PR 2002/39 - Income tax: Australian Growth - Timber Project No. 4

Product Ruling
Income tax: Australian Growth – Timber Project No. 4

Contents Para

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Preamble

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

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

No guarantee of commercial success

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

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how this product fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out below in the **Ruling** part of this document are available **provided that** the arrangement is carried out in accordance with the information we have been given and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the 'Australian Growth – Timber Project No.4' or simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- Section 8-1 (ITAA 1997);
- Section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- Section 82KZME (ITAA 1936);
- Section 82KZMF (ITAA 1936);
- Section 82KZMG (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

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

Changes in the Law

4. The Government is currently evaluating further changes to the tax system in response to the Ralph *Review of Business Taxation* and continuing business tax reform is expected to be implemented over a

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

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

Note to promoters and advisers

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement.

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

Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

Date of effect

11. This Ruling applies prospectively from 17 April 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Previous Rulings

14. This Ruling replaces Product Ruling PR 2001/16, which is withdrawn on and from the date this Ruling is made (17 April 2002). Product Ruling PR 2001/16 will continue to apply to investors who entered into the Project on or before 17 April 2002.

Arrangement

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

- Application for Product Ruling dated 22 December 2000;

- The Australian Growth-Timber Project No.4 Project Draft Prospectus 2001 undated;
- **Draft Lease and Management Agreement – 2002 Year between Australian Growth Managers Ltd (the "Responsible Entity" and "Lessor"), and the Grower, dated 16 February 2001**;
- **Constitution for Australian Growth-Timber Project No. 4, dated 16 February 2001;**
- Draft Compliance Plan for the Australian Growth-Timber Project No. 4, dated 11 November 2000;
- Draft Head Lease between Australian Growth Landholdings Ltd and Australian Growth Managers Ltd, undated; and
- Additional correspondence from the Applicant dated 23 January 2001, 14 February 2002 and 3 April 2002.

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

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

17. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

18. This arrangement is called Australian Growth – Timber Project No.4.

Location	South Coast region of Western Australia and Kangaroo Island in South Australia.
Type of business each participant is carrying on	Plan A – Commercial growing, and cultivation of *Eucalyptus globulus* (Tasmanian Blue Gums) trees for the purpose of producing timber for woodchipping. Plan B – Commercial growing and

	cultivation of *Eucalyptus globulus* (Tasmanian Blue Gums) and *Eucalyptus Nitens* (Shining Gum) trees for the purpose of producing timber for timber products. Plan C – Commercial growing and cultivation of *Pinus radiata* (Radiata Pine) trees for the purpose of producing timer for timber products.
Number of hectares under cultivation	4,500 hectares
Size of each leasehold area	1 hectare
Number of trees per hectare	Approximately 1,000
The term of the Project	Plan A – 12 years Plan B – 17 years Plan C – 25 years.
Initial cost per Woodlot	Plan A - $6,050 Plan B - $5,500 Plan C - $5,500
Initial cost per hectare	Plan A - $6,050 Plan B - $5,500 Plan C - $5,500
Ongoing costs	Maintenance, Rent, Pruning fees and Harvest fees.

19. Growers participating in the arrangement will enter into a Lease and Management Agreement for the Project. This Agreement is set out in the Fifth Schedule to the Constitution. The Agreement gives a Grower a sub-lease from Australian Growth Managers Ltd over an identifiable area of land called a 'Woodlot' until the expiry of the sub-lease in accordance with Item A of Schedules 2, 3 and 4 to the Lease and Management Agreement. Each Woodlot is 1 hectare in size.

20. The Project Land is situated on Kangaroo Island in South Australia and the South Coast region of Western Australia. Australian Growth Landholdings Ltd will lease land to Australian Growth Managers Ltd.

21. Australian Growth Managers Ltd will sub-lease the Woodlot to the Growers to enable the Growers to carry on a long term commercial afforestation business. Growers are specifically granted rights to harvest timber on their Woodlots for this purpose.

22. The Prospectus states that there is no minimum subscription for this Project, however applications made under the Prospectus will not be accepted after 31 May 2002, or the date of expiry of the Prospectus whichever is the earlier. Each investor may subscribe for a minimum of one Woodlot, at a cost of $6,050 per Woodlot under Plan A, and $5,500 under Plans B and C. Where Growers lodge their application on or before 31 May 2002, a minimum of 1,000 seedlings or trees will be planted per Woodlot (1,000 seedlings or trees per hectare) on or before 31 October 2002 (Item 1.1.2, Schedules 2, 3, and 4).

Constitution

23. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Grower and to manage the Project. The Responsible Entity will keep a register of Growers (cl. 9.3). The Lease and Management Agreement is annexed to the Constitution and will be executed on behalf of a Grower following them signing the Application and a Power of Attorney Form in the Prospectus. Growers are bound by the Constitution by virtue of their participation in the Project.

Compliance Plan

24. The Responsible Entity has prepared a Compliance Plan in accordance with the *Corporations Act 2001*. Under the Compliance Plan, a Compliance Committee will monitor to what extent the Responsible Entity meets its obligations as the Responsible Entity of the Project and the rights of the Growers are protected.

Interest in Land

25. Growers participating in the arrangement will enter into a Lease and Management Agreement between Australian Growth Managers Ltd (the "Responsible Entity" and "Lessor"), and the Grower. Growers are granted an interest in land in the form of a sub-lease to use their Woodlot for the purpose of conducting their afforestation business.

26. Each Grower who invests in Plan A must pay a fee for rent to the Responsible Entity of an amount equal to 4.4% of all the Forest Product harvested and sold by the Responsible Entity, as agent for the Growers, from all areas leased by Growers under the Project that were

planted in the same year less any amounts due to the Responsible Entity under the Lease and Management Agreement (Schedule 2, Item 2.5). Growers who invest in either Plan B or Plan C must pay a fee for rent of $165, payable on or before 30 September 2002. For each year thereafter rent is payable on 30 September each year respectively (Item B, Schedules 3 and 4).

27. Where the Grower invests in Plan A (Item A, Schedule 2) the term of the Grower's sub-lease is the earliest of, 12 years after the commencement date, the date the harvesting of the wood is completed or the day immediately preceding the termination of the Head Lease. Where a Grower invests in Plan B, the term of the sub-lease is, the earliest of 17 years after the commencement date, the date the harvesting of the wood is completed, or the day immediately preceding the termination of the Head Lease (Item A, Schedule 3). The term of the sub-lease for Growers who invest in Plan C is the earliest of, 25 years after the commencement date, the date the harvesting of the wood is completed, or the day immediately preceding the termination of the Head Lease (Item A, Schedule 4).

Lease and Management Agreement

28. Each Grower enters into a Lease and Management Agreement with the Responsible Entity for each Woodlot. Growers contract with the Responsible Entity to establish and maintain the plantation until maturity. Each Grower who invests in Plan A must pay a maintenance fee to the Responsible Entity of an amount equal to 3.3% of the net sales proceeds of all the Forest Product harvested and sold by the Responsible Entity (Schedule 2, Item 2.5). For Growers who invest in Plan B and/or Plan C the annual maintenance fee is $110 indexed annually (Item 2.3, Schedules 3 and 4). The first annual maintenance fee is payable on 30 September 2002, and on 30 September for each subsequent year.

29. The Lease and Management Agreement provides that each Grower appoints the Responsible Entity to perform services under the Agreement. Schedules 2, 3 and 4 of the Agreement specify the services to be performed by the Responsible Entity. The Responsible Entity will supervise and manage all silvicultural activities on behalf of each Grower and must:

- acquire appropriate seeds and seedlings;
- rip and mound the Woodlot;
- plant *Eucalyptus globulus*, *Eucalyptus nitens* or *Pinus Radiata* seedlings on the land;
- keep access roads in good repair and each Woodlot free from rabbits and other vermin; and

- maintain the Woodlot according to good silvicultural and forestry practices.

30. The Responsible Entity will perform harvesting services for all Growers, for a fee of 3.3% of the net sale proceeds of all the Forest Product harvested from all areas leased by Growers under the Project that were planted in the same year less any amounts due to the Responsible Entity under the Agreement. The Grower will be responsible for paying the cost of annual insurance on the Woodlot.

Planting

31. During the period from the date the application is accepted to 31 October 2002, the Responsible Entity is required to plant either *Eucalyptus globulus, Eucalyptus nitens or Pinus Radiata* on the Woodlots. From 1 November 2002, the Responsible Entity will maintain the trees in accordance with good silvicultural practice. The services to be provided by the Responsible Entity over the term of the Project are outlined in the Lease and Management Agreement (Schedules 2, 3 and 4).

Fees

32. The initial fee payable under the Lease and Management Agreement is $6,050 (Plan A), or $5,500 (Plans B & C) per Woodlot. These fees include a fee for primary services of $5,885 for Plan A or $5,335 for Plans B and C (Schedules 2, 3 and 4, Item 2.1). Where Growers lodge their applications by 22 April 2002, these services will be completed by 30 June 2002.

33. A planting service fee of $165 is also payable on application for planting services to be carried out during the period from the date the application is accepted to 31 October 2002.

34. For Growers who participate in Plans B and C, a maintenance fee of $110, to be indexed commencing 30 September 2002 by the percentage increase in the Consumer Price Index over the four quarters preceding the Annual Payment Date, is payable on or before 30 September of each income year for services to be provided during 1 July to 30 June for that year.

35. For Growers who participate in Plan A, a deferred maintenance fee of 3.3% of the net sale proceeds of all the Forest Product harvested from all areas leased by Growers under the Project that were planted in the same year less any amounts due to the Responsible Entity under the Agreement, is payable after harvest.

36. Each Grower who participates in Plan A must pay a fee for rent to the Responsible Entity of an amount equal to 4.4% of all the

Forest Product harvested and sold by the Responsible Entity as agent for the Growers from all areas leased by Growers under the Project that were planted in the same year less any amounts due to the Responsible Entity under the Lease and Management Agreement (Schedule 2, Item 2.5). Growers who participate in either Plan B or Plan C must pay a fee for rent of $165 per year, commencing 30 September 2002 (Item B, Schedules 3 and 4).

37. For Growers who participate in Plans B and/or C, a pruning fee of $110, to be indexed by the percentage increase in the Consumer Price Index over the four quarters preceding the Annual Payment Date, is payable on or before 30 September of each income year for services to be provided in the period 1 July to 30 June for that year. This fee commences to be payable on 20 September 2002 (Item 2.4, Schedules 3 and 4).

38. A harvest fee of 3.3% of the net sale proceeds of all the Forest Product harvested from all areas leased by Growers under the Project that were planted in the same year less any amounts due to the Responsible Entity under the Lease and Management Agreement, is required to be paid by all Growers, after harvest (Item 2.5, Schedules 2, 3 and 4).

Finance

39. Growers can fund their investment in the Project by borrowing from Australian Growth Finance Ltd (a lender associated with the Responsible Entity).

40. Those Growers may enter into the following finance arrangement;

- 6 Year Term with interest only repayments in the first 12 months and principal and interest repayments for the remainder of the term;
- fixed interest rate of 9.5%;
- administration fee of $25 per quarter; and
- repayments must be made by Direct Debit from a nominated bank account.

41. This Ruling does not apply if the finance arrangement entered into by the Grower includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;

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

Ruling

Application of this Ruling

42. This Ruling applies only to Growers who are accepted to participate in the Project on or before 31 May 2002 or the expiry of the Prospectus whichever is the earlier and who have executed Lease and Management Agreements before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. This Ruling does not apply to those Growers who make an election under the Lease and Management Agreement to take delivery of and market the timber produced from their Woodlot(s).

The Simplified Tax System ('STS')

Division 328

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

- must be eligible to be an 'STS taxpayer'; and

- must have elected to be an 'STS taxpayer'.

Qualification

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

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income

Section 6-5

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

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

Deductions for the Primary Services Fee, Planting Services Fee, Rent, Maintenance Fee, Pruning Fee and Interest

Section 8-1

47. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Plan A

Fee Type	ITAA 1997 Section	Year ended 30/6/2002	Year ended 30/6/2003	Year ended 30/6/2004	Year ended 30/6/2005
Primary Services Fee	8-1	$5,885 – See Note (i) (below)			
Planting Services Fee	8-1	$165 – See Notes (i) & (ii) (below)			
Interest	8-1	As incurred – See Note (iv) (below)	As incurred – See Note (iv) (below)	As incurred – See Note (iv) (below)	As incurred – See Note (iv) (below)

Plans B & C

Fee Type	ITAA 1997 Section	Year ended 30/6/2002	Year ended 30/6/2003	Year ended 30/6/2004	Year ended 30/6/2005
Primary Services Fee	8-1	$5,335 – See Note (i) (below)			
Planting Services Fee	8-1	$165 – See Notes (i) & (ii) (below)			
Rent	8-1		*$165 – See Notes (i) & (iii) (below)	*$165 – See Notes (i) & (iii) (below)	*$165 – See Notes (i) & (iii) (below)
Maintenance Fee	8-1		*$110 – See Notes (i) & (iii) (below)	*$110 – See Notes (i) & (iii) (below)	*$110 – See Notes (i) & (iii) (below)
Pruning Fee	8-1		*$110 – See Notes (i) & (iii) (below)	*$110 – See Notes (i) & (iii) (below)	*$110 – See Notes (i) & (iii) (below)
Interest	8-1	As incurred – See Note (iv) (below)	As incurred – See Note (iv) (below)	As incurred – See Note (iv) (below)	As incurred – See Note (iv) (below)

***** These fees are subject to indexation on 30 June 2003 and on 30 June each year thereafter. The amount will be the prior year fee indexed at the annual rate of inflation.

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 115;

(ii) Expenditure for 'seasonally dependent agronomic activities' is deductible in the income year in which it is incurred;

(iii) Where a Grower who is not an 'STS taxpayer', pays the maintenance fees, rent and pruning fees in the relevant income years shown in the Lease and Management Agreement those fees are deductible in full in the year that they are incurred. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 80 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000;

(iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Australian Growth Finance Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Australian Growth Finance Ltd, should read the discussion of the prepayment rules in paragraphs 76 to 85 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5 and section 328-105

48. 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.

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

Deductions for Primary Services Fee, Planting Services Fee, Rent, Maintenance Fee, Pruning Fee, and Interest

Section 8-1 and section 328-105

50. A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses:

Plan A

Fee Type	ITAA 1997 Section	Year ended 30/6/2002	Year ended 30/6/2003	Year ended 30/6/2004	Year ended 30/6/2005
Primary Services Fee	8-1 & 328-105	$5,885 – See Notes (v) & (vi) (below)			
Planting Services Fee	8-1 & 328-105	$165 – See Notes (v), (vi) & (vii) (below)			
Interest	8-1 & 328-105	When Paid – See Note (ix) (below)	When Paid – See Note (ix) (below)	When paid – See Note (ix) (below)	When paid – See Note (ix) (below)

Plans B & C

Fee Type	ITAA 1997 Section	Year ended 30/6/2002	Year ended 30/6/2003	Year ended 30/6/2004	Year ended 30/6/2005
Primary Services Fee	8-1	$5,335 – See Notes (v) & (vi) (below)			
Planting Services Fee	8-1	$165 – See Notes (v), (vi) & (vii) (below)			
Rent	8-1		*$165 – See Notes (v), (vi) & (viii) (below)	*$165 – See Notes (v), (vi) & (viii) (below)	*$165 – See Notes (v), (vi) & (viii) (below)
Maintenance Fee	8-1		*$110 – See Notes (v), (vi) & (viii) (below)	*$110 – See Notes (v), (vi) & (viii) (below)	*$110 – See Notes (v), (vi) & (viii) (below)
Pruning Fee	8-1		*$110 – See Notes (v), (vi) & (viii) (below)	*$110 – See Notes (v), (vi) & (viii) (below)	*$110 – See Notes (v), (vi) & (viii) (below)
Interest	8-1	When paid – See Note (ix) (below)	When paid – See Note (ix) (below)	When paid – See Note (ix) (below)	When paid – See Note (ix) (below)

* These fees are subject to indexation on 30 June 2003 and on 30 June each year thereafter. The amount will be the prior year fee indexed at the annual rate of inflation.

Notes:

(v) 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 115;

(vi) If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Table above which is not paid

in the year in which it is incurred will be deductible in the year in which it is actually paid;

(vii) Expenditure for 'seasonally dependent agronomic activities' is deductible in the income year in which it is incurred;

(viii) Where a Grower who is an 'STS taxpayer', pays the maintenance fees, rent and pruning fees in the relevant income years shown in the Lease and Management Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 76 to 85). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 80, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000;

(ix) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Australian Growth Finance Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Australian Growth Finance Ltd, should read the discussion of the prepayment rules in paragraphs 76 to 85 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes that apply to all Growers

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

Section 35-55 – Commissioner's discretion

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

Project. For Growers who invest in Plan A, under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2012 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 Growers who invest in Plan B, under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2018 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 Growers who invest in Plan C, under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2026 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.

52. 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 102 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; or
- 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)).

53. Where, the exception in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.

54. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be commercially viable. An assessment of the Project or the product from this perspective has not been made.

Section 82KL, and Part IVA

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

- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanations

Is the Grower carrying on a business?

56. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in Australian Growth - Timber Project No. 4 must amount to the carrying on of a business of primary production.

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

58. For schemes such as that of Australian Growth - Timber Project No. 4, 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.

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

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's trees are established;
- the Grower has a right to harvest and sell the timber produce from those trees;
- the afforestation activities are carried out on the Grower's behalf;
- the afforestation activities of the Grower are typical of those associated with a afforestation business; and

- the weight and influence of general indicators point to the carrying on of a business.

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

61. Under the Lease and Management Agreement each individual Grower will have rights over a specific and identifiable area of one hectare of land. The Lease and Management Agreement provides the Grower with an ongoing interest in the specific trees on the Woodlot(s). Under the sub-lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The sub-lease allows the Responsible Entity to come onto the land to carry out its obligations under the Lease and Management Agreement.

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

63. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the timber produce grown on the Grower's Woodlot unless the Grower is a Non-Participating Grower under the Lease and Management Agreement.

64. 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.

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

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

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

68. The Grower's degree of control over the Responsible Entity as evidenced by the Lease and Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Responsible Entity will provide the Grower with regular progress reports on the Grower's Woodlot and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Responsible Entity in certain instances, such as cases of default or neglect.

69. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' afforestation activities in Australian Growth - Timber Project No. 4 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

70. 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.

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

Deductibility of the Primary Services Fee, Planting Services Fee, Maintenance Fee, Pruning Fee, and Rent

Section 8-1

72. Consideration of whether the primary services fee, planting services fee, maintenance fee, pruning fee, and rent 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.

73. The primary services fee, planting services fee, maintenance fee, pruning fee, and rent associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of timber produce) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the primary services fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMF

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

75. For this Project only section 82KZL (an interpretative provision) and sections 82KZME and 82KZMF are relevant. 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 'STS taxpayers' from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

76. 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)).

77. 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;
- 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.

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

79. 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.

80. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

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

Section 82KZMG

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

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

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

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

- it must be an agreement for planting and tending trees for felling;
- be an agreement where the taxpayer does not have day to day control over the operations arising out of the agreement. (A right to be consulted or to give directions does not equate to day to day control for the purposes of this requirement); and
- either:

(i) there must be more than one participant in the agreement in the same capacity as the taxpayer who incurs the expenditure; or

(ii) the manager manages, arranges or promotes the agreement, or an associate of the manager, manages, arranges or promotes similar agreements.

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

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

Application of the prepayment provisions to this Project

86. Under the Lease and Management Agreement, a Grower incurs a planting services fee consisting of expenditure of $165 for 'seasonally dependent agronomic activities'. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2002 for the planting services fee incurred under the Lease and Management Agreement for 'seasonally dependent agronomic activities'.

87. The Lease and Management Agreement also requires that a Grower incurs a maintenance fee of $110 per year for the performance of maintenance services during the term of the Project , and a pruning fee of $165 for Plans B and C. Under the Lease and Management Agreement a Grower incurs rent of $165 to lease land during the term of the Project for Plans B and C.

88. The maintenance fee, pruning fee and rent incurred under the Lease and Management Agreement are not prepaid. These fees are charged for providing maintenance services and for the lease of the land to a Grower until 30 June of the year in which the fees are incurred. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for each of the relevant fees in the income year in which the fee is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for each of the relevant fees in the income year in which the fee is incurred.

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

89. Although not required under either the Lease and Management Agreement, or the Loan Agreement with Australian Growth Finance Ltd, a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Where this occurs, contrary to the conclusion reached in paragraph 88 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

90. For these Growers, the amount and timing of deductions for any relevant prepaid maintenance fees, prepaid pruning fees and prepaid rent, or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

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

Interest deductibility

Section 8-1

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

92. Some Growers may finance their participation in the Project through a loan facility with Australian Growth Finance Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the maintenance fees, pruning fees, and rent.

93. The interest incurred for the year ended 30 June 2002 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing trees and the lease (or licence) of the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

94. As with the maintenance fees, pruning fees, and rent in the absence of any application of the prepayment provisions (see paragraphs 76 to 85), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

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

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

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

98. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 76 to 85).

Deferral of losses from non-commercial business activities

Division 35

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

- the exception in subsection 35-10(4) applies;
- one of four tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

100. 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.

101. 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.

102. 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.

103. In broad terms, the tests require:

(a) at least $20,000 of assessable income in that year from the business activity (section 35-30);

(b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year)(section 35-35);

(c) at least $500,000 of real property, or an interest in real property, (excluding any private dwelling) is used on a continuing basis in carrying on the business activity in that year (section 35-40); or

(d) at least $100,000 of certain other assets (excluding cars, motor cycles and similar vehicles) are used on a continuing basis in carrying on the business activity in that year (section 35-45).

104. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Woodlot in the Project is unlikely to ever pass one of the tests.

105. Therefore, 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.

106. 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 yet met one of the tests set out in Division 35; 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.

107. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Woodlot in Plan A, Plan B and/or Plan C 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 2013, 30 June 2010 and 30 June 2016 respectively.

108. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2012 for Growers who participate in Plan A, 30 June 2018 for Growers who participate in Plan B and/or 30 June 2026 for Growers who participate in Plan C. The taxation profit that is projected for the income year ended 30 June 2010 for Growers who participate in Plan B, and the income years ended 30 June 2016 and 30 June 2022 for Growers who participate in Plan C do not affect the period of the Commissioner's discretion as they are considered to be 'one-off-events' that are specific to the afforestation industry.

109. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 107), in the manner described in the Arrangement (see paragraphs 15 to 41). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

110. In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- the report of the independent forester and additional expert or scientific evidence provided with the application by the Responsible Entity; and

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

Section 82KL - recouped expenditure

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

Part IVA - general tax avoidance provisions

112. 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).

113. Australian Growth - Timber Project No. 4 will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 47 and 50 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.

114. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of the wood produce. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Examples

Example 1 - Entitlement to GST input tax credits

115. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her afforestation 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 $4,400 = $400.

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

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

$^{1}/_{11}$ x $2,200 = $200.

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

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as $4,000 (not $4,400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as $200 (one tenth of $2,000 only, not one tenth of $2,200).

Detailed contents list

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

Commissioner of Taxation
17 April 2002

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

PR 1999/95; PR 2001/16; TR 92/1; TR 92/20; TR 97/11; TR 97/16; TR 98/22; TR 2000/8; TD 93/34; IT 360;

Subject references:

- carrying on a business
- commencement of business
- primary production
- primary production expenses
- management fee expenses
- producing assessable income
- product rulings
- public rulings
- schemes and shams
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Division 27
- ITAA 1997 Division 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 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1936 Pt III – Div 3
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMG(5)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- TAA 1953 Pt IVAAA
- Copyright Act 1968

Case references:

- FCT v. Lau 84 ATC 4929

ATO references:
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