



PR 2004/101 - Income tax: Queensland Paulownia Forests Project No. 8 - Capital Forestry Units (Discounted Fees)

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Product Ruling

Income tax: Queensland Paulownia Forests Project No. 8 – Capital Forestry Units (Discounted Fees)

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Potential participants may wish to refer to the Tax Office website at www.ato.gov.au or contact the Tax Office directly to confirm the currency of this Product Ruling or any other Product Ruling that the Tax Office has issued.

Preamble

*The number, subject heading, **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 Tax Office **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 and how the product fits an existing portfolio. 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 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, 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 Tax Office will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the 'Queensland Paulownia Forests Project No. 8 – Capital Forestry Units' 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 of the ITAA 1997;
 - section 17-5 of the ITAA 1997;
 - Division 27 of the ITAA 1997;
 - Division 35 of the ITAA 1997;
 - Division 328 of the ITAA 1997;
 - section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - sections 82KZME to 82KZMF of the ITAA 1936; and
 - Part IVA of the ITAA 1936.

Goods and Services Tax

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

Changes in the Law

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

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

Note to promoters and advisers

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

Class of persons

7. The class of persons to whom this Ruling applies is the persons more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (that is, being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. This Ruling applies to Unit Holders who meet the requirements set out in section 3 of the Product Disclosure Statement (see paragraph 20). In this Ruling, these persons are referred to as 'Unit Holders'.

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. Similarly, Unit Holders who:

- do not meet the requirements in section 3 of the Product Disclosure Statement; or
- elect to market their own timber,

are also excluded from the class of persons to whom this Ruling applies.

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

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

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2007. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

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

- Application for a Product Ruling from Queensland Paulownia Forests Ltd (QPFL) dated 6 October 2004, constituted by documents provided on 11 November 2003, 2, 16 and 19 December 2003, 13 and 16 February 2004, 25 August 2004, 13, 14 and 22 September 2004 and 6 and 11 October 2004 and additional correspondence dated 6, 9, 13 and 16 February 2004, 23 August 2004, 13, 14, 16, 22, 23 and 24 September 2004, and 6 and 11 October 2004, in respect of Queensland Paulownia Forests Project No. 8 – Capital Forestry Units;
- Draft Product Disclosure Statement issued by QPFL, undated, received in the ATO on 11 October 2004;
- Constitution of Queensland Paulownia Forests Project No. 8 dated 19 December 2003, (the Constitution);
- Draft Supplementary Constitution for Queensland Paulownia Forests Project No.8 dated 1 September 2004;
- Draft Lease between Quality Land Holdings Pty Ltd (Lessor) and QPFL (Lessee), undated, received on 2 December 2003;
- **Draft (5) Farming Agreement between QPFL and the Unit Holder** dated 3 September 2004;
- **Draft (5) Plantation and Maintenance Agreement between QPFL and the Unit Holder** (the Plantation and Maintenance Agreement) dated 3 September 2004;
- Draft Loan Funding Arrangement, Loan Agreement between QPFL and QPFL Finance Pty Ltd, received in the ATO on 22 September 2004; and
- Draft **Loan Agreement** between QPFL Finance Pty Ltd and each Unit Holder received by the ATO on 25 August 2004.

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 Unit Holders may enter into. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Unit Holder, or any associate of a Unit Holder, will be a party to, which are a part of the arrangement. The effect of these agreements is summarised below.

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16. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

17. The salient features of the Queensland Paulownia Forests Project No. 8 are as follows:

Location	Forbes, NSW
Type of business to be carried on by each participant	Commercial growing and cultivation of <i>Paulownia fortunei</i> trees for the purpose of harvesting and selling timber
Number of Allotments on offer	18,000
Minimum number of Allotments per application	479
Number of hectares available	600 hectares
Size of each Allotment	0.03334 hectares
Number of trees per Allotment	10
Incentive fee	Responsible Entity will be entitled to ½ of the amount paid to the Unit Holder over and above the 'Threshold Amount for the Incentive Fee for Timber Income' set out in the Product Disclosure Statement (named Capital Forestry Units).
The term of the investment	The date Harvest and Milling of all Trees has been completed.
Initial cost	\$1,045 per Allotment
Initial cost per hectare	\$31,343
Ongoing costs	Maintenance fees and licence fees deferred until the time of harvest, harvesting, milling, and marketing fees as well as Insurance (where applicable).

18. Under the Product Disclosure Statement (PDS), applicants are invited to participate in the Queensland Paulownia Forests Project No. 8. Unit Holders entering into the Project will enter into the Farming Agreement that gives them a licence over an area of land called an 'Allotment'. The Land Owner (Quality Land Holdings Pty Ltd) leases the land, at Forbes, NSW, to Queensland Paulownia Forests Limited (QPFL), the Responsible Entity, who grants a licence to the Unit Holders. The licence allows the Plantation Manager, QPFL, to come onto the land to carry out its obligations under the Plantation and Maintenance Agreement. QPFL conducts its role as Responsible Entity and advisor under its Australian Financial Services Licence number 222305. QPFL provides agricultural

services to the Project under its role as Plantation Manager. The Unit Holders will also enter into the Plantation and Maintenance Agreement with QPFL to have paulownia trees (*Paulownia fortunei*) planted on the Allotment for the purpose of eventual felling and sale commencing when the Responsible Entity, in conjunction with the Project Forester, determines the Trees are suitable for Harvesting (clause 5.1(a)).

19. There are 18,000 Units on offer of 0.03334 hectares each at a cost of \$1,045 per Unit. The total land area for the Project will be 600 hectares. A minimum of 10 trees per Allotment (300 per hectare) will be planted within the first 12 months following execution of the Plantation and Maintenance Agreement.

Discounted fees

20. Under Section 3 of the PDS, Unit Holders who acquire Units in the Project to the value of at least \$500,000 will pay fees at a discounted rate under the Farming Agreement and the Plantation and Maintenance Agreement. Unit Holders, who meet the requirements under section 3 of the PDS, will pay the fees set out in paragraphs 30 and 31. **This Ruling does not apply to Unit Holders who do not meet the requirements of section 3 of the PDS.**

Farming Agreement

21. Under the Farming Agreement, Unit Holders are granted a licence by QPFL to use their Allotment for the purpose of conducting their afforestation business (clause 2.1). The Unit Holders must pay QPFL an initial licence fee of \$20.90 per Unit for the first twelve months (clause 6(a)(i)).

22. The term of the Agreement is either until harvesting and milling of all trees has been completed or termination of the Unit Holder's Unit, whichever is the latest (clause 3.1(a)). The Unit Holder must pay 2.42% of the 'Gross Sale Proceeds of Timber' for re-imbursement of ongoing licence fees.

Plantation and Maintenance Agreement

23. The Plantation and Maintenance Agreement for each Unit is entered into by the Unit Holder and QPFL. The term of the Agreement will continue until the Harvest and Milling of all Trees has been completed (cl 3(a)(i)).

24. The services to be provided by QPFL for an annual fee over the term of the Project are outlined in clause 4. In re-imbursement of the annual fee, the Unit Holder pays 3.63% of the 'Gross Sale Proceeds from Timber' at the time of harvest. QPFL will be responsible for planting *Paulownia fortunei* on the Allotment and will then maintain the trees in accordance with good silvicultural practice until maturity.

25. The services to be provided by QPFL in clause 4.1 include duties to:

- a) acquire Trees for the Unit Holder in the form of clonal tissue and seedlings for propagation, which Trees will be the property of the Unit Holder for the duration of this Agreement;
- b) prepare the Land with adequate drainage for the Trees;
- c) establish, tend and maintain the Trees and Allotment in a proper and skilful manner and as and when appropriate prepare, cultivate, spray herbicides and insecticides, and plant and fertilise Tree seedlings;
- d) comply with the laws and regulations relating to the use and occupancy of the Allotment;
- e) embark on such operations as may be required to prevent or combat land degradation which may affect the yield of the Trees;
- f) keep accurate records of payments;
- g) carry out any obligations imposed on the Unit Holder under the provisions of the Farming Agreement (except for the payment of fees by the Unit Holder); and
- h) carry out any obligations of the Responsible Entity under the Constitution and Compliance Plan.

These services include both 'Seasonally Dependent Agronomic Activities' (SDAA) and non-SDAA. The Responsible Entity will complete all non-SDAA on or before 30 June 2005.

26. The Responsible Entity, QPFL, must perform the services under clause 4 as soon as practicable (clause 4.2), and must perform the services in clause 4.3 from the commencement of the 13th month of this Agreement onward and on an annual basis until this Agreement is at an end (clause 4.3). Initially seedlings propagated at Palm Range, Queensland may be used and a 'pole' nursery will be established at Forbes to provide stock for any replanting required. The seedlings will be 'acclimatised' or 'hardened off' prior to dispatch and before planting.

27. Prior to 30 June 2012, Unit Holders may elect to collect the timber attributable to their Allotments (Electing Unit Holders) (clause 9.1), with at least three months written notice to the Responsible Entity, instead of having it milled and marketed on their behalf by QPFL. **This Ruling will not apply to Electing Unit Holders.** If no such election is made, QPFL will sell the timber attributable to the Allotments on the (Non-Electing) Unit Holder's behalf, for the best possible commercial price (clause 6.2). QPFL will then be entitled to a marketing fee of 4.95% of the gross proceeds from the sale of the timber. Harvesting and milling of trees will take place when the Responsible Entity, in conjunction with the Project Forester, determines the Trees are suitable for Harvesting (clause 5.1(a)).

28. Unit Holders who do not elect to collect their own timber will have the gross proceeds of sale of the timber attributable to their Allotments paid to the Responsible Entity in its capacity as Custodian of the Project. The Responsible Entity will retain from the payment the Unit Holder's proportional interest of the harvesting and milling costs, other costs of sale, licence and maintenance fees owing by the Unit Holder and the Marketing and Incentive fee (clause 5 and clause 10.1). After payment of these expenses, the Responsible Entity will account to the Unit Holder and pay the Unit Holder his/her share of the net proceeds of sale. Each Unit Holder's proportionate share of the sale proceeds of the pooled wood products will reflect the proportion of the trees contributed from their Allotment (clause 7).

Constitution

29. The Constitution is between QPFL (in its capacity as the Responsible Entity) and the Unit Holders. The Constitution sets out the terms and conditions under which QPFL agrees to act for the Unit Holders and under which QPFL agrees to manage the Project. QPFL keeps a Unit Holder register. Unit Holders are only entitled to assign the Unit Holder's Interest in certain circumstances (clause 18). Unit Holders are bound by the Constitution by virtue of their participation in the Project.

Fees

30. The fees payable under clause 10 of the Plantation and Maintenance Agreement are:

- i) \$1,024.10 per Allotment for the Establishment services provided after the acceptance of the Application for an Allotment made under the Product Disclosure Statement. The services to be provided are those in paragraph 25 as listed in 4.1(a) to (h) of the Plantation and Maintenance Agreement. These services include both SDAA and non-SDAA. The Responsible Entity will complete all non-SDAA on or before 30 June 2005';

- ii) 3.63% of the 'Gross Sale Proceeds from Timber' for re-imbursement of ongoing maintenance fees is payable at the time of harvest or \$18.48 per year for each year the Project has been in operation in the absence of any harvest due to the destruction of the Unit Holder's Allotment;
- iii) an incentive fee calculated to be half of the amount paid to the Unit Holder over and above the 'Gross Sale Proceeds from Timber' set out in the Product Disclosure Statement for the Project;
- iv) a marketing fee of not more than 4.95% of the gross proceeds generated from the sale of timber attributable to the Unit Holder's Allotment where QPFL sells on the Unit Holders behalf; and
- v) all harvesting and milling costs.

31. The fee payable under clause 6 of the Farming Agreement is an initial licence fee of \$22 per Unit paid on application under the Product Disclosure Statement. 2.42% of the 'Gross Sale Proceeds from Timber' is payable at the time of harvest for re-imbursement of ongoing licence fees or \$12.32 per year for each year the Project has been in operation in the absence of any harvest due to the destruction of the Unit Holder's Allotment.

32. The Responsible Entity will hold the application moneys in an application account to be released when certain specified criteria in the Constitution have been met (clause 15).

Finance

33. Unit Holders can fund their investment in the Project themselves, by borrowing from an associate of the Responsible Entity – QPFL Finance Pty Ltd or by borrowing from another independent lender.

34. Finance will be provided to Unit Holders by QPFL Finance Pty Ltd under the following finance arrangements:

- Facility 1 – Interest free finance of twelve equal monthly principal instalments;
- Facility 2 – Payment of 10% deposit followed by monthly repayments of principle and interest over 5 years;
- Facility 3 – Payment of 10% deposit followed by monthly payments of interest only for first 2 years, then monthly repayments of principle and interest for 5 years; or
- Facility 4 – Payment of 10% deposit followed by monthly payments of interest only for first 3 years, then monthly repayments of principle and interest for 7 years.

Facility types 2 to 4 are subject to 11.25 % per annum interest rates based on current interest rates. The maximum amount of finance that can be received for any Unit Holder is \$300,000. All payments will be monthly by direct debit on QPFL's Direct Debit System. Interest will accrue on the unpaid balance of the loan on the date each scheduled payment is due and is charged monthly in arrears.

35. This Ruling will not apply to Unit Holders if the Responsible Entity accepts their Application subject to finance approval by QPFL Finance Pty Ltd and the full amount payable at the time of Application, is not paid to the Responsible Entity by 30 June in the year of Application. The Application Price must be paid before or contemporaneously with the acceptance of the Application in accordance with the terms of clause 13 of the Constitution and such funds are to be paid into the Application Fund Account in accordance with the terms of clause 12 of the Constitution.

36. This Ruling does not apply if a Unit Holder enters into a finance agreement that includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender, or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- Entities associated with the Project, other than QPFL Finance Pty Ltd, are involved or become involved, in the provision of finance to Unit Holders for the Project.

Ruling

Application of this Ruling

37. Tax deductions are only available to Unit Holders who are accepted to participate in the Project on or before 30 June 2005 and who have executed a Plantation and Maintenance Agreement and a Farming Agreement on or before that date. The Unit Holder's participation in the Project must constitute the carrying on of a business of primary production.

38. This Ruling will not apply to Electing Unit Holders or Unit Holders who do not meet the requirements in section 3 of the Product Disclosure Statement.

The Simplified Tax System (STS)

Division 328

39. For a Unit Holder participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Unit Holder is an 'STS taxpayer'. To be an 'STS taxpayer' a Unit Holder:

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

Qualification

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

Prepaid initial licence fees

Sections 82KZME and 82KZMF

41. The initial licence fees incurred by Unit Holders who are accepted into this Project are subject to the prepayment rules in sections 82KZME and 82KZMF. In this context, a prepayment refers to advance expenditure incurred by a Unit Holder in return for the doing of a thing that will not be wholly done in the year in which the expenditure is incurred. Where a Unit Holder prepays expenditure that would otherwise be a general deduction under section 8-1 of the ITAA 1997 in the expenditure year, the Unit Holder must apportion

the prepayment over the period the prepayment covers unless it is 'excluded expenditure' (see Note (iii) below).

42. Subsection 82KZMF(1) provides the formula for determining how much of the prepaid expenditure a Unit Holder can deduct for each income year. In that formula, which is shown below, the 'eligible service period' means the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

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

In this Project, the tax deductions allowable for the initial licence fees must be calculated by applying the above formula to the amount incurred by the Unit Holder.

Assessable income

Section 6-5 and section 328-105

43. That part of the gross sales proceeds from the Project attributable to the Unit Holder's timber, less any GST payable on those proceeds (section 17-5), will be assessable income of the Unit Holder under section 6-5.

44. The Unit Holder who is not an 'STS taxpayer' recognises ordinary income from carrying on the business of afforestation at the time that income is derived.

45. The Unit Holder who is an 'STS taxpayer' recognises ordinary income from carrying on the business of afforestation at the time that income is received (paragraph 328-105(1)(a)).

Deductions for Establishment services fees, licence fees and interest

Section 8-1 and section 328-105

46. A Unit Holder may claim tax deductions under section 8-1 of the ITAA 1997, for the revenue expenses in the Table below.

47. However, if for any reason, an amount shown or referred to in the Table below is not fully paid in the year in which it is incurred by a Unit Holder 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 Unit Holder. Any amount or part of an amount shown in the Table below which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid. The years shown in the Table below relate to a Unit Holder who is accepted into the Project on or before 30 June 2005.

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Fee Type	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Establishment services fee	\$1,042.10 See Notes (i) & (ii)		
Licence fee	See Notes (i) & (iii)		
Interest incurred or paid to QPFL Finance Pty Ltd	As incurred (Non-STS taxpayers) Or as paid (STS taxpayers) See Note (iv)	As incurred (Non-STS taxpayers) Or as paid (STS taxpayers) See Note (iv)	As incurred (Non-STS taxpayers) Or as paid (STS taxpayers) See Note (iv)

Notes:

- (i) If the Unit Holder is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example, input tax credits): Division 27. See Example at paragraph 118.
- (ii) The Establishment services fee includes both 'Seasonally Dependent Agronomic Activities' (SDAA – see paragraphs 79 to 83) and non-SDAA. The Responsible Entity will complete all non-SDAA on or before 30 June 2005. The Establishment services fee is deductible in the income year in which it is incurred (where the Unit Holder is **not an 'STS taxpayer'**) or the year in which it is paid (where the Unit Holder is an **'STS taxpayer'**).
- (iii) Although the Farming Agreement requires the licence fee to be prepaid, for a Unit Holder who acquires the minimum allocation, the amount of the prepaid licence fee is less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred (where the Unit Holder is **not an 'STS taxpayer'**) or the year in which they are paid (where the Unit Holder is an **'STS taxpayer'**). However, where a Unit Holder acquires more than the minimum allocation in the Project, the amount of the Unit Holder's prepaid licence fee may be \$1,000 or more. Such Unit Holders **MUST** determine the deduction for the prepaid licence fee using the formula shown in paragraph 42.

- (iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than QPFL Finance Pty Ltd, is outside the scope of this Ruling. Unit Holders who borrow from lenders other than QPFL Finance Pty Ltd may request a Private Binding Ruling on the deductibility of the interest incurred. However all Unit Holders, including those who finance their participation in the Project other than with QPFL Finance Pty Ltd should read the discussion of the prepayment rules in paragraphs 71 to 78 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 Unit Holder's choice.

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

Section 35-55 – Commissioner's discretion

48. For a Unit Holder who is an individual and who enters the Project during the year ended 30 June 2005 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 2005 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.

49. This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:

- the 'exception' in subsection 35-10(4) applies (see paragraph 103 in the Explanation part of this ruling);
- a Unit Holder's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- a Unit Holder'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)).

50. Where, the 'exception' in subsection 35-10(4) applies, the Unit Holder'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 Unit Holder will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, that is, 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.

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

Section 82KL and Part IVA

52. For a Unit Holder who participates in the Project and incurs expenditure as required by the Plantation and Maintenance Agreement and the Farming Agreement the following provisions of the ITAA 1936 have application as indicated:

- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanation

Is the Unit Holder carrying on a business?

53. For the amounts set out in the Tables above to constitute allowable deductions the Unit Holder's afforestation activities as a participant in the Queensland Paulownia Forests Project No. 8 – Capital Forestry Units must amount to the carrying on of a business of primary production.

54. Where there is a business, or a future business, the gross proceeds from the sale of the timber will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.

55. For schemes such as that of the Queensland Paulownia Forests Project No. 8 – Capital Forestry Units, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Unit Holder'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.

56. Generally, a Unit Holder will be carrying on a business of afforestation, and hence primary production, if:

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

57. In this Project, each Unit Holder enters into a Plantation and Maintenance Agreement and a Farming Agreement.

58. Under the Farming Agreement each individual Unit Holder will have rights over a specific and identifiable area of 0.03334 hectares of land. The Farming Agreement provides the Unit Holder with an ongoing interest in the specific trees on the licensed area for the term of the Project. Under the licence the Unit Holder must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The licence allows the Plantation Manager to come onto to the land to carry out its obligations under the Plantation and Maintenance Agreement.

59. Under the Plantation and Maintenance Agreement the Plantation Manager is engaged by the Unit Holder to establish and maintain an Allotment on the Unit Holder's identifiable area of land during the term of the Project. The Plantation Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the Establishment services to establish and maintain the Allotment on the Unit Holder's behalf.

60. The Plantation Manager is also engaged to harvest and sell, on the Unit Holder's behalf, the timber grown on the Unit Holder's Allotment.

61. 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.

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

63. The pooling of timber from the trees grown on the Unit Holder's Allotment with the timber of other Unit Holders is consistent with general afforestation practices. Each Unit Holder's proportionate share of the sale proceeds of the pooled timber will reflect the proportion of the trees contributed from their Allotment.

64. The Plantation Manager's services are also consistent with general silvicultural practices. They are of the type ordinarily found in afforestation ventures that would commonly be said to be businesses. While the size of an Allotment is relatively small, it is of a size and scale to allow it to be commercially viable.

65. The Unit Holder's degree of control over the Plantation Manager as evidenced by the Plantation and Maintenance Agreement, and supplemented by the *Corporations Act 2001*, is sufficient. During the term of the Project, the Manager will provide the Unit Holder with regular progress reports on the Unit Holder's Allotment and the activities carried out on the Unit Holder's behalf. Unit Holders are able to terminate arrangements with the Plantation Manager in certain instances, such as cases of default or neglect.

66. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Unit Holders' afforestation activities in the Queensland Paulownia Forests Project No. 8 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

68. The question of whether a Unit Holder is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Unit Holder 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 Establishment services fees and licence fees

Section 8-1

69. Consideration of whether the Establishment services fees and licence fees are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

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

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

70. The Establishment services fees and licence fees associated with the afforestation activities will relate to the gaining of income from the Unit Holder's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of timber) 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' purposes in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the Establishment services fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMG

71. 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 (for example the performance of management services or the licensing 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.

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

Sections 82KZME and 82KZMF

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

74. 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.

75. 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 Unit Holder in this Project who, in order to participate in the Project may borrow funds from a financier other than QPFL Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the resulting interest deductions are directly related to the activities under the arrangement. If a Unit Holder prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

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

77. 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.

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

78. 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.

Section 82KZMG

79. Under section 82KZMG(1), expenditure is excluded from the prepayment rules that would otherwise apply, to the extent that the prepaid amount satisfies the requirements of subsections 82KZMG(2) to (4).

80. Subsection 82KZMG(2) requires that the expenditure is:

- incurred on or after 2 October 2001 and on or before 30 June 2006;
- the eligible service period must be 12 months or shorter and must end on or before the last day of the year of income after the expenditure year; and
- for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

81. To satisfy subsection 82KZMG(3) the agreement must satisfy the following requirements:

- it must be an agreement for planting and tending trees for felling;
- be an agreement where the taxpayer does not have day to day control over the operations arising out of the agreement. (a right to be consulted or to give directions does not equate to day to day control for the purposes of this requirement); and
- either:
 - (i) there is more than one participant in the agreement in the same capacity as the taxpayer; or
 - (ii) the manager manages, arranges or promotes the agreement, or an associate of the manager, manages, arranges or promotes similar agreements.

82. Under subsection 82KZMG(4) the expenditure incurred by the taxpayer must be paid for 'seasonally dependent agronomic activities' undertaken by the manager during the 'establishment period' for the relevant planting of trees for felling.

83. Subsection 82KZMG(5) defines the 'establishment period to commence at the time that the first 'seasonally dependent agronomic activity' is performed in relation to a specific planting of trees and to conclude with the planting of trees. Where it is necessary to apply a fertiliser or herbicide to the trees at the same time as planting then those activities fall within the establishment period. Planting of trees refers to the main planting of the particular plantation and expressly excludes specific planting to replace existing seedlings that have not survived.

Application of the prepayment provisions to this Project

84. Under the Plantation and Maintenance Agreement, a Unit Holder incurs an Establishment services fee consisting of expenditure of \$1,042.10 for 'seasonally dependent agronomic activities'.

85. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2005 for Unit Holders accepted into the Project on or before 30 June 2005 for the expenditure incurred under the Plantation and Maintenance Agreement for 'seasonally dependent agronomic activities'.

86. The Plantation and Maintenance Agreement also requires that a Unit Holder incurs a Maintenance Fee of 3.63 % of the Gross Sales Proceeds of the timber or \$18.48 per year in the absence of any harvest for the performance of maintenance services during the term of the Project.

87. The Maintenance Fee incurred under the Plantation and Maintenance Agreement for Years 2 to 11 is not prepaid. This fee is charged for providing maintenance in each of the years from Years 2 to 11 during which the fees are incurred.

88. On this basis, the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application to the maintenance fees in Years 2 to 11.

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

90. Under the Farming Agreement, a Unit Holder is required to pay an initial licence fee of \$20.90 for the first 12 month period. The Farming Agreement also requires that a Unit Holder incurs a licence fee of 2.42% of Gross Sales Proceeds or \$12.32 per year for each year of the term of the Project in the absence of any harvest.

91. The expenditure incurred by a Unit Holder in the Project for the initial licence fee meets the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF.

92. The prepaid initial licence fee, being an amount of less than \$1,000 in the expenditure year, constitutes an 'excluded expenditure' as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF. A Unit Holder who is an 'STS taxpayer' can, therefore, claim an immediate deduction for the initial licence fee in the income year in which it is paid. A Unit Holder who is not an 'STS taxpayer' can claim an immediate deduction for the initial licence fee in the income year in which it is incurred.

93. However, where a Unit Holder acquires more than the minimum allocation of one interests in the Project and the quantum of the prepaid initial licence fees is \$1,000 or more, the deduction allowable for those amounts will also be subject to apportionment according to the formula in subsection 82KZMF(1).

Interest deductibility

Section 8-1

(i) Unit Holders who use QPFL Finance Pty Ltd as the finance provider

94. Some Unit Holders may finance their participation in the Project through a loan facility with QPFL Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of licence and Establishment services fees.

95. The interest incurred for the year ended 30 June 2005 and in subsequent years of income will be in respect of a loan to finance the Unit Holder's business operations – the cultivation and growing trees and the licence of the land on which the trees will have been planted – that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

96. As with the management fees, in the absence of any application of the prepayment provisions (see paragraphs 71 to 78), the timing of deductions for interest will again depend upon whether a Unit Holder is an 'STS taxpayer' or is not an 'STS taxpayer'.

97. If the Unit Holder is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.

98. If the Unit Holder is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Unit Holder. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Unit Holder.

(ii) Unit Holders who DO NOT use QPFL Finance Pty Ltd as the finance provider

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

Deferral of losses from non-commercial business activities

Division 35

100. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2) a deduction for a loss made by an individual (including an individual in a general law partnership) from certain business activities will not be taken into account in an income year unless:

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

101. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

102. Losses that cannot be taken into account in a particular year of income, because of subsection 35-10(2), can be applied to the extent of future profits from the business activity, or are deferred until one of the tests is satisfied, the discretion is exercised, or the exception applies.

103. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both

subsections relate to the individual circumstances of Unit Holders who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

104. In broad terms, the tests require:

- (a) at least \$20,000 of assessable income in that year from the business activity (section 35-30);
- (b) the business activity results in a taxation profit in 3 of the past 5 income years (including the current year) (section 35-35);
- (c) at least \$500,000 of real property, 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).

105. A Unit Holder 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 Unit Holder who acquires the minimum allocation of one Allotment during the year ended 30 June 2005 in the Project is unlikely to have their activity satisfy one of the tests until the income year ended 30 June 2015.

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

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

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

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108. Information provided with this Product Ruling indicates that a Unit Holder who acquires the minimum investment of one Allotment during the year ended 30 June 2005 in the Project is expected to be carrying on a business activity that will satisfy one of the tests in the income year ended 30 June 2015, or will produce a taxation profit, for the income years ended 30 June 2013, 30 June 2014 and 30 June 2015.

109. The Commissioner will decide for such a Unit Holder 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.

110. This Product Ruling is issued on a prospective basis (that is, before an individual Unit Holder'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 48), in the manner described in the Arrangement (see paragraphs 14 to 36). 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). Unit Holders may need to apply for private rulings on how paragraph 35-55(1) will apply in such changed circumstances.

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

- the report of the independent forester and additional expert or scientific evidence provided with the application by the Responsible Entity; and
- independent, objective, and generally available information relating to the Paulownia industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by QPFL.

Section 82KL – recouped expenditure

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

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

114. Section 82KL's operation depends, among other things, on the identification of a certain quantum of 'additional benefits'. Here, there may be a loan provided to the Unit Holder. The loan will be provided on a full recourse basis, and on commercial terms. Insufficient 'additional benefits' will be provided in respect of this Project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1.

Part IVA – general tax avoidance provisions

115. 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).

116. The Queensland Paulownia Forests Project No. 8 – Capital Forestry Units will be a 'scheme'. A Unit Holder will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 47 that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

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

Example

Entitlement to GST input tax credits

118. 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 2003, 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 1/1/2004 to 30/6/2004	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>
Total due and payable by 1 January 2004 (includes GST of \$600)	<u>\$6,600</u>

*Taxable supply

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

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

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

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

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

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

In preparing her income tax return for the year ended 30 June 2004, 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

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Commissioner of Taxation

20 October 2004

<i>Previous draft:</i>	- tax shelters project
Not previously released in draft form	- taxation administration
<i>Related Rulings/Determinations:</i>	<i>Legislative references:</i>
PR 1999/95; TR 92/1; TR 92/20;	- ITAA 1936 82KH(1)
TR 97/11; TR 97/16; TR 98/22;	- ITAA 1936 82KH(1F)(b)
TR 2000/8; TD 93/34	- ITAA 1936 82KL
	- ITAA 1936 82KL(1)
	- ITAA 1936 Pt III Div 3 Subdiv H
<i>Subject references:</i>	- ITAA 1936 82KZL
- advance deductions and	- ITAA 1936 82KZL(1)
expenses for certain forestry	- ITAA 1936 82KZM
expenditure	- ITAA 1936 82KZMA
- carrying on a business	- ITAA 1936 82KZMB
- commencement of business	- ITAA 1936 82KZMC
- fee expenses	- ITAA 1936 82KZMD
- forestry agreement	- ITAA 1936 82KZME
- interest expenses	- ITAA 1936 82KZME(1)
- management fees	- ITAA 1936 82KZME(2)
- non-commercial losses	- ITAA 1936 82KZME(3)
- producing assessable income	- ITAA 1936 82KZME(4)
- product rulings	- ITAA 1936 82KZME(7)
- public rulings	- ITAA 1936 82KZMF
- seasonally dependent agronomic	- ITAA 1936 82KZMF(1)
activity	- ITAA 1936 82KZMG
- tax avoidance	- ITAA 1936 82KZMG(1)
- tax benefits under tax avoidance	- ITAA 1936 82KZMG(2)
schemes	- ITAA 1936 82KZMG(3)
- tax shelters	- ITAA 1936 82KZMG(4)
	- ITAA 1936 82KZMG(5)

- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 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)
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- ITAA 1997 Div 328
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

Case references:

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

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