PR 2002/6 - Income tax: Great Southern Plantations 2002 and 2003 Projects

Product Ruling
Income tax: Great Southern Plantations 2002 and 2003 Projects

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 these products as investments. Further, we give no assurance that the products are commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

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

This Product Ruling provides certainty for potential 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 law(s)' identified below apply to the defined class of persons, who take part in the arrangements to which this Ruling relates. In this Ruling these arrangements are sometimes referred to as the 'Great Southern Plantations 2002 Project', 'Great Southern Plantations 2003 Project' or just simply as 'the Project(s)'.

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);
- sections 82KZME - 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

3. All fees and expenditure referred to in this Ruling include the 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 laws 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 these. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that potential 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 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 as set out in the description of the arrangement. In this Ruling, these persons are referred to as 'Growers'.

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

Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the 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 16 January 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 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 persons' involvement in the arrangement.

Arrangement

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

- Application for Product Ruling received 17 September 2001;
- Draft Prospectus for the Great Southern Plantations 2002 and 2003 Projects prepared by Great Southern Managers Australia Ltd ('GSMAL'), undated;
- Constitution of the Great Southern Plantations 2002 Scheme, made by GSMAL, dated 30 November 2000;
- Draft Constitution of the Great Southern Plantations 2003 Scheme dated 12 September 2001;

- Draft **Lease and Management Agreement** ('LMA') between GSMAL (as both the 'Lessor' and 'Responsible Entity') and the Grower dated 13 September 2001;
- Draft **Forest Right and Management Agreement** between GSMAL (as both the 'Grantor' and 'Responsible Entity') and the Grower, dated 13 September 2001;
- **Loan Deed** between Great Southern Finance Pty Ltd (as the 'Lender') and the Borrower;
- Compliance Plan for Great Southern Plantations 2002 adopted by GSMAL (as 'the Responsible Entity') on 30 November 2000;
- Draft Compliance Plan for Great Southern Plantations 2003, undated;
- Proforma Lease between GSMAL and Great Southern Land Holdings Pty Ltd (as the 'Landholder'); and
- Additional correspondence between the ATO and the Applicant dated 16 November 2001, 22 November 2001 and 19 December 2001.

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

15. The documents highlighted are those that Growers may 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 as follows.

Overview

16. The arrangements are called the Great Southern Plantations 2002 Project and the Great Southern Plantations 2003 Project. The salient features of the arrangement are:

Location	The South West and 'Great Southern' areas of Western Australia; the 'Green Triangle' area of South West Victoria; and the Gladstone region of Queensland.
Type of business each	Commercial growing of Eucalypt species

participant is carrying on	for the production of short fibre hardwood woodchips for use in the paper industry.
Number of hectares offered for cultivation	This Prospectus provides for 5,000 hectares to be planted, however, oversubscriptions may be accepted.
Size of each Woodlot	0.33 hectares
Number of trees per hectare	Average of 1,000 per hectare
Expected production	250 cubic metres per hectare
Term of the investment	Approximately 11 years
Initial cost	$3,300
Initial cost per hectare	$10,000
Ongoing costs	Growers are required to pay 3.3% of net harvest proceeds as management fees and 2.75% of net harvest proceeds as rent/lease fees.
Other costs	Growers will be charged for the cost of all insurance except Public Liability Insurance.

17. Under this Prospectus, GSMAL proposes to offer 15,000 interests called 'Woodlots' of 0.33 hectares. There is no minimum amount that must be raised under the Prospectus for either Project. GSMAL has sufficient land available for this offer. The land for the Projects has been primarily purchased by Great Southern Land Holdings Pty Ltd, a wholly owned subsidiary of GSMAL. GSMAL will lease the land from Great Southern Land Holdings Pty Ltd. GSMAL has the right to accept oversubscriptions. Any additional land for the Projects will only be purchased if deemed suitable by the Independent Forester for the establishment of a Eucalyptus plantation.

18. Growers applying under this Prospectus will join one of two projects depending on their date of application. The date of application also determines the date of execution of the Lease and Management Agreement and the period of provision of Establishment Services to which the initial fee relates.

19. GSMAL undertakes to ensure that Establishment Services, other than Planting Services, are completed by 30 June in the year of commencement and will be monitoring on a daily basis its ability to complete the Establishment Services. GSMAL will not accept applications for any Woodlots in the 2002 Project where it is apparent that they will not be able to complete the Establishment Services by 30 June 2002. In such cases, Applications of Growers will be

processed on or after 1 July and will commence participation in the 2003 Project.

20. The Growers will enter into a contract with the Responsible Entity to have suitable Eucalyptus seedlings planted on their Woodlot for the purpose of eventual felling and sale in approximately eleven years. The Responsible Entity will establish and cultivate the trees and be responsible for harvesting, processing and selling the timber. Unless the Grower elects to take possession of their timber, the Responsible Entity will arrange the marketing and sale of the forest produce.

21. Growers will execute a Power of Attorney enabling the Responsible Entity, GSMAL, to act on their behalf as required when they make an application for a Woodlot. Each Grower is provided with an ownership certificate and a copy of the plantation grid map from which their land and trees can be identified.

Constitution

22. The relevant Constitution establishes each Project and operates as a deed binding on all of the Growers of the relevant Project and the Responsible Entity. The Constitution sets out the terms and conditions under which GSMAL agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the relevant Project. Pursuant to clause 29 of each Constitution, the Responsible Entity will keep a register of Growers. Growers may assign their interest only in certain circumstances as set out in clause 7 of the Lease and Management Agreement.

Compliance plan

23. As required by the Corporations Law, a Compliance Plan has been prepared by GSMAL for each Project. The purpose of the Compliance Plan is to ensure that the Responsible Entity manages each Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Lease and Management Agreement

24. Growers participating in the arrangement on Project land in Western Australia or Victoria will enter into a Lease and Management Agreement between GSMAL (as both Lessor and Responsible Entity) and the Grower. Growers participating in the arrangement on Project land in Queensland will enter into a Forest Right and Management

Agreement between GSMAL (as both Grantor and Responsible Entity) and the Grower on the same terms. Where this Ruling uses the terms 'Lease' and 'Lessor' it is intended to also include the respective terms 'Forest Right' and 'Grantor' in the same context.

25. Growers participating in either Project are granted an interest in land by GSMAL in the form of a sub-lease or forest right to use their Woodlot for the purpose of conducting their afforestation business. The agreement gives the Grower a lease over an identifiable area of land for approximately 11 years when the final distribution of the sale proceeds is made to the Grower or until the relevant Project is terminated.

26. Prior to harvest, Growers will have the right to apply to enter into a new Lease and Management Agreement with GSMAL to manage the coppice to produce a second crop from the original planting. This will be harvested when the volume of timber is appropriate.

27. Each Grower must pay Rent to the Lessor in an amount specified in clause 3 of the Lease and Management Agreement. Payment of Rent is deferred until the year the harvest proceeds are received.

28. Some of the conditions of the lease are that the Grower:

- will not use, or permit to be used, the Woodlot for a purpose other than that of commercial silviculture;
- will not use, or permit to be used, the Woodlot for residential, recreational or tourist purposes;
- must pay annual insurance premiums;
- shall keep the Woodlot in good and substantial repair; and
- must not install upon or remove anything from the Woodlot.

29. The Lease and Management Agreement provides that each Grower appoints the Responsible Entity to perform services under the agreement. The services to be performed are specified in the definitions of 'Establishment Services' and 'Services'. The Responsible Entity will supervise and manage all silvicultural activities on behalf of the Grower and must:

- prepare the ground for planting as necessary from the Commencement Date;
- plant sufficient seedlings per Woodlot as would reasonably be expected to produce 250 cubic metres per hectare by harvest time;

- cultivate, tend, cull, fertilise, replant, spray and otherwise care for the trees;
- keep access roads in good repair and the Woodlot free from rabbits and other vermin; and
- maintain the Woodlot according to good silvicultural and forestry practices.

Fees

30. The fees payable under the Lease and Management Agreement on a per Woodlot basis are as follows:

- Establishment Services fee of $2,970 payable on Application for the period from the Commencement Date to 30 June in the financial year in which execution of the Agreement takes place;
- Planting Services fee of $330 payable on Application for planting to be completed in accordance with clause 15.2 of the LMA (see paragraphs 34 and 35);
- At each relevant harvest, the Responsible Entity is entitled to 3.3% of the Net Proceeds of Sale of each harvest in consideration for meeting the ongoing management and maintenance expenses from completion of the Establishment Services until harvest;
- At each relevant harvest, the Responsible Entity is entitled to 2.75% of the Net Proceeds of Sale of each harvest for Rent during the term of the relevant agreement.

31. The Responsible Entity will use its best endeavours to arrange insurance of the Woodlot on behalf of the Grower to cover against fire and other usual risks.

32. Under the terms of each Constitution, all moneys received from applications shall be paid to the Responsible Entity. The Responsible Entity shall deposit those moneys into an Application Fund in the name of the Responsible Entity for each project. The application moneys will be released by the Responsible Entity when it is reasonably satisfied that certain specified criteria in the relevant Constitution have been met (clauses 7 and 8 of the Constitution).

Planting

33. GSMAL will be responsible for planting Eucalyptus seedlings on the Woodlots. The species to be planted will generally be

Eucalyptus globulus for Woodlots located in Western Australia and Victoria and *Eucalyptus grandis* and *Eucalyptus dunnii* for Woodlots located in Queensland. A sufficient number of trees will be planted which would reasonably be expected to meet the projected timber production.

34. The timing of planting will depend on the date of execution of the Lease and Management Agreement. If the Commencement Date is on or before 31 May 2002 for the 2002 Project, GSMAL must complete the Planting Services by 30 June 2002. Similarly for the 2003 Project, GSMAL must complete the Planting Services by 30 June 2003 where the Commencement Date is on or before 31 May 2003.

35. If the Commencement Date is after 31 May, in each relevant year, the Planting Services must be completed by 30 June of the subsequent year. For such Growers, fees payable for Planting Services are subject to the prepayment rules discussed later in this Ruling. After planting, GSMAL will maintain the trees in accordance with good silvicultural practice. The services to be provided by GSMAL over the term of the Projects are defined in clause 1 of the Agreement.

Harvesting and Sale

36. Growers may elect, within 6 years of the Commencement Date, to become an 'Electing Grower' (clause 18.1) and take their own Collectable Produce by giving written notice to the Responsible Entity or the Responsible Entity will sell the forest produce on behalf of the 'Non-Electing Growers' for the maximum practicable price (clause 19.1). At all times the Grower has full right, title and interest in the Forest Produce and the right to have the Forest Produce sold for their benefit (clause 11.3).

37. Harvesting is to take place when the forest produce equals or exceeds 250 cubic metres per hectare or no later than 11 years from the Commencement Date unless the Responsible Entity believes that it would be in the best interests of the Growers for harvesting to be deferred and the relevant Growers resolve to do so by ordinary resolution (clause 17 of the LMA).

38. Growers will share the Gross Proceeds of Sale on a proportionate basis following the payment of felling costs, costs of sale, costs of chipping (if applicable), and any amounts due and payable by the relevant Grower (clause 21).

39. GSMAL will ensure that the Gross Proceeds of Sale of each Project are paid into the relevant Proceeds Fund trust bank account. The Growers' proportional share of the costs of felling and costs of sale, and, if applicable, the costs of chipping, will be paid from the Gross Proceeds of Sale to GSMAL, or the relevant contractor.

GSMAL will receive from each of the Proceeds Funds an amount equal to 2.75% of the Net Proceeds of Sale, as rent, and another amount equal to 3.3%, as remuneration for the services provided following completion of the Establishment Services. The balance of the Net Proceeds of Sale will be distributed to the Non-Electing Growers on a proportionate basis. The terms 'Proceeds Fund' and 'Grower's Proportional Share' are defined in clause 1 of the LMA.

40. If a Grower is an Electing Grower, the Grower's proportional share of the costs of felling, rent owed to the Lessor and the Responsible Entity's remuneration, are due for payment at the time specified by the Responsible Entity for collection of the Grower's Collectable Produce (clause 18.1 of the LMA).

Finance

41. Growers can fund their investment in the Project themselves, borrow from Great Southern Finance Pty Ltd (a lender associated with the Responsible Entity) or borrow from an independent lender.

42. Finance is available under the following arrangements but may be otherwise negotiated with Great Southern Finance Pty Ltd at arms length on full recourse commercial terms. Normal debt recovery procedures, including legal action, will be taken in the case of defaulting borrowers:

Option A -

- Minimum deposit of 10% of GST exclusive cost upon application ($300 per Woodlot) followed by equal monthly instalments over a period not to exceed 2 years;
- GST due on issue of Lease/Forest Right Agreement ($300 per Woodlot);
- No interest applicable.

Option B – amounts over $20,000

- Minimum deposit of 10% of GST exclusive cost upon application ($300 per Woodlot);
- Principal and interest loans up to a maximum of 4 years;
- GST due on issue of Lease/Forest Right Agreement ($300 per Woodlot);
- Interest rate negotiable but fixed for the term of the loan;
- Security taken over Lease/Forest Right Agreement.

43. 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;
- entities associated with the Project, other than Great Southern Finance Pty Ltd, are involved in the provision of finance for the Project;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' 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 terms or rate of interest are of a non-arm's length nature;
- repayments of the principal and 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) back to the lender or any associate; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

Ruling

Application of this Ruling

44. This Ruling applies only to Growers who are accepted to participate:

- between 2 March 2002 and 30 June 2002, where the Grower has executed a Lease and Management Agreement on or between those dates (2002 Project); and/or
- on or after 1 July 2002 and before the expiry date of this Prospectus, such date being no later than 31 May 2003, where the Grower has executed a Lease and Management Agreement on or between those dates (2003 Project).

45. The Grower's participation in the Project must constitute the carrying on of a business of primary production (See Explanations at paragraphs 64 to 76). 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')

46. 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

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

Prepaid fees

48. Lease and Management fees incurred by Growers who are accepted into this Project are subject to the prepayment rules in sections 82KZME and 82KZMF. 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) of paragraph 53 below).

49. 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.

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

50. In this Project, the tax deductions allowable for management fees associated with Planting Services must be calculated by applying the above formula to the amount incurred each year by the Grower.

Tax outcomes for Growers who are <u>not</u> 'STS taxpayers'

Assessable Income – section 6-5

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

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

Deductions for Management fees and Interest

Section 8-1

2002 Project

53. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses on a per Woodlot basis:

Fee Type	ITAA 1997 Section	30/6/2002	30/6/2003	30/6/2004
Establishment Services	8-1	$2,860 See notes (i) & (ii) below		
Planting	8-1	See note (iii) below		
Interest	8-1	As incurred See note (iv) below	As incurred See note (iv) below	As incurred See note (iv) 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 116.

(ii) The Establishment Services fee contains an amount of $110 identified as capital expenditure. See paragraph 80.

(iii) The Lease and Management Agreement requires the fee for Planting Services to be paid on Application. The Planting fee is fully deductible for Growers who commence participation in the 2002 Project by 31 May 2002.
However, the Planting fee will be prepaid where a Grower commences participation in the 2002 Project after 31 May 2002. For a Grower who acquires three or fewer Woodlots, the amount of the prepaid fee is 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 2 at paragraph 117).
However, where a Grower acquires four or more Woodlots in the Project, the amount of the Grower's prepaid fee will be more than $1,000. Such Growers **MUST** determine the deduction for the prepaid Planting Services fee using the formula shown above in paragraph 49 and accordingly, the Planting fee will be deductible in the year ended 30 June 2003.

(iv) The deductibility or otherwise of interest arising from agreements entered into with financiers other than Great Southern Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However, all Growers including those who finance their participation in the Project other than with Great Southern Finance Pty Ltd, should read carefully the discussion of the prepayment rules in paragraphs 82 to 92 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.

2003 Project

54. A Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses on a per Woodlot basis where they enter the Project on or after 1 July 2002:

Fee Type	ITAA 1997 Section	30/6/2003	30/6/2004	30/6/2005
Establishment Services	8-1	$2,860 See notes (i) & (ii) above		
Planting	8-1	$330 See notes (i) & (iii) above		
Interest	8-1	As incurred See note (iv) above	As incurred See note (iv) above	As incurred See note (iv) above

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income – section 6-5

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

56. 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 Management fees and Interest

Section 8-1 and section 328-105

2002 Project

57. A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses on a per Woodlot basis:

Fee Type	ITAA 1997 Section	30/6/2002	30/6/2003	30/6/2004
Establishment Services	8-1	$2,860 See notes (v) & (vi) below		
Planting	8-1	See note (vii) below		
Interest	8-1	As incurred See note (viii) below	As incurred See note (viii) below	As incurred See note (viii) below

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 116.

(vi) The Establishment Services fee contains an amount of $110 identified as capital expenditure. See paragraph 80.

(vii) The Lease and Management Agreement requires the fee for Planting Services to be paid on Application. The Planting fee is fully deductible for Growers who commence participation in the 2002 Project by 31 May 2002.
However, the Planting fee will be prepaid where a Grower commences participation in the 2002 Project after 31 May 2002. For a Grower who acquires three or fewer Woodlots, the amount of the prepaid fee is 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 an 'STS taxpayer', is deductible in full in the year in which it is paid (see Example 2 at paragraph 117).
However, where a Grower acquires four or more Woodlots in the Project, the amount of the Grower's prepaid fee will be more than $1,000. Such Growers **MUST** determine the deduction for the prepaid Planting Services fee using the formula shown above in paragraph 49 and accordingly, the Planting fee will be deductible in the year ended 30 June 2003.

(viii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Great Southern Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However, all Growers, including those who finance their participation in the Project other than with Great Southern Finance Pty Ltd, should read carefully the discussion of the prepayment rules in paragraphs 82 to 92 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.

2003 Project

58. A Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses on a per Woodlot basis:

Fee Type	ITAA 1997 Section	30/6/2003	30/6/2004	30/6/2005
Establishment Services	8-1	$2,860 See notes (v) & (vi) above		
Planting	8-1	$330 See notes (v) & (vii) above		
Interest	8-1	As incurred See note (viii) above	As incurred See note (viii) above	As incurred See note (viii) above

Tax outcomes that apply to all Growers

Division 35 - deferral of losses from non-commercial business activities

Section 35-55 - Commissioner's discretion

59. For a Grower who is an individual and who enters the 2002 Project or the 2003 Project, the rule in section 35-10 may apply to the business activity comprised by their involvement in the Project. For the 2002 Project, 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. Similarly for the 2003 Project, the Commissioner will decide for the income years ending 30 June 2003 to 30 June 2013 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.

60. 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 103 in the Explanations part of this Ruling); or
- 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)) or
- the Commissioner is precluded from exercising the discretion under paragraph 35-55(1)(b) because of subsection 35-55(2).

61. 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 the 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.

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

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

63. For a Grower who commences participation in the 2002 Project by 31 May 2002 or the 2003 Project on or after 1 July 2002, and incurs expenditure as required by the Lease and Management Agreement, the following provisions of the ITAA 1936 have application as indicated:

- expenditure by the Grower does not fall within the scope of sections 82KZME - 82KZMF;
- 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?

64. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the Great Southern Plantations 2002 or 2003 Project must amount to the carrying on of a business of primary production.

65. Where there is a business, or a future business, the gross proceeds from the sale of the timber will constitute 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.

66. For schemes such as those of the Great Southern Plantations 2002 and 2003 Projects, 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.

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

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

68. In this Project, each Grower enters into a Lease and Management Agreement. Under the agreement each individual Grower will have rights over a specific and identifiable area of land. The agreement provides the Grower with an ongoing interest in the specific trees on the leased area for the term of the Project. Under the lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The lease allows the Project Manager to come onto the land to carry out its obligations under the Management Agreement.

69. Under the same agreement the Project Manager 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 Project Manager 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.

70. The Project Manager is also engaged to harvest and sell, on the Grower's behalf, the wood produce grown on the Grower's Woodlot.

71. 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.

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

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

74. The Project Manager's services are also consistent with general silvicultural and forestry 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).

75. The Grower's degree of control over the Project Manager as evidenced by the Lease and 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 Woodlot and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements

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

76. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' afforestation activities in the Projects will constitute the carrying on of a business.

The Simplified Tax System

Division 328

77. 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.

78. 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 management fees and lease fees

Section 8-1

79. Consideration of whether the initial management fees and lease 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.

80. Any part of the expenditure of a Grower entering into a forestry business 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, the Commissioner is of the view that $110 of the Establishment Services fee is properly characterised as capital expenditure and the amount allowed as a deduction under section 8-1 has been reduced accordingly.

81. The remainder of the fee for Establishment Services is associated with the afforestation activities that will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of wood produce) is to be gained from this business. It will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. There is no capital component of the management fee other than that identified in paragraph 80 above. 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

82. 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.

83. For these Projects, only section 82KZL (an interpretive 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) (see paragraph 88 below). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

84. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA

1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

85. 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.

86. 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 either of these Projects who, in order to participate in the Project may borrow funds from a financier other than Great Southern Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

87. There are a number of exceptions to these rules, but for Growers participating in these Projects, 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 these Projects, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than $1,000. Such expenditure is immediately deductible.

88. 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.

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

89. 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 these Projects

90. Expenditure on Planting fees incurred by a Grower entering the 2002 Project after 31 May 2002 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.

91. Where Planting fees are prepaid, 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 a Planting fee in the income year in which it is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for a Planting fee in the income year in which it is incurred.

92. However, where a Grower acquires more than the minimum investment of one Woodlot in the Project and the quantum of the prepaid Planting fees is $1,000 or more, the deduction allowable for those amounts will be subject to apportionment according to the formula in subsection 82KZMF(1).

Interest deductibility

(i) Growers who use Great Southern Finance Pty Ltd as the finance provider

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

94. The interest incurred for the year ended 30 June 2002 or 30 June 2003, for the 2002 Project and 2003 Project respectively, and in subsequent years of income, will be in respect of a loan to finance the Project business operations of growing trees and is therefore directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

95. As with the management fees and the lease fees, in the absence of any application of the prepayment provisions (see paragraphs 82 to 92), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

97. 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 Great Southern Finance Pty Ltd as the finance provider

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

99. 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 relevant prepayments provisions of the ITAA 1936 (see paragraphs 82 to 92).

Division 35 - deferral of losses from non-commercial business activities

100. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2), a deduction for a loss made by an individual (including an individual in a general law partnership) from

certain business activities will not be taken into account in an income year unless:

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

101. 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.

102. 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.

103. 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 Projects, they are beyond the scope of this Product Ruling and are not considered further.

104. In broad terms, the tests require:

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

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

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

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

105. A Grower who participates in the 2002 Project or the 2003 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 commences participation during

the year ended 30 June 2002 (the 2002 Project) is unlikely to have their activity pass one of the tests until the year ended 30 June 2013. Similarly, a Grower who commences participation in the 2003 Project during the year ended 30 June 2003 is unlikely to have their activity pass one of the tests until the year ended 30 June 2014.

106. 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 these Projects.

107. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised where:

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

(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.

108. Information provided with this Product Ruling application indicates that a Grower who acquires the minimum investment of one Woodlot in the 2002 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. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2012.

109. Similarly, a Grower who acquires the minimum investment of one Woodlot in the 2003 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 2014. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2013. Subsection 35-55(2) prevents the Commissioner exercising the discretion beyond this year.

110. 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 59) in the manner described in the Arrangement (see paragraphs 14 to 43). 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.

111. 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 evidence provided with the application by the Responsible Entity; and
- independent, objective and generally available information relating to the plantation timber 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

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

Part IVA

113. 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).

114. Both of the Projects 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 53 to 58 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

115. 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 are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be

considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Examples

Example 1 - Entitlement to GST input tax credits

116. 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 $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).

Example 2 – Apportionment of fees where there is a contractual 'eligible service period' and the fees include expenditure that is 'excluded expenditure'

117. 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 registered nor required to be registered for GST calculates his tax deduction for management fees and the lease fee for the **2002 income year** as follows:

Management fee

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

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

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

Commissioner of Taxation
16 January 2002

Previous draft:
Not previously released in draft form

Related Rulings/Determinations:
PR 1999/95; TR 92/1; TR 92/20; TR 97/11; TR 97/16; TD 93/34; TR 98/22

Subject references:
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- producing assessable income
- product rulings
- public rulings
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

Legislative references:
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- 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 8-1(1)(a)
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 27-5
- 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 Subdiv 328-C
- ITAA 1997 328-105
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G

Case references:
- FCT v. Lau 84 ATC 4929

ATO references:

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