Growers according to their proportional holding of Plantation Allotments (clause 8.1(c)),
- The Responsible Entity will maintain a Register of the Growers with the Growers names and addresses, description of the Plantation Allotment leased by the Grower, the date at which the name of each Grower entered in the Register and the date on which any person ceased to be a Grower (clause 10). A copy of the Project Agreements will be issued to the Grower within two months after executing the Project Agreements.

Fees

33. Under the terms of the Plantation Management Agreement and the Plantation Lease, for pre 31 May 2003 Growers the following fees apply:

- Plantation Services which include;
 - \$2622.50 on application for Plantation Establishment Services to be completed on or before the Plantation Establishment Date for each 75m² of the Plantation Allotment.
 - An annual management fee of \$110 for each 75m² of the Plantation Allotment, indexed each 30 June, commencing 1 July 2003. The first annual management fee is to be made on 1 August 2003 and thereafter 1 August in each year.
- Rent of \$27.50 for each 75m² of the Leased Area of the Plantation Allotment. Rent will be indexed each 30 June, commencing 1 July 2003. First year Rent is paid on application for the period from the Commencement Date until 30 June 2003 and thereafter 1 August in each year.

34. For Prepaid Growers the following fees apply:

- Plantation Services which include;
 - \$2622.50 on application for Plantation Establishment Services for each 75m² of the

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Plantation Allotment, to be completed on or before 31 August 2003.

- An annual management fee of \$110 for each 75m² of the Plantation Allotment, indexed each 30 June, commencing 1 July 2003. The first annual management fee is to be made on 1 August 2004 and thereafter 1 August in each year.

- Rent of \$27.50 for each 75m² of the Leased Area of the Plantation Allotment. Rent will be indexed each 30 June, commencing 1 July 2003. First year Rent is paid on application for the period from the Commencement Date until 30 June 2004 and thereafter 1 August in each year.

35. For 2004 Growers the following fees apply:

- Plantation Services which include;
 - \$2622.50 on application for Plantation Establishment Services for each 75m² of the Plantation Allotment, to be completed 30 days after the expiry of the Prospectus.
 - An annual management fee of \$110 for each 75m² of the Plantation Allotment, indexed each 30 June, commencing 1 July 2003. The first annual management fee is to be made on 1 August 2004 and thereafter 1 August in each year.
- Rent of \$27.50 for each 75m² of the Leased Area of the Plantation Allotment. Rent will be indexed each 30 June, commencing 1 July 2003. First year Rent is paid on application for the period from the Commencement Date until 30 June 2004 and thereafter 1 August in each year.

36. In addition to the fees paid above the following fees also apply to all Growers:

- Marketing Service Fee equal to 20% of the amount by which the net proceeds of sale of the timber exceed \$9000 (indexed);
- harvest costs and expenses – reimbursement of reasonable costs and expenses actually incurred;
- insurance of Plantation - at a reasonable cost and expenses actually incurred; and

- a Grower who borrows the Principle Sum from Australian Plantation Finance Pty Ltd is required to pay a loan application fee of \$250.

Finance

37. Growers can fund their involvement in the Project themselves, borrow from an independent lender or borrow from Australian Plantation Finance Pty Ltd ('the Financier'), a lender associated with the Responsible Entity.

38. The provision of finance involves full recourse loans where the Financier will pursue legal action against defaulting borrowers. Only those Growers entering into the following finance arrangement are covered by this Ruling.

- The Financier will provide a maximum Settlement Sum of 80% of the Grower's Application Amount;
- The Financier will provide the Principle Sum to Growers who subscribe for a minimum subscription amount of \$10,000;
- The Grower will pay a loan application fee of \$250 to the Financier prior to receiving the Principle Sum from the Financier;
- The Grower will pay interest at the rate referred to in the Schedule on the amount of the principle sum outstanding from time to time, which payments of interest will be due and payable on each successive date set out in the Schedule under the heading 'Repayment of Principle Sum' (clause 6);
- In the event that any of the Principle Sum is not repaid as provided in Clause 6, interest at 4% above the interest rate specified in the Schedule is due and payable from the date the unpaid part to the Principle Sum fell due until the date the sum is paid by the Grower;
- The Principle Sum and interest must be paid in full to the Financier within five (5) years;
- The Grower is entitled upon notice to the Financier to repay the whole or any part of the principle sum without penalty for early repayment;
- The Grower will assign and transfer over to the Financier by way of security all its rights, title and interest in and under the Plantation Management

Agreement, Plantation Lease, Wood Purchase Agreement and Insurances.

39. This Ruling does not apply if the finance arrangement entered into by the Grower 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 Principle 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 Australian Plantation Finance Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

40. This Ruling applies to Growers who have executed a Plantation Management Agreement and a Plantation Lease and are accepted to participate in the Project:

- On or before 30 June 2003, where the Grower has executed a Plantation Lease and Plantation Management Agreement on or before that date; and/or
- On or after 1 July 2003 and before the expiry date of the Prospectus, where the Grower has executed a

Plantation Lease and Plantation Management Agreement on or before those dates.

41. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

42. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

The Simplified Tax System ('STS')

Division 328

43. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower :

- must be eligible to be an 'STS taxpayer'; and
- must have elected to be an 'STS taxpayer'.

Qualification

44. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income

Section 6-5

45. That part of the gross sales proceeds from the Project attributable to the Growers produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

46. The Grower recognises ordinary income from carrying on the business of afforestation at the time that income is derived.

PR 2002/118*Deductions for Plantation Establishment Services, Annual Management Fee, Rent, Interest and Borrowing Costs**Section 8-1*

47. A pre 31 May 2003 Grower who is accepted to participate in the Project and acquires a minimum interest of one Plantation Allotment (an area of 150m²), and who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses shown in the table below. If a Grower is accepted into the Project between 1 July 2003 and before the expiry date of the Prospectus, the years ended 30 June 2004, 2005 and 2006 must be substituted for the income years shown in the table below.

Fee Type	ITAA 1997 Section	Year ended 30 June 2003	Year ended 30 June 2004	Year ended 30 June 2005
Plantation Establishment Services	8-1	\$5245 See Notes (i) (ii) & (iii) (below)		
Annual Management Fees	8-1		\$220 indexed – See Notes (i) (v) & (vi) (below)	\$220 indexed – See Notes (i) (v) & (vi) (below)
Rent	8-1	\$55 – See Notes (i) & (v) (below)	\$55 indexed – See Notes (i) (v) & (vi) (below)	\$55 indexed – See Notes (i) (v) & (vi) (below)
Interest	8-1	As incurred See Note (vii) (below)	As incurred See Note (vii) (below)	As incurred See Note (vii) (below)
Borrowing Costs	25-25	Must be calculated – see note (viii) below	Must be calculated – see note (viii) below	Must be calculated – see note (viii) below

48. A Prepaid Grower who is accepted to participate in the Project and acquires a minimum interest of one Plantation Allotment (an area of 150m²), and who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses.

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Fee Type	ITAA 1997 Section	Year ended 30 June 2003	Year ended 30 June 2004	Year ended 30 June 2005
Plantation Establishment Services	8-1	\$5245 See Notes (i) (ii) & (iii) (below)		
Annual Management Fees	8-1			\$220 indexed – See Notes (i) (v) & (vi) (below)
Rent	8-1	Must be calculated – See Notes (i) & (iv) (below)		\$55 indexed – See Notes (i) (v) & (vi) (below)
Interest	8-1	As incurred See Note (vii) (below)	As incurred See Note (vii) (below)	As incurred See Note (vii) (below)
Borrowing Costs	25-25	Must be calculated – see note (viii) below	Must be calculated – see note (viii) below	Must be calculated – see note (viii) below

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See Example at paragraph 122.
- (ii) Expenditure for ‘seasonally dependent agronomic activities’ is deductible in the income year in which it is incurred.
- (iii) If a Grower is accepted into the Project between 1 July 2003 and before the expiry date of the Prospectus the Plantation Establishment Services shown in the Plantation Management Agreement is deductible in full in the year that it is incurred and is for things that will be done in the year the Plantation Establishment Services fee is incurred.
- (iv) The Plantation Lease, requires those Growers who enter into the project after 31 May 2003 and on or before 30 June 2003, to prepay the first year Rent fee for the period from the Commencement Date to 30 June 2004. For a Grower who acquires the minimum Plantation Allotment of 2 interests, the amount of those prepaid Rent fees is less than \$1,000

and for the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. Therefore the Rent fee is deductible in full in the year in which it is incurred. However, where a Grower acquires more than the minimum allocation in the Project, the amount of the Rent fee may be \$1,000 or more. Where this occurs, such Growers MUST determine the relevant deduction for the prepaid Rent using the formula shown below in paragraph 82.

- (v) Where a Grower who is an 'STS taxpayer', pays the annual management fees and Rent Fee in the relevant income years shown in the Plantation Management Agreement and the Plantation Lease, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 76 to 98). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 82, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.
- (vi) The annual management fee and Rent will be subject to Indexation commencing on 30 June 2003 and on 30 June each year thereafter. The amount will be the prior year fee indexed at the annual rate of inflation. If a Grower's Commencement Date is after 31 May 2003 the Rent will be Indexed as at 30 June 2004 and on 30 June each year thereafter.
- (vii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Australian Plantation Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with than Australian Plantation Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 76 to 98 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the

prepayment is required under the relevant loan agreement or is at the Grower's choice.

- (viii) The Loan Application fee is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing moneys that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5 and section 328-105

49. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on those proceeds (section 17-5), will be assessable income of the Grower under section 6-5.

50. The Grower recognises ordinary income from carrying on the business of afforestation at the time the income is received (paragraph 328-105(1)(a)).

Deductions for Plantation Establishment Service, Annual Management fees, Rent, Interest and Borrowing Costs

Section 8-1 and section 328-105

51. A pre 31 May 2003 Grower who is accepted to participate in the Project acquires a minimum interest of one Plantation Allotment (an area of 150m²), and who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses shown in the table below. If a Grower is accepted into the Project between 1 July 2003 and before the expiry date of the Prospectus, the years ended 30 June 2004, 2005 and 2006 must be substituted for the income years shown in the table below.

Fee Type	ITAA 1997 Sections	Year ended 30 June 2003	Year ended 30 June 2004	Year ended 30 June 2005
Plantation Establishment Services	8-1 328-105	\$5245 See Notes (ix) (x) & (xi) (below)		
Annual Management Fees	8-1 328-105		\$220 indexed – See Notes	\$220 indexed – See Notes

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			(ix) (xii) & (xiv) (below)	(ix) (xii) & (xiv) (below)
Rent	8-1 328-105	\$55 – See Notes (ix) (xii) & (xiv) (below)	\$55 indexed – See Notes (xi) (xii) & (xiv) (below)	\$55 indexed – See Notes (ix) (xii) & (xiv) (below)
Interest	8-1 328-105	As incurred See Note (xv) (below)	As incurred See Note (xv) (below)	As incurred See Note (xv) (below)
Borrowing Costs	25-25	Must be calculated – see note (xvi) below	Must be calculated – see note (xvi) below	Must be calculated – see note (xvi) below

52. A Prepaid Grower who is accepted to participate in the Project acquires a minimum interest of one Plantation Allotment (an area of 150m²), and who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses.

Fee Type	ITAA 1997 Sections	Year ended 30 June 2003	Year ended 30 June 2004	Year ended 30 June 2005
Plantation Establishment Services	8-1 328-105	\$5245 See Notes (ix) (x) & (xi) (below)		
Annual Management Fees	8-1 328-105			\$220 indexed – See Notes (ix) (xiii) & (xiv) (below)
Rent	8-1 328-105	Must be calculated – see notes (ix) & (xii) (below)		\$55 indexed – See Notes (ix) (xiii) & (xiv) (below)
Interest	8-1 328-105	As incurred See Note (xv) (below)	As incurred See Note (xv) (below)	As incurred See Note (xv) (below)
Borrowing Costs	25-25	Must be calculated – see note (xvi) below	Must be calculated – see note (xvi) below	Must be calculated – see note (xvi) below

Notes:

- (ix) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits). See Example at paragraph 122.
- (x) Expenditure for 'seasonally dependent agronomic activities' is deductible in the income year in which it is incurred.
- (xi) If a Grower who is an 'STS taxpayer' and is accepted into the Project between 1 July 2003 and before the expiry date of the Prospectus, the Plantation Establishment Services fee is for things that will be done in the year the fee is incurred. Where the at Grower chooses to pay the Plantation Establishment Service fee in full in the year in which it is incurred, the amount is deductible in full when it is incurred.
- (xii) The Plantation Lease, requires those Growers who enter into the project after 31 May 2003 and on or before 30 June 2003, to prepay the first year Rent fee for the period from the Commencement Date to 30 June 2004. For a Grower who acquires the minimum Plantation Allotment of 2 interests, the amount of those prepaid Rent fees is less than \$1,000 and for the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. Therefore the Rent fee is deductible in full in the year in which it is incurred. However, where a Grower acquires more than the minimum allocation in the Project, the amount of the Rent fee may be \$1,000 or more. Where this occurs, such Growers **MUST** determine the relevant deduction for the prepaid Rent using the formula shown below in paragraph 82.
- (xiii) Where a Grower who is an 'STS taxpayer', pays the annual management fees and Rent Fee in the relevant income years shown in the Plantation Management Agreement and the Plantation Lease, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 76 to 98). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 82, unless the

expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

- (xiv) The annual management fee and Rent will be subject to Indexation commencing on 30 June 2003 and on 30 June each year thereafter. The amount will be the prior year fee indexed at the annual rate of inflation. If a Grower's Commencement Date is after 31 May 2003 the Rent will be Indexed as at 30 June 2004 and on 30 June each year thereafter.
- (xv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Australian Plantation Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Australian Plantation Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 76 to 98 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.
- (xvi) The Loan Application fee is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing moneys that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter.

Tax outcomes that apply to all Growers

Deferral of losses from non-commercial business activities Division 35

Section 35-55 – Commissioner's discretion

53. For a Grower who is an individual and who enters the Project during the year ended 30 June 2003 and/or 30 June 2004 and who will engage the Manager to arrange for the harvesting of trees and marketing of timber, 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 2003 to 30 June 2013 for a Grower who is accepted into the Project on or before 30 June 2003,
- the income years ending 30 June 2004 to 30 June 2013 for a Grower who is accepted into the Project on or after 1 July 2003 and before the expiry date of the Prospectus,

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.

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

- the 'exception' in subsection 35-10(4) applies (see paragraph 109 in the Explanations part of this ruling, below); or
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- a Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

55. Where, the 'exception' in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, 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.

56. 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 subsection 35-55(1) as an indication that the Tax Office sanctions or guarantees the Project or the product to be commercially viable. An assessment of the Project or the product from this perspective has not been made.

Section 82KL, and Part IVA

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

- section 82KL does not apply to deny the deductions otherwise allowable; and

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

Explanations

Is the Grower carrying on a business?

58. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the Australian Cricket Bat Willow Project – Prospectus 2002 must amount to the carrying on of a business of primary production.

59. Where there is a business, or a future business, the gross proceeds from the sale of the wood produce 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.

60. For schemes such as that of the Australian Cricket Bat Willow Project – Prospectus 2002, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929.

61. Generally, a Grower will be carrying on a business of afforestation, and hence primary production, if:

- the Grower has an identifiable interest (by lease) in the land on which the Grower's trees are established;
- the Grower has a right to harvest and sell the wood produce from those trees;
- the afforestation activities are carried out on the Grower's behalf;
- the afforestation activities of the Grower are typical of those associated with a afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

62. In this Project, each Grower enters into a Plantation Management Agreement and a Plantation Lease.

63. Under the Plantation Lease each individual Grower will have rights over a specific and identifiable area of 150m² of land. The

Plantation Lease provides the Grower with an ongoing interest in the specific trees on the leased area for the term of the Project. Under the lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The lease allows the Manager to come onto the land to carry out its obligations under the Plantation Management Agreement.

64. Under the Plantation Management Agreement the Manager is engaged by the Grower to establish and maintain a Plantation Allotment on the Grower's identifiable area of land during the term of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Plantation Allotment on the Grower's behalf.

65. The Manager is also engaged to harvest and sell, on the Grower's behalf, the wood produce grown on the Grower's Plantation Allotment.

66. 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 Project's description for all the indicators.

67. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of the wood produce that will return a before-tax profit, i.e., a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

68. The pooling of wood produce from trees grown on the Grower's Plantation Allotment with the wood produce of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled wood products will reflect the proportion of the trees contributed from their Plantation Allotment.

69. The Manager's services are also consistent with general silvicultural practices. They are of the type ordinarily found in afforestation ventures that would commonly be said to be businesses. While the size of a Plantation Allotment is relatively small, it is of a size and scale to allow it to be commercially viable. (see Taxation Ruling IT 360).

70. The Grower's degree of control over the Manager as evidenced by the Plantation Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Grower with regular progress reports on the Grower's Plantation Allotment and the activities carried out on the Grower's behalf. Growers are able to

terminate arrangements with the Manager in certain instances, such as cases of default or neglect.

71. 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. For the purposes of this Ruling, the Growers' afforestation activities in the Australian Cricket Bat Willow Project – Prospectus 2002 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

72. Subdivision 328-F sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.

73. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

Deductibility of Plantation Establishment Services, Annual Management fees and Rent fees

Section 8-1

74. Consideration of whether the Plantation Establishment Services, annual management fees and Rent 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 is contractually committed 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.

75. The Plantation Establishment Services, annual management fees and Rent Fees associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of wood produce) 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 Plantation Establishment Services and annual management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMG

76. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g., the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

77. For this Project, only section 82KZL (an interpretive provision) and sections 82KZME, 82KZMF and 82KZMG are relevant. Subject to section 82KZMG, if the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

78. Other than expenditure deductible under section 82KZMG, if the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met

if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

79. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year; and
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either :
 - (a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
 - (b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

80. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier other than Australian Plantation Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

81. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

82. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure.

Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

83. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

Section 82KZMG

84. Under section 82KZMG(1), expenditure is excluded from the prepayment rules that would otherwise apply, to the extent that the prepaid amount satisfies the requirements of subsections 82KZMG(2) to (4).

85. Subsection 82KZMG(2) requires that the expenditure is

- incurred on or after 2 October 2001 and on or before 30 June 2006; and
- the eligible service period must be 12 months or shorter and must end on or before the last day of the year of income after the expenditure year; and
- for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

86. To satisfy subsection 82KZMG(3) the agreement must satisfy the following requirements:

- it must be an agreement for planting and tending trees for felling; and
- be an agreement where the taxpayer does not have day to day control over the operations arising out of the agreement. (A right to be consulted or to give directions does not equate to day to day control for the purposes of this requirement); and
- either:
 - (i) there is more than one participant in the agreement in the same capacity as the taxpayer; or
 - (ii) the manager manages, arranges or promotes the agreement, or an associate of the manager,

manages, arranges or promotes similar agreements.

87. Under subsection 82KZMG(4) the expenditure incurred by the taxpayer must be paid for 'seasonally dependent agronomic activities' undertaken by the manager during the 'establishment period' for the relevant planting of trees for felling.

88. Subsection 82KZMG(5) defines the 'establishment period' to commence at the time that the first 'seasonally dependent agronomic activity' is performed in relation to a specific planting of trees and to conclude with the planting of trees. Where it is necessary to apply a fertiliser or herbicide to the trees at the same time as planting then those activities fall within the establishment period. Planting of trees refers to the main planting of the particular plantation and expressly excludes specific planting to replace existing seedlings that have not survived.

Application of the prepayment provisions to this Project

89. Under the Plantation Management Agreement, a Grower incurs a Year 1 Plantation Establishment Service consisting of expenditure of \$5245 'seasonally dependent agronomic activities'.

90. The 'seasonally dependent agronomic activities' that will be carried out by the Manager on the Grower's behalf during the 'establishment period' are ploughing, ripping, and other subsurface works, soil improvement, supply, maintenance and planting of the Grower's Willow Trees. During the term of the Project, the Willow Trees will be tended by the Manager for the Growers and are specifically grown for felling in the harvest year.

91. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2003 for the expenditure incurred under the Plantation Management Agreement for 'seasonally dependent agronomic activities'.

92. The Plantation Management Agreement also requires that a Grower incurs an annual management fee of \$220 per year during Years 2 to 10 for the performance of management services during the term of the Project. Under the Plantation Lease a Grower incurs Rent of \$55 to lease land during the term of the Project.

93. The annual management fee and the Rent fee incurred under the Plantation Management Agreement and Plantation Lease in Years 2 to 10 are not prepaid. These fees are charged for providing management services and for the lease of the land to a Grower until 30 June of the year in which the fees are incurred.

94. On this basis, the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have

no application to the annual management fees in Years 2 to 10 and the Rent Fees.

95. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for each of the relevant fees in the income year in which the fee is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for each of the relevant fees in the income year in which the fee is incurred.

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

96. Although not required under either the Plantation Management Agreement, the Plantation Lease, or the Loan Agreement with Australian Plantation Finance Pty Ltd (see below), a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Where this occurs, contrary to the conclusion reached in paragraph 94 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

97. For these Growers, the amount and timing of deductions for any relevant prepaid Management Fees, prepaid Rent Fees, or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

98. However, as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be 'excluded expenditure' and will be not subject to apportionment under section 82KZMF.

Interest deductibility

Section 8-1

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

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

100. The interest incurred for the year ended 30 June 2003 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing trees and the lease of the land on which the trees will have been planted - that will continue to be 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.

101. As with the annual management fees and the Rent fees, in the absence of any application of the prepayment provisions (see paragraphs 76 to 98), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

102. If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.

103. If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

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

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

105. 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. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 76 to 98).

Deferral of losses from non-commercial business activities

Division 35

106. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2) a deduction for a loss made by an individual (including an individual in a general law partnership) from certain business activities will not be taken into account in an income year unless:

- the exception in subsection 35-10(4) applies;

- one of four tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

107. 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.

108. Losses that cannot be taken into account in a particular year of income, because of subsection 35-10(2), can be applied to the extent of future profits from the business activity, or are deferred until one of the tests is passed, the discretion is exercised, or the exception applies.

109. For the purposes of applying Division 35, 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.

110. In broad terms, the 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, or an interest in real property, (excluding any private dwelling) 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 (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

111. 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 allocation of one Plantation Allotment in the Project is unlikely to have their activity pass one of the tests until the income year ended 30 June 2014. Growers who

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acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

112. 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.

113. 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, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where the business activity has started to be carried on and for that, or those income years;

- because of its nature, the business activity has not satisfied, or will not satisfy one of the tests set out in Division 35; and
- there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

114. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Plantation Allotment in the Project is expected to be carrying on a business activity that will produce a taxation profit, for the income years ended 30 June 2014.

115. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2013.

116. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 52), in the manner described in the Arrangement (see paragraphs 17 to 39). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

117. 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 marketing consultant and scientific evidence provided with the application by the Responsible Entity;
- independent, objective, and generally available information relating to the afforestation industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Losses and Outgoings incurred under Certain Tax Avoidance Schemes

Section 82KL - recouped expenditure

118. 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.

Schemes to Reduce Income Tax

Part IVA - general tax avoidance provisions

119. 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).

120. The Australian Cricket Bat Willow Project – Prospectus 2002 will be a ‘scheme’. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 47 and 52 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.

121. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of the wood produce. 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 at arm’s length or, if any parties are not dealing 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 GST input tax credits

122. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2002 to 30/6/2002	\$4 400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2 200*</u>
Total due and payable by 1 January 2002 (includes GST of \$600)	<u>\$6 600</u>

*Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

$$1/11 \times \$4400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4400 *less* \$400, or \$4000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

$$1/11 \times \$2200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2200 *less* \$200, or \$2000.

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4000 (not \$4400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2000 only, not one tenth of \$2200).

Detailed contents list

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Commissioner of Taxation

2 October 2002

<i>Previous draft:</i>	- ITAA 1936 82KZMG
Not previously issued in draft form	- ITAA 1936 82KZMG(1)
	- ITAA 1936 82KZMG(2)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZMG(3)
PR 1999/95; TR 92/1; TR 92/20;	- ITAA 1936 82KZMG(4)
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	- ITAA 1936 177A
	- ITAA 1936 177C
<i>Subject references:</i>	- ITAA 1936 177D
- advance deductions and expenses for certain	- ITAA 1936 177D(b)
- forestry expenditure	- ITAA 1936 Subdiv H
- carrying on a business	- ITAA 1936 Div 3, Part III
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- producing assessable income	- ITAA 1997 Div 35
- product ruling	- ITAA 1997 35-10
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