



PR 2002/145 - Income tax: Willmott Forests Professional Investor 2003 Project

 This cover sheet is provided for information only. It does not form part of *PR 2002/145 - Income tax: Willmott Forests Professional Investor 2003 Project*

 This document has changed over time. This is a consolidated version of the ruling which was published on *18 December 2002*



Product Ruling

Income tax: Willmott Forests Professional Investor 2003 Project

Contents	Para
What this Product Ruling is about	1
Date of effect	11
Withdrawal	13
Arrangement	14
Ruling	39
Explanations	55
Example	114
Detailed contents list	115

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

Preamble

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

No guarantee of commercial success

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

Potential 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 this product fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential 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. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential 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 Willmott Forests Professional Investor 2003 Project or simply as 'the Project'.

Tax law(s)

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);
 - 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, each of these persons, referred to as 'Growers', will have accepted an offer made under subsections 708(8)-(11) or section 761G of the *Corporations Act 2001* (see paragraphs 17 & 18 below).

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. This Ruling does not apply to Growers who will not engage the Manager to arrange for the harvesting of the trees and marketing of timber.

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.

10. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Intellectual Property Branch
Department of Communications, Information Technology and
the Arts
GPO Box 2154
Canberra ACT 2601

or by e-mail: commonwealth.copyright@dcita.gov.au.

Date of effect

11. This Ruling applies prospectively from 18 December 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 2006. 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:

- Application for a Product Ruling dated 25 October 2002 as constituted by documents provided on 26 July 2002 and 25 October 2002 and additional correspondence dated 7 October 2002, 25 October 2002, 27 November 2002, 2 December 2002, 5 December 2002 and 10 December 2002;
- Draft Information Memorandum Willmott Forests Professional Investor 2003 Project dated 28 August 2002 with amendments provided on 7 October 2002, 25 October 2002, 27 November 2002, 2 December 2002, and 10 December 2002 ('Information Memorandum');
- **Investment Deed** of the Willmott Forests Professional Investor 2003 Project dated 28 August 2002 that was provided as one of the enclosures in a letter dated 14 October 2002 ('Investment Deed');
- Draft **Lease Agreement** between Willmott Forests Limited ('WFL') and the Grower, that was provided as one of the enclosures in a letter dated 14 October 2002;
- Draft **Loan Agreement** between Willmott Finance Pty Ltd and the Grower that was provided as one of the enclosures in an e-mail dated 27 November 2002;
- Draft **Forestry Management Agreement** between WFL ('the Manager') and the Grower that was provided as one of the enclosures in an e-mail dated 2 December 2002; and
- Correspondence and attachments from WFL and WFL's Taxation Advisors dated 7 October 2002, 25 October 2002, 27 November 2002, 2 December 2002, 5 December 2002 and 10 December 2002.

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 Growers enter into or become a party to. The Loan Agreement will be executed where a Grower successfully applies for finance from Willmott Finance Pty Ltd. There are no other agreements, whether formal or informal, and

whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are part of the arrangements to which this Ruling applies.

16. The Information Memorandum specifies the Growers who can participate in the Project. In accordance with the Information Memorandum, a Grower who participates in the Project must have accepted an offer that was made under section 708 of the *Corporations Act 2001*.

17. **This Ruling does not apply unless the Grower:**

- is a 'sophisticated investor' for the purposes of subsections 708(8)-(9) of the *Corporations Act 2001*;
- has accepted an offer made by a licenced dealer where the offer meets the requirements of sub-section 708(10) of the *Corporations Act 2001*; or
- is a 'professional investor' for the purposes of subsection 708(11) of the *Corporations Act 2001*.

18. WFL has stated in the Information Memorandum that at the earlier of 11 March 2004 or a date that is yet to be determined in accordance with the *Corporations Act 2001*, it will only accept Growers who are wholesale clients as defined in section 761G of the *Corporations Act 2001*.

19. 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

20. This arrangement is called the Willmott Forests Professional Investor 2003 Project.

Location	Bombala region of south-east New South Wales
Type of business each participant is carrying on	Commercial forestry
Tree species	<i>Pinus radiata</i>
Number of Hectares under cultivation	Unlimited
Minimum number of Hectares than can be subscribed for	72 Hectares or such other amount as the Manager may determine but not less than 50 Hectares
Minimum number of trees per	1,100 seedlings

Hectare	
Term of the Project	25 years
Initial cost to Growers	\$7,700 per Hectare
Ongoing Costs to Growers	There are no ongoing payments for maintenance or lease rental. These costs will be covered by a percentage of Gross Timber Proceeds from the thinnings in Years 13 and 18 of the Project and the Clear Fell in Year 25 of the Project (see paragraphs 32 & 33).
Other possible costs to Growers	<ul style="list-style-type: none"> • Insurance premiums re fire after year 5 if a Grower so desires; • Harvesting and marketing costs; • Any other amounts agreed in writing between WFL and Growers.

21. Growers participating in the Project enter into a Lease Agreement and a Forestry Management Agreement. The minimum area of land that must be leased by each Grower is 72 Hectares or such other amount (but not less than 50 Hectares) as the Manager may determine. The term of the Lease is 25 years. There is no minimum or maximum amount that must be raised under the Information Memorandum. WFL has stated that the land for the Project is already available and WFL will have freehold title to the Project Land prior to allocation to Growers. Information provided in the Information Memorandum indicates that the Project Land will be drawn from land within the Bombala region of south-east New South Wales. No Hectares will be issued under the Information Memorandum later than 30 June 2004.

Lease Agreement

22. The Lease is granted by WFL ('lessor') to Growers ('lessee') under the terms of the Lease Agreement. Growers are granted an interest in land in the form of a lease to use their Hectares for the purposes of conducting their afforestation business, including the right to harvest timber grown on the Hectares. The lease is for 25 years and may be extended by 5 years or until such time as the trees have been harvested and the land made good, whichever is the sooner.

23. The lessee shall not use the land jointly with anyone else and retains the right to say when the trees are to be planted. If the lessee breaches any conditions, the lessor may enter the land to remedy the breaches at cost to the lessee. If the lessee defaults, the lessor can re-enter the land. Re-entry by the lessor ends the lease but the lessor retains all rights under the general law including the right to sue the lessee for unpaid money or for damages for breaches of the lessee's obligations under the lease.

Forestry Management Agreement

24. A Forestry Management Agreement is entered into between WFL ('the Manager') and each Grower. Growers contract with the Manager to establish and maintain the plantation until maturity. The Manager shall use all reasonable endeavours to complete the following works in accordance with good forestry practices in respect of the leasehold property. WFL may delegate its responsibilities. Part 1 services as outlined below will be provided within twelve (12) months from the date of a Grower's acceptance into the Project.

Part 1 – preparation and planting

- Preparation works – ripping, mounding and/or ploughing;
- Pre-planting weedicide treatments as required;
- Supply and planting *Pinus radiata* seedlings (high quality *Pinus radiata* cuttings or seedling material) at a minimum rate of 1,100 per Hectare;
- Fertilising, where required; and
- Pest control.

Part 2 – maintenance to clear fell (years 2 – 25)

Establishment work in years 2 to 4 as follows:

Year 2

- Supply and replanting of seedlings where required;
- Treatment of re-growth;
- Post-planting weedicide treatments as required;
- Folia analysis of planted stock;
- Construction and maintenance of access road and firebreaks as required; and

- General maintenance inclusive of on going monitoring.

Year 3

- general maintenance including monitoring, attention to regrowth, access roads and firebreaks, fertilising where required; and

Year 4

- general establishment work and maintenance, including monitoring, attention to regrowth, access roads and firebreaks.

In years 5 to 25 maintenance work involve further fertilising and general maintenance including attention to regrowth, access roads, firebreaks and selective pruning.

25. The Manager will provide a Stocking Guarantee during the Stocking Guarantee Period being the period of five years from the date the Grower is registered as the holder of the Hectare on terms and conditions set out in the Investment Deed.

26. The Stocking Guarantee as contemplated in the Investment Deed means that unless the Manager chooses to maintain an insurance policy until year 10, the Manager will at its own expense, remove Trees that are Materially Damaged, prepare the ground and acquire and plant new *pinus radiata* seedlings of a quality comparable to the original seedlings planted in accordance with the relevant Forestry Management Agreement. Trees are Materially Damaged when they are damaged or destroyed other than by:

- acts or terrorism, war, hostilities or rebellion;
- ionising radiation or contamination by radioactivity from any nuclear fuel or waste, the combustion of nuclear weapons materials; and
- any other cause or damage specified for this purpose in the Information Memorandum,

so that, in the reasonable opinion of an independent forester appointed by the Manager, there is a materially adverse impact on the value or long term viability of the relevant Trees.

27. The insurance to cover the cost of planting new trees to replace any Trees as may be damaged or destroyed by fire after the Stocking Guarantee Period will be the Grower's responsibility unless the Manager chooses to maintain such insurance at the Manager's expense. The Manager will maintain Public Risk Liability Insurance during the term of the Project subject to conditions under the Insurance Policy.

Harvesting and Marketing

28. Harvesting of the trees and marketing of timber are the Grower's decision. The Grower may engage the Manager to arrange for these services to be carried out at the appropriate time or make other arrangements to harvest and market the timber. The Manager's fees and expenses for doing so will be 1% of Gross Timber Proceeds. Harvesting is anticipated to be undertaken in years 13 (1st thinning), 18 (2nd thinning) and 25 (Clear fell).

29. The Manager will deduct from the proceeds prior to distribution to Growers any outstanding fees in accordance with the terms of the Lease Agreement and the Forestry Management Agreement.

Investment Deed

30. Growers are bound by the Investment Deed by virtue of their acceptance into the Project. The Investment Deed sets out the terms and conditions under which WFL agrees to act for the Growers and to manage the Project. Within 30 days of execution and delivery of Application for Hectares, WFL is required to notify in writing the Applicant of such acceptance. WFL has absolute discretion to decline or accept an Application for Hectares. Where the application is accepted, the Manager has two months to place the Grower in the register and provide the Grower with a copy of the Forestry Management Agreement and Lease Agreement.

Project Fees

31. The total fee in consideration for Part 1 services under the Forestry Management Agreement is \$7,700 per Hectare ('initial management fee') and this fee is payable upon application or \$1,400 per Hectare on application and the balance of \$6,300 per Hectare within 30 days .

32. For Part 2 services, a maintenance fee of 7% of the Gross Timber Proceeds is required to be paid by each Grower as and when timber is thinned or clear felled and sold.

33. Under the Lease Agreement, lease rentals of 2% of the Gross Timber Proceeds are required to be paid by Growers pursuant to the lease agreement as and when timber is thinned or clear felled and sold.

Finance

34. Growers can either fund their participation in the Project themselves, borrow from an independent lender, or may elect to use the finance facility offered by Willmott Finance Pty Ltd, an associate of the Manager ('the Lender').

35. Under the finance facility offered by the Lender, the amount of loan is \$6,300 ('principal') per Hectare on a ten (10) year term interest only facility at 8.75% per annum payable by quarterly instalment in arrears. The first quarterly interest payment is due on 30 September 2003 for Growers accepted into the Project on or before 30 June 2003 and 30 September 2004 for Growers accepted into the Project after 30 June 2003 but on or before 30 June 2004.

36. Under the Loan Agreement, the principal amount must be repaid on 30 June 2013 for Growers accepted into the Project in the year ending 30 June 2003. For Growers accepted into the Project in the year ending 30 June 2004, the principal amount must be repaid on 30 June 2014. However, subject to the Lender's consent the repayment date may be extended for a period of five (5) years on a principal and interest facility at 8.75% per annum with payments made quarterly in arrears.

37. The terms of the loan provide that security will be given over the Grower's interest in the Project including the Hectares allocated to that Grower. If a Grower defaults, the Lender will demand payment and if the demand is not complied with, the Lender will sell the Grower's interest. The Grower will pay on demand the amount of any deficiency in any loan money and interest after such sale and all costs and expenses incurred by or on behalf of the Lender in exercising its rights arising from that Grower's default.

38. 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 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 Willmott Finance Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

39. This Product Ruling applies to Growers who will engage the Manager to arrange for the harvesting of the trees and marketing of timber and who are accepted to participate in the Project:

- on or before 30 June 2003, where the Grower has executed a Lease Agreement and a Forestry Management Agreement on or before that date; and/or
- after 30 June 2003 but on or before 30 June 2004, where the Grower has executed a Lease Agreement and a Forestry Management Agreement on or between those dates.

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

41. 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

42. 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**

43. That part of the Gross Timber 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.

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

Deductions for initial management fee and interest**Section 8-1**

45. A Grower who is not an 'STS taxpayer' and who is accepted into the Project on or before 30 June 2003 may claim tax deductions for the following revenue expenses. If a Grower is accepted into the Project after 30 June 2003 but on or before 30 June 2004, the years ended 30 June 2004, 2005 and 2006 must be substituted for the income years shown in the table below.

PR 2002/145

Fee Type	ITAA 1997 Section	30/6/2003	30/6/2004	30/6/2005
Initial management fee	8-1	\$7,700 – See Notes (i) &(ii) (below)	nil	nil
Interest	8-1	As incurred – See Note (iii) (below)	As incurred – See Note (iii) (below)	As incurred – See Note (iii) (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 114;
- (ii) The initial management fee which is an expenditure in consideration of Part 1 services to be provided by the Manager is expenditure for ‘seasonally dependent agronomic activities’ and is deductible in full in the income year in which it is incurred (see paragraphs 81 to 85);
- (iii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Willmott 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 Willmott Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 73 to 80 (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.

Tax outcomes for Growers who are ‘STS taxpayers’**Assessable Income****Section 6-5 and section 328-105**

46. That part of the Gross Timber 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.

47. 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 initial management fee and interest

Section 8-1 and section 328-105

48. A Grower who is an 'STS taxpayer' and who is accepted into the Project on or before 30 June 2003 may claim tax deductions for the following revenue expenses. If a Grower is accepted into the Project after 30 June 2003 but on or before 30 June 2004, 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	30/6/2003	30/6/2004	30/6/2005
Initial management fee	8-1 & 328-105	See Notes (iv) & (v) (below)		
Interest	8-1 & 328-105	When paid – See Note (vi) (below)	When paid – See Note (vi) (below)	When paid – See Note (vi) (below)

Notes:

- (iv) 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 114;
- (v) The initial management fee which is an expenditure in consideration of Part 1 services to be provided by the Manager is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 81 to 85). If the Grower, who is an 'STS taxpayer', chooses to pay on application the full amount of the initial management fee, then the initial management fee will be fully paid in the year in which it is incurred. Therefore, the initial management fee is deductible in full when it is incurred;

However, if the initial management fee will not be fully paid in the year in which it is incurred, then the initial management fee is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount of the initial management fee which is not paid in the year in which it is incurred, will be deductible in the year in which it is actually paid;

- (vi) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Willmott 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 Willmott Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 73 to 80 (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.

Tax outcomes that apply to all Growers

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

Section 35-55 – Commissioner's discretion

49. For a Grower who is an individual and who enters the Project during the year ended 30 June 2003 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 2027 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.

50. For a Grower who is an individual and who enters the Project during the year ended 30 June 2004 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 2004 to 30 June 2028 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.

51. 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 99 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)).

52. 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.

53. 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 commercially viable. An assessment of the Project or the product from this perspective has not been made.

Sections 82KZME – 82KZMF, 82KL, and Part IVA

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

- expenditure by a Grower does not fall within the scope of sections 82KZME - 82KZMF (but see paragraphs 73 to 80);
- 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?

55. For the amount set out in paragraph 31 above to constitute allowable deductions the Grower's afforestation activities as a participant in the Willmott Forests Professional Investor 2003 Project must amount to the carrying on of a business of primary production.

56. Where there is a business, or a future business, the Gross Timber Proceeds from the sale of the wood produce from the Hectares comprising the Project will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.

57. For schemes such as that of the Willmott Forests Professional Investor 2003 Project, 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; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest (by lease or by licence) 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 an afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

59. In this Project, each Grower enters into a Lease Agreement and a Forestry Management Agreement.

60. Under the Lease Agreement, each individual Grower will have rights over a specific and identifiable area of land. The Lease Agreement 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 Forestry Management Agreement.

61. Under the Forestry Management Agreement the Manager is engaged by the Grower to establish and maintain a Hectare 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 Hectares on the Grower's behalf.

62. The Manager can also be engaged to harvest and sell, on the Grower's behalf, the wood produce grown on the Grower's Hectare.

63. 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.

64. 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.

65. The pooling of wood produce from trees grown on the Grower's Hectare 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 Hectare.

66. 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.

67. The Grower's degree of control over the Manager as evidenced by the Forestry 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 Hectares 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.

68. 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 Grower's afforestation activities in the Willmott Forests Professional Investor 2003 Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

69. 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.

70. 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 the initial management fee

Section 8-1

71. Consideration of whether the initial management fee is 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.

72. The initial management fee 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. It 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 initial 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 82KZMF***

73. 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.

74. 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) (see paragraph 79 below). 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

75. Other than expenditure deductible under section 82KZMG, if the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) 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)).

76. 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.

77. 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 who, in order to participate in the Project may borrow funds from a bank or other financiers. 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.

78. 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.

79. 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.

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

80. 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

81. 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).

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

- incurred on or after 2 October 2001 and on or before 30 June 2006;
- 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.

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

- it must be an agreement for planting and tending trees for felling;
- 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 must be more than one participant in the agreement in the same capacity as the taxpayer who incurs the expenditure; or
 - (ii) the manager manages, arranges or promotes the agreement, or an associate of the manager, manages, arranges or promotes similar agreements.

84. 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.

85. 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

86. Under the Forestry Management Agreement, a Grower who is accepted into the Project incurs an initial management fee of \$7,700 per Hectare. This fee consists of expenditure for 'seasonally dependent agronomic activities'. As the requirements of section 82KZMG have been met, a deduction is allowable in the same income year as the expenditure is incurred under the Forestry Management Agreement for 'seasonally dependent agronomic activities'.

87. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for the initial management fee in the income year in which the fee is incurred.

88. Where a Grower, who is an 'STS taxpayer', chooses to pay on application the full amount of the initial management fee, then the initial management fee will be fully paid in the year in which it is incurred. Therefore, the initial management fee is deductible in full when it is incurred. However, if the initial management fee will not be fully paid in the year in which it is incurred, then the initial management fee is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount of the initial management fee which is not paid in the year in which it is incurred, will be deductible in the year in which it is actually paid

Interest deductibility**Section 8-1*****(i) Growers who use Willmott Finance Pty Ltd as the finance provider***

89. Some Growers may finance their participation in the Project through a loan facility with Willmott 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 the initial management fee.

90. 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 of *pinus radiata* trees and the lease of the land on which these trees will be 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.

91. As with the initial management fee, in the absence of any application of the prepayment provisions (see paragraphs 73 to 80),

the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

93. 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 Willmott Finance Pty Ltd as the finance provider

94. 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 Willmott 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.

95. 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 73 to 80).

Deferral of losses from non-commercial business activities

Division 35

96. 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.

97. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions

PR 2002/145

attributable to the business activity over that taxpayer's assessable income from the business activity.

98. 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.

99. 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.

100. 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 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).

101. 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 72 Hectares (although WFL may accept other amounts but not less than 50 Hectares) and who will engage the Manager to arrange for the harvesting of the trees and marketing of timber is unlikely to have their activity pass one of the tests until the income year ended 30 June 2016 if that Grower is accepted into the Project on or before 30 June 2003 and the income year ended 30 June 2017 if that Grower is accepted into the Project after 30 June 2003 but on or before 30 June 2004.

102. Therefore, prior to these respective times, 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.

103. 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 where the business activity has started to be carried on and for that, or those income years:

- (i) because of its nature, it has not yet met one of the tests set out in Division 35; and
- (ii) 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.

104. Information provided with this Product Ruling application indicates that a Grower who is accepted into the Project on or before 30 June 2003 acquires the minimum allocation of 72 Hectares (although WFL may accept other amounts but not less than 50 Hectares) and who will engage the Manager to arrange for the harvesting of the trees and marketing of timber is expected to be carrying on a business activity that will pass one of the tests in the income years ended 30 June 2016 and 30 June 2021.

105. 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 2027. The taxation profit that is projected for the income years ended 30 June 2016 and 30 June 2021 do not affect the period of the Commissioner's discretion as they are considered to be 'one-off' events that are specific to the afforestation industry.

106. Information provided with this Product Ruling application also indicates that a Grower who is accepted into the Project after 30 June 2003 but on or before 30 June 2004 acquires the minimum allocation of 72 Hectares (although WFL may accept other amounts but not less than 50 Hectares) and who will engage the Manager to arrange for the harvesting of the trees and marketing of timber is expected to be carrying on a business activity that will pass one of the tests in the income years ended 30 June 2017 and 30 June 2022.

107. 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 2028. The taxation profit that is projected for the income years ended 30 June 2017 and 30 June 2022 do not affect the period of

the Commissioner's discretion as they are considered to be 'one-off' events that are specific to the afforestation industry.

108. 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 paragraphs 49 & 50) in the manner described in the Arrangement (see paragraphs 14 to 38). 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.

109. 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 independent forester and market reports provided with the application by WFL; and
- independent, objective, and generally available information relating to the afforestation industry.

Section 82KL – recouped expenditure

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

Part IVA – general anti-avoidance provisions

111. 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).

112. The Willmott Forests Professional Investor 2003 Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 45 and 48, 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.

113. 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.

Example

Example – Entitlement to GST input tax credits

114. 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)	\$6,600

*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:

$$1/11 \times \$4,400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4,400 less \$400, or \$4,000.

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

$$1/11 \times \$2,200 = \$200.$$

Hence her outgoing for the power upgrade is effectively \$2,200 less \$200, or \$2,000.

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 \$4,000 (not \$4,400).

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 \$2,000 only, not one tenth of \$2,200).

Detailed contents list

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

	Paragraph
What this Ruling is about	1
Tax law(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
Date of effect	11
Withdrawal	13
Arrangement	14
Overview	20
Lease Agreement	22
Forestry Management Agreement	24
Harvesting and Marketing	28
Investment Deed	30
Project Fees	31
Finance	34
Ruling	39
Application of this Ruling	39
The Simplified Tax System ('STS')	41
Division 328	41
Qualification	42
Tax outcomes for Growers who are not 'STS taxpayers'	43
Assessable Income	43

Section 6-5	43
Deductions for initial management fee and interest	45
Section 8-1	45
Tax outcomes for Growers who are ‘STS taxpayers’	46
Assessable Income	46
Section 6-5 and section 328-105	46
Deductions for initial management fee and interest	48
Section 8-1 and section 328-105	48
Tax outcomes that apply to all Growers	49
Division 35 – Deferral of losses from non-commercial business activities	49
Section 35-55 – Commissioner’s discretion	49
Sections 82KZME – 82KZMF, 82KL and Part IVA	54
Explanations	55
Is the Grower carrying on a business?	55
The Simplified Tax System	69
<i>Division 328</i>	69
Deductibility of the initial management fee	71
<i>Section 8-1</i>	71
Prepayment provisions	73
<i>Sections 82KZL to 82KZMF</i>	73
<i>Sections 82KZME and 82KZMF</i>	75
<i>Section 82KZMG</i>	81
<i>Application of the prepayment provisions to this Project</i>	86
Interest deductibility	89
Section 8-1	89
<i>(i) Growers who use Willmott Finance Pty Ltd as the finance provider</i>	89
<i>(i) Growers who DO NOT use Willmott Finance Pty Ltd as the finance provider</i>	94
Deferral of Losses from non-commercial business activities	96
Division 35	96
Section 82KL – recouped expenditure	110
Part IVA – general anti-avoidance provisions	111

Example	114
Example – Entitlement to GST input tax credits	114
Detailed contents list	115

Commissioner of Taxation

18 December 2002

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/1; TR 92/20; TD 93/34;
 TR 97/11; TR 97/16; TR 98/22;
 TR 2000/8; PR 1999/95.

Subject references:

- advance deductions and expenses
 for certain forestry expenditure
 - carrying on a business
 - commencement of business
 - fee expenses
 - forestry agreement
 - interest expenses
 - management fee expenses
 - producing assessable income
 - product rulings
 - public rulings
 - schemes and shams
 - seasonally dependent agronomic
 activity
 - taxation administration
 - tax avoidance

Legislative references:

- ITAA 1936 82KL
 - ITAA 1936 82KZL
 - ITAA 1936 82KZL(1)
 - ITAA 1936 82KZME
 - ITAA 1936 82KZME(1)
 - ITAA 1936 82KZME(2)
 - ITAA 1936 82KZME(3)
 - ITAA 1936 82KZME(4)
 - ITAA 1936 82KZME(7)
 - ITAA 1936 82KZMF
 - ITAA 1936 82KZMF(1)
 - ITAA 1936 82KZMG
 - ITAA 1936 82KZMG(1)
 - ITAA 1936 82KZMG(2)
 - ITAA 1936 82KZMG(3)

- ITAA 1936 82KZMG(4)
 - ITAA 1936 82KZMG(5)
 - ITAA 1936 Pt IVA
 - ITAA 1936 177A
 - ITAA 1936 177C
 - ITAA 1936 177D
 - ITAA 1936 177D(b)
 - ITAA 1936 Pt III Div 3
 - ITAA 1997 6-5
 - ITAA 1997 8-1
 - ITAA 1997 17-5
 - ITAA 1997 Div 27
 - ITAA 1997 Div 35
 - ITAA 1997 35-10
 - ITAA 1997 35-10(2)
 - ITAA 1997 35-10(3)
 - ITAA 1997 35-10(4)
 - ITAA 1997 35-30
 - ITAA 1997 35-35
 - ITAA 1997 35-40
 - ITAA 1997 35-45
 - ITAA 1997 35-55
 - ITAA 1997 35-55(1)
 - ITAA 1997 35-55(1)(a)
 - ITAA 1997 35-55(1)(b)
 - ITAA 1997 328
 - ITAA 1997 328-105
 - ITAA 1997 328-105(1)(a)
 - ITAA 1997 Subdiv 328-F
 - ITAA 1997 Subdiv 328-G
 - TAA 1953 Pt IVAAA
 - Copyright Act 1968
 - Corporations Act 2001 708
 - Corporations Act 2001 708(8)
 - Corporations Act 2001 708(9)
 - Corporations Act 2001 708(10)
 - Corporations Act 2001 708(11)
 - Corporations Act 2001 761G

Case references:

- FCT v. Lau 84 ATC 4929; (1984)
 16 ATR 55

PR 2002/145

FOI status: **may be released**

Page 33 of 33

ATO references:
NO: 2002/008811
ISSN: 1441 1172