



PR 2003/48 - Income tax: WRF Kangaroo Island Plantations 2002

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Product Ruling

Income tax: WRF Kangaroo Island Plantations 2002

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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.

Participants must form their own view about the commercial and financial viability of the product. This involves 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 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. Participants may wish to seek assurances from the promoter that the arrangement has been carried out as described in this Product Ruling.

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement, WRF Kangaroo Island Plantations 2002, is sometimes referred to simply as 'the Project'.

Tax law(s)

2. The tax law dealt with in this Ruling is:
- Division 35 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Goods and services tax

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

Changes in the law

4. The Government is currently evaluating further changes to the tax system in response to the *Ralph Review of Business Taxation* and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

5. Taxpayers 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:

- Product Ruling PR 2000/31 *Income tax: WRF Kangaroo Island Plantations* and who, between 5 April 2000 and 30 June 2001, entered into the specified arrangement that is set out in paragraphs 13 to 41 of that Ruling;
- Product Ruling PR 2001/19 *Income tax: WRF Kangaroo Island Plantations 2002* and who between 14 March 2001 and 30 June 2001, entered into the specified arrangement that is set out in paragraphs 14 to 38 of that Ruling;
- Product Ruling PR 2001/71 *Income tax: WRF Kangaroo Island Plantations 2002* and who between 30 May 2001 and 30 June 2001, entered into the specified arrangement that is set out in paragraphs 13 to 39 of that Ruling;
- Product Ruling PR 2001/142 *Income tax: WRF Kangaroo Island Plantations 2002* and who between 31 October 2001 and 30 June 2002, entered into the specified arrangement that is set out in paragraphs 15 to 38 of that Ruling; or
- Product Ruling PR 2002/64 *Income tax: WRF Kangaroo Island Plantations 2002 – Second Prospectus* and who between 15 May 2002 and 30 June 2002, entered into the specified arrangement that is set out in paragraphs 14 to 39 of that Ruling.

The class of persons to whom this Ruling applies 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 ‘Growers’.

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

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 24 June 2003 for Growers who entered into one of the arrangements specified in paragraph 7. 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 2004. Even following its withdrawal, this Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified classes who, between 5 April 2000 and 30 June 2002, entered into the specified arrangements as detailed in the relevant Product Rulings listed at paragraph 7. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

Arrangement

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

- Application for a Product Ruling dated 23 January 2003;
- Project Operations Agreement for 2000 Growers between a Grower (accepted under the Prospectus for WRF Kangaroo Islands Plantations dated 27 April 2000) and Primary Securities Ltd (the 'Responsible Entity') and WRF Management Ltd and WRF Securities Ltd, dated 1 January 2003;
- Project Operations Agreement for 2002 Growers between a Grower (accepted under the Prospectus for WRF Kangaroo Islands Plantations 2002 dated either 2 May 2001 or 1 May 2002) and Primary Securities Ltd (the 'Responsible Entity') and WRF Management Ltd and WRF Securities Ltd, dated 1 January 2003;
- Draft Lease for 2000 Growers between KI Plantations Limited (the 'Lessor') and Primary Securities Ltd (the 'Responsible Entity') and the Grower (whose application was accepted under the Prospectus for WRF Kangaroo Islands Plantations dated 27 April 2000), undated;
- Draft Lease and Sub-lease for 2002 Growers between KI Plantations Limited (the 'Lessor') and Primary Securities Ltd (the 'Responsible Entity') and the Grower (whose application was accepted under the Prospectus for WRF Kangaroo Islands Plantations 2002 dated either 2 May 2001 or 1 May 2002), undated;
- Management Agreement between Primary Securities Ltd (the 'Responsible Entity') and WRF Forestry Limited (the 'Manager') and WRF Management Ltd and WRF Securities Ltd, dated 1 January 2003;
- Amended Constitutions for WRF Kangaroo Island Plantations 2002 between Primary Securities Ltd (the 'Responsible Entity') and Primary Securities Ltd (the 'Bare Trustee') and the Grower, dated 22 January 2003;
- Notice of General Meeting of 2000 Growers dated 18 November 2002; and

- Notice of General Meeting of 2002 Growers dated 18 November 2002.

Overview

15. Growers who are participating in this Project were either participants in the WRF Kangaroo Island Plantations managed invested scheme ('2000 Scheme') or are participating and commenced participation prior to 1 July 2002 in the WRF Kangaroo Island Plantations 2002 managed investment scheme ('2002 Scheme').

16. Product Ruling PR 2000/31 was issued in respect of the WRF Kangaroo Island Plantations Project. For the purpose of this Ruling Growers who were participants in the WRF Kangaroo Island Plantations managed investment scheme will be referred to as the '2000 Growers'.

17. Product Rulings PR 2001/19, PR 2001/71, PR 2001/142 and PR 2002/64 were issued in respect of the WRF Kangaroo Island Plantations 2002 managed investment scheme. For the purposes of this Ruling, Growers who commenced participation in the WRF Kangaroo Island Plantations 2002 prior to 1 July 2002 will be referred to as the '2002 Growers'.

18. A special resolution was passed on 16 December 2002, by 75% of all Growers in each scheme to merge the two managed investment schemes. As a result, the 2000 Growers are now participants (together with the 2002 Growers) in the WRF Kangaroo Island Plantations 2002 Project. The following occurred as a result of the merger:

- The 2000 Growers have ceased to be Growers under the WRF Kangaroo Island managed investment scheme and have become the 2000 Growers under the WRF Kangaroo Island Plantations 2002 managed investment scheme;
- The 2000 Growers entered the Project Operations Agreement for 2000 Growers WRF Kangaroo Island Plantations 2002;
- The 2002 Growers entered the Project Operations Agreement for 2002 Growers WRF Kangaroo Island Plantations 2002;
- The leases of the 2000 Growers have been amended and extended by one year until 30 June 2013; and
- The 2000 Growers and the 2002 Growers will pool their timber.

19. The Project land of the merged managed investment scheme is situated on Kangaroo Island in South Australia. Both the 2000 Growers and the 2002 Growers entered into leases or sub-leases with KI Plantations Ltd over an identifiable area of land called a 'Woodlot' and are carrying on a business of long term afforestation. Each Grower has a lease or sub-lease over a minimum of one Woodlot. Each Woodlot is one hectare in size.

Constitution

20. The Amended Constitution for WRF Kangaroo Island Plantations 2002 sets out the terms and conditions under which the Responsible Entity, Primary Securities Ltd, agrees to act for the Growers and manage the Project. Growers are entitled to assign their interests in certain circumstances (cl 1.1). Under the Constitution, Growers appoint Primary Securities Ltd as an agent and as bare trustee. Under clause 9, the bare trustee may delegate any of its functions to a Custodian, however this does not relieve the bare trustee from its obligations under the Constitution. The Responsible Entity as bare trustee has appointed a Custodian as its agent for the purpose of holding Application Money, Project Fees, Receipts and Authorised Investments.

Compliance plan

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

Interest in land

22. Growers have entered into a Lease or Sub-Lease Agreement with the Lessor, KI Plantations Ltd. Growers have an interest in land in the form of a lease or sub-lease to use their Woodlot(s) for the purpose of conducting their afforestation business (cl 2.1). All Growers must pay rent to the Lessor.

23. The 2000 Growers have paid rent in advance on application until 30 June 2011. The 2002 Growers have paid rent in advance on application until 30 June 2013. These amounts have been placed in a trust bank account. The Responsible Entity will direct the Custodian to pay the yearly rent which the Grower is liable to pay under the Lease or Sub-Lease Agreement. For the 2000 Growers the rent payable for the period 1 July 2011 to 30 June 2013 will be paid out of net sale proceeds.

Project Operations Agreements

24. Each Grower has entered into a Project Operations Agreement with the Responsible Entity. Growers contract with the Responsible Entity to establish and maintain the plantation until maturity

25. The Management fees payable for the 2002 Growers have been paid in advance at the time of application. For the 2000 Growers only the management fees from commencement to 30 June 2011 have been prepaid. The management fees payable by the 2000 Growers for the period 1 July 2011 to 30 June 2013 will be paid out of net sale proceeds. The Responsible Entity will direct the Custodian to pay the management fees, which the Grower is liable to pay under the Project Operations Agreement to the Responsible Entity.

26. The Responsible Entity will perform the following services under the Agreement:

- manage, maintain and cultivate the Woodlots, including watering, weeding, pruning, selecting, procuring, and applying appropriate fertilisers, nutrients and herbicides and doing all things necessary for the purpose of maintaining and cultivating the Woodlots in accordance with good and proper silvicultural practices;
- procure the use of all necessary plant, equipment, machinery, goods and materials for the purposes of performing the management services including suitable irrigation, fencing, drainage and shelter the trees and any other necessary fixtures required for the purposes of performing the management services;
- keep each Woodlot free of competitive weeds, vermin, noxious animals and insects;
- maintain the Woodlot according to good silvicultural and forestry practices; and
- harvest remove, mill, market and sell the timber on behalf of the Grower (unless the Grower has elected to sell their own timber).

27. The Responsible Entity will determine the appropriate time to harvest the trees having regard to sound forestry practice (cl 8.2). The Responsible Entity will harvest and sell the timber produce on the Growers' behalf at the highest price practicable (cl 9.2). Growers may have elected to take their own timber produce (cl 10.1).

Management Agreement

28. Under the Management Agreement WRF Kangaroo Island Plantations 2002, the Responsible Entity has sub-contacted its obligations under the Project Operations Agreements to WRF Forestry Limited, as Manager. The Project Operations Agreement and the Management Agreement WRF Kangaroo Island Plantations 2002 replace the former Management Agreement entered into by the Grower, the Responsible Entity and the former Manager, WRF Management Ltd.

Planting

29. The previous Manager, WRF Management Ltd, has planted *Eucalyptus globulus* trees on the Woodlots. The trees have been planted on the Woodlots within the timeframes specified in the schedules to the relevant Project Operations Agreements. The Responsible Entity will maintain the trees in accordance with good silvicultural practice. The services to be provided by the Responsible Entity over the term of the Project are outlined in the Schedule to the Project Operations Agreement for 2000 Growers and the Project Operations Agreement for 2002 Growers.

Fees

30. The management fees and rent payable by the 2002 Growers have been paid in advance at the time of application. For the 2000 Growers only the management fees and rent from commencement to 30 June 2011 have been prepaid. The management fees and rent payable by the 2000 Growers for the period 1 July 2011 to 30 June 2013 will be paid out of net sale proceeds.

31. The prepaid management fees and rent are banked in the Application Fund trust bank account formed under the Projects Constitution (cl 3.7 of the Amended Constitution). The Responsible Entity will direct the Custodian to pay the management fees and rent year from the trust bank account after the Responsible Entity has given an estimate of the fees required for the following 12 months (cl 12 of the Amended Constitution). If for any reason the Project is terminated prior to completion, the Responsible Entity shall refund the balance of the Project Fees to each Grower, including interest accrued, which have been paid in advance, after deducting any amounts due and payable by the Grower. This refund will occur on 30 June following the date of termination (cl 10.4 of the Amended Constitution).

32. The following management fees are payable by the 2000 Growers:

- for the period 1 July 2002 to 30 June 2003 a management fee of \$72, increased by the greater of the aggregate increase in the CPI in the previous year or 3%, was payable by 1 July 2002;
- for each year thereafter a management fee of \$72, increased by the greater of the aggregate increase in the CPI in the previous year or 3%, is payable on 1 July of each year; and
- for the period 1 July 2011 to 30 June 2013 the management fees payable will be paid out of net sale proceeds.

33. The following management fees are payable by the 2002 Growers:

- for 2002 Growers who commenced participation in the Project prior to 30 June 2001 a management fee of \$148.50 was payable in advance on 30 June 2002 for services to be performed during the period 1 July 2002 to 30 June 2003;
- for 2002 Growers who commenced participation in the Project after 30 June 2001, a management fee of \$682 was payable in advance on 30 June 2002 for services to be performed during the period 1 July 2002 to 30 June 2003; and
- for each year thereafter, an amount of \$148.50, increased from 1 July 2003 by the greater of the aggregate increase in the CPI in the previous year or 3%, is payable in advance on 30 June of the preceding year.

34. The following amounts of rent are payable by the 2000 Growers:

- for the period 1 July 2002 to 30 June 2003 \$33, increased by the greater of the aggregate increase in the CPI in the previous year or 3%, was payable on 1 July 2002; and
- for each year thereafter, \$33, increased by the greater of the aggregate increase in the CPI in the previous year or 3%, is payable on 1 July of each year.

35. The following amounts of rent are payable by 2002 Growers:
- For 2002 Growers who commenced participation in the Project prior to 30 June 2001 \$36.30, increased by the greater of the aggregate increase in the CPI in the previous year or 3%, was payable on 30 June 2002;
 - For 2002 Growers who commenced participation in the Project after 30 June 2001 \$36.30 was payable on 30 June 2002; and
 - For each year thereafter, \$36.30, increased by the greater of the aggregate increase in the CPI in the previous year or 3%, is payable in advance on 30 June of the preceding year.

36. Before harvest, the Grower must pay to the Responsible Entity a harvest fee, equal to the amount stated on the Harvesting Quote. The Harvesting Quote will be provided to the Growers 3 months prior to harvesting taking place (cl 8 of the Project Operations Agreement for 2000 Growers and the Project Operations Agreement for 2002 Growers). After harvest, Growers must pay the Responsible Entity a Co-ordination fee of 5.5% of the Net Sale Proceeds (cl 4.1 of the Project Operations Agreement for 2000 Growers and the Project Operations Agreement for 2002 Growers). These amounts will be withheld by the Responsible Entity from the Growers' Gross Sale Proceeds before the Net Sale Proceeds are distributed to the Growers.

Finance

37. Growers have funded their investment themselves, or borrowed from an independent lender.
38. This Ruling does not apply if a Grower has entered into a finance agreement that includes or has any of the following features:
- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
 - there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
 - 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
 - the loan or rate of interest is non-arm's length;
 - repayments of the principal and payments of interest are linked to the derivation of income from the Project;

- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Continuing application of previous Product Rulings

39. The tax benefits set out in Product Rulings PR 2000/31, PR 2001/19, PR 2001/71, PR 2001/142 and PR 2002/64 continue to apply to participants who are within the specified class of persons to which the Rulings applied and who entered into the specified arrangement between 5 April 2000 and 30 June 2002.

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

Section 35-55 – Commissioner’s discretion

40. For a Grower who is an individual and who is participating in the Project during 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 2003 to 30 June 2012 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.

41. 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 47 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)).

42. 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.

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

Explanation

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

44. 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.

45. 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.

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46. 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.

47. 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.

48. 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).

49. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum allocation of one Woodlot in the Project is unlikely to have their activity pass one of the tests. Growers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in the income year ended 30 June 2013.

50. 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.

51. 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.

52. Information provided with this Product Ruling indicates that a Grower who acquires the minimum investment of one Woodlot in the Project is expected to be carrying on a business activity that will either pass one of the tests or produce a taxation profit in the income year ended 30 June 2013.

53. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2012.

54. The applicant has stated that the business activity comprised by a Grower’s involvement in this Project has started to be carried on, and will continue to be carried on in a manner that is not materially different to that described in the arrangement that is set out in paragraphs 14 to 38 of this Ruling. If, however, the Project is not carried on during the income years specified above (see paragraph 40), in the manner described in the arrangement, this Ruling may be affected. Specifically, the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

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

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

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

Detailed contents list

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Commissioner of Taxation

 25 June 2003

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| <i>Previous draft:</i> | - ITAA 1997 35-10(3) |
| Not previously released in draft form | - ITAA 1997 35-10(4) |
| | - ITAA 1997 35-30 |
| <i>Related Rulings/Determinations:</i> | - ITAA 1997 35-35 |
| TR 92/1; TR 92/20; TD 93/34; | - ITAA 1997 35-40 |
| TR 97/16; TR 98/22; PR 1999/95; | - ITAA 1997 35-45 |
| PR 2000/31; PR 2001/71; | - ITAA 1997 35-55 |
| PR 2001/142; PR 2002/64 | - ITAA 1997 35-55(1) |
| | - ITAA 1997 35-55(1)(a) |
| | - ITAA 1997 35-55(1)(b) |
| <i>Legislative references:</i> | - TAA 1953 Part IVAAA |
| - ITAA 1936 Part IVA | - Copyright Act 1968 |
| - ITAA 1936 82KL | - Corporations Act 2001 |
| - ITAA 1997 Div 35 | |
| - ITAA 1997 35-10 | |
| - ITAA 1997 35-10(2) | |

ATO references

NO: T2002/000601

ISSN: 1442-1162