PR 2003/69 - Income tax: Rewards Group Premium Vineyards Project 2

Product Ruling
Income tax: Rewards Group Premium Vineyards Project 2

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Preamble

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

No guarantee of commercial success

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

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

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

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

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the 'Rewards Group Premium Vineyard Project 2' 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 40 (ITAA 1997);
- Division 70 (ITAA 1997);
- Division 328 (ITAA 1997);
- Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- Section 82KZL (ITAA 1936);
- Section 82KZME (ITAA 1936);
- Section 82KZMF (ITAA 1936); and
- Part IVA (ITAA 1936).

Goods and Services Tax

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

Changes in the Law

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

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

Note to promoters and advisers

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

Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e. being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling each of these persons referred to as 'Growers', will be wholesale clients for the purpose of the *Corporations Act 2001* or will have accepted an offer which qualifies as a small scale offer for the purposes 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.

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 26 November 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 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 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 person's involvement in the arrangement.

Arrangement

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

- Application for Product Ruling received 28 October 2003 and further correspondence, including emails, received 28 October, 5 November, 6 November, 13 November and 17 November 2003;
- The Rewards Group Premium Vineyard Project 2 draft Information Memorandum, undated, received 28 October 2003;
- **Draft Constitution for the Rewards Group Premium Vineyard Project 2, received 6 November 2003**;
- **Draft Management Agreement for the Rewards Group Premium Vineyard Project 2,** between Rewards Projects Ltd (the 'Responsible Entity') and the Grower, undated, received 6 November 2003;
- **Draft Sub-lease for the Rewards Group Premium Vineyard Project 2** between Rewards Projects Ltd [the 'Lessor'] and the Grower, undated, received 5 November 2003;
- Compliance Plan for the Rewards Group Premium Vineyard Project 2, undated, received 28 October 2003;
- Management Plan for Premium Vineyard Project 2, undated, received 5 November 2003;
- Lease Agreement for the Rewards Group Premium Vineyard Project 2 between Pemberton Premium Vineyard Land Pty Ltd and Rewards Projects Ltd ('Manager'), undated, received 5 November 2003;
- **Terms Agreement between Rewards Projects Ltd ('Responsible Entity') and the Grower;**
- Operations Agreement for the Rewards Group Premium Vineyard Project 2 between Rewards Projects Ltd and Rewards Management Pty Ltd received 6 November 2003; and
- Contract for Field Management and Supervisory Services for Premium Vineyard Project 2 between Rewards Management Pty Ltd and Gridline Holdings Pty Ltd undated, received 5 November 2003;

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

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

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

Overview

17. This arrangement is called the Rewards Group Premium Vineyards Project 2.

Location	North of Pemberton in the South West Region of Western Australia
Type of business each participant is carrying on	A commercial viticulture business
Number of hectares under cultivation	50 hectares
Size of each Grove	1 hectare
Minimum Subscription	35 groves
Number of vines per hectare	1,666
The term of the investment	21 years
Initial cost	$33 000
Initial cost per hectare	$33 000
Ongoing costs	Once only Planting Services Fee of $330 payable 1 October 2004. Rent of $1870 indexed after 1 July 2006 Management Services Fee, indexed after 1 July 2006. Marketing Fee payable out of net harvest proceeds. Performance Fee payable out of net harvest proceeds after taking into account the Marketing Fee, Rent and the Management Services Fee.

The Project

18. Rewards Projects Ltd (Responsible Entity) has identified suitable sites for the Project near Pemberton in the South West of Western Australia. The sites were identified using Rewards Projects Ltd site selection criteria and site evaluation procedure. When the Project commences and the land requirements are known, Rewards Projects Ltd will acquire leasehold.

19. This offer pertains to 50 Groves of one hectare each. There is a minimum subscription of 35 Groves for this Project. This offer is made under an Information Memorandum to 'wholesale' clients only (see paragraph 72). Under this offer, Growers may enter the Project in the 2004 income year only. Applications will only be accepted by the Responsible Entity if lodged before 28 February 2004.

20. Growers participating in the arrangement will enter into a Sub Lease with Rewards Projects Ltd. Under this Agreement, Growers lease an area of land called a 'Grove' for a term of approximately 21 years for the purpose of viticulture. Each Grove will be planted with 1,666 vine rootlings.

21. The Growers will also enter into a Management Agreement with Rewards Projects Ltd (for the management of their Grove. Rewards Projects Ltd will engage Rewards Management Pty Ltd (The Manager) to manage the Groves. The Manager will be responsible for establishing and cultivating the vineyard. Growers may elect to harvest and sell their own grapes where they notify the Responsible Entity in writing by 30 June 2004. Alternatively, the Responsible Entity will harvest and sell the grapes on their behalf. Harvests are expected to take place in every year starting in the second year of the project.

22. Growers will only be accepted by paying Subscription Monies to the Responsible Entity in full or by instalments under a Terms Payment Option offered by the Responsible Entity. Growers will execute a Power of Attorney enabling the Responsible Entity to act on their behalf as required when they make an application for a Grove. This will include the execution of the Sub-Lease and the Management Agreements.

Constitution

23. The Constitution establishes the Project and operates as a deed binding on all of the Growers and Rewards Projects Ltd as the Responsible Entity. The Constitution sets out the terms and conditions under which Rewards Projects Ltd agrees to act as the Responsible Entity for the Project. Growers are bound by the Constitution by virtue of their participation in the Project.

24. Under the terms of the Constitution, all monies received from Growers on application shall be paid to the Responsible Entity, which shall deposit those moneys into an application fund. The application monies will be released when the Responsible Entity is reasonably satisfied that certain specified criteria in the Constitution have been met (clause 3.3).

Interest in land

25. Rewards Projects Ltd, the Lessor, grants a sub-lease to the Grower under the terms of the Sub-Lease Agreement (clause 2). Growers are granted an interest in land in the form of a sub-lease to use their Groves for carrying on a business of cultivating vines and harvesting grapes (Recital B). Growers must pay rent annually to the Lessor. Growers must pay rent to the Lessor of $935 per Grove on application and $1,870 on 1 October each year thereafter indexed at 2.8% annually commencing in the year ended 30 June 2007. The term of a Grower's sub-lease is for a period of 21 years or such longer term agreed between the parties to allow final harvest.

Management Agreement

26. Each Grower enters into a Management Agreement with the Responsible Entity. The term of the Project is until completion of the final harvest in 21 years time, payment of proceeds from the final harvest and the dispatch of all accounts and reports in relation thereto as provided in the Management Agreement or otherwise required.

27. Growers contract with the Responsible Entity to supervise, carry out, manage, and administer the cultivation of vines and harvesting of grapes. Growers pay a Management Services Fee for each Grove on application for the 'initial period'. An annual Management Services Fee is payable each year thereafter. The Responsible Entity may engage a third party to perform its duties under this agreement. (clause 2.4)

28. The Responsible Entity will provide the following services during the initial period:

- supply suitable rootlings;
- prepare the land for planting;
- erect trellising;
- install the irrigation system;
- undertake initial landcare operations;
- supervise and secure management of all works on the vineyard; and

- carry out supervision, monitoring and inspection of irrigation infrastructure and sprinklers as considered necessary for the efficient supply of water.

29. The Responsible Entity will perform the following ongoing services under this agreement:

- cultivate and maintain the vines on the Groves in a proper and skilful manner pursuant to the Management Plan;
- take any necessary steps to prevent or combat land degradation in relation to the Groves;
- tend to the vines according to the principles of sound viticulture practice, including such nutrient analysis, pruning, irrigating, fertilising and fumigating as the Responsible Entity deems appropriate;
- in the two years following planting, conduct survival counts and where necessary replant vines;
- undertake such operations as may be reasonably required to prevent or combat land degradation in relation to the Groves; and
- do such things as may reasonably be required to eradicate, exterminate and keep the Groves and the land free from disease, vermin, noxious weeds, rabbits, kangaroos, insect pests and all other pests.

30. Growers may elect, on or before 30 June 2004, to harvest and sell the grapes from their Groves (clause 8.1). However, where Growers do not elect, the Responsible Entity will harvest as and when deemed appropriate with the aim to product the best overall result for the Grower (clause 6.1). The Responsible Entity will use its best endeavours to negotiate the sale of grapes for the highest price practicable (clause 7.2). The Responsible Entity will be responsible for the cost of public risk insurance and can arrange additional insurance on behalf of the Grower, if requested, at the Growers expense.

Operations Agreement

31. Responsible Entity engages the Manager to perform the Responsible Entities obligations under the Management Agreement by execution of the Operations Agreement.

Fees

32. The fee payable on application for the initial period is $33,000 per Grove consisting of a Management Services Fee of $19,071, Rent of $935 and a Planting Services Fee of $12,994 for services to be performed during the period from the date of allotment until 30 June 2004.

33. A Management Services Fee of $8,223 per Grove is payable on or before 1 October 2004 for services to be provided during the period 1 July 2004 until 30 June 2005.

34. An ongoing Management Services Fee of $7,817 per Grove is payable on or before 1 October 2005 for the period from 1 July 2005 to 30 June 2006. The $7,817 (indexed at 2.8%) is payable for each year thereafter for the term of the Project on or before 1 October in each respective financial year.

35. A further Planting Services Fee of $330 is also payable on or before 1 October 2004. This fee is for services to be provided during the period from 1 July 2004 to 30 June 2005.

36. Rent of $935 per Grove is payable on application for the initial period. For each year thereafter Rent of $1,870 is payable on 1 October of the relevant year. This amount will be indexed at 2.8% commencing the year ended 30 June 2007.

37. Each Grower must pay a Marketing Fee equal to 11% of the Grower's share of the sale proceeds of each Harvest after deducting the harvest costs (Item 4, Schedule to the Management Agreement). The Responsible Entity will also be entitled to a Performance Fee equal to 22% of the Grower's share of the sales proceeds after deducting the harvest costs, Marketing Fee, Management Services Fee and Rent.

38. The Application Monies will be banked in the Subscription Fund bank account formed under the Project's Constitution (clause 8.2 of the Constitution).

Payment of Fees

39. Under the Information Memorandum, the Responsible Entity is offering Terms Payment Options in respect of the initial amount payable (refer to paragraph 32 above). The following options are available:

Cash Option

- $33,000 per Grove payable on application for the initial period, consisting of a Management Services Fee of $19,071, Rent of $935 and a Planting Services Fee of $12,994.

1 Year Term Payment Option

- deposit of $3,300 payable on application; and
- $29,800 per Grove payable in 12 equal monthly instalments (interest free) of $2,483.33.

2 Year Term Payment Option

- deposit of $3,300 payable on application; and
- $33,168.24 per Grove payable in 24 equal monthly instalments (including interest calculated at 10.5% per annum) of $1,382.01.

5 Year Term Payment Option

- deposit of $3,300 payable on application; and
- $38,431.20 per Grove payable in 60 equal monthly instalments (including interest calculated at 10.5% per annum) of $640.52.

7 Year Term Payment Option

- deposit of $3,300 payable on application; and
- $42,205.80 per Grove payable in 84 equal monthly instalments (including interest calculated at 10.5% per annum) of $502.45.

7 Year Term Payment Option (3 Year Interest Only)

- deposit of $3,300 payable on application; and
- $46,001.04 per Grove payable initially in 36 monthly instalments of $260.75. Thereafter, 48 monthly instalments of $762.98. Both amounts include interest calculated at 10.5% per annum

40. The total amount payable under each of the Terms Payment Options includes an Application Fee of $100 per Grove.

41. The Rewards Group closely monitors the level of terms applications to ensure that immediate cash flow received is in excess of amounts required to fund the work to be undertaken. The Responsible Entity will monitor the level of applications received under each of the Terms Payment Options and is not obliged to accept Terms Payment applications. A limit will be imposed on the number of applications that can be accepted under each instalment option.

Terms Agreement

42. If a Grower chooses to pay under one of the Terms Payment Options, they must complete a Terms Application and Direct Debit Request. A Terms Agreement will be executed by the Responsible Entity.

43. The monthly instalments are paid by direct debit commencing on the last business day of the first month following allotment. If a Grower does not pay the required instalments under the Terms Payment Option, then provided Rewards Projects Ltd has given the Grower 14 days written notice to remedy the default and payment has still not been made, the balance owing under the Terms Payment Option will become immediately due and payable. In addition, Rewards Projects Ltd may take legal proceedings to recover the amount, resume all rights and interest which the Grower has in their Grove(s), or do anything which an owner of the Grove(s) is entitled to do (clause 5.2 of the Terms Agreement).

Planting

44. Under the Management Agreement, the Responsible Entity will prepare the land for planting and supply the necessary rootlings. The Responsible Entity will be responsible for planting the rootlings on the Groves by 30 August 2004. Each Grove will be planted with rootlings at a rate of 1,666 vines per hectare. The Responsible Entity will, in the two years following planting, conduct survival counts and where necessary replant vines (Annexure A to the Management Agreement). The services to be provided by the Responsible Entity over the Term of the Project are outlined in the Management Agreement (Annexures A and B).

Cultivation and Harvesting

45. Growers may elect, by notice in writing to the Responsible Entity on or before 30 June 2004, to harvest and sell their own grapes (clause 8.1 of the Management Agreement). This Product Ruling does not apply to Growers who make such an election.

46. If no such election is made, the Grower appoints the Responsible Entity to negotiate the sale of harvested grapes (clause 7.1 of the Management Agreement). The Responsible Entity will use its best endeavours to negotiate the sale of the grapes for the highest price practicable having regard to the circumstances at the time.

47. The Receipts from the sale of the grapes by the Responsible Entity will be paid into the Proceeds Fund bank account. Proceeds received by the Responsible Entity are to be distributed in the following order of priority:

- to pay the Grower's share of the costs of the harvest and sale (unless the Grower has made an election to sell their fruit under the Management Agreement);
- to pay to the Responsible Entity any outstanding Project Fees or other fees, costs, interest or taxes owing by the Grower to the Responsible Entity under the Constitution;
- to pay to the Responsible Entity a reasonable estimate of the following 12 months estimated project fees that may be required;
- to pay to the Responsible Entity any amount owing by the Grower to the Responsible Entity under the Management Agreement;
- to pay to the Lessor any outstanding amount owing by the Grower to the Lessor under the Lease; and
- the balance to the Growers provided that if the aggregate sum to be distributed to all of the Growers is less than $1,000, then, at the discretion of the Responsible Entity, distribution to Growers may be postponed (clause 11.1 of the Constitution).

Finance

48. Growers can fund their investment in the Project themselves or borrow from an independent lender.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;

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

Ruling

Application of this Ruling

50. This Ruling applies only to Growers who are accepted to participate in the Project on or before 28 February 2004 and who have executed a Management Agreement and a Sub-Lease Agreement by that date.

This Ruling does not apply to Growers who elect to harvest and market their own grapes from their Grove(s).

Minimum Subscription

51. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the Information Memorandum, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 35 interests is achieved.

The Simplified Tax System ('STS')

Division 328

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

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

Qualification

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

Tax outcomes for Growers who are not 'STS taxpayers'

Assessable Income

Section 6-5

54. 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.

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

Deductions for Management Fees, Rent and Interest

Section 8-1

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

Fee Type	ITAA 1997 Section	Deduction Year ended 30/6/2004	Deduction Year ended 30/6/2005	Deduction Year ended 30/6/2006
Manage – ment Fee	8-1	$19,071 – See Note (i) (below)	$8,223 – See Notes (i) & (ii) (below)	$7,817 – See Notes (i) & (ii) (below)
Rent	8-1	$935 – See Note (i) (below)	$1,870 – See Notes (i) & (ii) (below)	$1,870 – See Notes (i) & (ii) (below)
Interest (Terms Payment Options only)	8-1	As incurred – See Note (iii) (below)	As incurred – See Note (iii) (below)	As incurred – See Note (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 1 at paragraph 134.

(ii) The Management Services Fee, Planting Services Fee and the Rent shown in the Management Agreement and the Sub-Lease are deductible in full in the year that they are incurred. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees (see paragraphs 101 to 108). In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 107 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000.

(iii) Interest payable under either the 2, 5 or 7 Year Terms Payment Option will be deductible when incurred.

Deductions for capital expenditure

Division 40

57. A Grower who is not an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (e.g. irrigation), a 'landcare operation' and grapevines. All deductions shown in the following Table are determined under Division 40.

Fee type	ITAA 1997 section	Deduction Year ended 30 June 2004	Deduction Year ended 30 June 2005	Deduction Year ended 30 June 2006
Trellising	40-25	Must be calculated – See Notes (iv) and (v) (below)	Must be calculated – See Notes (iv) and (v) (below)	Must be calculated – See Notes (iv) and (v) (below)

Water facility (e.g. irrigation, dam, bore, etc)	40-515	$1,650 - see Notes (iv) & (vi) (below)	$1,650 - see Notes (iv) & (vi) (below)	$1,650 - see Notes (iv) & (vi) (below)
Landcare operations	40-630	$268 - see Notes (iv) & (vii) (below)		
Establishment of horticultural plants (grapevines)	40-515	Nil - see Notes (iv) & (viii) (below)	Nil - see Notes (iv) & (viii) (below)	Nil - see Notes (iv) & (viii) (below) Must be calculated for the year ended 30 June 2007 onwards

Notes:

(iv) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 134.

(v) Trellising is a 'depreciating asset'. Each Grower's interest in the trellising is a 'depreciating asset'. The 'cost' of the asset is the amount paid by each Grower. The decline in value of the asset is calculated using the formula in either subsection 40-70(1) ('diminishing value method') or subsection 40-75(1) ('prime cost method'). Both formulas rely on the 'effective life' of the trellising. Growers can either self-assess the 'effective life' (section 40-105) or use the Commissioner's determination of 'effective life' (section 40-100). The Commissioner has determined that trellising has an 'effective life' of 20 years. Trellising will be installed and first used during the year ended 30 June 2004. The Responsible Entity will advise Growers when that occurs to enable Growers to calculate the deduction for the decline in value.

(vi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation

of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).

(vii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630.

(viii) As grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4 year write-off under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a sub-lease, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Growers of when the grapevines enter their first commercial season.

Tax outcomes for Growers who are 'STS taxpayers'

Assessable Income

Section 6-5 and section 328-105

58. 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.

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

Deductions for Management Fees and Rent

Section 8-1 and section 328-105

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

Fee Type	ITAA 1997 Sections	Deduction Year ended 30/6/2004	Deduction Year ended 30/6/2005	Deduction Year ended 30/6/2006
Manage-ment Fee	8-1 & 328-105	See Notes (ix), (x) & (xi) (below)	See Notes (ix), (x), (xi) & (xii) (below)	$6,255 – See Notes (ix), (x), (xi), & (xii) (below)
Rent	8-1 & 328-105	See Notes (ix), (x) & (xi) (below)	See Notes (ix), (x), (xi) & (xii) (below)	$1,540 - See Notes (ix), (x), (xi) & (xii) (below)
Interest (Terms Payment Options only)	8-1 & 328-105	When Paid - See Note (xiii) (below)	When Paid - See Note (xiii) (below)	When Paid - See Note (xiii) (below)

Notes:

(ix) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See Example 1 at paragraph 134.

(x) If a Grower who is an 'STS taxpayer' chooses to pay the Year 1 Management Services Fee and Rent by the cash option, then these amounts should be fully paid in the year in which they are incurred. Therefore, the Management Services Fee of $19,071, the Planting Services Fee of $12,994 and Rent of $935 will be deductible in Year 1 as it is fully paid in the year in which it is incurred.

If a Grower who is an 'STS taxpayer' chooses to pay the Year 1 Management Services Fees, Planting Services Fee and Rent by any of the Terms Payment Options, then the amounts described above will not be fully paid in the in which they are incurred. The Management Services Fee, Planting Services Fee and Rent are 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 which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

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

(xii) Where a Grower who is an 'STS taxpayer', pays the Management Services Fee, Planting Services Fee and the Rent in the relevant income years shown in the Management Agreement and Sub-Lease, those fees are deductible in full in the year that they are paid. However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 101 to 108) . In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 107, 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.

(xiii) Interest payable under either the 2, 5 or 7 Year Terms Payment Options will be deductible when paid.

Deductions for capital expenditure

Subdivision 328-D and Subdivisions 40-F and 40-G

61. A Grower who is an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (e.g. irrigation), a 'landcare operation' and grapevines. Deductions relating to the 'cost' of trellising must be determined under Division 328. An 'STS taxpayer' may claim deductions in relation to water facilities under Subdivision 40-F and in relation to a 'landcare operation' under Subdivision 40-G. If the 'water facility' or 'landcare operation' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F.

62. The deductions shown in the following table assume, for representative purposes only, that a Grower has either chosen to or can only claim deductions for expenditure on water facilities or a 'landcare operation' under Subdivisions 40-F or 40-G and not under Division 328. If the expenditure has been incurred on 'depreciating assets' and is claimed under Division 328, the deduction is determined as discussed in Notes (xv) and (xvii).

63. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than $1000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

Fee Type	**ITAA 1997 section**	**Deduction Year ended 30 June 2004**	**Deduction Year ended 30 June 2005**	**Deduction Year ended 30 June 2006**
Trellising	328-185 & 328-190	$793 – See Notes (xiv) & (xv) below	$1,348 – See Notes (xiv) & (xv) below	$943 - See Notes (xiv) & (xv) below
Water facility (e.g., irrigation, dam, bore, etc)	40-515	$1,833 – See Notes (xiv) & (xvi) (below)	$1,833 – See Notes (xiv) & (xvi) (below)	$1,833 – See Notes (xiv) & (xvi) (below)
Landcare operations	40-630	$275 – See Notes (xiv) & (xvii) (below)		
Establishment of horticultural plants (grapevines)	40-515	Nil – See Notes (xiv) & (xviii) (below)	Nil - See Notes (xiv) & (xviii) (below)	Amount must be calculated – See Notes (xiv) & (xviii) (below)

Notes:

(xiv) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 134.

(xv) Trellising is a 'depreciating asset'. Each Grower's interest in the trellising is a 'depreciating asset' which can be allocated to a 'general STS pool'. The 'cost' of

the asset is the amount paid by each Grower. The tax deduction allowable is determined in the year ended 30 June 2004 by multiplying the 'cost' of the interest by half the 'general STS pool rate, i.e. by 15%. Each Grower's interest in the trellising is allocated to their 'general STS pool' at the end of the year ended 30 June 2004 and that part of the 'cost' not deducted in the first year is added to the pool balance. In subsequent years, the full pool rate of 30% will apply.

(xvi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than $1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2004 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).

(xvii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division

328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Grower's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than $1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G.

(xviii) As grapevines are affixed to land which the Grower does not own, they are not owned by the Grower, the conditions in subsection 40-525(3) cannot be met, and the grapevines are not eligible for the 4 year write-off under section 40-550. However, grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a sub-lease, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Grower that is attributable to their establishment. If the grapevines have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the grapevines enter their first commercial season (section 40-530(2)). The Project Responsible Entity will inform Growers of when the grapevines enter their first commercial season.

Tax outcomes that apply to all Growers

Interest

64. The deductibility or otherwise incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier, other than the Terms Payment Options offered by Rewards Projects Ltd, 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 101 to 108 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

65. For a Grower who is an individual and who has not made an election under clause 8 of the Management Agreement and who enters the Project during the year ended 30 June 2004, the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project.

66. Provided that the Project is carried out in the manner described in this Ruling, a Grower who is an **not STS taxpayer** will have the discretion exercised as follows:

- If you pay the initial fee **up front in full**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee by the **one year Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee up front by the **two year Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee up front by the **five year Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income

years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;

- If you pay the initial fee up front by the **seven year principal and interest Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2008, the rule in section 35-10 does not apply to this business activity; and
- If you pay the initial fee up front by the **seven year (3 year interest only) Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2008, the rule in section 35-10 does not apply to this business activity.

67. Provided that the Project is carried out in the manner described in this Ruling, a Grower who is an **STS taxpayer** will have the discretion exercised as follows:

- If you pay the initial fee **up front in full**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee by the **one year Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee up front by the **two year Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2007, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee by the **five year Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2008, the rule in section 35-10 does not apply to this business activity;
- If you pay the initial fee by the **seven year principal and interest Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2009, the rule in section 35-10 does not apply to this business activity; and

- If you pay the initial fee by the **seven year (3 Years interest only) Terms Payment Option**, the Commissioner will decide under paragraph 35-55(1)(b) that, for the income years ending 30 June 2004 to 30 June 2009, the rule in section 35-10 does not apply to this business activity.

68. 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 122 in the Explanations part of this ruling, below);
- a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- the Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

69. 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.

70. 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.

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

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

- expenditure by a Grower does not fall within the scope of sections 82KZME - 82KZMF (but see paragraphs 101 to 108);

- 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.

Explanation

Corporations Act 2001

72. For this Ruling to apply, an offer for an interest in the Project must:

- have been made to, and accepted by a Grower, who qualifies as a wholesale client as defined in section 761G of the *Corporations Act 2001*; or
- be an offer which qualifies as a small scale offering as defined in section 1012E of the *Corporations Act 2001*.

Small scale offers and offers to wholesale clients do not require a prospectus or product disclosure statement.

73. A Grower in the Project may be a person who is a wholesale client within the definition in section 761G. A person will be a wholesale client where the person satisfies one of the following tests :

- the 'product value test' (paragraph 761G(7)(a));
- the 'individual wealth test' (paragraph 761G(7)(c));
- the 'professional investor test' (paragraph 761G(7)(d)).

74. A participant in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will satisfy the 'product value test' 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; or
- 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.

75. A participant in a managed investment scheme, referred to below as 'the person' or the 'the person to whom the offer is made', will satisfy the 'individual wealth test' where, 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:

- has net assets of at least $2.5 million; or
- has a gross income for each of the last two financial years of at least $250,000 a year.

76. A participant in a managed investment scheme, referred to below as 'the person' or 'the person to whom the offer is made', will satisfy the 'professional investor test' where:

- the person is a financial services licensee, or;
- the person controls at lease $10 million for the purposes of investment in securities.

77. Alternatively, under section 1012E, a Grower may participate in the Project by accepting a 'personal offer' for the interest in the Project. Offers made under section 1012E cannot be accepted by more than 20 investors in any 12 month period and these investors, in aggregate, not must invest more than $2 million (subsection 1012E(2)).

78. 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 1012E(5)).

Is the Grower carrying on a business?

79. For the amounts set out in the Tables above to constitute allowable deductions, the Grower's viticulture activities as a participant in the Rewards Group Premium Vineyard Project 2 must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

80. For schemes such as that of the Rewards Group Premium Vineyard Project 2, 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 *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

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

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's vines are established;

- the Grower has a right to harvest and sell the grapes each year from those vines;
- the viticulture activities are carried out on the Grower's behalf;
- the viticulture activities of the Grower are typical of those associated with a viticulture business; and
- the weight and influence of general indicators point to the carrying on of a business.

82. In this Project, each Grower enters into a Management Agreement and a Sub-Lease.

83. Under the Sub-Lease, each individual Grower will have rights over a specific and identifiable area of land (Groves). The Sub-Lease provides the Grower with an ongoing interest in the specific vines on the Groves for the term of the Project. Under the Sub-Lease the Grower must use the Groves in question for the purpose of carrying out viticultural activities and for no other purpose. The Sub-Lease allows the Responsible Entity to come onto the land to carry out its obligations under the Management Agreement.

84. Under the Management Agreement the Responsible Entity is engaged by the Grower to maintain the vines on the Grower's Groves during the term of the Project. The Responsible Entity and the Manager have provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the Grove on the Grower's behalf.

85. The Grower engages the Responsible Entity to maintain the vines on the Groves according to the principles of sound viticulture practice which includes irrigation, fertilisation, weed control and pruning. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the grapes grown on the Grower's Grove.

86. 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.

87. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable forecasts, a Grower in the Project may derive assessable income from the sale of its grapes that may 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.

88. The pooling of grapes grown on the Grower's Grove with the grapes of other Growers is consistent with general viticulture practices. Each Grower's proportionate share of the sale proceeds of the pooled grapes will reflect the proportion of the grapes contributed from their Grove.

89. The Responsible Entities services are consistent with general viticulture practices. While the size of a Grove is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling TR 2000/8).

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

91. The viticulture 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' viticulture activities in the Rewards Group Premium Vineyard Project 2 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

92. 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.

93. 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 Services Fee, Planting Services Fee and Rent

Section 8-1

94. Consideration of whether the initial management fees and rent are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;

- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

95. The Management Services Fees and Rent associated with the viticulture activities will relate to the gaining of income from the Grower's business of viticulture, and hence have a sufficient connection to the operations by which income (from the regular sale of grapes) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the Management Services Fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Possible application of prepayment provisions

96. Under the Management Agreement and the Sub-Lease, neither the Management Services Fees nor the Rent are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

97. However, where a Grower chooses to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 101 to 108) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than $1,000.

Timing of deductions

98. In the absence of any application of the prepayment provisions, the timing of deductions for the management fees or the rent will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

99. If the Grower is not an 'STS taxpayer', the management fees and the rent are deductible in the year in which they are incurred.

100. If the Grower is an 'STS taxpayer' the management fees and the rent are deductible in the income year in which they are paid, or are paid for the Grower (paragraph 328-105(1)(b)). If any amount that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid or is paid for the Grower.

Prepayment provisions

Sections 82KZL to 82KZMF

101. 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.

102. For this Project only section 82KZL (an interpretative provision) and sections 82KZME and 82KZMF are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF.

Sections 82KZME and 82KZMF

103. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure

is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).

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

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year;
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either:
  - (a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - (b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

105. 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.

106. 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.

107. 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.

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

108. 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

109. In this Project, an initial management fee of $19,071 per Grove, initial Planting Fee of $12,994 per Grove and initial rent of $935 per Grove will be incurred on the execution of the Management Agreement and Sub-Lease. The Management Services Fee and Rent are charged for providing management services or leasing land to a Grower by 30 June of the year of execution of the Agreements. Under the Agreements further annual expenditure is required each year during the term of the Project for the provision of management services until 30 June in those years.

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

111. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial management fee, and the fees for subsequent years, is for the Responsible Entity doing 'things' that are not to be wholly done within the expenditure year. Under the Sub-Lease, Rent is payable annually for the sub-lease of the land during the expenditure year

112. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraphs 32 to 37, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

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

113. Although not required under either the Management Agreement or the Sub-Lease, a Grower participating in the Project may **choose** to prepay fees for a period beyond the 'expenditure year'. Similarly, Growers who use financiers may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 112 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

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

115. 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.

Expenditure of a capital nature

116. Any part of the expenditure of a Grower that is 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, expenditure attributable to trellising, water facilities, a 'landcare operation', and the establishment of the grapevines is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

117. The application and extent to which a Grower claims deductions under Division 40 and Division 328 depends on whether or not the Grower is an 'STS taxpayer'.

118. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 57 and 63 in the Tables and accompanying notes.

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

119. 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.

120. 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.

121. 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.

122. For the purposes of applying the tests, 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.

123. In broad terms, the tests require:

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

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

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

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

124. 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 investment in the Project of one Grove is unlikely to have their activity pass one of the tests until the income year 30 June 2009. Growers who acquire more than one Grove may however, find that their activity meets one of the tests in an earlier income year.

125. 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.

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

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

(ii) because of its nature, it has not yet met one of the tests set out in Division 35; and

(iii) there is an expectation that the business activity of an individual taxpayer will either pass one of the tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

127. Information provided with this Product Ruling indicates that the following outcomes will occur:

- a **non STS Grower** who acquires the minimum investment of one Grove in the Project and does not use either of the seven year Term Payment Options, is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2008; or
- a **STS Grower** who acquires the minimum investment of one Grove in the Project and does not use the five year or either of the seven year Term Payment Options, is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2008.

The Commissioner will decide for such Growers that it would be reasonable to exercise the second arm of the discretion until the income year ended 30 June 2007.

- a **Grower** who acquires the minimum investment of one Grove in the Project and who is not an 'STS taxpayer' and is paying the Year 1 fee by either of the 7 Year Term Payment Options, is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2009; or
- a **Grower** who acquires the minimum investment of one Grove in the Project and who is an 'STS taxpayer' and is paying the Year 1 fee by the 5 Year Term

Payment Option, is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2009.

The Commissioner will decide for such Growers that it would be reasonable to exercise the second arm of the discretion until the income year ended 30 June 2008.

- a **Grower** who acquires the minimum investment of one Grove in the Project and who is not an 'STS taxpayer' and is paying the Year 1 fee by either of the seven Year Term Payment Options, is expected to be carrying on a business activity that will either pass one of the tests, or produce a taxation profit, for the year ended 30 June 2010.

The Commissioner will decide for such Growers that it would be reasonable to exercise the second arm of the discretion until the income year ended 30 June 2009.

128. 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 65) in the manner described in the Arrangement (see paragraphs 14 to 49). 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.

129. 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:

- additional evidence provided with the application by the Responsible Entity; and
- independent, objective and generally available information relating to the viticulture industry which substantially supports cash flow forecasts and other claims, including prices and costs, as described by the independent experts in the Information Memorandum, and in the Product Ruling application submitted by the Responsible Entity.

Section 82KL

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

Part IVA

131. 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).

132. The Rewards Group Premium Vineyard Project 2 will be a 'scheme' commencing with the issue of the Information Memorandum. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 56 and 60 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

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

Examples

Example 1 - Entitlement to GST input tax credits

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

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

*Taxable supply

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

$$^{1}/_{11} \times \$4,400 = \$400.$$

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:

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

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 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as $4,000 (not $4,400).

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

Detailed contents list

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

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 2000/8; PR 1999/95; TR 92/1; TR 92/20; TR 97/11; TR 97/16; TD 93/34; TR 98/22; TR 2000/8, TR 2001/14

Subject references:

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

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-10(3)
- ITAA 1997 35-10(4)
- ITAA 1997 35-30
- ITAA 1997 35-35
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(a)
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 Subdiv 40-G
- ITAA 1997 40-25
- ITAA 1997 40-70(1)
- ITAA 1997 40-75(1)
- ITAA 1997 40-100
- ITAA 1997 40-105
- ITAA 1997 40-515
- ITAA 1997 40-515(1)(a)
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(1)
- ITAA 1997 40-525(2)
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- ITAA 1997 40-530(2)
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- ITAA 1997 40-540
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- ITAA 1997 40-550
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- ITAA 1997 40-635
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- ITAA 1997 Subdiv 328-D
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- ITAA 1997 328-185
- ITAA 1997 328-190
- ITAA 1936 Pt III – Div 3
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- Copyright Act 1968
- Corporations Act 2001
- Corporations Act 2001 761G
- Corporations Act 2001 761G(7)(a)
- Corporations Act 2001 761G(7)(c)
- Corporations Act 2001 761G(7)(d
- Corporations Act 2001 1012E
- Corporations Act 2001 1012E(2)
- Corporations Act 2001 1012E(5)

Case references:

- Commissioner of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

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