PR 2002/21 - Income tax: Hillston Grove Vineyards No. 3 Project

Product Ruling
Income tax: Hillston Grove Vineyards No. 3 Project

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

This Product Ruling provides certainty for potential 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 relates. In this Ruling this arrangement is sometimes referred to as Hillston Grove Vineyard No 3 Project, or just 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);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Division 40 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- Section 82KZM (ITAA 1936);
- Sections 82KZME (ITAA 1997);
- Section 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

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

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 potential participants are fully informed of any legislative changes that take place after the Ruling is issued.

Class of persons

7. The class of persons to whom this Ruling applies is those persons who enter into the arrangement described below on or after the date this Ruling is made and does not include persons who entered the arrangement before the date on which the Ruling is issued. This Ruling does not apply to a participant who has purchased an established or partly established Vinelot, nor to a participant who is accepted into the project between 15 June 2002 and 30 June 2002 and between 15 June 2003 and 30 June 2004 (expiry of subsection 1454(2) of the Corporations Act extension period). If it is intended that applications be accepted between 15 June 2003 and 30 June 2004, then a further Product Ruling will be required. Participants in this project will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. In this Ruling, each of these persons, referred to as 'Growers', must have accepted an offer made under subsection 708(10) of the Corporations Act.

8. As the offer is a stapled security, the right to occupy a Vinelot and carry on a business of growing grapes can only be exercised by the owner of 'A' Class shares in the Land Owner. In this arrangement only a Grower can subscribe for 'A' Class shares in the Land Owner.

This Ruling does not apply to persons or entities who own shares other than 'A' Class shares in the Land Owner. Those persons or entities may be referred to as 'Shareholders'.

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 Product Ruling may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

Date of effect

11. This Ruling applies prospectively from 20 February 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 the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

13. This Product Ruling is withdrawn after 30 June 2004 and ceases to have effect after this date. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement as described 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 described below. This description incorporates the following documents:

- Application for Product Ruling dated 28 March 2001;
- Project Deed between Grapes of Australia Management Limited, Cardinal Financial Securities Limited formerly Inteq Custodians Limited, Hillston Grove Vineyards Limited ('HGVL' or 'the Land Owner') and Investment Licencing Pty Ltd ('IL') dated 12 May 1998 together with Supplemental Deeds between these same parties dated 1 June 1998 and 4 February 1999, collectively referred to as 'the Project Deed';
- Deed of Retirement and Appointment of Manager Hillston Grove Vineyards Project dated 12 October 1999 under which Grapes of Australia Management Limited retired as manager under the Project Deed and was replaced by Managed Investments Australia Limited ('MIAL' or 'the Manager');
- Deed of Retirement and Appointment of Trustee for Hillston Grove Vineyards Project dated 5 February 2001 under which Cardinal Financial Securities Limited retired as trustee under the Project Deed and was replaced by Burke Bond Securities Limited ('Burke' or 'the Trustee');
- Regulation 1 of the Articles of Association for HGVL, as amended by a resolution dated 1 September 2000 by replacing paragraph 3(a), under which a Grower has rights to occupy an area of land for use as a vineyard or 'Vinelot';
- Deed of Trust and Right to Occupy dated 7 March 2000 between HGVL and Cardinal Financial Securities Limited;
- **Management Agreement between MIAL and each Grower;**
- **Application Forms for Growers**; and

- Additional correspondence received from the Applicant up to and including correspondence received on 9 May 2001, 18 May 2001, 27 May 2001, 31 October 2001, 5 December 2001, 6 December 2001 and 12 February 2002.

Note: certain information received from Hillston Grove Vineyards Limited 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 that Growers enter into. For the purposes of describing the arrangement to which this Ruling applies, 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 a part of the arrangement. The effect of these agreements is summarised in the Overview area of this Product Ruling.

16. Further to the above, a Grower who participates in the arrangement must have accepted an offer that was made under subsection 708(10) of the Corporations Act**. This Ruling does not apply unless the Grower has accepted an offer made by a licensed dealer where the offer meets the requirements of subsection 708(10) of the Corporations Act.**

Overview

17. This arrangement is called the Hillston Grove Vineyards No. 3 Project. HGVL has approval under subsection 1454(2) of the Corporations Act to extend the period of transition from the old Law to the new Law as it pertains to Managed Investment Schemes. This extension ends on:

(a) 30 June 2004; or

(b) the date upon which an interest in the scheme, if any, is issued after 30 June 1998, other than:

(i) under a Prospectus which was lodged before 1 July 1998; or

(ii) by an excluded issue; or

(c) the date upon which there is a change, if any, to the time by which the scheme is to be wound up, whichever is the earliest.

18. Section 708(10) of the Corporations Act (as long as it applies) and the provisions of the Corporations Act, may from time to time allow offers of interests in this scheme without disclosure pursuant to Chapter 6D of the Corporations Act (as long as it applies) or Part 7.9

of the Corporations Act (when it becomes applicable to this scheme). The Project will be marketed as an excluded offer. The requirements under subsection 708(10) of the Corporations Act provides that for an excluded offer:

(a) the licensed dealer must provide an investor with a statement that the dealer is satisfied on reasonable grounds that the persons to whom the offer is made have previous experience in investing in securities that allows them to assess:

(i) the merits of the offer;

(ii) the value of the securities;

(iii) the risks involved in accepting the offer;

(iv) their own information needs;

(v) the adequacy of the information given by the person making the offer; and

(vi) the dealer's reasons for being satisfied as to those matters; and

(b) the person to whom the offer is made signs a written acknowledgment before, or at the time when, the offer is made that the dealer has not given the person a disclosure document (e.g., Prospectus) in relation to the offer.

19. As the Project is not being offered through a Prospectus but as an excluded offer a potential participant will only be given a single "Share Application and Right to Occupy" form comprising:

(a) Acquisition of Shares;

(b) Right to Occupy and Enter Business of Farming under Management;

(c) Exercise of Options;

(d) Occupancy Fee;

(e) Power of Attorney;

(f) Registration for GST; and

(g) Acknowledgment.

20. Salient features of the Project are as follows:

Location	25 km west of the town of Hillston in New South Wales
Type of business each participant is carrying on	A long term commercial viticulture business.
Number of hectares under cultivation	Up to a maximum of 400 hectares
Name used to describe the project	Hillston Grove Vineyards No 3
Size of each Vinelot	0.0833 hectares
Number of vines per Vinelot	Approximately 150 vines
Number of vines per hectare	To an appropriate density to be determined by the viticulturist employed by the Manager.
Termination date of the project	30 June 2020
Initial cost where a Grower participates in only one Vinelot	$4,650 which includes prepaid Occupancy Fees for Y2 and Y3
Initial cost on a per hectare basis, including shareholding cost, where a Grower invests in only one Vinelot	$55,800 which includes prepaid Occupancy Fees for Y2 and Y3
Ongoing costs	Ongoing Management and Occupancy Fees
Cost of shares in Hillston Grove Vineyards Limited	$250

21. This arrangement is called the Hillston Grove Vineyards No. 3 Project. Participants are invited to conduct a primary production business of growing grapes on the property known as 'The Lea South', 25 kilometres west of the town of Hillston in New South Wales.

22. The Project will operate as a "Stapled Security". In order to subscribe for a Vinelot, a Grower must take 250 A Class shares at $1 each in the Land Owner (Hillston Grove Vineyards Limited or HGVL). As a shareholder in HGVL, a Grower may be entitled to any dividends declared by the company. Growers participating in the arrangement will hold Vinelots by way of a licence under a Deed of Trust and Right to Occupy which was executed on 7 March 2000 between HGVL (as Land Owner) and Cardinal Financial Securities Limited (as trustee on trust for each Grower). Under this Deed, Growers will hold a licence over a specific 'Vinelot' of 0.0833 hectares until the final distribution of the proceeds from the sale of the

grapes is made to the Grower or until the Project is terminated on 30 June 2020.

23. The total land area for this stage of the Project is 400 hectares. There is a maximum of 4800 Vinelots on offer. Once accepted into the Project, each Vinelot will be physically planted with approximately 150 vines after the preparation work covered by the Initial Management Fee has been completed.

24. There is no minimum subscription level. The offer will expire on 15 June 2004 ie no applications will be accepted into this Project after this date.

25. The term of the Project will be until 30 June 2020, at which time thereafter, the rights and obligations of A Class shareholders in the Land Owner shall rank pari passu with holders of other Ordinary Shares in all respects.

Project Deed

26. The offer is made under a Project Deed rather than a Constitution and a Prospectus. The Project Deed sets out the terms and conditions under which the Manager agrees to act for the Growers and to manage the Project. The Manager will keep a register of Growers. The Management Agreement which is an attachment to the Deed, will be executed on behalf of a Grower following the signing of the Application and an included Power of Attorney. Growers are bound by the Project Deed and Management Agreement by virtue of their participation in the Project.

Interest in land

27. HGVL holds the project land under a crown lease and has granted a general right to occupy to Cardinal Financial Securities Limited which in turn holds the land for the benefit of the Growers.

28. Under the terms of Regulation 1 of HGVL's Articles of Association, Growers are granted an interest in land in the form of a licence to use their Vinelot for the purpose of long term viticulture for the term of the Project. Growers must pay an Occupancy Fee of $300 per 12 month period per Vinelot to HGVL from the date of the acceptance of the application for each of the first three years. Thereafter for each later year, the Occupancy Fee is $300 or such lesser amount determined at the discretion of the Directors and payable prior to the commencement of the applicable 12 month period.

Management Agreement

29. Growers will execute a Power of Attorney as part of the Application Form enabling the Manager to act on their behalf to execute a Management Agreement. The Management Agreement will come into effect on the day it is executed and unless terminated sooner in accordance with the provisions of the Agreement will terminate on

(a) 30 June 2020;

(b) the Grower ceasing to have any Rights to Occupy; or

(c) termination of the Investment Deed in respect of the Interest of the Farmer in this Agreement, whichever first occurs.

30. The Manager will provide the following services to the Grower pursuant to clause 5.1 of the Management Agreement:

(a) develop initial plans for the general operation of the Grower's Vinelot in relation to the general layout, marketing and administration;

(b) shall provide establishment and planting services by properly preparing the seed bed, obtaining wine grape cuttings and/or rootstock, planting 0.0833 hectares Vinelots at an appropriate density to be determined by the viticulturist employed by the Manager (approximately 150 vines per Vinelot);

(c) perform all associated services in a proper and workmanlike manner, including installation of trellising, installation of above ground drip irrigation, surveying, levelling, soil surveys, flood mitigation works, installation of vermin fence and other initial land degradation measures, roads and mixing pad;

(d) procure the use of all necessary plant, equipment, machinery goods and materials for the purposes of performing the services set out in the preceding paragraph, and diligently carrying out quality control and other best practice procedures in relation to those services, or as an alternative sub-contract a experienced entity to provide the pre-planting and planting services detailed above and deliver properly cared for and healthy vines at the completion of the contract;

(e) provide post planting services to properly weed, water, train and prune the vines to ensure appropriate production in the future;

(f) procure the use of all necessary plant, equipment, machinery goods and materials for the purposes of

performing the services set out in the post planting services;

(g) harvest the grapes and if the Grower has previously directed make the grapes available to the Grower to sell on his/her own behalf, but otherwise to market and sell the grapes and account to the Growers;

(h) obtain professional services and advice which the Manager may consider necessary or desirable in connection with the maintenance and cultivation of the Vinelots or the harvesting of the vines and the marketing of the grapes;

(i) diligently carry out quality control and other best practice procedures in relation to the above services to ensure the production of high quality grape produce and thereafter to use its best endeavours to market the said produce effectively and to manage the business of the Growers efficiently to increase revenues and returns to the Growers, or as an alternative, sub-contract an experienced entity to provide the post planting services detailed above.

31. Growers who are accepted into the Project on or before 14 June in the years ended 30 June 2002, 30 June 2003 or 30 June 2004 will have landcare (land degradation control) services and irrigation installed on each Vinelot along with the other services performed by the next 30 June by the manager, MIAL. Growers who make application between 15 June and 30 June in the years ended 30 June 2002 or 30 June 2003 respectively will not have their applications accepted until after 1 July 2002 or 1 July 2003 as applicable. Such Growers will not have any services carried out until the 2003 or the 2004 financial year and will not be able to claim any tax deductions relating to this Project in the year of application. No one will be accepted into the Project on or after 15 June 2004.

32. There are no sale agreements in place for the grapes that will be produced and harvested under the Project. The Growers have the right to elect to have any grapes harvested from their Vinelots made available to them to sell or deal with as they determine (cl 5.1(g) of Management Agreement). Clause 5.1(h) of the Management Agreement provides that all Growers are paying, as part of the service and management fees, an amount to MIAL for it to market and sell the grapes.

33. Unless the Growers elect to deal with their produce themselves MIAL will pool for sale all produce of each Grower's business with that of each other Grower and will market and sell all such produce. The proceeds of the pooled sales of grapes will be paid to the Trustee for crediting to the account of each Grower on a proportional basis

without reference to grape type, quality, volume, prices or any other factor in relation to the Grower's product or those of any other Grower. The insurance proceeds resulting from a major event that results in a Grower being unable to contribute grape produce will be paid into the pool.

34. Income of the Project is to be held in trust for the Growers by the Trustee and is to be applied in payment of the Growers' obligations under the Management Agreement prior to payment to the Grower. Any net income remaining after the payment of these fees is to be distributed to Growers after the final payment is received for each sale of produce (cl 6).

35. If, in any year in which sales of grapes occur, the income resulting from the sale of produce is insufficient to meet the annual management and occupancy fees of that year, participants are still liable to pay the shortfall, but any shortfall may be deducted from future years' income under clause 26.3(iii) of the Project Deed.

36. The production or sale of wine by or on behalf of Growers is not part of the Project and this Ruling does not have application to such activities.

37. The Grower may terminate the Management Agreement in certain instances, including where the Manager makes default in the performance of its duties (cl 10.2(a)).

38. All costs and expenses incurred by the Manager in carrying out its duties are to be borne by it and the Grower has no further obligation to make any payment, save those under clauses 9(b) and 9(c) of the Management Agreement (cl 9(d)).

Amounts Payable

39. Participation in the project requires the following:

(A) the Grower subscribing for 250 'A' class shares in HGVL for a cost of $1 each;

(B) payments to the Land Owner HGVL of an Occupancy Fee of $300 per 12 month period from the date of acceptance into the project. If only a single Vinelot is being taken, the first three years fees are to be paid as an initial $900 payment. If more than one Vinelot is taken, then an Occupancy Fee of $300 per Vinelot for the first year is payable upon application, and an Occupancy Fee of $300 per Vinelot for each of the next two years is payable on 30 June of the year of application, and by 30 June of the following year respectively. Thereafter for each later year, the Occupancy Fee is $300 or such lesser amount

determined at the discretion of the Directors and payable prior to the commencement of the applicable 12 month period;

(C) the Grower entering into a 'Management Agreement' with MIAL for services provided from date of acceptance into the Project for the establishment of the vineyard, maintenance, annual harvesting and marketing, under which the Grower pays MIAL:

1. an 'Initial Service Fee' of $378 for services in respect of the general planning of the Vinelot layout, marketing and administration (cl 9(b) of Management Agreement);
2. an 'Initial Management Fee' of $1,174 comprising of $522 for acquisition and installation of trellises, $362 for acquisition and installation of above ground drip irrigation, $74 for land degradation work and $216 for all other Vinelot establishment and planting work (cl 9(c) of Management Agreement);
3. a 'Further Initial Management Fee' of $1,948 in respect of post planting services (cl 9(d) of Management Agreement); and
4. 'Further Management Fees' for Year 2 and Year 3 of $690, and from Year 4 the greater of 25% of the gross sale proceeds or $690 (cl 9(d) of Management Agreement).

Vineyards Costings and applicable years

40. Vineyard costs as calculated by the Manager for one Vinelot applicable for the first three years reflecting when work will be performed are as follows:

	Year 1	Year 2	Year 3
Shares	$250		
Initial Service Fee	$378		
Initial Management Fee comprising: • Irrigation $362 • Trellising $522 • Landcare $74 • Pre-planting & planting $216	$1,174		
Further Initial Management Fee	$1,486	$462	
Further Management Fees		$690	$690
Occupancy Fee	% of	$300	$300

	$300		

Timing of Payments and Related Services

41. Clause 9 of the Management Agreement dictates the timing of amounts due and services to be performed as follows:

(i) the payment for the 'Initial Service Fee' of $378 is due upon application for services to be fully provided from the date of acceptance into the project to 30 June 2002 where acceptance occurs by 14 June 2002, or to be fully provided by 30 June 2003 where acceptance occurs between 1 July 2002 and 14 June 2003, or to be fully provided by 30 June 2004 where acceptance occurs between 1 July 2003 and 14 June 2004;

(ii) the payment of the `Initial Management Fee' for the payment for the trellising, irrigation, land degradation and planting work totalling $1,174 is due upon application and these services will be provided during the period from the date of acceptance of the application until 30 June 2002 where the application is accepted by 14 June 2002, otherwise for the year ended 30 June 2003 where an application is accepted between 1 July 2002 and 14 June 2003, or to be fully provided by 30 June 2004 where acceptance occurs between 1 July 2003 and 14 June 2004;

(iii) the payment for the `Further Initial Management Fee':

(a) where application is accepted on or before 14 June 2002, $1,948 is payable on application comprising $1,486 for services to be provided during the period from the date of acceptance of the application into the project until 30 June 2002 and $462 for services to be provided during the year ended 30 June 2003; or

(b) where application is accepted between 1 July 2002 and on or before 14 June 2003, $1,948 is payable on application comprising $1,486 for services to be provided during the period from the date of acceptance of the application into the project until 30 June 2003 plus $462 for services to be provided during the year ended 30 June 2004; or

(c) where application is accepted between 1 July 2003 and on or before 14 June 2004, $1,948 is payable on application comprising $1,486 for services to be provided during the

period from the date of acceptance of the application into the project until 30 June 2004 plus $462 for services to be provided during the year ended 30 June 2005;

(i) The amounts applicable for the `Further Management Fees' for Years 2 and 3 are due for payment before 1 July of the relevant year [cl 9(a) of Management Agreement]. Costs for a Grower's Vinelot for Year 4 until the termination of the project are deducted from the income resulting from the sale of grapes to the extent of funds available.

42. The timing of the Occupancy Fees depends upon the number of Vinelots taken. If only a single Vinelot is taken, the first three years fees of $900 (being $300 per year) is payable upon application. If more than one Vinelot is taken, then an Occupancy Fee of $300 per Vinelot for the first year is payable upon application, and an Occupancy Fee of $300 per Vinelot for each of the next two years is payable on 30 June of the year of application, and by 30 June of the following year respectively. Thereafter for each later year, the Occupancy Fee is $300 or such lesser amount determined at the discretion of the Directors and payable prior to the commencement of the applicable 12 month period.

Finance

43. Growers can fund their investment in the Project themselves, or borrow from an independent lender.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be

transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender;

- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project, are involved, or become involved, in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

45. This Ruling applies only to Growers who are accepted to participate in the Project after the date on which this Ruling is issued and on or before 14 June 2003 and who have executed a Management Agreement within specified dates within this period. This Product Ruling does not apply to participants who are accepted into the project between 15 June 2002 and 30 June 2002 and between 15 June 2003 and 30 June 2004 (refer paragraphs 7 and 31). The Manager will perform all required duties for a Grower only after the Grower's application has been accepted. Any payments for work already undertaken by the Manager to establish a Vinelot is not covered by this Ruling. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

46. 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

47. 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

48. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which his/her 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.

Prepaid fees

49. The Further Initial Management Fee, the Further Management Fees and the Occupancy Fees incurred by Growers who are accepted into this Project are subject to the prepayment rules in sections 82KZME and 82KZMF where such expenses are prepaid. In this context, a prepayment refers to advance expenditure incurred by a Grower in return for the doing of a thing that will not be wholly done in the year in which the expenditure is incurred. Where a Grower prepays expenditure that would otherwise be a general deduction under section 8-1 of the ITAA 1997 in the expenditure year, the Grower must apportion the prepayment over the period the prepayment covers unless it is 'excluded expenditure' (see Note (iii) below).

50. Subsection 82KZMF(1) provides the formula for determining how much of the prepaid expenditure a Grower can deduct for each income year. In that formula, which is shown below, the 'eligible service period' 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.

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

51. In this Project, the tax deductions allowable for the prepaid Further Initial Management Fee, the prepaid Further Management Fees and the prepaid Occupancy Fees must be calculated by applying the above formula to the amount incurred each year by the Grower unless it is 'excluded expenditure'.

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income

52. 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.

53. The Grower recognises ordinary income from carrying on the business of growing grapes at the time that income is derived. Where any consideration is paid or given otherwise than in cash, the money value of that consideration shall be assessable income. Any dividends declared by HGVL will be assessable income of a Grower.

Deductions for Management Fees and Occupancy Fees

Section 8-1

54. A Grower who acquires one Vinelot in the project, is not an 'STS taxpayer', and is accepted into the project between the date of issue of this Ruling and 14 June 2002 (no applications for Vinelots will be accepted between 15 June 2002 and 30 June 2002) may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Initial Service Fee	8-1	$378 See Note (i) below		
Further Initial Management Fees	8-1	Amount must be calculated See Notes (i) & (ii) below	Amount must be calculated See Notes (i) & (ii) below	
Further Management Fees	8-1	$690 See Notes (i) & (iii) below	$690 See Notes (i) & (iii) below	Amount must be calculated See Notes (i) & (iii) below
Occupancy Fees	8-1	$900 See Notes (i) & (iii) below		

55. A Grower who acquires one Vinelot in the project, is not an 'STS taxpayer', and who is accepted into the project between 1 July 2002 and 14 June 2003 may claim tax deductions as set out in the following table. This Product Ruling will not apply to applications for Vinelots accepted between 15 June 2003 and 30 June 2004.

Fee Type	ITAA 1997 Section	Year ended 30 June 2003	Year ended 30 June 2004
Initial Service Fee	8-1	$378 See Note (i) below	
Further Initial Management Fee	8-1	Must be calculated See Notes (i) & (ii) below	Must be calculated See Notes (i) & (ii) below
Further Management Fees	8-1	$690 See Notes (i) & (iii) below	$690 See Notes (i) & (iii) below
Occupancy Fees	8-1	$900 See Notes (i) & (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 1 at paragraph 127;

(ii) The Further Initial Management Fee is **NOT** deductible in full in the year it is incurred. The deduction for each year's fee must be determined using the formula in subsection 82KZMF(1) (see paragraph 50). The Manager must inform Growers of the number of days in the `eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable for the fee incurred. (See example 2 at paragraph 128);

(iii) Although the Further Management Fees and Occupancy Fees can be prepaid, for a Grower who acquires one Vinelot, the amount of the prepaid Further Management Fee and the Occupancy Fees are less than $1,000. For the purposes of this Project, an amount of less than $1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and, for a Grower who is not an 'STS taxpayer', is deductible in full in the year in which it is incurred (see Example 3 at paragraph 129). However, **where a Grower acquires more than one Vinelot in the project**, the amount of the Grower's prepaid Further Management Fees and prepaid Occupancy Fees may be $1,000 or more. Such Growers **MUST** determine the deduction for the prepaid Further Management Fees and Occupancy

Fees on the same basis as the prepaid Further Initial Management Fee, i.e., using the formula shown above in paragraph 50 above.

Deductions for capital expenditure

Division 40

56. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (e.g., irrigation), 'landcare operations' and the purchase of grapevines. All deductions shown in the following Table are determined under Division 40. The table reflects the tax treatment for Growers who are accepted into the Project between the date of this Ruling and 14 June 2002. No Growers will be accepted into the project between 15 June 2002 and 30 June 2002.

Fee type	**ITAA 1997 section**	**Year ended 30 June 2002**	**Year ended 30 June 2003**	**Year ended 30 June 2004**
Trellising	40-25	Must be calculated - See Notes (iv) and (v) below	Must be calculated - See Notes (iv) and (v) below	Must be calculated - See Notes (iv) and (v) below
Water facilities (e.g., irrigation)	40-515	$121 - See Notes (iv) & (vi) below	$121 - See Notes (iv) & (vi) below	$120 - See Notes (iv) & (vi) below
Landcare operations	40-630	$74 - See Notes (iv) & (vii) below		
Establishment of horticultural plants (grapevines)	40-515	Nil - See Notes (iv) & (viii) below	Nil - See Notes (iv) & (viii) below	Must be calculated - See Notes (iv) & (viii) below

57. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (e.g., irrigation), 'landcare operations' and the purchase of grapevines. All deductions shown in the following Table are determined under Division 40. The table reflects the tax treatment for Growers who are accepted into the Project between 1 July 2002 and on or before 14 June 2003. This Product Ruling does not apply to applications for Vinelots accepted between 15 June 2003 and 30 June 2004.

Fee type	ITAA 1997 section	Year ended 30 June 2003	Year ended 30 June 2004
Trellising	40-25	Must be calculated - see Notes (iv) and (v) below	Must be calculated - see Notes (iv) and (v) below
Water facilities (e.g., irrigation)	40-515	$121 - see Notes (iv) & (vi) below	$121 - see Notes (iv) & (vi) below
Landcare operations	40-630	$74 - see Notes (iv) & (vii) below	
Establishment of horticultural plants (grapevines)	40-515	Nil - see Notes (iv) & (viii) below	Nil - see Notes (iv) & (viii) below

Notes:

(iv) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g., input tax credits). See example 1 at paragraph 127;

(v) Trellising is a 'depreciating asset'. Each Grower holds an interest in the trellising and this interest is a 'low-cost asset' which can be allocated to a 'low-value pool'. Once any 'low-cost asset' of a Grower is allocated to a 'low-value pool', all other 'low-cost assets' that the Grower starts to 'hold' in that year or a later year must be allocated to that pool. If the Grower has already allocated a 'low-cost asset' to a 'low-value pool', the trellising assets would also have to be allocated to that pool. Otherwise, the Grower must decide whether to create a 'low-value pool'. If the assets are allocated to a 'low-value pool', the capital expenditure on the trellising will be deducted under the diminishing value methodology of the pool based on a rate of 18.75% in the year the trellises are first used and a rate of 37.5% in subsequent years (section 40-440). If the assets are not allocated to a 'low-value pool', they can be written off based on the 'effective life' of the trellising.

Growers can either self-assess the 'effective life' (section 40-105) or use the Commissioner's determination of 'effective life' (section 40-100). The

Commissioner has determined that trellising has an 'effective life' of 20 years. As an example, trellising will be installed and first used during the year ended 30 June 2002 for Growers who are accepted into the project by 14 June 2002. The Project Manager will advise Growers when that occurs to enable Growers to calculate the deduction for the decline in value;

(vi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);

(vii) Any capital expenditure incurred for 'landcare operations' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630;

(viii) As grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the write-off over 4 years under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530, item 2). The Project Manager will inform Growers of when the grapevines enter their first commercial season.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

58. 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.

59. The Grower recognises ordinary income from carrying on the business of growing grapes at the time the income is received (paragraph 328-105(1)(a)). Where any consideration is paid or given otherwise than in cash, the money value of that consideration shall be assessable income. Any dividends declared by HGVL will be assessable income of a Grower.

Deductions for Management Fees and Occupancy Fees

Section 8-1 and section 328-105

60. A Grower who acquires one Vinelot in the project, is an 'STS taxpayer', and who are accepted into the Project between the date of this Ruling and 14 June 2002 (no applications for Vinelots will be accepted between 15 June 2002 and 30 June 2002) may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Initial Service Fee	8-1 & 328-105	$378 - see Note (ix) (below)		
Further Initial Management Fee	8-1 & 328-105	Amount must be calculated See Notes (ix) & (x) (below)	Amount must be calculated See Notes (ix) & (x) (below)	
Further Management Fees	8-1 & 328-105	$690 See Notes (ix) & (xi) (below)	$690 See Notes (ix) & (xi) (below)	Amount must be calculated See Notes (ix) & (xi) (below)
Occupancy Fees	8-1 & 328-105	$900 See Notes (ix) & (xi) (below)		

61. A Grower who acquires one Vinelot in the project, is an 'STS taxpayer', and is accepted into the Project between 1 July 2002 and 14 June 2003 may claim tax deductions as set out in the following table. This Product Ruling will not apply to applications for Vinelots accepted between 15 June 2003 and 30 June 2004.

Fee Type	ITAA 1997 Sections	Year ended 30 June 2003	Year ended 30 June 2004
Initial Service Fee	8-1 & 328-105	$378 - See Note (ix) (below)	
Further Initial Management Fees	8-1 & 328-105	Must be calculated See Notes (ix) & (x) (below)	Must be calculated See Notes (ix) & (x) (below)
Further Management Fees	8-1 & 328-105	$690 See Notes (ix) & (xi) (below)	$690 See Notes (ix) & (xi) (below)
Occupancy Fees	8-1 & 328-105	$900 See Notes (ix) & (xi) (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 1 at paragraph 127;

(x) the Further Initial Management Fee shown in the table above is **NOT** deductible in full in the year in which it is paid by, or on behalf of the STS taxpayer. The deduction for each year's fee must be determined using the formula in subsection 82KZMF(1) (see paragraph 50). The Manager must inform Growers of the number of days in the 'eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable. (See example 2 at paragraph 128);

(xi) although the Further Management Fees and the Occupancy Fees can be prepaid for a Grower who acquires the minimum of one Vinelot, the amount of the prepaid Further Management Fees and the prepaid Occupancy Fees are less than $1,000. For the purposes of this Project, amounts of less than $1,000 are 'excluded expenditure'. Excluded expenditure is an 'exception' to the prepayment rules and it is therefore deductible in full in the year in which it is paid (see Example 3 at paragraph 129). However, **where a**

Grower acquires more than one Vinelot in the Project, the amount of the Grower's prepaid Further Management Fees and Occupancy Fees may be $1,000 or more. Such Growers **MUST** determine the deduction for the prepaid Further Management Fees and the Occupancy Fees on the same basis as the prepaid Further Initial Management Fee, i.e., using the formula shown in paragraph 50 above. The Manager must inform Growers of the number of days in the `eligible service period' in the first expenditure year. This figure is necessary to calculate the deduction allowable.

Deductions for capital expenditure

Subdivision 328-D and Subdivisions 40-F and 40-G

62. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (e.g., irrigation), a 'landcare operation' and grapevines. Deductions relating to the 'cost' of trellising must be determined under Division 328. An 'STS taxpayer' may claim deductions in relation to water facilities under Subdivision 40-F and in relation to a 'landcare operation' under Subdivision 40-G. If the 'water facility' or 'landcare operation' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F.

63. The deductions shown in the following Table assume, for representative purposes only, that a Grower has either chosen to or can only claim deductions for expenditure on water facilities or a 'landcare operation' under Subdivisions 40-F or 40-G and not under Division 328. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Notes (xiv) and (xv) below.

64. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than $1000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

65. The table below reflects the tax treatment for Growers who are accepted into the Project between the date of this Ruling and 14 June 2002. No Growers will be accepted into the project between 15 June 2002 and 30 June 2002.

Fee type	ITAA 1997 section	Year ended 30 June 2002	Year ended 30 June 2003	Year ended 30 June 2004
Trellising	328-185 & 328-190	$522 - See Notes (xii) & (xiii) below		
Water facility (eg. irrigation)	40-515	$121 - See Notes (xii) & (xiv) below	$121 - See Notes (xii) & (xiv) below	$120 - See Notes (xii) & (xiv) below
Landcare operations	40-630	$74 - See Notes (xii) & (xv) below		
Establishment of horticultural plants (grapevines)	40-515	Nil - See Notes (xii) & (xvi) below	Nil - See Notes (xii) & (xvi) below	Must be calculated - See Notes (xii) & (xvi) below

66. The table below reflects the tax treatment for Growers who are accepted into the Project between 1 July 2002 and 14 June 2003. This Product Ruling will not apply to applications for Vinelots accepted between 15 June 2003 and 30 June 2004.

Fee type	ITAA 1997 section	Year ended 30 June 2002	Year ended 30 June 2003
Trellising	328-185 & 328-190	$522 - See Notes (xii) & (xiii) below	
Water facility (e.g., irrigation)	40-515	$121 - See Notes (xii) & (xiv) below	$121 - See Notes (xii) & (xiv) below
Landcare operations	40-630	$74 - See Notes (xii) & (xv) below	
Establishment of horticultural plants (grapevines)	40-515	Nil - See Notes (xii) & (xvi) below	Nil - See Notes (xii) & (xvi) below

Notes:

(xii) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to

be adjusted as relevant for GST (e.g., input tax credits): Division 27: see example 1 at paragraph 127;

(xiii) trellising is a 'depreciating asset'. Each Grower holds an interest in the trellising and this interest is a 'low-cost asset' as defined in subsection 40-425(2). It cannot be allocated to the 'general STS pool' (section 328-180). A deduction equal to the amount of the Grower's expenditure for the trellising is available in the income year in which the trellising is used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which the Grower starts to 'hold' the interest and the income year in which the trellising is first used or 'installed ready for use' to produce assessable income;

(xiv) any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than $1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in Year 1 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540);

(xv) any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than $1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G;

(xvi) As grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the write-off over 4 years under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530(2)). The Project

Manager will inform Growers of when the grapevines enter their first commercial season.

Tax outcomes that apply to all Growers

Interest

67. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 93 to 104 (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.

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

Section 35-55 – Commissioner's discretion

68. For a non-electing Grower who is an individual and who enters the Project during the year ended 30 June 2002 (2002 Grower) 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 2002 to 30 June 2004 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. For a non-electing Grower who is an individual and who enters the Project during the year ended 30 June 2003 (2003 Grower), the Commissioner will decide for the income years ending 30 June 2003 to 30 June 2005 that the rule in section 35-10 does not apply to this activity.

69. 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 113 in the Explanations part of this Ruling, below);
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45;
- the 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)); or

- the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).

70. 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 his/her business activity in excess of any assessable income from that activity, ie, 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.

71. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, non-electing 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 82KL and Part IVA

72. For a Grower who participates in the Project and incurs expenditure as required by the Management Agreement and the Right to Occupy Deed, 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

Section 708 of the Corporations Act

73. For this Ruling to apply, an offer for an interest in the Project must have been made to, and accepted by the Grower under subsection 708(10) of the Corporations Act. This provision sets out situations where a Prospectus or similar disclosure document is not required.

74. Under subsection 708(10), the licenced dealer must be satisfied that the person to whom the offer is made has previous experience in investing which allows them to assess the merits of the offer, the value of the interests in the Project, the risks involved in

accepting the offer, their own information needs and the adequacy of the information provided.

75. The licenced dealer must provide a written statement of reasons for being so satisfied. Where a Grower is accepted into the Project under this provision he or she must sign an acknowledgment that they did not receive a Prospectus in relation to the offer.

Is the Grower carrying on a business?

76. For the amounts set out in the Tables above to constitute allowable deductions the Grower's viticulture activities as a participant in the Hillston Grove Vineyards No. 3 Project must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

77. For schemes such as that of the Hillston Grove Vineyards No 3 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.

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

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

79. In this Project, each Grower enters into a Management Agreement and is a party to a Right to Occupy Deed.

80. Under the Project Deed each individual Grower will have rights over a specific and identifiable area of land. The Deed provides the Grower with an ongoing interest in the specific grapevines on the licensed area for the term of the Project. Under a Right to Occupy Deed, the Grower must use the land in question for the purpose of carrying out viticultural activities and for no other purpose. The

licence allows the Project Manager to come onto the land to carry out its obligations under the Management Agreement.

81. Under the Management Agreement the Manager is engaged by the Grower to establish and maintain a Vinelot 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 Vinelot on the Grower's behalf.

82. In establishing the Vinelot, the Grower engages the Manager to purchase and install trellising, and water facilities (e.g., irrigation), to carry out 'landcare operation' and to acquire and plant vine seedlings/rootlings on the Grower's Vinelot. During the term of the Project, these assets will be used wholly to carry out the Grower's viticulture activities. The Manager is also engaged to harvest and sell, on the Grower's behalf, the grapes grown on the Grower's Vinelot.

83. 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.

84. 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 its grapes 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.

85. The pooling of grapes grown on the Grower's Vinelot with the grapes of other Growers is consistent with general viticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled grapes will reflect the proportion of the grapes contributed from their Vinelot.

86. The Manager's services and the installation of assets on the Grower's behalf are also consistent with general viticulture practices. The assets are of the type ordinarily used in carrying on a business of viticulture. While the size of a Vinelot is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

87. The Grower's degree of control over the Manager as evidenced by the 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 Vinelot 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.

88. The viticulture 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' viticulture activities in the Hillston Grove Vineyards No 3 Project will constitute the carrying on of a business from the time the Grower has been accepted into the Project.

The Simplified Tax System

Division 328

89. 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.

90. 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 Initial Service Fee, the Further Initial Management Fee, the Further Management Fees and Occupancy Fees

Section 8-1

91. Consideration of whether the Initial Service Fee, the Further Initial Management Fee, the Further Management Fees and Occupancy 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.

92. The Initial Service Fee, the Further Initial Management Fee, the Further Management Fees and Occupancy Fees associated with the viticulture activities will relate to the gaining of income from the Grower's business of viticulture, and hence have a sufficient connection to the operations by which income (from the regular sale of grapes) 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 fees is identifiable from the arrangement. The fees appear to be reasonable. There is no capital component of the Initial Service Fee, the Further Initial Management Fee, and the Further Management Fees. 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

93. 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 (eg. 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.

94. Where 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

95. Where 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)).

96. 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.

97. 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 an associated financier. 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.

98. 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.

99. 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.

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

100. 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.

Application of the prepayment provisions to this Project

101. The expenditure incurred by a Grower in the Project for the Further Initial Management Fee, the Further Management Fees and the Occupancy Fees meets the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF.

102. The prepaid Further Initial Management Fee incurred by Growers does not fall within any of the 5 exceptions to section 82KZME. Therefore, the deduction for each year is determined using the formula in subsection 82KZMF(1). Section 82KZMF will apportion the deduction for prepaid Further Initial Management Fee over the period that the services for which the prepayment is made are provided.

103. The prepaid Further Management Fees and the Occupancy Fees, being amounts of less than $1,000 in each expenditure year, constitute 'excluded expenditure' as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for the Further Management Fee and the Occupancy Fees in the income year in which it is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for the Further Management Fee and the Occupancy Fee in the income year in which it is incurred.

104. However, where a Grower acquires more than the minimum of one Vinelot in the Project and the quantum of the prepaid Further Management Fees and the Occupancy Fees is $1,000 or more, the deduction allowable for those amounts will also be subject to apportionment according to the formula in subsection 82KZMF(1).

Interest deductibility

Section 8-1

Growers who borrow from an external and unrelated finance provider

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

106. 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 93 to 104).

Expenditure of a capital nature

Division 40 and Division 328

107. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to trellising, water facilities, a 'landcare operation', and the establishment of the grapevines is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

108. The application and extent to which a Grower claims deductions under Division 40 and Division 328 depends on whether or not the Grower is an 'STS taxpayer'.

109. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 56, 57, 65 and 66 (above) in the Tables and the accompanying Notes.

Deferral of losses from non-commercial business activities

Division 35

110. 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 incurred by an individual (including an individual in a general law partnership) from

certain business activities will not be allowable in an income year unless:

- the exception in subsection 35-10(4) applies;
- one of four 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.

111. 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.

112. 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.

113. 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.

114. 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) that 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 dwellings) 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).

115. 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

non-electing Grower who acquires the minimum of one Vinelot in the Project during the year ended 30 June 2002 is unlikely to have his/her activity pass one of the tests until the income year ended 30 June 2007. For a 2003 Grower, it is unlikely that a non-electing Grower would pass one of the tests until the year ended 30 June 2008. A Grower who acquire more than one interest in the Project may however, find that his/her activity meets one of the tests in an earlier income year.

116. 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.

117. 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:

(i) the business activity has started to be carried on;

(ii) because of its nature, it has not satisfied one of the tests; and

(iii) 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.

118. Information provided with the application for this Product Ruling indicates that a non-electing Grower who acquires the minimum of one Vinelot in the Project is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit for the year ended 30 June 2005 for a non-electing Grower who is accepted into the Project during the year ending 30 June 2002. The Commissioner will decide for such a non-electing Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2004. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year. For a 2003 non-electing Grower, these years are 30 June 2006 (pass one of the tests or produce a profit) and 30 June 2005 (discretion date) respectively.

119. 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, in the manner described in the Arrangement (see paragraphs 14 to 44). 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 10). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

120. 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 viticulturist provided with the application by the Responsible Entity;
- independent, and generally available information relating to the viticulture industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Section 82KL - recouped expenditure

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

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

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

Part IVA - general tax avoidance provisions

124. 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).

125. The Hillston Grove Vineyards No. 3 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 56 to 72 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.

126. 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 grapes. 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

127. 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	$2 200*
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 x $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 x $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).

Example 2 – Apportionment of Fees

128. Murray decides to participate in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are $5,000 in the first year and $1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date. The project is subject to a minimum subscription of 300 interests. Murray provides the Project Manager with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2002 the Project Manager informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

Murray is an 'STS taxpayer' who is not registered, nor required to be registered for GST. He calculates his tax deduction for management fees for the **2002 income year** as follows:

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

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

= **$356** (this is Murray's total tax deduction in 2002 for the Year 1 prepaid management fees of $5,000. It represents the 26 days for which management services were provided in the 2002 income year).

In the **2003 income year** Murray will be able to claim a tax deduction for management fees calculated as the sum of two separate amounts:

$5,000 X 339

365

= **$4,644** (this represents the balance of the Year 1 prepaid fees for services provided to Murray in the 2003 income year).

$1,200 X 26

365

= **$85** (this represents the portion of the Year 2 prepaid management fees for the 26 days during which services were provided to Murray in the 2003 income year).

$4,644 + $85 = $4,729 (The sum of these two amounts is Murray's total tax deduction for management fees in 2003).

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

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

129. On 1 June 2002 Kevin applies for an interest into the Western Bluegum Project, a prospectus based afforestation project of 12 years. Kevin is accepted into the project and executes a lease and management agreement with the Responsible Entity for the provision of management services and the lease of his Woodlot. The terms of the lease and management agreement require Kevin to prepay the management fees and the lease fee on or before the 30 June each year for the lease of his Woodlot and the provision of management services between the 1 July and 30 June in the following income year. Kevin pays the first year management fee of $3,600 and first year lease fee of $500 on 15 June 2002.

Kevin, who is not an 'STS taxpayer' is not registered, nor required to be registered for GST.

He calculates his tax deduction for management fees and the lease fee for the **2001 income year** as follows:

Management fee

130. Even though he paid the $3,600 in the 2002 income year, because there are no 'days of eligible service period' in that year, Kevin is unable to claim any part of his management fees as a tax deduction in his tax return for the year ended 30 June 2002.

Lease fee

131. Because the $500 lease fee is less than $1,000 it is 'excluded expenditure' and can be claimed in full as a tax deduction in Kevin's tax return for the year ended 30 June 2002.

In the **2003 income year** Kevin can claim a tax deduction for his first year's management fees calculated as follows:

$3,600 X 365

365

= **$3,600** (this represents the whole of the first year's management fee prepaid in the 2002 income year but not deductible until the 2003 income year).

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

Detailed contents list

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

Commissioner of Taxation
20 February 2002

Previous draft:

Not previously issued in draft form.

Related Rulings/Determinations:

PR 1999/95; TR 92/1; TR 92/20; TR 97/11; TR 97/16; TR 2000/8 ; TD 93/34; TR 98/22 ; IT 3601

Subject references:

- carrying on a business
- interest expenses
- management fees
- occupancy fees
- producing assessable income
- product rulings
- public rulings
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- vineyard
- viticulture

Legislative references:

- ITAA 1936 82KH(1)
- ITAA 1936 82KH(1F)(b)
- ITAA 1936 82KL
- ITAA 1936 82KL(1)
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM

- 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 Div 3 of Part III
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- 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 35-55(2)
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- ITAA 1997 Subdiv 40-F
- ITAA 1997 Subdiv 40-G
- ITAA 1997 40-25
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- ITAA 1997 40-105
- ITAA 1997 40-515
- ITAA 1997 40-515(1)(a)
- ITAA 1997 40-515(1)(b)
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- ITAA 1997 40-525(2)
- ITAA 1997 40-525(3)
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- ITAA 1997 40-630
- ITAA 1997 40-635
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-D
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 328-180
- ITAA 1997 328-185
- ITAA 1997 328-190
- Corporations Act 2001 Part 7.9
- Corporations Act 2001 708
- Corporations Act 2001 708(10)
- Corporations Act 2001 1454(2)

Case references:

- FCT v. Lau 84 ATC 4929

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