



PR 2004/24 - Income tax: Monini Olive Groves Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 March 2004*

Product Ruling

Income tax: Monini Olive Groves Project

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

Preamble

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

No guarantee of commercial success

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

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

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

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

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

Terms of Use of this Product Ruling

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

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the Monini Olive Groves Project or simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - Section 8-1 (ITAA 1997);
 - Section 17-5 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 40 (ITAA 1997);
 - Division 70 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - Section 82KZL (ITAA 1936);
 - Section 82KZME (ITAA 1936);
 - Section 82KZMF (ITAA 1936); and
 - Part IVA (ITAA 1936).

Goods and Services Tax

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

Changes in the Law

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

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

Note to promoters and advisers

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

Class of persons

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

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. Members who either elect to harvest and market their olives from their Olive Grove or who enter into other subcontracting arrangements (see paragraphs 38) are 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 10 March 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 that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 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 person's involvement in the arrangement.

Arrangement

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

- Application for a Product Ruling from Elliance Securities Limited (Elliance), dated 17 December 2003, as constituted by documents provided on 18 December 2003 and 3, 18, 23, 24 and 27 February 2004 in respect of the Monini Olive Groves Project and additional correspondence dated 22 December 2003, 23 January 2004, and 3, 12, 18, 24 and 27 February 2004;
- **Monini Olive Groves Project Constitution** dated 27 February 2002, the parties to which are the Members (collectively) and Elliance;
- **Supplementary Constitution for the Monini Olive Groves Project**, dated 18 February 2004;
- Monini Olive Groves Project Compliance Plan, dated 17 December 2003;
- Draft Supplementary Monini Olive Groves Project Compliance Plan, dated 3 February 2004;
- Product Disclosure Statement and Prospectus, undated, received by the ATO on 24 February 2004;
- **Draft Licence and Management Deed**, undated, received by the ATO on 23 February 2004, between Elliance and a Member;
- Draft Lease between Montoro Olives Pty Ltd (Montoro) as landowner and Elliance as lessee, received by the ATO on 3 February 2004;
- **Option Deed** between Elliance and each investor in relation to options for shares in the proposed nominee company, Hillston Landowning Company Limited ;
- Promoter's deed between Elliance and Montoro;

- Tree Supply And Purchase Agreement between Montoro and Monini S.P.A. (Monini) and Agricola Antinori de Antinori Annarita (both Italian based companies), dated 1 March 2001;
- **Olive Oil Production and Supply Agreement** between Elliance, Monini and each Member through the agency of Elliance, dated 1 March 2001; and
- Preferred Supplier Agreement between Elliance and Montoro, undated, received by the ATO on 18 December 2003.

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

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

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

Overview

17. This arrangement is called the Monini Olive Groves Project.

Location	‘Burilda’ located on the outskirts of Hillston in South-Western NSW. Lots 13 and 14 of Registered Plan 755157.
The Land	The total land size is 712 Hectares, of which 200 Hectares has been assigned to the Project.
Term of the Project	25 years
Number of investments available	800
Olive Grove	0.25 hectare

Minimum Subscription	Minimum subscription of 200 Olive Groves, totalling \$833,600.
Minimum initial cost	\$4,168 per Olive Grove, consisting of: (a) Management Fees \$978 (b) Share Option Purchase \$100 (c) Irrigation Costs \$1,730 (d) Landcare \$570 (e) Grove Preparation \$355, and (f) Tree Purchase \$435.
Initial Cost per hectare	\$16,272.
Annual Management Fee	\$1,432 for the second year \$1,475 for the third year \$1,519 for the fourth year \$1,565 for the fifth year and then increased by the greater of 3% or CPI (per year)
Annual Licence Fee	\$330.00 for the second year and then increased by the greater of 3% or CPI (per year) from and including the third year.
Harvesting Fee	\$3.50 per Olive Tree (increased annually by CPI until 2006 when the figure will be indexed to CPI).
Processing Charge	\$0.80 per litre of Olive Oil (increased annually by 3% until 2006 when the figure will be indexed to CPI).
Performance Bonus	From year 9, 15% of actual gross income over targeted gross income (increased annually by 3% after the first year bonus payable)

18. The Project is registered as a managed investment scheme under the *Corporations Act 2001*. The Responsible Entity for the Project is Elliance Securities Limited.

19. The Project Land is situated on a property known as 'Burilda' located at Hillston in south-western New South Wales.

20. Members applying under the Product Disclosure Statement will enter into a Licence and Management Deed with the Responsible Entity. The maximum offer under the PDS is for 200 hectares which is equivalent to 800 Olive Groves. The offer will invite Members to subscribe for at least 1 Olive Grove in the Project.

21. Montoro Olives Pty Ltd (the Land Owner) will lease the land to Elliance who will licence the Olives Groves to the Members. Members participating in the Project will carry on the business of commercial growing and cultivation of Olive Trees for the purpose of producing Olive Oil.

22. The Licence and Management Deed gives a Member a licence from Elliance over an identifiable area of land called a Olive Grove until the earlier of:

- A termination of a Member's interest in the Project, pursuant to the Constitution, or
- date of payment to the Member of the final distribution following harvest in year 25 of the Project.

The Member is granted this right for the purpose of planting, growing, harvesting and marketing of olives to produce Olive Oil for commercial gain.

23. Minimum subscription for the Project is 200 Olive Groves. The Responsible Entity has the right to accept or reject applications in whole or in part. For the purposes of this Product Ruling, applications to participate in the Project are open until 31 May 2005 or until the Responsible Entity closes the offer prior. It should be noted that applications will only be accepted by the Responsible Entity during the period from the date of issue of this Ruling until 31 May 2004 (both dates included) and from 1 July 2004 until 31 May 2005 (both dates included).

24. As part of the arrangement, Members participating in the Project acquire a stapled option to acquire shares in the nominee company that has the right to acquire 100 hectares of the land used in the Project. The nominee company is intended to be named 'Hillston Land Holding Company Limited' (Hillston). This option is able to be exercised from 1 September 2028 until the earlier of 31 July 2029 or by the sending by Members of an option notice. If a Member exercises the option, they shall be required to pay the greater of the last year's net income for the Member's Olive Grove or \$1.00 per share. The effect of the allotment of these shares is that the Member will then own a share of Hillston.

MIS Constitution

25. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Members and to manage the Project.

26. The Responsible Entity will keep a register of Members (Clause 19). Members are entitled to assign their Member's Interest in certain circumstances (Clause 20). The Licence and Management Deed will be executed on behalf of a Member, pursuant to a Power of Attorney Form in the Product Disclosure Statement. Members are bound by the Constitution by virtue of their participation in the Project.

27. Members in consideration for an annual Licence Fee acquire the right to occupy a defined area of approximately 0.25 hectares (the Olive Grove) for the purpose of growing Olive Trees (clause 3 of the Licence and Management Deed). Each Olive Grove can be physically identified and differentiated from all Olive Groves and Members will be advised of the exact location of their grove (Schedule 1 to the Licence and Management Deed).

Compliance Plan

28. The Responsible Entity has prepared a Compliance Plan in accordance with the Corporations Act 2001 to ensure it complies with that legislation and the Project's Constitution. Under the Compliance Plan, a Compliance Committee will monitor the extent to which the Responsible Entity meets its obligations in relation to the Project.

Licence and Management Deed

29. Each Member will enter into a Licence and Management Deed appointing the Responsible Entity to manage the Member's business of commercial olive growing on the Member's Olive Grove and Olive Oil production. The Licence and Management Deed terminates on the date of payment to the Member of the final distribution following the harvest in year 25 of the Project, or on the termination of the Member's interest in the Project.

Licence Fee

30. Members who enter the Project on or before 31 May 2004 do not pay a Licence Fee for the period up to 30 June 2004.

31. Members pay the following Licence Fees:

- Irrespective of the date of entering the Project, a Licence Fee of \$330 is payable on 1 July 2004, or on the date of Application, for the period commencing 1 July 2004 and ending 30 June 2005;
- For the period commencing 1 July 2005 and ending 30 June 2006, a Licence Fee of \$340 is payable by 1 July 2005;
- For the period commencing 1 July 2006 and ending 30 June 2007, a Licence Fee of \$350 is payable by 1 July 2006; and
- For the period commencing 1 July 2007 and ending 30 June 2008, a Licence Fee of \$361 is payable by 1 July 2007.

32. The Manager will be entitled to an ongoing annual Licence Fee until the date of termination of the Project, calculated by the greater of the formulas:

$$A = B \times \frac{C}{D} \quad \text{or} \quad A = B \times 1.03$$

Where:

- | | | |
|---|---|--|
| A | = | the new Licence Fee |
| B | = | the Licence Fee current at the time the new fee is being calculated. |
| C | = | the Consumer Price Index for Sydney as at the 31 March immediately prior to the new fee being calculated |
| D | = | the Consumer Price Index for Sydney as at 12 months prior to the Consumer Price Index figure in 'C'. |

Primary Services

33. Members must pay a Primary Services Fee on application under the Product Disclosure Statement. The Primary Services to be provided for that fee include amongst other things:

- Apply for and obtain all relevant Governmental approvals for the establishment and operation of an olive grove on the Member's Olive Grove;
- Develop an irrigation and drainage plan for the Olive Grove;

- c) Install the irrigation and drainage system in accordance with that plan;
- d) Manage and maintain the irrigation system on the Olive Grove;
- e) Manage and maintain drainage on the Olive Grove;
- f) Supervise the owner of the Land to ensure it has prepared the Olive Grove for planting;
- g) Supervise the owner of the Land to ensure it has applied initial appropriate quantities of herbicide, fertiliser, lime calcium and gypsum;
- h) Attend to removing internal fencing and remanent vegetation, stones and sticks;
- i) Control weeds, pests and vermin on the Olive Grove;
- j) Carry out soil maintenance work to keep the Olive Grove in a plantable condition and clear of weeds, pests, vermin and vegetation pending planting;
- k) Finalise and mark out olive tree layout, including marking the location of Olive Trees to be planted on the Member's Olive Groves;
- l) Purchase good quality Olive Tree seedlings from suppliers;
- m) Hold, manage, nurture and care for the Olive Tree seedlings in a suitable nursery pending planting;
- n) Supervise the nursery where the Member's Olive Tree seedlings are held and to otherwise ensure those seedlings are clearly and specifically identified as allocated to the Member;
- o) Manage and maintain all infrastructure on the Olive Grove;
- p) Arrange appropriate insurance for an olive grove, including the Member's Olive Grove; and
- q) Manage and maintain all records in relation to the above primary services, and all other management, administration and compliance duties to be performed by the Responsible Entity in relation to the Member's Interest from the date of commencement of the Agreement.

34. The Management Services that will be provided by the Responsible Entity to each Member include:

- a) Management and administration:
 - i. Carry out staking on the Olive Grove and arrange ties to assist young tree support;
 - ii. Plant the Olive Trees supplied to the Member;
 - iii. Maintain, tend, prune and otherwise care for the Olive Trees as and when required;
 - iv. Monitor and control, to the extent assessed by the Responsible Entity to be commercially feasible, any insects, pests or vermin that may cause significant damage to the Olive Trees;
 - v. Maintain and repair the irrigation to supply water to the Member's Olive Grove;
 - vi. Irrigate the Olive Grove;
 - vii. Manage and maintain the staking system to support the Olive Trees;
 - viii. Replace any Olive Trees that fail to establish or die during the first three years;
 - ix. Monitor soil and foliar nutrient status of the Olive Grove and apply fertilizer and herbicide to the Olive Grove as required;
 - x. Maintain in good repair and condition access to the Olive Grove;
 - xi. Use all reasonable measures by fumigating, poisoning and spraying for controlling the Olive Grove from noxious weeds, to comply with the provisions of all relevant statutes, regulations and by-laws (and any amendments to them) relating to or affecting the Olive Grove or the Member;
 - xii. Maintain in good repair and condition adequate fire-breaks and waterpoints in and about the Olive Grove;
 - xiii. Do all things reasonably necessary to prevent the outbreak or spread of fire upon, from and to the Olive Grove and to comply with all statutory requirements in relation to the prevention and control of fire;

- xiv. Obtain all necessary approvals and consents required in relation to the provision of the services;
 - xv. Do all other things required to be performed by the Member under the Deed (except payment of fees); and
 - xvi. Enter any olive sale agreement as agent for the Member.
- b) Harvesting and processing:
- i. Harvest the olives produced from the Member's Olive Trees at the appropriate time of year according to usual olive horticultural practice;
 - ii. Conduct the harvest in a workmanlike manner;
 - iii. Process the harvested olives at the appropriate time and in accordance with proper time limits and usual practices; and
 - iv. Deliver the Member's Olive Oil produced up for sale or otherwise arrange the sale of the Olive Oil produced.

35. The Member's Olive Trees will be purchased when the participant is accepted into the Project. If necessary, the trees will be held in a nursery on the property until the appropriate time to plant the Olive Trees into the Member's Olive Grove. Whilst in the nursery, the Member's Olive Trees will be specifically identified as belonging to that Member.

36. Members who enter into the agreement on or before 31 August 2004 will have their Olive Trees planted onto the Member's licensed land by 30 September 2004. Members who enter the Project after 31 August 2004 will have their Olive Trees planted onto the Member's licensed land by 30 September 2005.

37. The Member authorises the Responsible Entity to decide when it is appropriate to harvest the olives and to make all arrangements for the harvesting, processing, freighting and sale of the Olive Oil.

38. The Responsible Entity has agreed to use all reasonable endeavours to market and sell the Olive Oil produced from the harvested olives. The Responsible Entity has entered into an Olive Oil Production and Supply Agreement with Monini and as agent for each Member whereby Monini is to purchase up to 720 tonnes of olive oil per year. Members may elect to collect the Olive Oil produced and market and sell the olive oil on their own behalf (clause 10.3). However, this Ruling does not apply to these Members.

Primary Services Fee

39. The following Primary Services Fee is payable on application for the performance of the primary services:

For landcare	\$570
For tree supply	\$435
For irrigation	\$1,730
For management services	\$978
For grove preparation	\$355

Fee for Share Option

40. Members pay \$100.00 on application for an option to acquire shares in the nominee company that has the right to acquire 100 hectares of the land used in the Project.

Timing of Primary Services

41. The primary services shown in the Licence and Management Deed will be commenced by the Responsible Entity when the Member is accepted into the Project and continue until the next 30 June, or the Olive Trees are planted, whichever occurs the earliest. Accordingly, where the Member is accepted into the project on or before 31 May 2004, the primary services will cover the period to 30 June 2004. For a Member who is accepted into the Project after 30 June 2004 and on or before 31 August 2004 the primary services will be performed before 30 September 2004. For a Member who is accepted into the Project after 31 August 2004 and on or before 31 May 2005 the primary services will be performed before 30 June 2005.

Management Fee

42. Members who enter the project on or before 31 May 2004 ('2004 Members') will pay the following Management Fees to the Responsible Entity:

- For the period commencing on the day after the primary services cease and ending on 30 June 2005, the Responsible Entity is entitled to a Management Fee of \$1,432;
- For the period commencing 1 July 2005 and ending on 30 June 2006, the Responsible Entity is entitled to a Management Fee of \$1,475;
- For the period commencing 1 July 2006 and ending on 30 June 2007, the Responsible Entity is entitled to a Management Fee of \$1,519;
- For the period commencing 1 July 2007 and ending on 30 June 2008, the Responsible Entity is entitled to a Management Fee of \$1,565; and

The fees above will also apply to Members who enter the Project after 30 June 2004 and on or before 31 August 2004 ('Early 2005 Members').

43. Members who enter the Project after 31 August 2004 but on or before 31 May 2005 ('Late 2005 Members') will pay the following Management Fees to the Responsible Entity:

- For the period commencing on the day after the primary services cease and ending on 30 June 2006, the Responsible Entity is entitled to a Management Fee of \$1,432;
- For the period commencing 1 July 2006 and ending on 30 June 2007, the Responsible Entity is entitled to a Management Fee of \$1,475;
- For the period commencing 1 July 2007 and ending on 30 June 2008, the Responsible Entity is entitled to a Management Fee of \$1,519; and
- For the period commencing 1 July 2008 and ending on 30 June 2009, the Responsible Entity is entitled to a Management Fee of \$1,565.

44. From 1 July 2008, for 2004 Members and Early 2005 Members, and from 1 July 2009, for Late 2005 Members, the Responsible Entity will be entitled to an ongoing annual Management Fee until the date of termination of the Deed calculated as the greater of the formulas:

$$A = B \times \frac{C}{D} \quad \text{or} \quad A = B \times 1.03$$

Where:

- | | | |
|---|---|---|
| A | = | the new Management Fee |
| B | = | the Management Fee current at the time the new fee is being calculated. |
| C | = | the Consumer Price Index as at the 31 March immediately prior to the new fee being calculated |
| D | = | the Consumer Price Index as at 12 months prior to the Consumer Price Index figure in 'C'. |

Harvesting and Processing Fees

45. The following fees will be paid for the Harvesting And Processing Costs in the first year in which a harvest occurs:

- For the costs incurred in relation to harvesting, \$3.50 per Olive Tree, to be increased annually by 3% until 2006 when they will be indexed to CPI;
- For the costs incurred in relation to processing the Member's olive oil, \$0.80 per litre of olive oil, to be increased annually by 3% until 2006 when they will be indexed to CPI; and
- A performance bonus of 15% of the actual gross income over targeted gross income, to be increased annually by 3% after the first year bonus payable.

This ruling does not apply to Members who elect to market and sell their own olives or olive oils.

Finance

46. Members are required to fund their involvement in the Project themselves or by borrowing from an independent lender.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;

- ‘additional benefits’ are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a ‘scheme’ to which Part IVA may apply;
- the loan or rate of interest is non-arm’s length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to s for the Project.

Ruling

Application of this Ruling

48. This Ruling applies only to Members who are accepted to participate in the Project on or before 31 May 2005 and who have executed a Licence and Management Deed before that date. The Member’s participation in the Project must constitute the carrying on of a business of primary production.

Minimum subscription

49. A Member is not eligible to claim any tax deductions until the Member’s application to enter the Project is accepted and the Project has commenced. Under the terms of the product disclosure statement, a Member’s application will not be accepted and the Project will not proceed until the minimum subscription of 200 interests is achieved.

The Simplified Tax System (‘STS’)

Division 328

50. For a Member participating in the Project, the recognition of income and the timing of tax deductions, including those related to

capital allowances, is different depending on whether the Member is an 'STS taxpayer'. To be an 'STS taxpayer' a Member:

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

Qualification

51. This Product Ruling assumes that a Member who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Member may become an 'STS taxpayer' at a later point in time. Also, a Member 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 Members that cannot be accommodated in this Ruling. Such Members can ask for a private ruling on how the taxation legislation applies to them.

Tax outcomes for Members who are not 'STS taxpayers'

Assessable Income

Section 6-5

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

53. The Member recognises ordinary income from carrying on the business of growing olive trees at the time that income is derived.

Trading stock

Section 70-35

54. A Member who is not an 'STS taxpayer' may, in some years, hold olives that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the *end* of an income year exceeds the value of trading stock on hand at the *start* of an income year a Member must include the amount of that excess in assessable income.

55. Alternatively, where the value of trading stock on hand at the *start* of an income year exceeds the value of trading stock on hand at the *end* of an income year, a Member may claim the amount of that excess as an allowable deduction.

56. During each year of the Project, the Manager will provide the Member with sufficient information to enable the Member to determine the value of trading stock on hand at the end of the relevant income year.

Deductions for Primary Services Fee, Management Fees and Licence Fees for 2004 Members

Section 8-1

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

Fee Type	ITAA 1997 Section	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Primary Services Fee	8-1	\$978.00 – See Notes (i) & (ii) (below)		
Management Fee	8-1	NIL – See Notes (i) & (ii) (below)	\$1,432.00 – See Notes (i) & (ii) (below)	\$1,475.00 – See Note (i) & (ii) (below)
Licence Fee	8-1	NIL – See Notes (i) & (ii) (below)	\$330.00 – See Notes (i) & (ii) (below)	\$340.00 – See Notes (i) & (ii) (below)

Deductions for Primary Services Fee, Management Fees and Licence Fees for Early 2005 Members

Section 8-1

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

Fee Type	ITAA 1997 Section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Primary Services Fee	8-1	\$978.00 – See Notes (i) & (ii) (below)		

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Management Fee	8-1	\$1,432.00 – See Notes (i) & (ii) (below)	\$1,475.00 – See Notes (i) & (ii) (below)	\$1,519.00 – See Note (i) & (ii) (below)
Licence Fee	8-1	\$330.00 – See Notes (i) & (ii) (below)	\$340.00 – See Notes (i) & (ii) (below)	\$350.00 – See Notes (i) & (ii) (below)

Deductions for Primary Services Fee, Management Fees and Licence Fees for Late 2005 Members

Section 8-1

59. A Member who is not an ‘STS taxpayer’ may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Primary Services Fee	8-1	\$978.00 – See Notes (i) & (ii) (below)		
Management Fee	8-1	NIL – See Notes (i) & (ii) (below)	\$1,432.00 – See Notes (i) & (ii) (below)	\$1,475.00 – See Note (i) & (ii) (below)
Licence Fee	8-1	\$330.00 – See Notes (i) & (ii) (below)	\$340.00 – See Notes (i) & (ii) (below)	\$350.00 – See Notes (i) & (ii) (below)

Notes:

- (i) If the Member is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 140.
- (ii) The Primary Services Fees, Management Fees and the Licence Fees shown in the Licence and Management Deed are deductible in full in the year that they are incurred. However, if a Member chooses to prepay

fees for the doing of a thing (e.g. the provision of management services or the licensing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 108 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Deductions for capital expenditure

Division 40

60. A Member who is not an 'STS taxpayer' will also be entitled to tax deductions relating to water facilities (e.g. irrigation), a 'landcare operation' and olive trees. All deductions shown in the following Tables are determined under Division 40.

For 2004 Members

Fee type	ITAA 1997 section	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Water facility (e.g. irrigation, dam, bore, etc)	40-515	\$577.00 - See Notes (iv) & (vii) below	\$577.00 - See Notes (iv) & (vii) below	\$576.00 - See Notes (iv) & (vii) below
Landcare operations	40-630	\$570.00 - See Notes (iv) & (viii) below		
Establishmen t of horticultural plants (olive trees)	40-515	Nil - See Notes (iv) & (ix) below	Nil - See Notes (iv) & (ix) below	Nil - See Notes (iv) & (ix) below

For Early 2005 Members and Late 2005 Members

Fee type	ITAA 1997 section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Water facility (e.g. irrigation, dam, bore, etc)	40-515	\$577.00 - See Notes (iv) & (vii) below	\$577.00- See Notes (iv) & (vii) below	\$576.00 - See Notes (iv) & (vii) below
Landcare operations	40-630	\$570.00 - See Notes (iv) & (viii) below		
Establishmen t of horticultural plants (olive trees)	40-515	Nil - See Notes (iv) & (ix) below	Nil - See Notes (iv) & (ix) below	Nil - See Notes (iv) & (ix) below

Notes:

- (iii) If the Member is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 140.
- (iv) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Member on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).
- (v) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630.
- (vi) Olive Trees are a 'horticultural plant' as defined in subsection 40-525(2). As Members hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is

available under paragraph 40-515(1)(b) for their decline in value. The deduction for the olive trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Member that is attributable to their establishment. If the olive trees have an 'effective life' of greater than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 7%. The deduction is allowable when the olive trees enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Members of when the olive trees enter their first commercial season.

Tax outcomes for Members who are 'STS taxpayers'

Assessable Income

Section 6-5 and section 328-105

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

62. The Member recognises ordinary income from carrying on the business of growing olive trees at the time the income is received (paragraph 328-105(1)(a)).

Treatment of trading stock

Section 328-285

63. A Member who is an 'STS taxpayer' may, in some years, hold olives that will constitute trading stock on hand. Where, for such a Member, for an income year, the difference between the value of all their trading stock at the start and a reasonable estimate of it at the end, is less than \$5,000, they do not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

64. Alternatively, a Member who is an 'STS taxpayer' may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).

65. During each year of the Project, the Manager will provide the Member with sufficient information to enable the Member to determine the value of trading stock on hand at the end of the relevant income year.

Deductions for Primary Services Fee, Management Fees and Licence Fees for 2004 Members***Section 8-1 and section 328-105***

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

Fee Type	ITAA 1997 Sections	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Primary Services Fee	8-1 & 328-105	\$978.00 – See Notes (viii), (ix) & (x)(below)		
Management Fee	8-1 & 328-105	NIL – See Notes (viii), (ix) & (x)(below)	\$1,432.00 – See Notes (viii), (ix) & (x)(below)	\$1,475.00 – See Notes (viii), (ix) & (x)(below)
Licence Fee	8-1 & 328-105	NIL – See Notes (viii), (ix) & (x)(below)	\$330.00 – See Notes (viii), (ix) & (x)(below)	\$340.00 – See Notes (viii), (ix) & (x)(below)

Deductions for Primary Services Fee, Management Fees and Licence Fees for Early 2005 Members***Section 8-1 and section 328-105***

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

Fee Type	ITAA 1997 Sections	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Primary Services Fee	8-1 & 328-105	\$978.00 – See Notes (viii), (ix) &		

		(x)(below)		
Management Fee	8-1 & 328-105	\$1,432.00 – See Notes (viii), (ix) & (x)(below)	\$1,475.00 – See Notes (viii), (ix) & (x)(below)	\$1,519.00 – See Notes (viii), (ix) & (x)(below)
Licence Fee	8-1 & 328-105	\$330.00 – See Notes (viii), (ix) & (x)(below)	\$340.00 – See Notes (viii), (ix) & (x)(below)	\$350.00 – See Notes (viii), (ix) & (x)(below)

Deductions for Primary Services Fee, Management Fees and Licence Fees for Late 2005 Members

Section 8-1 and section 328-105

68. A Member who is an ‘STS taxpayer’ may claim tax deductions for the following revenue expenses:

Fee Type	ITAA 1997 Sections	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Primary Services Fee	8-1 & 328-105	\$978.00 – See Notes (viii), (ix) & (x)(below)		
Management Fee	8-1 & 328-105	NIL – See Notes (viii), (ix) & (x)(below)	\$1,432.00 – See Notes (viii), (ix) & (x)(below)	\$1,475.00 – See Notes (viii), (ix) & (x)(below)
Licence Fee	8-1 & 328-105	\$330.00 – See Notes (viii), (ix) & (x)(below)	\$340.00 – See Notes (viii), (ix) & (x)(below)	\$350.00 – See Notes (viii), (ix) & (x)(below)

Notes:

- (vii) If the Member is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 140.
- (viii) If, for any reason, an amount shown in the Table above is not fully paid in the year in which it is incurred by a Member 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 Member. Any amount or part of an amount shown in the Table above which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.
- (ix) Where a who is an 'STS taxpayer', pays the Primary Services Fee, Management Fees and Licence Fees in the relevant income years shown in the Licence and Management Deed, those fees are deductible in full in the year that they are paid. However, if a Member chooses to prepay fees for the doing of a thing (e.g. the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA may apply to apportion those fees (see paragraphs 102 to 113) . In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 108, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Deductions for capital expenditure***Subdivision 328-D and Subdivisions 40-F and 40-G***

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

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

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

For 2004 Members

Fee type	ITAA 1997 section	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Water facility (e.g. irrigation, dam, bore, etc)	40-515	\$577.00 - See Notes (xi) & (xii) below	\$577.00 - See Notes (xi) & (xii) below	\$576.00 - See Notes (xi) & (xii) below
Landcare operations	40-630	\$570.00 - See Notes (xi) & (xiii) below		
Establishment of horticultural plants (olive trees)	40-515	Nil - See Notes (xi) & (xiv) below	Nil - See Notes (xi) & (xiv) below	Nil - See Notes (xi) & (xiv) below

For Early 2005 Members and Late 2005 Members

Fee type	ITAA 1997 section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Water facility (e.g. irrigation, dam, bore, etc)	40-515	\$577.00 - See Notes (xi) & (xii) below	\$577.00 - See Notes (xi) & (xii) below	\$576.00 - See Notes (xi) & (xii) below
Landcare operations	40-630	\$570.00 - See Notes (xi) & (xiii) below		
Establishment of horticultural plants (olive trees)	40-515	Nil - See Notes (xi) & (xiv) below	Nil - See Notes (xi) & (xiv) below	Nil - See Notes (xi) & (xiv) below

Notes:

- (x) If the Member is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 140.
- (xi) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Member may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Member's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Member is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not

treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2004 or, for Members accepted into the Project after 30 June 2004, in the year ended 30 June 2005 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Members must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Member on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).

- (xii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is fully deductible in the year it is incurred under Subdivision 40-G, section 40-630. If the expenditure is on a 'depreciating asset' (the underlying asset), the Member may choose to claim a deduction under either Division 328 or Subdivision 40-G (although expenditure on some items of plant can only be deducted under Division 328). For the purposes of Division 328, each Member's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Member is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years, the full pool rate will apply. If the expenditure is not on a 'depreciating asset', the expenditure is fully deductible under Subdivision 40-G.

- (xiii) Olive trees are a 'horticultural plant' as defined in subsection 40-525(2). As Members hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the olive trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Member that is attributable to their establishment. If the olive trees have an 'effective life' of greater than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 7%. The deduction is allowable when the olive trees enter their first commercial season (section 40-530(2)). The Responsible Entity will inform Members of when the olive trees enter their first commercial season.

Tax outcomes that apply to all Members

72. The deductibility or otherwise of interest incurred by Members who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However all Members who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 102 to 113 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Member's choice.

Deferral of losses from non-commercial business activities**Division 35*****Section 35-55 – Commissioner's discretion***

73. For a Member who is an individual and who enters the Project on or before 31 May 2004 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2004 to 30 June 2008 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.

74. For a Member who is an individual and who enters the Project after 30 June 2004 and on or before 31 August 2004 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the

Commissioner will decide for the income years ending 30 June 2005 to 30 June 2008 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.

75. For a Member who is an individual and who enters the Project after 31 August 2004 and on or before 31 May 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 2009 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling

76. 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 123 in the Explanations part of this ruling, below); or
- a Member’s business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
- a Member’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)).

77. Where, the ‘exception’ in subsection 35-10(4) applies, the Member’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 Member 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.

78. Members are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Members 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

79. For a Member who participates in the Project and incurs expenditure as required by the Licence and Management Deed the following provisions of the ITAA 1936 have application as indicated:

- expenditure by a Member does not fall within the scope of sections 82KZME-82KZMF (but see paragraphs 102 to 113);
- 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 Member carrying on a business?

80. For the amounts set out in the Tables above to constitute allowable deductions the Member's olive growing activities as a participant in the Monini Olive Groves Project must amount to the carrying on of a business of primary production. These olive growing activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535 of the ITAA 1997.

81. For schemes such as that of the Monini Olive Groves Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Member's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929.

82. Generally, a Member will be carrying on a business of olive growing, and hence primary production, if:

- the Member has an identifiable interest (by lease or by licence) in the land on which the Member's olive trees are established;
- the Member has a right to harvest and sell the olives each year from those olive trees
- the olive growing activities are carried out on the Member's behalf;
- the olive growing activities of the Member are typical of those associated with a olive growing business; and
- the weight and influence of general indicators point to the carrying on of a business.

83. In this Project, each Member enters into a Licence and Management Deed.

84. Under the Licence and Management Deed each individual Member will have rights over a specific and identifiable area of land. The Licence and Management Deed provides the Member with an ongoing interest in the specific olive trees on the licensed area for the term of the Project. Under the Licence and Management Deed the Member must use the land in question for the purpose of carrying out olive growing and for no other purpose. The licence allows the Responsible Entity to come onto the land to carry out its obligations under the Licence and Management Deed.

85. Under the Licence and Management Deed the Responsible Entity is engaged by the Member to establish and maintain an Olive Grove on the Member's identifiable area of land during the term of the Project. The Responsible Entity has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to establish and maintain the Olive Grove on the Member's behalf.

86. In establishing the Olive Grove, the Member engages the Responsible Entity to purchase and install water facilities (e.g. irrigation), to carry out 'landcare operation' and to acquire and plant olive trees on the Member's Olive Groves. During the term of the Project, these assets will be used wholly to carry out the Member's Olive growing activities. The Responsible Entity is also engaged to harvest and sell, on the Member's behalf, the olives grown on the Member's Olive Grove.

87. 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.

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

89. The pooling of olives grown on the Member's Olive Grove with the olives of other Members is consistent with general horticultural practices. Each Member's proportionate share of the sale proceeds of the pooled olives will reflect the proportion of the olives contributed from their Olive Grove.

90. The Responsible Entity's services and the installation of assets on the Member's behalf are also consistent with general horticultural practices. The assets are of the type ordinarily used in carrying on a business of olive growing. While the size of a Olive Grove is relatively small, it is of a size and scale to allow it to be commercially viable. (see *Taxation Ruling* IT 360).

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

92. The olive growing 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 Members' olive growing activities in the Monini Olive Groves Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

94. The question of whether a Member is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Member 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 Primary Services Fee, Management Fees and Licence Fees

Section 8-1

95. Consideration of whether the Primary Services Fee, Management 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.

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

Possible application of prepayment provisions

97. Under the Licence and Management Deed neither the Primary Services Fee, nor the Management Fees and the Licence Fees are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.

98. However, where a Member chooses to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 102 to 113) will apply to determine the amount and timing of the deductions regardless of whether the Member is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

Timing of deductions

99. In the absence of any application of the prepayment provisions, the timing of deductions for the Primary Services Fee, Management Fees or the Licence Fees will depend upon whether a Member is an 'STS taxpayer' or is not an 'STS taxpayer'.

100. If the Member is not an 'STS taxpayer', the Primary Services Fee, Management Fees and the Licence Fees are deductible in the year in which they are incurred.

101. If the Member is an 'STS taxpayer' Primary Services Fee, Management Fees and the Licence Fees are deductible in the income year in which they are paid, or are paid for the Member (paragraph 328-105(1)(b)). If any amount that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid or is paid for the Member.

Prepayment provisions***Sections 82KZL to 82KZMF***

102. 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.

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

Sections 82KZME and 82KZMF

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

105. 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; and
- 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.

106. 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 Member in this Project who, in order to participate in the Project may borrow funds from an independent financier. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Member prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

107. There are a number of exceptions to these rules, but for Members 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 Members in this Project, 'excluded expenditure' is

prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

108. 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.

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

109. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

Application of the prepayment provisions to this Project

110. In this Project, a Primary Services Fee of \$4,068.00 will be incurred on execution of the Licence and Management Deed. The Primary Services Fee is charged for providing Primary Services to a Member who enters the Project on or before 31 May 2004 by 30 June 2004, or to a Member who enters the Project after 30 June 2004 and on or before 31 May 2005 by 30 June 2005. Under the Licence and Management Deed, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.

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

112. There is also no evidence that might suggest the Primary Services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the Primary Services Fee, and the Management Fees for subsequent years, is for the Project Responsible Entity doing 'things' that are not to be wholly done within the expenditure year. Under the Licence and Management Deed, Licence Fees are payable annually in advance for the licence of the land during the expenditure year.

113. On this basis, provided a Member incurs expenditure as required under the Project agreements, as set out in paragraphs 31, 39, 42, 43 and 45, then the basic precondition in subsection 82KZME(2)

is not satisfied and, in these circumstances, section 82KZMF will have no application.

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

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

115. For these Members, the amount and timing of deductions for any relevant prepaid Management Fees, prepaid Licence Fees, or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

116. However, as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be 'excluded expenditure' and will be not subject to apportionment under section 82KZMF.

Expenditure of a capital nature

Division 40 and Division 328

117. Any part of the expenditure of a Member that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to water facilities, a 'landcare operation', and the establishment of the olive trees is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328 of the ITAA 1997.

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

119. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 60 and 71 (above) in the Tables and the accompanying Notes.

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

120. 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.

121. 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.

122. 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.

123. 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 Members who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

124. 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).

125. A Member 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 Member who acquires the minimum allocation of one Olive Grove in the Project on or before 31 August 2004 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2011. Information provided with the application for this Product Ruling indicates that a Member who acquires the minimum allocation of one Olive Grove in the Project after 31 August 2004 and on or before 31 May 2005 is unlikely to have their activity pass one of the tests until the income year ended 30 June 2012. Members 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.

126. 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 Member's participation in the Project.

127. 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.

128. Information provided with this Product Ruling indicates that a Member who acquires the minimum investment of one Olive Grove in the Project on or before 31 August 2004 is expected to be carrying on a business activity that will pass one of the tests in the income year ended 30 June 2011, or will produce a taxation profit, for the income years ended 30 June 2009, 30 June 2010 and 30 June 2011.

129. The Commissioner will decide for such a Member 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 2008.

130. Information provided with this Product Ruling indicates that a Member who acquires the minimum investment of one Olive Grove in the Project after 31 August 2004 and on or before 31 May 2005 is expected to be carrying on a business activity that will pass one of the tests in the income year ended 30 June 2012, or will produce a taxation profit, for the income years ended 30 June 2010, 30 June 2011 and 30 June 2012.

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

132. This Product Ruling is issued on a prospective basis (i.e. before an individual Member's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraphs 73, 74 and 75), in the manner described in the Arrangement (see paragraphs 14 to 47). 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). Members may need to apply for private rulings on how paragraph 35-55(1) will apply in such changed circumstances.

133. 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 horticulturist and additional expert or scientific evidence provided with the application by the Responsible Entity;
- the binding Olive Oil production and Supply Agreement between Elliance, Monini and each Member through the agency of Elliance setting out prices that realistically reflect the existing market and/or the projected market in the geographical region where the olives are grown; and
- independent, objective, and generally available information relating to the olive industry which substantially supports cash flow projections and other claims, including prices and costs, in the Product Ruling application submitted by the Responsible Entity.

Losses and Outgoings incurred under Certain Tax Avoidance Schemes***Section 82KL - recouped expenditure***

134. 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'.

135. '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.

136. 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 Member. 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.

Schemes to Reduce Income Tax***Part IVA - general tax avoidance provisions***

137. 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).

138. The Monini Olive Groves Project will be a 'scheme'. A Member will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 57, 58, 59, 60, 66 above, 64 above, 68 above and 71 above 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.

139. Members to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the harvesting and sale of their olives. There are no facts that would suggest that Members 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

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

Management fee for period 1/1/2002 to 30/6/2002 \$4,400*

Carrying out of upgrade of power for your vineyard as quoted	<u>\$2,200*</u>
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Total due and payable by 1 January 2002 (includes GST of \$600)	<u>\$6,600</u>
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*Taxable supply

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

$$1/11 \times \$4,400 = \$400.$$

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

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

$$1/11 \times \$2,200 = \$200.$$

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

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2000 only, not one tenth of \$2,200).

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Commissioner of Taxation

10 March 2004

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	- ITAA 1936 177A
<i>Related Rulings/Determinations:</i>	- ITAA 1936 177C
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