

## Product Ruling

### Income tax: Willmott Forests Project – 2004 Product Disclosure Statement

Contents	Para
What this Product Ruling is about	1
Date of effect	11
Withdrawal	13
Arrangement	14
Ruling	54
Explanation	71
Example	122
Detailed contents list	123

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

#### **Preamble**

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

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

## No guarantee of commercial success

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

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

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

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

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

## Terms of use of this Product Ruling

---

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

## What this Product Ruling is about

---

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the 'Willmott Forests Project – 2004 Product Disclosure Statement' or simply as 'the Project'.

### Tax law(s)

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

### Goods and Services Tax

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

**Changes in the Law**

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

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

**Note to promoters and advisers**

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

**Class of persons**

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

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;
- persons who elect to opt out of the marketing and harvesting arrangement with Willmott Forests Ltd and organise the harvesting and marketing of timber produced from their own Woodlots;
- persons who participate in the Project through offers made other than through the Product Disclosure Statement;

- Willmott Forests Ltd or its associates; and
- persons who are accepted to participate in the Project after 30 June 2005.

## Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.

10. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no Product Ruling may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration  
Intellectual Property Branch  
Department of Communications, Information Technology and  
the Arts  
GPO Box 2154  
Canberra ACT 2601

or by e-mail: [commonwealth.copyright@dcita.gov.au](mailto:commonwealth.copyright@dcita.gov.au)

## Date of effect

---

11. This Ruling applies prospectively from 4 February 2004, 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).

Note: The Addendum to this Ruling that issued on 7 December 2005 applies on and from 1 July 2005.

---

## 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 dated 15 September 2003, as constituted by documents provided on 1 September 2003 and additional correspondence (including e-mails) dated 16 September 2003, 25 September 2003, 10 October 2003, 14 October 2003, 24 November 2003, 3 December 2003, 10 December 2003, 12 December 2003, 16 December 2003 and 22 January 2004;
- Draft Willmott Forests Project – 2004 Product Disclosure Statement issued by Willmott Forests Limited A.B.N. 17 063 263 650 ('WFL', the 'Manager' and the 'Responsible Entity') received by the Tax Office 1 September 2003 and amended on 10 October 2003, 15 December 2003 and 22 January 2004;
- Draft Consolidated **Constitution** for the Willmott Forests Project (the 'Constitution') issued by WFL, dated 2 September 1999, received by the Tax Office 1 September 2003 and amended on 14 October 2003 and 22 January 2004;
- **Proforma Lease Agreement** (the 'Lease Agreement'), to be entered into by each Grower and WFL, received by the Tax Office 1 September 2003 and amended on 15 December 2003 and 22 January 2004;

- Proforma Pre-lease Agreement between WFL and the Grower, received by the Tax Office 1 September 2003 and amended on 14 October 2003;
- **Proforma Forestry Management Agreement** to be entered into by each Grower and WFL, received by the Tax Office 1 September 2003 and amended on 10 October 2003 and 21 November 2003;
- Draft Forestry Right ('Forestry Right') received by the Tax Office 22 January 2004;
- Proforma Terms Agreement between WFL and the Grower, received by the Tax Office 1 September 2003; and
- Compliance Plan for WFL dated 27 September 2001, received by the Tax Office 14 October 2003.

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

15. The documents highlighted are those that Growers 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 Grower, or any associate of a Grower, will be a party to, which are a part of the arrangement. In this Ruling the term 'associate' has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

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

## Overview

17. The arrangement is called the Willmott Forests Project – 2004 Product Disclosure Statement and is summarised as follows.

Location	Bombala region of south east NSW.
Type of business to be carried on by each participant	Long term commercial plantations for the purpose of harvesting <i>pinus radiata</i> .
Number of hectares offered for cultivation	Approximately 4,000 hectares with an option to secure further interests if required.
Size of each interest	0.5 hectares (one 'Woodlot').
Trees per hectare	1100 seedlings.
Term of the Project	25 years.

Initial cost	\$3,850 per Woodlot.
Initial cost per hectare	\$7,700.
Ongoing costs	Maintenance and lease rental costs will be a percentage of 'Gross Timber Proceeds' from the 'Thinnings' and the 'Clear Fell' or from insurance proceeds in the event of Material Damage to the trees.
Other costs	Compulsory insurance premiums from Year 6; Harvesting Fee, of 1% of 'Gross Timber Proceeds'; Interest payments, under a Terms Agreement; and Any other amounts agreed upon in writing between WFL and Growers.

18. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. The objective of the Project is to establish and manage long term commercial plantations of softwood for the purpose of harvesting for sale. The Responsible Entity for the Project is WFL.

19. Under the PDS, applicants apply for one or more Woodlots each of 0.5 hectare in size. Applicants are accepted to participate in the Project as Growers and enter into a Lease Agreement and a Management Agreement with WFL. Where land is not immediately available for lease, Growers will also enter into a Pre-lease Agreement. The Project will be terminated after 'Clear Fell', a period of approximately 25 years.

### **Constitution**

20. The Constitution establishes the Project and operates as a deed binding all the Growers and WFL. The Constitution is a consolidated version of earlier Constitutions and amending Deeds. The Constitution sets out all the terms and conditions by which WFL agrees to act as the Responsible Entity and Manager of the Project. Growers are bound by the Constitution by virtue of their participation in the Project.

21. Under the terms of the Constitution, within 30 days of lodgement WFL is required to advise, in writing, whether an Application has been rejected or accepted. Where the Application is accepted, WFL has 2 months to place the Grower on the 'Register' and provide the Grower with a copy of the Forestry Management

Agreement and the Lease Agreement or Pre-lease Agreement. Further, as soon as practical, after the issue of the Woodlots, the Manager creates and through its appointed agent registers a Forestry Right in respect of the Land on which the Woodlots are located.

22. Subject to any contrary direction by the majority of Growers, the Manager may commence, institute, carry on and prosecute all actions, suits and proceedings at law:

- to procure compliance with the provisions of the Constitution;
- to obtain and recover any moneys payable;
- to enforce payment of any moneys; and
- for damages against any person arising out of any loss suffered by any Grower.

23. WFL is entitled to be remunerated for its services in managing the Project. Among other things, the Constitution sets out in detail the following:

- the stocking guarantee (clause 12) and public liability insurance (clause 13);
- the assignment of a Grower's interest (clause 14);
- powers and duties of the Manager (clause 6);
- meetings of Growers (clause 15); and
- complaints procedures (clause 22).

### **Compliance Plan**

24. As required by the *Corporations Act 2001*, WFL has prepared a Compliance Plan. The purpose of the Compliance Plan is to ensure that WFL, as the Manager, complies with its obligations and responsibilities under the *Corporations Act 2001* and the Constitution. The Compliance Plan is designed to protect the interests of the Growers.

### **Forestry Management Agreement**

25. A Forestry Management Agreement is entered into between WFL and each Grower. Growers contract with the Manager to establish and maintain the plantation until maturity. The Manager may delegate its responsibilities. The Manager will use all reasonable endeavours to carry out its obligations under Part 1 and Part 2 of the Forestry Management Agreement in accordance with good forestry practices.



26. The Part 1 services are for 'Preparation and Planting' and will be provided to Growers within the first 12 months of the Grower being accepted to participate in the Project. This Product Ruling will not apply to any Grower where WFL fails to complete the Part 1 services within 12 months of the Grower's acceptance into the Project.

27. Part 2 services are for 'Maintenance' and will be provided from the completion of the Part 1 services to 'Clearfell' in Year 25.

28. The Part 1 and Part 2 services are as follows:

### **Part 1 preparation and planting**

#### *Year 1*

- preparation works – ripping, mounding and/or ploughing;
- pre-planting weedicide treatments, as required;
- supply and planting *pinus radiata* seedlings at a rate of 550 per Woodlot;
- fertilising, where required; and
- pest control.

### **Part 2 maintenance**

#### *Year 2*

- supply and replanting of *pinus radiata* seedlings, where required;
- treatment of regrowth;
- post-planting weedicide treatments, as required;
- folia analysis of planted stock;
- construction and maintenance of access roads and firebreaks, as required; and
- general maintenance inclusive of ongoing monitoring.

#### *Year 3*

- general maintenance including: monitoring, attention to regrowth, access roads and firebreaks and fertilising, where required.

#### *Year 4*

- general establishment work and maintenance including: monitoring, attention to regrowth, access roads and firebreaks.

## General maintenance

### *Years 5 – 25*

- further fertilising; and
- general maintenance including monitoring, attention to regrowth, access roads, firebreaks and selective pruning.

29. The Manager will provide a ‘Stocking Guarantee’ for a period of 5 years (called the ‘Stocking Guarantee Period’) from the date the Grower is registered as the holder of a Woodlot on the terms and conditions set out in the Constitution.

30. During the ‘Stocking Guarantee Period’ the Manager will remove ‘Trees’ that are ‘Materially Damaged’, prepare the ground and acquire and plant new seedlings. ‘Trees’ are ‘Materially Damaged’ when they are damaged or destroyed other than in certain specified circumstances.

31. After the period covered by the ‘Stocking Guarantee’ (up to and including year 5), it is compulsory for the Grower to maintain insurance to cover trees that are ‘Materially Damaged’.

32. The Manager will, in addition to any other rights it may have, be entitled to charge interest on amounts outstanding and terminate the Management and Lease Agreement for any amount that is not paid on or before the due date for payment. The Manager reserves the right to take any necessary legal action and the Grower agrees to indemnify the Manager for any costs or expenses it incurs in seeking to recover any unpaid application moneys.

33. Subject to the conditions in the insurance policy, the Manager will maintain Public Risk Liability Insurance of \$10,000,000 until year 25.

## Lease Agreement and Forestry Right

34. An unregistered lease is granted by WFL (the ‘lessor’) to each Grower (the ‘lessee’). WFL also grants a Forestry Right over the project land to be held by Willmott Forests Investment Management Pty Ltd as agent of the Growers. The Forestry Right will be registered with the applicable land titles office and will provide protection for the Grower’s leasehold interest in the event of future dealings in the Project land.

35. Under the lease and Forestry Right Growers have an interest in land to use their Woodlot(s) for the purposes of conducting their afforestation business, including the right to harvest timber grown on the Woodlot. The term of the lease is for 24 years and may be extended for a further term of 5 years or until such time as the ‘Trees’

have been harvested and the land made good, whichever is sooner. The lessee may use the land only as part of a managed investment scheme by which Growers, including the lessee, participate in the establishment and maintenance of trees (clause 1(a))

### **Pre-lease Agreement**

36. The pre-lease agreement is granted by WFL to the Grower upon acceptance of application where WFL is not immediately in a position to grant the Grower a lease (including the Forestry Right) in respect of the Grower's woodlots. WFL undertakes to take all reasonable steps to grant a Lease and Forestry Right in respect of the Grower's Woodlots no later than 9 months from the date of acceptance of the Grower's application.

37. Where WFL has not been able to grant a Lease and Forestry Right to the Grower in respect of the Grower's woodlots within 9 months then either party may terminate the agreement by providing 7 days prior written notice. WFL must (except in an event of default) refund any of the Grower's application monies paid in respect of the Application within 14 days of the receipt or service of the notice.

### **Fees**

38. The total fee in consideration of the Part 1 services under the Forestry Management Agreement is \$3,850 per Woodlot and is payable on or before acceptance into the Project unless one of the following Terms Agreement options, set out below, are entered into. This Product Ruling will not apply to Growers who enter into instalment arrangements with WFL that differ materially from the Proforma Terms Agreements provided to the Tax Office with the Application for this Product Ruling. These Terms Agreements are summarised below.

<b>Terms Agreement</b>	<b>'Part Payment' per Woodlot</b>	<b>Instalments</b>	<b>Interest</b>
1 year	\$350	12 x \$291.67	Nil
3 years (Principal and Interest ('P&I.'))	\$350	36 x \$111.30	Fixed at 9% p.a.
5 years (P.&I.)	\$350	60 x \$73.51	Fixed at 9.5% p.a.
5 years (includes 2 years Interest Only)	\$350	24 x \$27.71 (I.O.)	Fixed at 9.5% p.a.

('I.O.')		payments 36 x \$112.11 (P.& I.) payments	
7 years (P& I)	\$350	84 x \$57.65	Fixed at 9.75% p.a.
7 years (includes 3 years I.O.)	\$350	36 x \$28.44 (I.O.) payments 48 x \$88.35 (P.& I.) payments	Fixed at 9.75% p.a.
10 years (P.& I.)	\$350	120 x \$46.25	Fixed at 10 % p.a.
10 years (includes 3 years I.O.)	\$350	36 x \$29.17 (I.O.) payments 84 x \$58.10 (P.& I.) payments	Fixed at 10 % p.a.

39. Payments for 1, 3, 5, 7 or 10 year Terms Agreements will commence on a monthly instalment basis commencing on 31 July following acceptance of the Grower's application to participate in the Project (the 'Payment Date'), other than the 'Part Payment' which is due within 90 days from the date the application is accepted. The 'Interest Rate' per annum commences on 1 July 2004 for Growers who enter the Project on or before 30 June 2004 and on 1 July 2005 for Growers who enter the Project on or before 30 June 2005, it is calculated on the 'Principal' less the amount of the 'Part Payment'.

40. Under Part 2 of the Forestry Management Agreement Growers pay a fee for maintenance of 7% of the 'Gross Timber Proceeds'. This is to be paid by each Grower as and when the 'Trees' are thinned or clear felled, and sold. If the Grower receives payment under an insurance policy in respect of damage to, or destruction of, the Grower's 'Trees' on a Woodlot, 7% of the insurance proceeds are to be paid to WFL within 14 days of their receipt.

41. Under the Lease Agreement the rent for the Term of the lease is an amount equal to 2% of the 'Gross Timber Proceeds' received from the thinning and clear felling of the trees on each woodlot of the land. If the lessee receives payment under an insurance policy in respect of damage to, or destruction of, the lessee's 'Trees' on a Woodlot, 2% of the insurance proceeds are to be paid to the lessor within 14 days of their receipt.

42. The Product Disclosure Statement provides that Growers who are accepted to participate in the Project engage the Manager to harvest their timber or may elect to market and harvest their own timber. Unless the Grower exercises this option, a Harvesting Fee totalling 1% of 'Gross Timber Proceeds' is payable for the Manager's fees and expenses.

### **Pooling of 'Trees' and distribution of proceeds**

43. The PDS sets out the circumstances relating to the pooling of Growers' 'Trees' and the distribution of proceeds from that sale. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Trees' from a 'Harvested Woodlot' to the pool making up the proceeds are entitled to benefit from distributions from those proceeds; and
- 'Trees' can only be pooled with the 'Trees' of Growers accepted to participate in the Project in the same financial year.

### **Application Form and Terms Agreement**

44. Under the Application Form that forms part of the PDS, Growers who are accepted to participate in the Project grant WFL an irrevocable Power of Attorney. This allows WFL to execute and deliver the Pre-lease Agreement and/or Lease Agreement, the Forestry Management Agreement and, if applicable, the Terms Agreement (the 'Project Documents'). The Power of Attorney begins from the date of the Application being signed, to the expiration of the Project Documents.

45. The Application Form also provides Growers with an opportunity to elect to opt out of harvesting and marketing arrangements with the Manager. Growers who make this election will not be covered by this Product Ruling and may seek a private ruling on the tax consequences of participating in the Project.

46. Upon signing the Application Form a Grower who has not been approved to pay fees under a Terms Agreement acknowledges that the full fee for all Application Monies is immediately due and payable.

47. The Application Form provides that a Grower who elects to, and is accepted to pay the 'Application Monies' on 'Terms' is required to execute a 'Terms Agreement'. Under the relevant 'Terms Agreement', a Grower declares that the terms for payment of 'Monies

Owing' have been extended pursuant to the Application and that this agreement is supplementary to the Application.

48. The 'Terms Agreements' for one, three, five, seven and ten year terms (as set out above in paragraph 38) detail the payments due where an Applicant is accepted to participate in the Project and payment by 'Terms' is approved by WFL. Under each Terms Agreement 'Monies Owing' will be the balance of the Part 1 fee, interest and all other 'Monies' actually or contingently owing under the Application.

49. Under a 'Terms Agreement', payment on 'Terms' will be on a full recourse basis. If a Grower defaults, WFL will pursue the 'Monies Owing' to the full extent permitted by law.

50. Application monies paid to WFL at the time of a Grower's Application will be deposited into a trust account known as the Willmott Forests Limited Project – Application Account and will only be released and paid to WFL once the Application is accepted.

## **Finance**

51. Growers who do not pay the Part 1 management fee in full upon Application or who do not receive approval to pay their fees under a 'Terms Agreement' (refer to paragraph 38 above) can fund their investment in the Project themselves, or borrow from an independent lender. Financing arrangements, other than the 'Terms Agreements' set out in paragraph 38, are not covered by this Product Ruling. Growers who enter into such finance agreements may request a private ruling on the deductibility or otherwise of interest incurred under the agreement.

52. Growers cannot rely on any part of this Product Ruling if Application Monies, other than Application Monies payable subject to a Terms Agreement, are not paid in full by 30 June of the income year in which the Grower is accepted to participate in the Project. Where an application is accepted by WFL subject to finance approval by any lending institution, Growers cannot rely on this Ruling if written evidence of that approval has not been given to WFL by 30 June of the income year in which the Grower is accepted to participate in the Project.

53. This Ruling also 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 WFL or the Project are involved or become involved in the provision of finance to Growers for the Project.

## **Ruling**

---

### **Application of this Ruling**

54. This Ruling applies only to Growers who are accepted to participate in the Project on or before 30 June 2005 and who have executed a Forestry Management Agreement and either a Pre-lease Agreement or a Lease Agreement on or before that date.

55. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

56. This Ruling does **not** apply to Growers who:

- are excluded from the Ruling as described in the Class of Persons or the Arrangement sections of this Project Ruling; or
- are accepted to participate in the Project on or after 1 July 2005.

57. [Deleted]

58. [Deleted]

59. 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.

## **The Simplified Tax System ('STS')**

### ***Division 328***

60. To be an 'STS taxpayer' a Grower must be eligible to be an 'STS taxpayer' and must have elected to be an 'STS taxpayer'. Changes to the STS rules apply from 1 July 2005. From that date, STS taxpayers may use the accruals accounting method or can continue to use the cash accounting method (called the 'STS accounting method' – see section 328-125).

## **Qualification**

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

## **Assessable Income**

### ***Section 6-5 and section 328-105***

62. 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.

63. Other than Growers referred to in paragraph 64, a Grower is assessable on ordinary income from carrying on their business of afforestation in the income year in which that income is derived.

64. A Grower who is an 'STS taxpayer' continuing to use the cash accounting method is assessable on ordinary income from carrying on their business of afforestation in the year in which the income is received.



**Deductions for the management fee under Part 1 of the Forestry Management Agreement and for interest under a Terms Agreement with WFL**

***Section 8-1 and section 328-105***

65. A Grower may claim, on a per Woodlot basis, tax deductions for the following revenue expenses.

***For Growers who are accepted to participate in the project on or before 30 June 2004***

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>	<b>Year ended 30 June 2006</b>
<b>Part 1 Management Fee</b>	8-1	\$3,850 See Notes (i), (ii) & (iii)	nil	nil
<b>Interest Payable to WFL under Terms Agreement</b>	8-1	nil	As incurred (Non-STs taxpayers); or as paid (STs taxpayers) See Notes (iv) & (v)	As incurred (Non-STs taxpayers & STs taxpayers using accruals accounting); or as paid (STs taxpayers using cash accounting) See Notes (iv) & (v)

**PR 2004/11**

*For Growers who are accepted to participate in the project on or after  
1 July 2004 and on or before 30 June 2005*

Fee Type	ITAA 1997 Section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
<b>Part 1 Management Fee</b>	8-1	\$3,850  See Notes (i), (ii) & (iii)	nil	nil
<b>Interest Payable to WFL under Terms Agreement</b>	8-1	nil	As incurred ( <b>Non-STs taxpayers &amp; STS taxpayers using accruals accounting</b> );  or as paid ( <b>STS taxpayers using cash accounting</b> ) See Notes (iv) & (v)	As incurred ( <b>Non-STs taxpayers &amp; STS taxpayers using accruals accounting</b> );  or as paid ( <b>STS taxpayers using cash accounting</b> ) See Notes (iv) & (v)

**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 the Example at paragraph 122.
- (ii) The fee for Part 1 services under the Forestry Management Agreement is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 94 to 100) and is deductible under section 8-1 in the income year in which it is incurred (where the Grower is **not** an '**STS taxpayer**') or the income year in which it is paid (where the Grower is an '**STS taxpayer**') (paragraph 328-105(1)(b)).
- (iii) If a Grower is an '**STS taxpayer**' who has entered into a Terms Agreement with WFL to pay the Part 1 management fee by instalments under a Terms Agreement, then the fee of \$3,850 will not be fully paid in the income year in which it is incurred.

For the 2003-04 and 2004-05 income years, such instalment is deductible in the income year in which it is paid (where the Grower is an '**STS taxpayer**').

For the 2005-06 and 2006-07 income years, such instalment is deductible in full in the 'changeover year'

(where the Grower becomes an **‘STS taxpayer’ using the accruals accounting method**) or in the year in which it is paid (where the Grower is an **‘STS taxpayer’ using the cash accounting method**).

- (iv) Growers who enter into a Terms Agreements with WFL for payment of the Part 1 management fee over 3, 5, 7 and 10 year Terms will incur interest monthly, as set out in the Agreements.

Where the Grower is **not** an **‘STS taxpayer’**, such interest is deductible in the income year in which it is incurred.

For the 2003-04 and 2004-05 income years, such interest is deductible in the income year in which it is paid (where the Grower is an **‘STS taxpayer’**).

For the 2005-06 and 2006-07 income years, such interest is deductible in full in the year in which it is incurred (where the Grower is an **‘STS taxpayer’ using the accruals accounting method**) or in the year in which it is paid (where the Grower is an **‘STS taxpayer’ continuing to use the cash accounting method**).

- (v) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than WFL is outside the scope of this Ruling. Growers who borrow from lenders other than WFL may request a private ruling on the deductibility of the interest incurred.

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

### ***Section 35-55 – Commissioner's discretion***

66. For a Grower who is an individual who enters the Project during the year ended 30 June 2004 or during the year ended 30 June 2005 and who engages the Manager to harvest and market their ‘Trees’ at the time they are accepted to participate in the Project, 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 that the rule in section 35-10 does not apply to this activity for the income years shown below, provided that the Project is carried out in the manner described in this Ruling:

- 30 June 2004 to 30 June 2028 for a Grower who is accepted into the Project on or before 30 June 2004; or

- 30 June 2005 to 30 June 2029 for a Grower who is accepted into the Project on or on or after 1 July 2004 and on or before 30 June 2005.

67. 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 107 in the Explanations part of this Ruling, below); or
- a Grower’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- a Grower’s business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).

68. 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.

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

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

70. For a Grower who participates in the Project and incurs expenditure as required by the Forestry Management Agreement, the Lease Agreement and any Terms Agreement (as applicable) the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Grower who participates in the Project does not fall within the scope of sections 82KZME to 82KZMF;
- 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 Grower carrying on a business?

71. For the amounts set out in the Table above to constitute allowable deductions the Grower's afforestation activities as a participant in the Willmott Forests Project – 2004 Product Disclosure Statement must amount to the carrying on of a business of primary production.

72. Where there is a business, or a future business, the gross proceeds from the sale of the 'Trees' from the Woodlots 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.

73. For schemes such as that of the Willmott Forests Project – 2004 Product Disclosure Statement, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest (by lease) or rights over the land (by licence) on which the Grower's trees are established;
- the Grower has a right to harvest and sell the wood produce from those trees;
- the afforestation activities are carried out on the Grower's behalf;
- the afforestation activities of the Grower are typical of those associated with a afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

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

76. Under the Lease Agreement each individual Grower will have rights over a specific and identifiable area of 0.5 of a hectare of land. The Lease Agreement provides the Grower with an ongoing interest in the specific trees on the leased area for the term of the Project. Under the Lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The Lease allows the Manager come onto to the land to carry out its obligations under the Forestry Management Agreement.

77. Under the Forestry Management Agreement the Manager is engaged by the Grower to establish and maintain a Woodlot on the Grower's identifiable area of land during the term of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Woodlot on the Grower's behalf.

78. The Manager is also engaged to harvest and sell, on the Grower's behalf, the wood produce grown on the Grower's Woodlot.

79. 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.

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

81. The pooling of wood produce from 'Trees' grown on the Grower's Woodlot with the wood produce of other Growers in the Project is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled wood products will reflect the proportion of the 'Trees' contributed to the pool from their Woodlot.

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

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

84. 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 Grower’s afforestation activities in the Willmott Forests Project – 2004 Product Disclosure Statement will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

85. 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.

86. 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 fees under Part 1 of the Forestry Management Agreement**

### ***Section 8-1***

87. Consideration of whether fees under Part 1 of the Forestry Management Agreement 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.

88. The management fee payable under Part 1 of the Forestry Management Agreement is associated with the afforestation activities and will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of the 'Trees' is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the initial management fee. The tests of deductibility under the first limb of section 8-1 are met (subject to the provisions of section 82KZMG, see below). The exclusions do not apply.

## **Interest deductibility**

### ***Section 8-1***

#### *(i) Growers who pay fees under a Terms Agreement with WFL*

89. Some Growers may finance their participation in the Project through a Terms Agreement with WFL. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the fees under Part 1 of the Forestry Management Agreement.

90. The interest incurred will be in respect of a loan to finance the Grower's business operations – the cultivation and growing of trees – 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. A Grower who is an 'STS taxpayer' (for the year ending 30 June 2005) or who is an 'STS taxpayer continuing to use the cash accounting method (for the years ending 30 June 2006 and 30 June 2007) can, therefore, claim a deduction for interest in the income year in which the amount is paid, or paid on their behalf (paragraph 328-105(b) and section 328-120). All other Growers can claim a deduction for interest in the income year in which the interest is incurred.

#### *(ii) Growers who enter into finance arrangements with other finance providers*

91. The deductibility of interest incurred by Growers who finance their participation in the Project through a finance facility with a bank or financier other than WFL 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.



**Prepayment provisions*****Sections 82KZL to 82KZMG***

92. 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.

93. For this Project, only section 82KZL (an interpretive provision) and section 82KZMG are relevant.

***Section 82KZMG***

94. 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).

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

- incurred on or after 2 October 2001 and on or before 30 June 2006; and
- 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.

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

- it must be an agreement for planting and tending trees for felling; and
- 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.

97. 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.

98. 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*

99. Under Part 1 of the Forestry Management Agreement, a Grower incurs a fee consisting of expenditure of \$3,850 per Woodlot for 'seasonally dependent agronomic activities'.

100. As the requirements of section 82KZMG have been met, a Grower who is not an 'STS taxpayer' can, therefore, claim an immediate deduction for the fee for the Part 1 services in the income year in which the amount is incurred. A Grower who is an 'STS taxpayer' can claim an immediate deduction for the Part 1 services in the income year in which the fees are paid. Where a Grower who is an 'STS taxpayer' (for the year ending 30 June 2005) or where a Grower who is an 'STS taxpayer continuing to use the cash accounting method (for the years ending 30 June 2006 and 30 June 2007) makes payments for the fee under a Terms Agreement, the fee can only be claimed as a deduction to the extent of the instalments paid by, or paid on behalf of, the Grower during the relevant income year.

#### *Sections 82KZME and 82KZMF*

101. Under the Arrangement to which this Product Ruling applies fees for rent under the Lease Agreement and fees under Part 2 of the Forestry Management Agreement are only payable as a percentage of the proceeds from harvest and sale of the 'Trees', or from insurance

proceeds. Interest payable under each of the Terms Agreements is incurred and payable monthly. Accordingly, the prepayment provisions in sections 82KZME to 82KZMF have no application to this Arrangement.

102. However, sections 82KZME and 82KZMF may have relevance if a Grower in this Project chose to prepay interest under a Terms Agreement with WFL or chose or are required to prepay interest under a loan agreement with a lender other than WFL. Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

103. Growers who choose to prepay interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

### **Deferral of losses from non-commercial business activities**

#### ***Division 35***

104. 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.

105. 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.

106. 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.

107. For the purposes of applying Division 35, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable

income for the income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

108. 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).

109. 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 is accepted into the Project on or before 30 June 2004 who acquires the minimum allocation of 1 Woodlot and engages the Manager to arrange for the harvesting of the trees and marketing of timber will not have their activity pass one of the tests. For a Grower accepted after 1 July 2004 and on or before 30 June 2005 who acquires the minimum allocation of 1 Woodlot and who will engage the Manager to arrange for the harvesting and marketing of timber will not have their activity pass on of the tests. Growers who acquire more than one interest in the Project may however, find that their activity meets one of the tests in an earlier income year.

110. 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.

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

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

112. Information provided with this Product Ruling indicates that a Grower (who is accepted to participate in the Project on or before 30 June 2004) who acquires the minimum investment of 1 Woodlot in the Project is expected to be carrying on a business activity that will produce a taxation profit, for the income years ended 30 June 2017 and 30 June 2022.

113. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2028. The taxation profit that is projected for the income years ended 30 June 2017 and 30 June 2022 do not affect the period of the Commissioner's discretion as they are considered to be 'one-off' events that are specific to the afforestation industry.

114. Information provided with this Product Ruling indicates that a Grower (who is accepted to participate in the Project on or after 1 July 2004 and on or before 30 June 2005) who acquires the minimum investment of 1 Woodlot in the Project is expected to be carrying on a business activity that will produce a taxation profit, for the income years ended 30 June 2018 and 30 June 2023.

115. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion for all income years up to, and including the income year ended 30 June 2029. The taxation profit that is projected for the income years ended 30 June 2018 and 30 June 2023 do not affect the period of the Commissioner's discretion as they are considered to be 'one-off' events that are specific to the afforestation industry.

116. 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 66), in the manner described in the Arrangement (see paragraphs 14 to 53). 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.

117. 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 market reports provided with the Application by WFL; and
- independent, objective, and generally available information relating to the afforestation industry.

## **Section 82KL - recouped expenditure**

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

## **Part IVA - general tax avoidance provisions**

119. 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).

120. The Willmott Forests Project – 2004 Product Disclosure Statement will be a ‘scheme’. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 65 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.

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

## Example

### Entitlement to GST input tax credits

122. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2002, Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2003 to 30/6/2003	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>
Total due and payable by 1 January 2003 (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 2003, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

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

**Detailed contents list**

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

	<b>Paragraph</b>
<b>What this Product Ruling is about</b>	<b>1</b>
Tax law(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Arrangement</b>	<b>14</b>
Overview	17
Constitution	20
Compliance plan	24
Forestry Management Agreement	25
Lease Agreement and Forestry Right	34
Pre-lease Agreement	36
Fees	38
Pooling of 'Trees' and distribution of proceeds	43
Application Form and Terms Agreement	44
Finance	51
<b>Ruling</b>	<b>54</b>
Application of this Ruling	54
The Simplified Tax System ('STS')	60
<i>Division 328</i>	60
Qualification	61
Assessable income	62
<i>Section 6-5 and section 328-105</i>	62
Deductions for the management fee under Part 1 of the Forestry Management Agreement and for interest under a Terms Agreement with WFL	65



<i>Section 8-1 and section 328-105</i>	65
Deferral of losses from non-commercial business activities – Division 35	66
<i>Section 35-55 – Commissioner’s discretion</i>	66
Sections 82KZME – 82KZMF, 82KL and Part IVA	70
<b>Explanation</b>	<b>71</b>
Is the Grower carrying on a business?	71
The Simplified Tax System	85
<i>Division 328</i>	85
Deductibility of fees under Part 1 of Forestry Management Agreement	87
<i>Section 8-1</i>	87
Interest deductibility	89
<i>Section 8-1</i>	89
<i>(i) Growers who pay fees under a Terms Agreement with WFL</i>	89
<i>(ii) Growers enter into finance arrangements with other finance providers</i>	91
Prepayment provisions	92
<i>Sections 82KZL – 82KZMG</i>	92
<i>Section 82KZMG</i>	94
<i>Application of the prepayment provisions to this Project</i>	99
<i>Section 82KZME and 82KZMF</i>	101
Deferral of losses from non-commercial business activities	104
<i>Division 35</i>	104
Section 82KL – recouped expenditure	118
Part IVA general tax avoidance provisions	119
<b>Example</b>	<b>122</b>
Entitlement to GST input tax credits	122
<b>Detailed Contents List</b>	<b>123</b>

**PR 2004/11**FOI status: **may be released**

Page 34 of 34

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

PR 1999/95; TR 92/1; TR 92/20;  
 TR 97/11; TR 97/16; TR 98/22;  
 TR 2000/8; TD 2003/12; TD 93/34;  
 IT 360

*Subject references:*

- advance deductions and expenses for certain forestry expenditure
- carrying on a business
- commencement of business
- fee expenses
- forestry agreement
- interest expenses
- management fees
- producing assessable income
- product rulings
- public rulings
- seasonally dependent agronomic activity
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

- 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 1936 318
- 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 328
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(b)
- IT(TP)A 1997 328-120
- IT(TP)A 1997 328-125
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

*Legislative references:*

- ITAA 1936 Div 3 Subdiv H Pt III
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)

*Case references:*

- *FCT v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

## ATO references

NO: 2003/8904

ISSN: 1441-1172