



PR 2003/41 - Income Tax: West Coast Hardwood - Resale Offer

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 This document has changed over time. This is a consolidated version of the ruling which was published on *11 June 2003*



Product Ruling

Income Tax: West Coast Hardwood – Resale Offer

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

Preamble

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

No guarantee of commercial success

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

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

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

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

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

Terms of use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as 'West Coast Hardwood Project' or simply as 'the Project'.

Tax law(s)

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

- Section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- Section 8-1 (ITAA 1997);
- Section 17-5 (ITAA 1997);
- Division 27 (ITAA 1997);
- Division 35 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- Section 82KZL (ITAA 1936);
- 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 this. In keeping with that intention the Tax Office suggests that promoters and advisers ensure that potential participants are fully informed of any legislative changes 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, each of these persons, referred to as 'Growers', will have accepted an offer made under subsections 708(1)-(11) of the *Corporations Act 2001*.

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. Growers who elect to market their own produce are also excluded from the class of persons to whom this Ruling applies (see paragraphs 22 and 47).

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.

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Date of effect

11. This Ruling applies prospectively from 11 June 2003, 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 2006. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the 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 a Product Ruling dated 17 March 2003 and additional correspondence between the Applicant and Tax Office dated 2 May 2003, 5 May 2003, 6 May 2003, 15 May 2003, 19 May 2003, 20 May 2003, 21 May 2003, 23 May 2003, 26 May 2003, 27 May 2003, 30 May 2003, 3 June 2003 and 4 June 2003;
- Draft Information Memorandum for West Coast Hardwood received 4 June 2003;
- Draft **Lease and Management Agreement Second Schedule** for West Coast Hardwood Project No.2 between Westeq Ltd ('Manager' and 'Lessor'), the Trustee and the Grower, received 4 June 2003;
- Draft **Lease and Management Agreement Schedule 3** for the West Coast Hardwood Project No.3 between Westeq Ltd ('Manager' and 'Lessor') and the Grower, received 4 June 2003;
- Trust Deed for the Paulownia West Coast Project made between Westeq Ltd (formerly Plantation Equity Services Ltd) ('Manager' and 'Lessor'), the Trustee and the Guarantor, dated 31 October 1996;
- Deed of Amendment of the Paulownia West Coast Project Deed, dated 4 May 1998;
- Modification of Trust Deed of Paulownia West Coast Project No.1 and Project No.2 dated 18 October 2002;
- Draft Modification of Trust Deed of Paulownia West Coast Project No.1 and Project No.2, received 17 March 2003;
- Constitution for the Paulownia West Coast Project No.3, dated 14 January 2000;
- Modification of Constitution of Paulownia West Coast Project No.3, dated 18 October 2002;
- Draft Modification of Constitution of Paulownia West Coast Project No.3, received 17 March 2003;
- Compliance Plan for Paulownia West Coast Project No.3, dated 20 April 1999;

- Lease Agreements between Farmtech Management Pty Ltd (formerly Farmtech Management Ltd) (the ‘Landowner’) and Australian Sheoak Pty Ltd (formerly Western Property Holdings Pty Ltd), dated 30 June 1999; and
- Deeds of Assignment and Variation of Lease between Farmtech Management Pty Ltd, Australian Sheoak Pty Ltd and Westeq Ltd, received 17 March 2003.

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 will 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 to which this Ruling applies.

16. In accordance with the above documents, a Grower who participates in the arrangement must have accepted an offer that was made under section 708 of the *Corporations Act 2001*. **This Ruling does not apply unless the Grower:**

- has accepted a ‘personal offer’ under subsections 708(1)-(7) of the *Corporations Act 2001*;
- is a ‘sophisticated investor’ for the purposes of subsections 708(8)-(9) of the *Corporations Act 2001*;
- has accepted an offer made by a licensed dealer where the offer meets the requirements of sub-section 708(10) of the *Corporations Act 2001*; or
- is a ‘professional investor’ for the purposes of paragraphs (a), (b) or (h) of subsection 708(11) of the *Corporations Act 2001*.

17. Each of these categories is explained in paragraphs 61 to 68 in the Explanations area of this Product Ruling.

Overview

18. The salient features of the West Coast Hardwood Project are as follows:

Location	Beermullah, Shire of Gingin in Western Australia
Type of business to be carried on by each participant	Commercial growing and cultivation of Paulownia trees for the purpose of harvesting and selling timber
Number of hectares offered for cultivation	110 hectares
Size of each interest	0.4 hectares
Number of trees per hectare	292
Term of the Project	Approximately 7 years
Initial cost	\$5,555
Initial cost per hectare	\$13,887
Ongoing and other costs	Annual lease and management fees Harvesting and processing costs Costs of Sale Optional Insurance

19. Under the Information Memorandum, Westeq Ltd is offering interests in an existing plantation formerly known as 'Paulownia West Coast'. Australian Sheoak Pty Ltd has assigned its leases for the Project Land to the Manager, Westeq Ltd. Four projects have been re-named as West Coast Hardwood Projects No.1, No.2, No.3 and No.4. Interests are offered in Projects 2 and 3 only which are located on Project Land known as 'Blue Lake' and 'Whitfield Springs' respectively at 5297 and 5731 Brand Highway, Beermullah, Western Australia.

20. Growers applying under this Information Memorandum may join either during the 2002/2003 income year (defined as '2003 Growers') or the 2003/2004 income year ('2004 Growers'). From 16 June until 27 June of each year, the Manager will be monitoring on a daily basis its ability to complete the Initial Services by 30 June of that year and will not accept applications where it is apparent that they will not be able to do so. The Manager has provided evidence of its intention and ability to complete all of the Initial Services as required. The Manager will not execute any agreements after 27 June of any financial year.

21. A Grower will lease a portion of land known as a 'Timber Lot' until the trees are harvested and sold and net income distributed. Each Timber Lot is 0.4 hectares in size and has been planted with at least 117 Paulownia trees. The trees are expected to be harvested in the year 2010.
22. Through the Lease and Management Agreement, the Grower engages the Manager to provide services and maintain a Paulownia plantation on the Leased Area. The Manager will also be responsible for the harvesting of the timber. A Grower may elect to take their forest produce ('Electing Grower') or the Manager will sell the produce on their behalf ('Non-Electing Grower'). This Ruling does not apply to Electing Growers. Electing Growers may request a private ruling on the taxation consequences of their participation in the Project.
23. Upon application, Growers will execute a Power of Attorney enabling the Manager to act on their behalf as required.

Trust Deed – Project 2

24. The Trust Deed for Project 2 sets out the terms and conditions under which the Trustee agrees to act for the Growers and the Manager agrees to manage Project 2. Both the Trustee and the Manager are obliged to act in the best interests of the Growers. The Lease and Management Agreement is annexed to the Trust Deed as the Second Schedule. Growers are bound by the Trust Deed by virtue of their participation in Project 2. Pursuant to clause 19 of the Trust Deed, the Manager will keep a register of Growers.
25. The Trust Deed was modified in accordance with a resolution passed by Growers on 30 May 2002. The effect of this was to restructure the annual management fees and introduce an annual lease fee for existing Growers. The Trust Deed has been further modified in order to correctly implement the changes approved by the resolution. The First Schedule of the Trust Deed, being the Lease and Management Agreement for existing Growers in Project 2, has been replaced to incorporate the amendments made in the Modification of Trust Deed.
26. Under the terms of the Trust Deed, all moneys received from applications shall be deposited into an Application Fund. The Application Moneys will be released when the Trustee is reasonably satisfied that certain specified criteria in the Trust Deed have been met (clauses 5.2 and 5.3 of the Trust Deed).

Constitution – Project 3

27. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the Manager. The Constitution sets out the terms and conditions under which Westeq Ltd agrees to act as Manager and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 26 of the Constitution, the Manager will keep a register of Growers.

28. The Constitution was modified in accordance with a resolution passed by Growers on 30 May 2002. The effect of this was to restructure the annual management fees and introduce an annual lease fee for existing Growers. The Constitution has been further modified in order to correctly implement the changes approved by the resolution. Schedules 1 and 2 of the Constitution, being the Lease and Management Agreements for existing Growers in Project 3, have been replaced to incorporate the amendments made in the Modification of Constitution.

29. Under the terms of the Constitution, all moneys received from applications shall be deposited into an Application Fund. The Application Moneys will be released when the Manager is reasonably satisfied that certain specified criteria in the Constitution have been met (clauses 14 and 15 of the Constitution).

Compliance Plan

30. The Manager has prepared a Compliance Plan for Project 3 in accordance with the *Corporations Act 2001*. Its purpose is to ensure that the Manager manages Project 3 in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

31. Project 2 is a Prescribed Interest Scheme and as such, a Compliance Plan is not required under the *Corporations Act 2001*.

Lease and Management Agreement

32. Growers participating in the arrangement will enter into a Lease and Management Agreement with Westeq Ltd (in its capacity as both 'Manager' and 'Lessor'). Growers are granted an interest in land in the form of a sub-lease to use their Leased Area, comprising one or more Timber Lots, for the purpose of conducting their afforestation business until the final distribution of the sale proceeds is made to the Grower or until the Project is terminated.

33. Each Grower must pay Rent to the Lessor in an amount specified in clause 4 of the Lease and Management Agreement.

34. The Agreement also provides that each Grower appoints the Manager to perform services under the agreement. The services to be performed are specified in the definitions of 'Initial Services' and 'Ongoing Services' which are listed respectively at Items 9A and 9B of the Second Schedule (Project 2) and Items 8A and 8B of Schedule 3 (Project 3). The Manager will supervise and manage all silvicultural activities on behalf of each Grower. Items listed under Initial Services are general in nature and the Manager has provided additional information as to the nature of services to be provided during the Initial Period, being the period from the Commencement Date until the following 30 June. Annual fees are payable for the provision of the Ongoing Services.

Fees

35. The fees payable under the Lease and Management Agreement on a per Timber Lot basis are as follows:

- Initial Management Fee of \$5,170 payable in the following manner:
 - minimum deposit of 20% (\$1,034) upon application;
 - balance payable in equal instalments over a maximum of 12 months;
- Annual Fee payable on or before 1 February of each financial year after the Initial Period in an amount specified in the Schedule at Item 12 (Project 2) or Item 11 (Project 3). The amounts payable for the first two financial years after the Initial Period are \$1,338 and \$1,375 respectively; and
- Rent of \$385, indexed annually after the Initial Period and payable upon application for the Initial Period and on or before 1 February of each financial year thereafter.

Other fees and costs

36. A Non-Electing Grower is also required to pay the following amounts to the Manager:

- the Grower's Proportional Share of the Costs of Harvest and Processing and the Costs of Sale (clause 21.2 – Project 2 and clause 20.2 – Project 3);

- a fee equal to 3.3 % of the Net Proceeds of Sale in consideration for the performance of Ongoing Services (clause 24 – Project 2 and clause 25 – Project 3); and
- an Incentive Fee of an amount equal to 44% of the excess of the Net Proceeds of Sale per Timber Lot over the amount estimated by the Manager (clause 25 - Project 2 and clause 24 – Project 3).

37. The Manager, on behalf of the relevant Grower, must use its best endeavours to arrange insurance of the Timber Lot annually so as to provide cover against destruction or damage by fire and other usual risks. The cost of such insurance will be borne by the Grower.

Planting

38. Growers will enter an established Project where planting has been completed. The Manager initially planted in excess of 117 trees per Timber Lot during the establishment phase by planting trees at a higher density along selected rows of each Timber Lot. During the Initial Period, the Manager will replace a selection of dead or underperforming trees from each Timber Lot by transplanting established Grower's trees from those rows with a higher planting density. The Manager will then maintain the trees in accordance with good silvicultural practice.

Water Licence

39. Farmtech Management Ltd, the Landowner, has a groundwater well licence for 1,570 million litres of water per year for the West Coast Hardwood Projects. The Manager has improved water facilities at the Plantation through the construction of a storage dam and upgrade of the irrigation system. The upgrade allows the Manager to deliver up to 120 litres of water per tree per day for the life of the Projects.

Harvesting and Sale

40. 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 20.1 – Project 2 and clause 19.1 – Project 3). The Manager is irrevocably appointed to sell the Forest Produce at the maximum practicable price available on behalf of all Growers (clause 19.1 – Project 2 and clause 18.1 – Project 3).

41. The Manager must procure a suitably qualified person to harvest and process the trees at market rates. Harvesting is expected to take place not later than 8 years from the Commencement Date. However, the Manager may defer Harvesting for a further two years if it reasonably believes that it would be in the best interests of the Growers (clause 17.1 – Project 2 and clause 16 – Project 3).

42. The gross proceeds of sale from the forest produce will be paid direct to the Manager who must deposit the proceeds into the Proceeds Fund. Within 10 business days, the Manager must pay to itself the costs incurred for harvesting, processing and selling (see paragraph 36 above) the forest produce. Within a further 5 business days, the Manager will pay to itself any other fees or amounts owing and distribute the remainder to the Non-Electing Growers (clause 21 - Project 2 and clause 20 – Project 3).

Finance

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

44. The Trust Deed and Constitution allow for the acceptance of Applications and allotment of Timber Lots where an Application is made subject to the approval of finance by an independent lending institution. This Ruling will not apply to Growers in circumstances where the full amount of Application Moneys is not paid by 30 June in the year of Application with the exception of Growers accepted under the instalment option described at paragraph 35.

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

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

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

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

Ruling

Application of this Ruling

46. Subject to paragraph 20 this Ruling applies only to Non-Electing Growers who are accepted to participate in the Project:

- on or before 30 June 2003 where the Grower has executed a Lease and Management Agreement on or before that date (2003 Growers);
- on or after 1 July 2003 where:
 - the Grower has executed a Lease and Management Agreement on or after that date; and
 - the Manager has accepted the application with the intention of completing the Initial Services by 30 June 2004 (2004 Growers).

47. The Grower's participation in the Project must constitute the carrying on of a business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted. This Ruling does not apply to Growers who elect to market their own timber produce (Electing Growers).

The Simplified Tax System ('STS')

Division 328

48. 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

49. 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.

Assessable Income

Sections 6-5 and 328-105

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

51. The Grower who is not an ‘STS taxpayer’ recognises ordinary income from carrying on the business of afforestation at the time that income is derived.

52. The Grower who is an ‘STS taxpayer’ recognises ordinary income from carrying on the business of afforestation at the time that income is received (paragraph 328-105(1)(a)).

Deductions for Management fees and Lease fees

Sections 8-1 and 328-105

53. A Grower may claim tax deductions under section 8-1 of the ITAA 1997, for the amounts shown in the Tables below.

54. However, if for any reason, an amount shown or referred to in the Tables below is not fully paid in the year in which it is incurred by a Grower who is an ‘STS taxpayer’, such as the deposit arrangement described at paragraph 35, then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount, or part of an amount shown in the Tables below, which is not paid by a Grower who is an ‘STS taxpayer’ in the year in which it is incurred, will be deductible in the year in which it is actually paid.

2003 Growers

Fee Type	Year ended 30 June 2003	Year ended 30 June 2004	Year ended 30 June 2005
Initial Management Fee	\$4,620 See notes (i) & (ii) below		
Annual Fee		\$1,338 See notes (i) & (iii) below	\$1,375 See notes (i) & (iii) below
Lease Fee (Rent)	\$385 See notes (i) & (iii) below	\$385 (indexed) See notes (i) & (iii) below	\$385 (indexed) See notes (i) & (iii) below

2004 Growers

Fee Type	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Initial Management Fee	\$4,620 See notes (i) & (ii) below		
Annual Fee		\$1,338 See notes (i) & (iii) below	\$1,375 See notes (i) & (iii) below
Lease Fee (Rent)	\$385 See notes (i) & (iii) below	\$385 (indexed) See notes (i) & (iii) below	\$385 (indexed) See notes (i) & (iii) below

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See Example at paragraph 119.
- (ii) The Initial Management Fee of \$5,170 contains an amount of \$550 identified as non-deductible capital expenditure. See paragraph 86.
- (iii) The Initial Management Fee, Annual Fee and Rent incurred by a Grower are, to the extent shown in the Tables above, for services to be provided within the expenditure year and are deductible in the year in which they are incurred (where the Grower is **not an 'STS taxpayer'**) or the year in which they are paid (where the Grower is an **'STS taxpayer'**). However, if a Grower **chooses** to prepay fees for the doing of a

thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 94 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.

Interest

55. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 88 to 95 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

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

Section 35-55 – Commissioner's discretion

56. For a Grower who is an individual and who enters the Project during the year ended 30 June 2003 or 30 June 2004 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2003 to 30 June 2009 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.

57. 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 106 in the Explanations part of this Ruling, below);
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or

- a Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

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

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

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

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

- expenditure incurred by a Grower does not fall within the scope of sections 82KZME – 82KZMF (but see paragraphs 88 to 102);
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanations

Section 708 of the *Corporations Act 2001*

61. For this Ruling to apply, an offer for an interest in the project must have been made to, and accepted by the Grower under one of four categories in subsections 708(1)-(11) of the *Corporations Act 2001*. These provisions set out situations where a prospectus or similar disclosure document is not required.

PR 2003/41

62. Under subsections 708(1)-(7) a Grower may participate in the Project by accepting a 'personal offer' for an interest in the Project. Offers under these provisions cannot be accepted by more than 20 investors in any 12 month period and these investors, in aggregate, must not invest more than \$2 million dollars.

63. An offer will be a personal offer where it can only be accepted by the person to whom it is made, and it is made to a person who is likely to be interested in the offer because of previous contact, or professional or other connection with the person making the offer, or because they have indicated that they are interested in offers of that kind (subsection 708(2)).

64. Offers made under other exclusions in section 708 (see below) are not counted for the purposes of the 20 investors limit.

65. Alternatively, a Grower who is a 'sophisticated investor' may accept an offer for interests in the project under subsections 708(8)-(10). Under subsection 708(8), an investor in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will be a 'sophisticated investor' where:

- the minimum amount payable for the interests in the project on acceptance of the offer by the person to whom the offer is made is at least \$500,000;
- the amount payable for the interests in the project on acceptance by the person to whom the offer is made and the amounts previously paid by the person for interests in the project of the same class that are held by the person add up to at least \$500,000; or
- it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:
 - (i) has net assets of at least \$2.5 million; or
 - (ii) has a gross income for each of the last 2 financial years of at least \$250,000 a year.

66. A Grower may also participate in the Project where the offer is made by a licensed dealer under subsection 708(10). Under this provision the dealer must be satisfied that the person to whom the offer is made has previous experience in investing which allows them to assess the merits of the offer, the value of the interests in the Project, the risks involved in accepting the offer, their own information needs and the adequacy of the information provided.

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

68. Under subsection 708(11) an offer may be made to and accepted by a person who is considered to be a professional investor. Growers who participate in the project under this provision will be, at the time the offer is made:

- a person who is a licensed or exempt dealer and who is acting as a principal;
- a person who is a licensed or exempt investment adviser and who is acting as a principal; or
- a person who controls at least \$10 million for the purposes of investment in securities.

Is the Grower carrying on a business?

69. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the West Coast Hardwood Project must amount to the carrying on of a business of primary production.

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

71. For schemes such as that of the West Coast Hardwood Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest in the land (by lease) or holds rights over the land (by licence) on which the Grower's trees are established;
- the Grower has a right to harvest and sell the timber 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

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

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

74. Under the agreement each individual Grower will have rights over a specific and identifiable area of at least 0.4 hectares 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 Manager to come onto the land to carry out its obligations under the Lease and Management Agreement.

75. Under the agreement, the Manager is engaged by the Grower to establish and maintain a Timber Lot on the Grower's identifiable area of land during the term of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Timber Lot on the Grower's behalf.

76. The Manager is also engaged to harvest and sell, on the Grower's behalf, the timber grown on the Grower's Timber Lot.

77. 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.

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

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

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

81. The Grower's degree of control over the Manager as evidenced by the Lease and Management Agreement, and supplemented by the *Corporations Act 2001*, is sufficient. During the term of the Project, the Manager will provide the Grower with regular progress reports on the Grower's Timber Lot and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect.

82. 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 West Coast Hardwood Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

83. 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.

84. 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

85. Consideration of whether the Initial Management Fee 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.

86. 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 \$550 of the Initial Management Fee relates to the acquisition of the right to harvest and sell standing timber and is properly characterised as capital expenditure. The amount allowed as a deduction under section 8-1 has been reduced accordingly.

87. The remainder of the Initial Management Fee for the Initial 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 Initial Management Fee other than that identified in paragraph 86 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

88. 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.

89. For this Project, only section 82KZL (an interpretive provision) and sections 82KZME and 82KZMF are relevant. If the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). 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

90. If 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)).

91. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year;
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer;
- 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.

92. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier. 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.

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93. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

94. 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.

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

95. 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

96. Under the Lease & Management Agreement, a Grower incurs an Initial Management Fee and a Lease fee (Rent). These fees are for services to be performed during the Initial Period. The Lease and Management Agreement also requires that a Grower incurs an Annual Fee for each year, commencing with an amount of \$1,338 for the first financial year after the Initial Period. Also, a Grower incurs Lease fees of \$385 (indexed) to lease land during the term of the Project.

97. The Initial Management Fee, the Annual Fees and the Lease fees incurred under the Lease and Management Agreement are not prepaid. These fees are charged for providing maintenance services and for the lease of the land to a Grower until 30 June of the year in which the fees are incurred.

98. On this basis, the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application to the Initial Management Fee, Annual Fees and the Lease fees.

99. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for each of the relevant fees in the income year in which the fee is paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for each of the relevant fees in the income year in which the fee is incurred.

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

100. Although not required under the Lease and Management Agreement, a Grower participating in the Project may **choose** to prepay fees for a period beyond the 'expenditure year'. Similarly, a Grower may choose to prepay interest under a Loan Agreement with an external financier. Where this occurs, contrary to the conclusion reached in paragraph 99 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

102. 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.

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

103. 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.

104. 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.

105. 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 satisfied, the discretion is exercised, or the exception applies.

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106. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

107. 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 three of the past five 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).

108. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Timber Lot in the Project is unlikely to have their activity satisfy one of the tests until the income year ended 30 June 2010.

109. Therefore, prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

110. 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 satisfy one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

111. Information provided with this Product Ruling indicates that a Grower who acquires the minimum allocation of one Timber Lot in the Project is expected to be carrying on a business activity that will satisfy one of the tests and will produce a taxation profit in the income year ended 30 June 2010.

112. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2009.

113. 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 56), in the manner described in the Arrangement (see paragraphs 14 to 45). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1), 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) will apply in such changed circumstances.

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

- the report of the Independent Forester and additional expert or scientific evidence provided with the application;
- independent, objective, and generally available information relating to the afforestation industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Manager; and
- other expert opinion independently obtained by the Commissioner relating to the Paulownia industry.

Section 82KL - recouped expenditure

115. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits(s)'. Insufficient 'additional benefits' will be provided to trigger the

application of section 82KL. It will not apply to deny the deduction otherwise allowable under section 8-1.

Part IVA - general tax avoidance provisions

116. 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).

117. The West Coast Hardwood Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed in the Tables under paragraph 54 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.

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

Example

Entitlement to GST input tax credits

119. 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 2002, 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 1/1/2003 to 30/6/2003	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>

Total due and payable by 1 January 2003 \$6,600
(includes GST of \$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:

$$\frac{1}{11} \times \$4,400 = \$400.$$

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

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

$$\frac{1}{11} \times \$2,200 = \$200.$$

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

In preparing her income tax return for the year ended 30 June 2003, 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).

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Commissioner of Taxation

11 June 2003

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Not previously issued in draft form	- ITAA 1936 82KZME(3)
	- ITAA 1936 82KZME(4)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZME(7)
TR 92/1; TR 92/20; TD 93/34;	- ITAA 1936 82KZMF
TR 97/11; TR 97/16; TR 98/22;	- ITAA 1936 82KZMF(1)
PR 1999/95; TR 2000/8; TR 2001/14;	- ITAA 1936 Pt III Div 3H
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	- ITAA 1936 177A
<i>Subject references:</i>	- ITAA 1936 177C
- carrying on a business	- ITAA 1936 177D
- commencement of business	- ITAA 1936 177D(b)
- fee expenses	- ITAA 1997 6-5
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<i>Legislative references:</i>	- ITAA 1997 35-55(1)(a)
- ITAA 1936 82KL	- ITAA 1997 35-55(1)(b)
- ITAA 1936 82KZL	- ITAA 1997 Div 328
- ITAA 1936 82KZL(1)	- ITAA 1997 328-105
- ITAA 1936 82KZME	- ITAA 1997 328-105(1)(a)
- ITAA 1936 82KZME(1)	- ITAA 1997 Subdiv 328-F

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- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001
- Corporations Act 2001 708
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- Corporations Act 2001 708(11)
- Corporations Act 2001 708(11)(a)
- Corporations Act 2001 708(11)(b)
- Corporations Act 2001 708(11)(h)

Case references:

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

ATO references

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