

PR 2002/94 - Income tax: Environinvest Cattle Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *19 June 2002*



Product Ruling

Income tax: Environinvest Cattle Project

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Preamble

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

No guarantee of commercial success

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

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.

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.

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 'Environinvest Cattle Project' or simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
 - section 8-1 (ITAA 1997);
 - section 17-5 (ITAA 1997);
 - section 25-25 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 70 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - section 82KZME (ITAA 1936);
 - section 82KZMF (ITAA 1936); and
 - Part IVA (ITAA 1936).

Goods and Services Tax

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

Changes in the Law

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

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

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

Note to promoters and advisers

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

Class of persons

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

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 part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning

reproduction and rights should be addressed to the Manager,
Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

Date of effect

11. This Ruling applies prospectively from 19 June 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

Withdrawal

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

Arrangement

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

- Application for Product Ruling dated 4 March 2002;
- **Draft Product Disclosure Statement for Environinvest Cattle Project prepared and issued by Environinvest Ltd, received 6 June 2002;**
- **Draft Management Agreement between Environinvest Ltd and the Grazier, dated 7 June 2002;**

- **Draft Cattle Lease Agreement between Environinvest Ltd (“the Lessor”) and the Grazier, received 7 June 2002;**
- **Draft Agistment Agreement between Environinvest King Island Pty Ltd (“the Owner”) and each Grazier, received 7 June 2002;**
- Sample loan application form (Annexure 5 to the Application) - Environinvest Cattle Project Financial Package for Individual Borrowers, received 6 June 2002;
- Sample Loan agreement relating to a Principal and Interest Loan (Annexure 6 to the Application), received 6 June 2002;
- Sample Loan agreements relating to an Interest Only Loan (Annexure 7 to the Application), received 4 March 2002;
- Draft Constitution for Environinvest Cattle Fund by Environinvest Ltd (the Responsible Entity), received 16 May 2002;
- Draft Compliance Plan for Environinvest Cattle Fund adopted by Environinvest as ‘the Responsible Entity’ (Annexure 10 to the Application), received 14 March 2002;
- Draft Stock Management Agreement between Environinvest Cattle Pty Limited (“the Stock Manager”) and Environinvest Limited (“the Manager”), received 31 May 2002;
- Draft Stock Sub-Management Agreement between Livestock Improvement Company Pty Limited (“the Stock Master”) and Environinvest Cattle Pty Ltd (“the Stock Manager”), received 31 May 2002; and
- Additional correspondence received from the applicant or the applicant’s representative, dated 18 April 2002, 19 April 2002, 24 April 2002, 1 May 2002, 7 May 2002, 9 May 2002, 14 May 2002, 16 May 2002, 22 May 2002, 23 May 2002, 24 May 2002, 30 May 2002, 31 May 2002, 4 June 2002, 6 June 2002, 7 June 2002 and 11 June 2002.

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

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

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

Overview

17. The arrangement is called the Environinvest Cattle Project.

Location	Property situated on King Island, Tasmania.
Type of business each participant is carrying on	Long term commercial breeding and maintenance of an Angus beef cattle herd for sale.
Number of Cows involved in the breeding program	Up to 5,000 cows (1,250 Drovers)
Size of each Drove	4 cows
The term of the Project	6 years
Initial Cost	\$3,234 per Drove
Ongoing costs	<p>Management Fees payable to the Manager for performing the services during the relevant years.</p> <p>Out of Pocket Expenses (if any).</p> <p>Agistment Fees payable to the Owner to agist the Herd on the Land during the relevant years.</p> <p>Lease Rental for the Lease of the Stock.</p> <p>Taxes, levies, excise, charges or duties in respect of the Stock or by reason of the lease of the Stock.</p> <p>Sales Fee.</p> <p>Costs incurred in transporting the Herd for the purpose of sale.</p> <p>Other costs of sale.</p>

18. The Project is for a period of six years. The Project is to lease, breed and graze an Angus beef cattle herd for sale for their beef (and veal).

19. The Project land is located on King Island, in Tasmania. The Land for the Project has been purchased by Environinvest King Island Pty Ltd, a wholly owned subsidiary of Environinvest Ltd. The Cattle may, at times, be agisted on land that is deemed suitable for the agistment of Cattle by Environinvest. Environinvest King Island Pty Ltd holds, will acquire or will obtain an interest in sufficient suitable land for the purposes of the Project. The additional land will be situated in either the South East of South Australia, the region of Yea in Victoria, the Western District of Victoria or North-East Tasmania. Additional land that is suitable for the agistment of beef cattle will form part of this arrangement where that land is either purchased or leased for the purposes of this Project.

20. Under the Product Disclosure Statement the Responsible Entity proposes to offer a maximum of 1,250 Drovers, which will be pregnancy tested in calf at the Commencement Date or will be tested as pregnant within 13 months of the Commencement Date of the Grazier's Cattle Lease Agreement. Subject to suitable land and suitable beef cattle being available, further Drovers will be issued if more than 1,250 Drovers are subscribed for. There is no minimum subscription for the Project. Each Grazier may subscribe for a minimum of one Drove.

21. Leased Drovers are allocated by Environinvest, which shall maintain a register of Graziers of the project identifying each Grazier's Drove.

22. Graziers may execute a Power of Attorney enabling Environinvest to execute the Project Documents on their behalf as required when they make an application for a Drove.

23. Graziers participating in the arrangement will enter into a Cattle Lease Agreement between Environinvest Ltd ('Environinvest') ('the Lessor') and the Grazier, a Management Agreement between Environinvest ('the Manager') and the Grazier and an Agistment Agreement between Environinvest King Island Pty Ltd ('the Owner') and the Grazier.

24. Under the Cattle Lease Agreement a Grazier will Lease a Drove, which will be made up of a four cow or heifer unit, from Environinvest. The Drovers that are leased by the Grazier and the Grazier's Herd Progeny will be agisted on the Land for the term of the Agistment Agreement.

25. The Grazier appoints the Manager to manage the Grazier's Herd by carrying out the Breeding Management Services, Paddock Management Services, Stock Management Services, Administrative

Services and the Sales Management Services in return for the annual Management Fee and Sales Fee.

26. The date of a Grazier's application determines the date of execution of the Management Agreement, the Cattle Lease Agreement and the Agistment Agreement and the period of provision of Administration Services, Breeding Management Services, Paddock Management Services and Stock Management Services to which the Initial Management Fee relates. The relevant periods for execution of the Agreements are summarised as follows:

- on or before 20 June 2002 and during the period after 20 June 2002 and on or before 30 June 2002, Project Documents will be executed where Environinvest considers that the services to which the Initial Management Fee relates can be performed by 30 June 2002, ('2002 Graziers'); and
- on or after 1 July 2002 and on or before 20 June 2003 and during the period after 20 June 2003 and on or before 30 June 2003, Project Documents will be executed where Environinvest considers that the services to which the Initial Management Fee relates can be performed by 30 June 2003, ('2003 Graziers').

27. Environinvest undertakes to ensure that it will complete the services to which the Initial Management Fee relates by 30 June in the Application Year. After 20 June 2002 and 2003 and on or before 30 June 2002 and 2003 Environinvest will be monitoring on a daily basis its ability to complete the services to which the Initial Management Fee relates by 30 June of the Application Year. Environinvest will not accept applications for Drovers where it is apparent that they will not be able to complete the services to which the Initial Management Fee relates by 30 June of the Application Year. In such cases, Graziers' applications for Drovers will be processed on or after 1 July in the following Financial Year and the Grazier will commence participation in the Project from the date of execution of the Project Documents.

Constitution

28. The relevant Constitution establishes the Project and operates as a deed binding on all of the Graziers of the Project and the Responsible Entity. The Constitution sets out the terms and conditions under which Environinvest agrees to act as Responsible Entity and thereby manage the Project. Graziers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 17 of the Constitution, the Responsible Entity will keep a register of Graziers, identifying the Interest held by Graziers. Graziers may assign their

Interest only in certain circumstances as set out in clauses 25 and 26 of the Constitution.

Acceptance of Applications

29. The Grazier's participation in the Project commences on the date the Grazier's Cattle Lease Agreement, Agistment Agreement and Management Agreement are executed by the Applicant or the Responsible Entity under its Power of Attorney for the Grazier and a Drove is allocated to the Grazier. The Agreements may be executed following the acceptance of a Grazier's Application for a Drove(s). The Responsible Entity will not accept a Grazier's Application for a Drove(s) unless, amongst other things, the Applicant has paid the full amount of Application Moneys as specified in the Product Disclosure Statement upon application for Drove(s), minimum subscription for the Project is reached and the Responsible Entity is ready, willing and able to commence performing its duties pursuant to the Project Documents.

Compliance Plan

30. The Responsible Entity has prepared a Compliance Plan in accordance with the *Corporations Act 2001*. The Compliance Plan's purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Graziers are protected.

Cattle Lease Agreement

31. The Cattle Lease Agreement sets out the roles and obligations of the parties to the Agreement. The Agreement is entered into between Environinvest as the Lessor and the Grazier. Under the terms of the Agreement the Grazier will lease Stock being the Drove(s), each consisting of a 4 cow or heifer unit, together with any replacements or additional beef cattle, cows or heifers that may be leased from time to time. Each cow contained in each Drove leased by the Grazier will be identified via a vendor tag. The details of each cow or heifer contained in each Drove leased to the Grazier will be set out in item 4 of the Schedule to the Cattle Lease Agreement.

32. Graziers participating in the Project are granted an interest in Stock by the Lessor in the form of a lease to use their Stock for the purpose of breeding and establishing the Grazier's Herd to carry on the business of leasing, breeding, grazing and the sale of beef cattle for profit.

33. The Agreement commences on the date the Cattle Lease Agreement is executed by the Manager. The Agreement is terminated pursuant to the provisions of the Agreement (clause 12) or on the date of completion of the lease of the Stock. The Grazier will lease the Stock for the purpose of producing progeny that may be used to replace the Stock in the Grazier's breeding program. As the Herd produces fertile heifer progeny, the Stock shall be progressively retired and returned to the Lessor at the discretion of the Manager.

34. Each Grazier must pay Lease Rental to the Lessor being an amount as specified in clause 3 and item 5 of the Schedule to the Cattle Lease Agreement.

35. Under the terms of the Cattle Lease Agreement, among other things, the Grazier agrees to:

- use the Grazier's best endeavours to ensure that the Herd remains free from any illness, disease or parasite;
- use the Grazier's best endeavours to ensure at all times that the Stock receives all necessary pasture, feeding and supplementary feeding and water supplies to maintain Stock in good condition and health in accordance with best animal husbandry practices for the beef cattle industry ; and
- not encumber or in any way deal with the Grazier's interest in the Stock except with the prior written consent of the Lessor.

36. Under the terms of the Cattle Lease Agreement the Lessor agrees, amongst other things:

- to deliver to the Grazier such reasonable breeding information and records of the Stock as requested in a Notice issued by the Grazier;
- to use all reasonable endeavours to ensure, that at the Commencement Date each of the Stock is pregnant; and
- to substitute any of the Stock which die or have not become pregnant within 13 months of the Commencement Date.

Agistment Agreement

37. The Agistment Agreement sets out the roles and obligations of the parties to the Agreement. The Agreement is entered into between Environinvest King Island Pty Ltd as the Owner and the Grazier. Under the terms of the Agreement the Grazier will agist the Grazier's Herd on the Land for the term of the Agreement. The Owner will

grant to the Grazier a non-exclusive licence to occupy and use the Land to agist and graze the beef cattle leased by the Grazier from the Lessor and the Grazier's Herd Progeny ('the Herd').

38. The Agreement commences on the date the Agistment Agreement is executed. The Agreement is terminated pursuant to the provisions of the Agreement or on the day after the Sale Year (clause 11).

39. Each Grazier must pay an Agistment Fee to the Owner being an amount as specified in clause 3 and item 4 of the Schedule to the Agistment Agreement.

Management Agreement

40. The Management Agreement is entered into between the Manager and the Grazier. Under the Agreement the Grazier appoints the Manager as an independent contractor to oversee and manage the Grazier's Business of leasing, breeding, grazing and selling of beef cattle for profit.

41. The Agreement commences on the date the Management Agreement is executed. The Agreement is terminated pursuant to the provisions of the Agreement (clauses 4 and 20).

42. The Management Agreement provides that each Grazier appoints the Manager to perform services under the Agreement. The services to be performed are specified in the definition of 'Breeding Management Services', 'Paddock Management Services', 'Stock Management Services', 'Administration Services' and 'Sales Management Services'. The Manager will supervise and manage all activities to be carried out with respect to the Grazier's Herd on behalf of the Grazier including, but not limited to the provision of the following services:

- (i) Breeding Management Services will be provided in joining the Grazier's Herd in accordance with good animal husbandry practice so as to create the possibility of the Herd being increased, including, without limitation, the following:
 - the provision of suitable bulls to stand in the Herd;
 - the joining of suitable cows and heifers with suitable bulls to ensure the genetic integrity of the continued breeding process;
 - the efficient joining of suitable cows and heifers with suitable bulls to maximise calving rates;
 - bull relocation, rotation and transport activities;

- the identification and segregation of cows and heifers unsuitable for breeding;
 - the effective identification of progeny to ensure correct identification of ownership and accurate recording of livestock; and
 - the maintenance of standard and necessary breeding information and records.
- (ii) Paddock Management Services:
- fencing, gate and holding pen maintenance and reinstatement activities;
 - erosion control, soil degradation control, soil salinity control and soil drainage control activities;
 - undertaking soil improvement and fertilising activities;
 - undertaking pasture improvement activities;
 - vegetation, disease, vermin and other pest reduction and eradication activities; and
 - fire control and management activities.
- (iii) Stock Management Services will be provided for the control, tending and rearing of the Grazier's Herd in accordance with good animal husbandry practice such as to ensure that the Land is not destroyed or deteriorated, including, without limitation, the following :
- stock care, including disease and parasite control and veterinary treatment activities;
 - stock relocation, rotation and transport activities; and
 - stock confinement and protection activities.

43. The Environinvest will not undertake any work on behalf of a Grazier prior to the Grazier subscribing for an interest in the Project.

Marketing Pool

44. The Grazier has full right, title and interest in the Herd Progeny that are produced by the Grazier's Drove(s) (clause 11.4). The Leased Stock will remain the property of the Lessor. Under the Management Agreement the Grazier agrees to participate in the

Marketing Pool at the point of sale of the Herd Progeny. The Marketing Pool will be administered by the Environinvest.

45. During the term of the Project steers, cows and heifers, which, in the opinion of the Manager, are unsuitable for breeding, will be contributed to the Marketing Pool at the point of sale. In the Sale Year all of the Herd Progeny will be contributed to the Marketing Pool at the point of sale. The Manager will provide the Sale Management Services in respect to the Herd Progeny together with all Herd Progeny of other Graziers that contribute to the Marketing Pool. The Sale Management Services to be carried out by the Manager include advertising, negotiation and execution of sale contracts, mustering and droving and transportation of the Grazier's Herd Progeny that are contributed to the Marketing Pool during the term of the Project.

46. The Grazier's Share of the Sales Proceeds from the sale of the Herd contributed to the Marketing Pool will be determined as follows:

$$\frac{\text{Number of Drovers of the Grazier}}{\text{Total Number of Drovers in the Project}} \times \text{Sales Proceeds}$$

The Manager will deduct from Sales Proceeds, before they are paid to a Grazier, a sales fee of 3.3%, costs incurred in transporting the Herd for the purpose of sale and other costs incurred in the sale process which include advertising costs and fees charged by sale agents (**referred to in this Ruling as Cattle Sales Costs**). Manager will pay the Grazier's Share of the Sales Proceeds into the Graziers' Account. Upon execution of the Management Agreement, the Grazier will authorise the Manager to set aside out of the Grazier's Share any sums due and payable under a Contribution Notice and any other sum payable in accordance with the Constitution of the Project.

Fees

47. Under the terms of the Cattle Lease Agreement, the Agistment Agreement and the Management Agreement a Grazier will make payments per Drove as described below.

48. **The Application Money** is to be paid in full by each Grazier on Application for the provision of services from the Commencement Date to 30 June 2002 for 2002 Graziers and from the Commencement Date to 30 June 2003 for 2003 Graziers. The Application Moneys comprise of the following:

- \$2,552 per Drove being the Initial Management Fee;
- \$242 per Drove being the Agistment Fee; and
- \$440 per Drove being the Cattle Lease Fee.

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49. Following the Application Year on or before 30 June of each Subsequent Year ongoing **Management Fees** are payable in arrears to the Manager for performing the Administration Services, Breeding Management Services, Paddock Management Services and Stock Management Services during the continuation of the Management Agreement. The fees will be calculated as follows in the first Subsequent Year:

$$\frac{\text{Number of Grazier's Droves (at 31 July)}}{\text{Total Number of Droves in the Project (at 31 July)}} \times (\text{Total number of cows/heifers in the Project in April - June of the Subsequent Year} \times \$374) \times \frac{\text{Number of months Managed}}{12}$$

50. For each Subsequent Year following the first Subsequent Year the Management Fee will be the amount calculated using the formula for the first Subsequent Year which may, at the Manager's discretion, be increased by the aggregate percentage change in the Consumer Price Index for the previous four quarters published by the Australian Bureau of Statistics ('CPI').

51. Following the Application Year on or before 30 June of each Subsequent Year ongoing **Agistment Fees** are payable in arrears to the Owner for the agistment of the Grazier's Herd during the continuation of the of the Agistment Agreement. The fees will be calculated as follows in the First Subsequent Year:

(a) For cows/heifers

$$\frac{\text{Number of Grazier's Droves (at 31 July)}}{\text{Total Number of Droves in the Project (at 31 July)}} \times (\text{Total number of cows/heifers in the Project in April - June of the Subsequent Year} \times \$121) \times \frac{\text{Number of months Agisted}}{12}$$

(b) For weaners and steers

$$\frac{\text{Number of Grazier's Droves (at 31 July)}}{\text{Total Number of Droves in the Project (at 31 July)}} \times (\text{Total number of weaners/steers in the Project in April - June of the Subsequent Year} \times \$66) \times \frac{\text{Number of months Agisted}}{12}$$

52. For each Subsequent Year following the first Subsequent Year the Agistment Fee will be the amount calculated using the formula for the first Subsequent Year which may, at the Manager's discretion, be increased by the aggregate percentage change in the Consumer Price Index for the previous four quarters published by the Australian Bureau of Statistics ('CPI').

53. Following the Application Year on or before 30 June of each Subsequent Year **Lease Rental** is payable in arrears during the continuation of the of the Cattle Lease Agreement. The fees will be calculated in accordance with the number of cow or heifer units being leased from the Lessor. Lease Rental is \$110 per cow or heifer unit, pro rated according to the number of months the cow or heifer unit is leased. The fees will be calculated as follows:

Year	No. of Cows	Rate	Total Fee
First Subsequent Year	4	\$110 per cow	\$440
Second Subsequent Year	4	2 cows - 2 x \$110 x CPI 2 cows - 2 x \$110 x CPI x $\frac{\text{Months}}{12}$	As calculated As calculated
Third Subsequent Year	2	(\$110 x CPI for the preceding year) x CPI	As calculated

54. **Out of Pocket Expenses**, if any, are payable to the Manager. The Manager shall issue the Grazier with a Contribution Notice giving full details of the expenses and specifying the due date such liability is payable to the Manager. Out of Pocket Expenses are any reasonable costs or expenses arising in the ordinary course of the Grazier's Business including, amongst other things, costs or expenses arising as a result of any disease or other event which reduces the normal fertility rates or life span of any member of the Grazier's Herd, supplemental feed costs resulting from the feed normally available on the Land being inadequate for any reason, costs or expenses arising from any flood or fire and any material increase in fuel costs.

55. The Lessor is entitled to **Taxes, levies, excise, charges or duties in respect of the Stock or by reason of the lease of the Stock.**

Finance

56. Graziers can fund all or part of the Application Money by borrowing from Environinvest, acting in the capacity of finance provider, or by borrowing from a third party financier.

57. Environinvest will offer two finance options to Graziers. Loans that differ materially in its terms and conditions from those described below are outside the scope of this Product Ruling:

- (i) **A Principal and Interest Loan** with the following features:
 - the Grazier must provide Environinvest with a deposit of not less than 15% of the Application Fee;
 - the term of the loan may be up to 6 years;
 - from the Commencement Date the principal and interest is repayable in equal monthly instalments, in arrears;
 - the rate of interest is fixed over the term of the loan;
 - the fixed rate of interest per annum will be not more than 4% above the base rate per annum that is charged from time to time by the National Australia Bank Ltd or its successor on unsecured overdraft accounts;
 - the monthly instalments are payable on or before the end of each calendar month commencing in the first calendar month after the loan moneys are drawn down;
 - a loan establishment fee of no more than \$100 is payable; and
 - at least, minimum security by mortgage over the Grazier's present and future interest in the Project.
- (ii) **An Interest Only Loan** with the following features:
 - the Grazier must provide Environinvest with a deposit of not less than 45% of the Application Fee;
 - the term of the loan may be up to 6 years;
 - the rate of interest is fixed over the term of the loan;
 - the fixed rate of interest per annum will be not more than 4% above the base rate per annum that is charged from time to time by the National Australia Bank Ltd or its successor on unsecured overdraft accounts;

- interest is payable annually in advance in equal amounts, beginning on the Commencement Date;
- the principal is payable on the Final Repayment Date as set out in Item 10 of the Schedule;
- a loan establishment fee of no more than \$100 is payable; and
- at least, minimum security by mortgage over the Grazier's present and future interest in the Project.

58. This Ruling does not apply if the finance arrangement entered into by the Grazier 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 Environinvest are involved or become involved in the provision of finance to Graziers for the Project.

Ruling

Application of this Ruling

59. This Ruling applies only to Graziers who are accepted to participate in the Project as 2002 Graziers and 2003 Graziers and who have executed a Management Agreement, a Cattle Lease Agreement and an Agistment Agreement on or before 30 June 2003. The Grazier's participation in the Project must constitute the carrying on of a business of primary production.

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

61. For 2002 Graziers, who are accepted to participate in the Project on or before 30 June 2002, references in the following paragraphs to Year 1, Year 2 and Year 3 are references to the income years ended 30 June 2002, 30 June 2003 and 30 June 2004 respectively. For 2003 Graziers, who are accepted to participate in the Project during the period 1 July 2002 to 30 June 2003, references in the following paragraphs to Year 1, Year 2 and Year 3 are references to the income years ended 30 June 2003, 30 June 2004 and 30 June 2005 respectively.

The Simplified Tax System ('STS')

Division 328

62. For a Grazier 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 Grazier is an 'STS taxpayer'. To be an 'STS taxpayer' a Grazier:

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

Qualification

63. This Product Ruling assumes that a Grazier who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grazier may become an 'STS taxpayer' at a later point in time. Also, a Grazier 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 Graziers that cannot be accommodated in this Ruling. Such Graziers can ask for a private ruling on how the taxation legislation applies to them.

Tax outcomes for Graziers who are not 'STS taxpayers'

Assessable Income

Section 6-5

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

65. The Grazier recognises ordinary income from carrying on the business of leasing, breeding, grazing and sale of beef cattle for profit at the time that income is derived.

Trading stock

Section 70-35

66. A Grazier who is not an 'STS taxpayer' may, in some years, hold cattle that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an income year exceeds the value of trading stock on hand at the *start* of an income year a Grazier must include the amount of that excess in assessable income.

67. Alternatively, where the value of trading stock on hand at the *start* of an income year exceeds the value of trading stock on hand at the *end* of an income year, a Grazier may claim the amount of that excess as an allowable deduction.

Deductions for the Initial Management Fee, Agistment Fees, Lease Rental, Management Fees, Cattle Sales Costs, Interest and Borrowing Expenses

Section 8-1 and section 25-25

68. A Grazier who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses for the Grazier's Herd. Deductions will be available in accordance with the year in which the Grazier commences participation in the Project, being Year 1 in the following Table.

PR 2002/94

Fee Type	ITAA 1997 Section	Year ended 30 June Year 1	Year ended 30 June Year 2	Year ended 30 June Year 3
Initial Management Fee	8-1	\$2,552.50 - See Notes (i) & (ii) (below)		
Agistment Fee	8-1	\$242 - See Notes (i) & (ii) (below)	As incurred- See Notes (i) & (ii) (below)	As incurred- See Notes (i) & (ii) (below)
Lease Rental	8-1	\$440 - See Notes (i) & (ii) (below)	\$440 - See Notes (i) & (ii) (below)	As incurred- See Notes (i) & (ii) (below)
Management Fee	8-1		As incurred- See Notes (i) & (ii) (below)	As incurred- See Notes (i) & (ii) (below)
Cattle Sales Costs	8-1			As incurred- See Notes (i) & (ii) (below)
Interest (Interest only loan from Environinvest)	8-1	Must be calculated - See Notes (iii) & (v) (below)	Must be calculated - See Notes (iii) & (v) (below)	Must be calculated - See Notes (iii) & (v) (below)
Interest (Principal and interest loan from Environinvest)	8-1	As incurred- See Notes (iv) & (v) (below)	As incurred- See Notes (iv) & (v) (below)	As incurred- See Notes (iv) & (v) (below)
Loan Establishment Fee	25-25	\$100 - See Note (vi) (below)		

Notes:

- (i) if the Grazier 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 145).
- (ii) the Initial Management Fee, Management Fees, Cattle Sales Costs, Agistment Fees and Lease Rental shown in the Management Agreement, Agistment Agreement and

the Cattle Lease Agreement are deductible in full in the year that they are incurred. However, if a Grazier **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of cattle) 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 (see paragraphs 104 to 111). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 110, 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.

- (iii) graziers who enter into an **Interest Only Loan** with Environinvest incur interest annually in advance, beginning from the Commencement date. Such interest is **NOT** deductible in full in the year in which it is incurred, unless the amount of the interest is 'excluded expenditure' (see Note (ii) above). Where the amount of interest is not 'excluded expenditure' the deduction for the interest paid in advance each year must be determined using the formula in subsection 82KZMF(1) (see paragraph 110). Environinvest will inform Graziers of the Commencement Date to allow Graziers to determine the number of days in the 'eligible service period' in the first expenditure year (i.e., the Application Year). This figure is necessary to calculate the deduction allowable for the interest incurred. (See Example 2 at paragraph 146).
- (iv) graziers who enter into a **Principal and Interest Loan** with Environinvest incur interest monthly, in arrears. Such interest is deductible when incurred. However, if a Grazier **chooses** to prepay interest, the prepayment rules of the ITAA 1936 may apply to apportion the prepaid interest. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 110 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.

- (v) the deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Environinvest is outside the scope of this Ruling. However, all Graziers, including those who finance their participation in the Project other than with Environinvest, should read the discussion of the prepayment rules in paragraphs 104 to 111 (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 Grazier's choice.
- (vi) borrowing expenses are deductible under section 25-25 where the borrowed moneys are used or will be used during that income year for income producing purposes. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6)).

Tax outcomes for Graziers who are 'STS taxpayers'

Assessable Income

Section 6-5 and section 328-105

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

70. The Grazier recognises ordinary income from carrying on the business of leasing, breeding, grazing and sale of beef cattle for profit at the time the income is received (paragraph 328-105(1)(a)).

Treatment of trading stock

Section 328-285

71. A Grazier who is an 'STS taxpayer' may, in some years, hold cattle that will constitute trading stock on hand. Where, for such a Grazier, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they do not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

72. Alternatively, a Grazier who is an 'STS taxpayer' may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).

Deductions for the Initial Management Fee, Agistment Fees, Lease Rental, Management Fees, Cattle Sales Costs, Interest and Borrowing Expenses

Section 8-1, section 25-25 and section 328-105

73. A Grazier who is an 'STS taxpayer' may claim tax deductions for the following properly incurred and paid revenue expenses for the Grazier's Herd. Deductions will be available in accordance with the year in which the Grazier commences participation in the Project, being Year 1 in the following Table.

74. If, for any reason, an amount shown in the Table below other than Borrowing Expenses is not fully paid in the year in which it is incurred by a Grazier 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 Grazier. Any amount or part of an amount other than Borrowing Expenses shown in the Table below which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

PR 2002/94

Fee Type	ITAA 1997 Section	Year ended 30 June Year 1	Year ended 30 June Year 2	Year ended 30 June Year 3
Initial Management Fee	8-1 & 328-105	\$2,552.50 - See Notes (vii) & (viii) (below)		
Agistment Fee	8-1 & 328-105	\$242 - See Notes (vii) & (viii) (below)	As incurred- See Notes (vii) & (viii) (below)	As incurred- See Notes (vii) & (viii) (below)
Lease Rental	8-1 & 328-105	\$440 - See Notes (vii) & (viii) (below)	\$440 - See Notes (vii) & (viii) (below)	As incurred- See Notes (vii) & (viii) (below)
Management Fee	8-1 & 328-105		As incurred- See Notes (vii) & (viii) (below)	As incurred- See Notes (vii) & (viii) (below)
Cattle Sales Costs	8-1			As incurred- See Notes (vii) & (viii) (below)
Interest (Interest only loan from Environinvest)	8-1 & 328-105	Must be calculated - See Notes (ix) & (xi) (below)	Must be calculated - See Notes (ix) & (xii) (below)	Must be calculated - See Notes (ix) & (xi) (below)
Interest (Principal and interest loan from Environinvest)	8-1 & 328-105	As incurred- See Notes (x) & (xi) (below)	As incurred- See Notes (x) & (xi) (below)	As incurred- See Notes (x) & (xi) (below)
Loan Establishment Fee	25-25	\$100 - See Note (xii) (below)		

Notes:

- (vii) if the Grazier 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 145).
- (viii) where a Grazier who is an 'STS taxpayer', pays the Initial Management Fee, Management Fees, Cattle Sales Costs, Agistment Fees and the Lease Rental in the

relevant income years shown in the Management Agreement, Agistment Agreement and Cattle Lease Agreement, those fees are deductible in full in the year that they are paid. However, if a Grazier **chooses** to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of cattle) 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 104 to 111). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 110, 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) Graziers who enter into an **Interest Only Loan** with Environinvest incur interest annually in advance, beginning from the Commencement date. Such interest is **NOT** deductible in full in the year in which it is incurred and paid, unless the amount of the interest is 'excluded expenditure' (see Note (viii) above). Where the amount of interest is not 'excluded expenditure' the deduction for the interest paid in advance each year must be determined using the formula in subsection 82KZMF(1) (see paragraph 110). Environinvest will inform Graziers of the Commencement Date to allow Graziers to determine the number of days in the 'eligible service period' in the first expenditure year (i.e., the Application Year). This figure is necessary to calculate the deduction allowable for the interest incurred. (See Example 2 at paragraph 146).
- (x) Graziers who enter into a **Principal and Interest Loan** with Environinvest incur interest monthly, in arrears. For STS taxpayers such interest is deductible when incurred and paid. However, if a Grazier **chooses** to prepay interest the prepayment rules of the ITAA 1936 may apply to apportion the prepaid interest. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 110 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.

- (xi) the deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Environinvest is outside the scope of this Ruling. However, all Graziers, including those who finance their participation in the Project other than with Environinvest, should read the discussion of the prepayment rules in paragraphs 104 to 111 (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 Grazier’s choice.
- (xii) borrowing expenses are deductible under section 25-25 where the borrowed moneys are used or will be used during that income year for income producing purposes. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6)).

Tax outcomes that apply to all Graziers

Deferral of losses from non-commercial business activities

Division 35

Section 35-55 – Commissioner’s discretion

75. For a Grazier who is an individual and who enters the Project during the year ended 30 June 2002 or the year ended 30 June 2003 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2002 to 30 June 2007 for 2002 Graziers and 30 June 2003 to 30 June 2008 for 2003 Graziers 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.

76. 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 130 in the Explanations part of this ruling, below); or
- a Grazier’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or

- a Grazier'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)).

77. Where, the 'exception' in subsection 35-10(4) applies, the Grazier'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 Grazier 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.

78. Graziers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Graziers 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

79. For a Grazier who participates in the Project and incurs expenditure as required by the Management Agreement and the Lease 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 Grazier carrying on a business?

80. For the amounts set out in the Tables above to constitute allowable deductions the Grazier's cattle leasing, breeding, grazing and sale activities as a participant in the Environinvest Cattle Project must amount to the carrying on of a business of primary production.

81. Where there is a business, or a future business, the gross proceeds from the sale of the Herd Progeny 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.

82. For schemes such as that of the Environinvest Cattle Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grazier's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929; (1984) 15 ATR 932.

83. Generally, a Grazier will be carrying on a business of leasing, breeding, grazing and selling beef cattle for profit where:

- the Grazier has an identifiable interest in the Drove (by lease), the Herd Progeny and in the land on which the Grazier's Herd are agisted;
- the Grazier has a right to sell the Herd Progeny each year;
- the leasing, breeding, grazing and beef cattle selling activities are carried out on the Grazier's behalf;
- the leasing, breeding, grazing and beef cattle selling activities of the Grazier are typical of those associated with a leasing, breeding, grazing and sale of beef cattle business; and
- the weight and influence of the general indicators of a business as used by the Courts point to the carrying on of a business.

84. In this Project, each Grazier enters into a Cattle Lease Agreement, an Agistment Agreement and a Management Agreement .

85. Under the Cattle Lease Agreement each individual Grazier will have rights over a specific and identifiable Drove. The Cattle Lease Agreement provides the Grazier with an ongoing interest in the individual cow and heifer units that make up the Drove and the Cattle Lease Agreement acknowledges that the Grazier is the absolute owner of the Herd Progeny that is the offspring of the leased stock and any offspring of the leased stock that forms the Grazier's Herd. The progeny of the Grazier's Herd will be identified via the use of tags to ensure correct identification of ownership and accurate recording of livestock. Under the Cattle Lease Agreement the Grazier must use the stock in question for the purpose of breeding and establishing the Grazier's Herd to carrying on the business of leasing, breeding, grazing and sale of beef cattle for profit activities and for no other purpose. The Cattle Lease Agreement allows the Manager to carry out its obligations under the Management Agreement in respect to the Herd.

86. Under the Agistment Agreement each individual Grazier will have rights over a specific and identifiable area of land. The Agistment Agreement provides the Grazier with an ongoing interest in the Land in the form of a non-exclusive licence to occupy and use the Land to agist and graze the Herd for the term of the Project. The licence allows the Manager to come onto the Land to carry out its obligations under the Management Agreement.

87. Under the Management Agreement the Manager is engaged by the Grazier to establish and maintain a Herd of Angus beef cattle on the Grazier'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 Herd on the Grazier's behalf.

88. In establishing the Herd, the Grazier engages the Manager to oversee the Grazier's business of leasing, breeding, grazing and selling beef cattle for profit and appoints the Manager as an independent contractor to provide Breeding Management Services, Paddock Management Services, Stock Management Services, Administrative Services, Sales Management Services and various other services in respect to the Grazier's Herd.

89. 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.

90. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grazier in the Project will derive assessable income from the sale of its Herd 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.

91. The pooling of Grazier's Herd Progeny at the point of sale for the purpose of sale with the Herd Progeny of other Graziers in the Marketing Pool is consistent with general animal husbandry practices. Each Grazier's proportionate share of the sale proceeds of the pooled cattle will reflect the proportion of the Grazier's Drovers used in building up the Grazier's Herd.

92. Environinvest's services are also consistent with general animal husbandry practices. They are of the type ordinarily found in ventures where there is leasing, breeding, grazing and sale of beef cattle. While the size of a Herd is relatively small, it is of a size and scale to allow it to be commercially viable. (see Taxation Ruling IT 360).

93. The Grazier's degree of control over the Manager as evidenced by the Management Agreement, and supplemented by the

Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Grazier with regular progress reports on the Grazier's Herd and the activities carried out on the Grazier's behalf. Graziers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect.

94. The leasing, breeding, grazing and sale of beef cattle 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 Graziers' leasing, breeding, grazing and sale of beef cattle activities in the Environinvest Cattle Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

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

Deductibility of the Initial Management Fee, Agistment Fees, Lease Rental, Management Fees and Cattle Sales Costs

Section 8-1

97. Consideration of whether the Initial Management Fee, Agistment Fees, Lease Rental ongoing Management Fees and Cattle Sales Costs 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.

98. The Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs associated with the leasing, breeding, grazing and sale of beef cattle will relate to the gaining of income from the Grazier's business of leasing, breeding, grazing and sale of beef cattle for profit (see above), and hence have a sufficient connection to the operations by which income (from the regular sale of cattle) 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 Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Possible application of prepayment provisions

99. Under the Cattle Lease Agreement, Agistment Agreement and Management Agreement neither the Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees nor Cattle Sales Costs are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

100. However, where a Grazier chooses to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 104 to 111) will apply to determine the amount and timing of the deductions regardless of whether the Grazier is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Timing of deductions

101. In the absence of any application of the prepayment provisions, the timing of deductions for the Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs will depend upon whether a Grazier is an 'STS taxpayer' or is not an 'STS taxpayer'.

102. If the Grazier is not an 'STS taxpayer', the Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs are deductible in the year in which they are incurred.

103. If the Grazier is an 'STS taxpayer' the Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs are deductible in the income year in which they are paid, or are paid for the Grazier (paragraph 328-105(1)(b)). If any amount 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 Grazier.

Prepayment provisions

Sections 82KZL to 82KZMF

104. 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 cattle) 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.

105. 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

106. 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)).

107. 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.

108. 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 Grazier in this Project who, in order to participate in the Project, may borrow funds from a financier other than Environinvest 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 Grazier prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

109. There are a number of exceptions to these rules, but for Graziers 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 Graziers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

110. 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.

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

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

Application of the prepayment provisions to this Project

112. In this Project, an Initial Management Fee of \$2,552, an initial Agistment Fee of \$242 and an initial Lease Rental of \$440 per Drove will be incurred on execution of the Management Agreement, Agistment Agreement and Cattle Lease Agreement. The Initial Management Fee, initial Agistment Fee and initial Lease Rental are charged for providing management services, agisting and grazing cattle and leasing cattle to a Grazier by 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services, agisting and grazing cattle and leasing cattle to a Grazier until 30 June in those years.

113. In particular, the Initial Management Fee is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the Initial Management Fee has been inflated to result in reduced fees being payable for Management Fees in subsequent years.

114. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the Initial Management Fee, and the fees for subsequent years, is for the Project Manager doing 'things' that are not to be wholly done within the expenditure year. Under the Cattle Lease Agreement, Lease Rent is payable annually in arrears for the lease of the Stock during the expenditure year to 30 June 2005 for 2002 Graziers and to 30 June 2006 for 2003 Graziers. Similarly under the Agistment Agreement, Agistment Fees are payable annually in arrears for the use of the Land during the expenditure year for the term of the Project.

115. On this basis, provided a Grazier incurs expenditure as required under the Project agreements, as set out in paragraphs 46 to 55, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

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

116. Although not required under either the Management Agreement or the Lease Agreement, a Grazier participating in the Project may **choose** to prepay fees for a period beyond the 'expenditure year'. Similarly, Graziers who use financiers other than Environinvest Ltd may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 114 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

118. 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) Graziers who use Environinvest Ltd as the finance provider

119. Some Graziers may finance their participation in the Project through a loan facility with Environinvest Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs.

120. The interest incurred will be in respect of a loan to finance the Grazier's business operations - the leasing, breeding, grazing and sale of beef cattle for profit - 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.

121. As with the Initial Management Fee, Agistment Fees, Lease Rental, ongoing Management Fees and Cattle Sales Costs, in the absence of any application of the prepayment provisions (see paragraphs 104 to 111), the timing of deductions for interest incurred under the **Principal and Interest Loan** will again depend upon whether a Grazier is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

123. If the Grazier is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grazier. 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 Grazier.

124. However, Graziers who enter into an **Interest Only Loan** pay interest annually in advance. Subject to the 'excluded expenditure' exception (see above), deductions for these Graziers will be determined using the formula shown in paragraph 110. However, as stated above, for Graziers who are 'STS taxpayers', the deduction calculated using this formula is only deductible to the extent to which it is paid.

(ii) Graziers who DO NOT use Environinvest as the finance provider

125. The deductibility of interest incurred by Graziers who finance their participation in the Project through a loan facility with a bank or financier other than Environinvest 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.

126. While the terms of any finance agreement entered into between relevant Graziers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grazier 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 104 to 111).

Deferral of losses from non-commercial business activities

Division 35

127. 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.

128. 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.

129. 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.

130. 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 Graziers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

131. 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).

132. A Grazier 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 Grazier who acquires the minimum allocation of one Drove in the Project during the years ended 30 June 2002 or 30 June 2003 is unlikely to ever pass one of the tests. Graziers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

133. 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 Grazier's participation in the Project.

134. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where the business activity has started to be carried on and for that, or those income years;

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

135. Information provided with this Product Ruling indicates that a Grazier who acquires the minimum investment of one Drove in the Project is expected to be carrying on a business activity that will pass one of the tests, or will produce a taxation profit, for the income years ended 30 June 2008 where a Grazier is a 2002 Grazier, or 30 June 2009 where a Grazier is a 2003 Grazier.

136. The Commissioner will decide for such a Grazier 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 2007 for 2002 Graziers and the income year ended 30 June 2008 for 2003 Graziers.

137. This Product Ruling is issued on a prospective basis (i.e., before an individual Grazier'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 75), in the manner described in the Arrangement (see paragraphs 14 to 58). 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). Graziers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

138. 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 expert and additional evidence provided with the application by the Manager;
- independent, objective, and generally available information relating to the beef cattle industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Manager.

Losses and Outgoings incurred under Certain Tax Avoidance Schemes

Section 82KL - recouped expenditure

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

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

141. Section 82KL’s operation depends, among other things, on the identification of a certain quantum of ‘additional benefits’. Insufficient ‘additional benefits’ will be provided in respect of this Project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1.

Part IVA - general tax avoidance provisions

142. 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).

143. The Environinvest Cattle Project will be a ‘scheme’. A Grazier will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 68 and 74 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.

144. Graziers 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 their cattle. There are no facts that would suggest that Graziers 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

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

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

*Taxable supply

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

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

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

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

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

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

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

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

Example 2 – Apportionment of Fees

146. Murray decides to participate in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are \$5,000 in the first year and \$1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date.

The project is subject to a minimum subscription of 300 interests. Murray provides the Project Manager with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2002 the Project Manager informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

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

Management fee x Number of days of eligible service period in the year of income

Total number of days of eligible service period

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

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

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

$$\$5,000 \times \frac{339}{365}$$

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

$$\$1,200 \times \frac{26}{365}$$

365

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

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

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

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Commissioner of Taxation

19 June 2002

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	- primary production income
<i>Related Rulings/Determinations:</i>	- producing assessable income
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- carrying on a business	- tax benefits under tax avoidance
- commencement of business	- schemes
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- management fees expenses	

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