

PR 2004/51 - Income tax: 2004 Timbercorp Citrus Project

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 May 2004*



Product Ruling

Income tax: 2004 Timbercorp Citrus Project

Contents	Para
What this Product Ruling is about	1
Date of effect	11
Withdrawal	13
Arrangement	14
Ruling	57
Explanation	75
Example	106
Detailed contents list	107

Preamble

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

No guarantee of commercial success

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.

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 investment 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, 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 '2004 Timbercorp Citrus 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);
 - Section 25-25 (ITAA 1997);
 - Division 27 (ITAA 1997);
 - Division 35 (ITAA 1997);
 - Division 40 (ITAA 1997);
 - Division 328 (ITAA 1997);
 - Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - Sections 82KZME – 82KZMF (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. Although this Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

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

Note to promoters and advisers

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

Class of persons

7. The class of persons to whom this Ruling applies is the persons more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (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 are accepted to participate in the Project on or after 16 June 2004 and on or before 30 June 2004;
- persons who are accepted to participate in the Project on or after 16 June 2005 and on or before 30 June 2005;
- persons who participate in the Project through offers made other than through the Product Disclosure Statement; and
- Timbercorp Securities Limited and its associates.

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 5 May 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).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2006. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the 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 Product Ruling dated 25 February 2004 and additional correspondence dated 5 April 2004, 7 April 2004, 14 April 2004, 21 April 2004 and 26 April 2004;
- Draft Product Disclosure Statement ('PDS'), dated 19 April 2004, for the 2004 Timbercorp Citrus Project prepared for Timbercorp Securities Limited A.C.N. 092 311 469 ('TSL');
- Draft **Constitution** of the 2004 Timbercorp Citrus Project, provided on 21 April 2004, undated;
- Draft **Licence Agreement**, between each Grower, TSL, Orchard Investments Management Limited A.C.N. 105 684 231 ('Land Owner'), and Timbercorp Limited A.C.N. 055 185 067, provided on 21 April 2004, undated;
- Draft **Citruslot Management Agreement**, between each Grower and TSL, dated 19 April 2004;
- Draft Deed of Lease between Timbercorp Limited, TSL and Land Owner, provided on 25 February 2004, undated;
- Draft Deed of Sub-lease between Timbercorp Limited, TSL and the Land Owner, provided on 26 April 2004, undated;
- Draft Management Agreement between TSL and Citruscorp Management Pty Ltd A.C.N. 105 995 257, provided on 25 February 2004, undated;
- Draft Citrus Orchard Management Agreement between Chiquita Brands South Pacific Limited A.C.N. 002 687 961, Kangara Foods Pty Ltd A.C.N. 093 583 049, Citruscorp Management Pty Ltd, TSL, Timbercorp Limited and the Land Owner, provided on 25 February 2004, undated;
- Draft Compliance Plan for the 2004 Timbercorp Citrus Project, provided on 25 February 2004, undated;
- Draft Custody Agreement between TSL and the Custodian, provided on 25 February 2004, undated; and
- 2003 Timbercorp Projects Finance Package.

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 Growers enter into or become a party to. A Loan Agreement will be executed where a Grower successfully applies for finance from Timbercorp Finance Pty Ltd. 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 part of the arrangements to which this Ruling applies. In this Ruling the term 'associate' has the meaning given by section 318 of the ITAA 1936. The effect of these agreements is summarised as follows.

16. It should be noted that the term Grower as used in this Ruling means each several person who becomes a party to these documents as a result of the allotment of 'Citruslots' pursuant to an Application in the PDS. In these documents, a Grower is referred to as 'Participant Grower'. Growers whose applications are accepted on or before 15 June 2004 will become '**Early Growers**' and those whose applications are accepted on or after 1 July 2004 and on or before 15 June 2005 will become '**Post 30 June Growers**'.

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

Overview

18. The salient features of the 2004 Timbercorp Citrus Project are as follows:

Location	'Kangara Estate', near Renmark, South Australia
Type of business to be carried on by each participant	Cultivating 'Citrus Trees' on their designated 0.25 hectare 'Citruslots' and harvesting the 'Citrus' for processing and sale
Number of hectares offered for cultivation	450 hectares with no capacity for oversubscription
Size of each 'Citruslot'	0.25 hectares
Minimum allocation for Growers who are not Joint Venture Growers	<ul style="list-style-type: none"> • Individual Growers – 15 'Citruslots'; • Non-individual Growers – 2 'Citruslots' but TSL reserves the right to accept applications for less than two 'Citruslots'.

Minimum allocation for Joint Venture Growers	<ul style="list-style-type: none"> • 'Joint Ventures' with individual First Joint Venture Growers – 22 'Citruslots'; • 'Joint Ventures' with non-individual First Joint Venture Growers - 2 'Citruslots' but TSL reserves the right to accept applications for less than two 'Citruslots'. <p>Note: Second Joint Venture Growers must be non-individual.</p>
Minimum subscription	None
Number of 'Citrus Trees' per 'Citruslot'	142
Term of the Project	22 years commencing on acceptance of a Grower's application and ending on 30 June 2026
Initial cost per 'Citruslot'	\$4,500 for 'Early Growers' \$6,600 for 'Post 30 June Growers'
Initial cost per hectare	\$18,000 for 'Early Growers' \$26,400 for 'Post 30 June Growers'
Other costs to Growers	Ongoing costs will be payable (refer to paragraphs 44 to 49).

19. The Project will be registered as a managed investment scheme under the *Corporations Act 2001*. Applications to participate in the Project must be made during the 'Offer Period'. The 'Offer Period' for 'Early Growers' is the period commencing on the date of issue of the PDS to 15 June 2004 and for 'Post 30 June Growers' it is the period from 1 July 2004 to 15 June 2005.

20. The offer to participate in the Project must be made through the Application Form attached to the PDS. There is no minimum amount that must be raised under the PDS and oversubscriptions will not be accepted. A Custodian will be appointed under the Custody Agreement to protect the interests of Growers in their dealings with TSL.

21. Under a Power of Attorney contained on the Application Form, Applicants irrevocably appoint TSL to enter into the Licence Agreement and Citruslot Management Agreement on their behalf. They will also be bound by the Constitution on acceptance into the Project.

Interest in land

22. The land referred to as 'Kangara Estate' has been leased by the Land Owner to Timbercorp Limited who in turn will sub-lease it to TSL. Schedule 1 of both the Deeds of Lease and Sub-lease provides the particulars of the land. The area of land within the 'Kangara Estate' where the Project will be conducted are as follows:

- 350 hectares of 'Existing Orchard'; and
- 100 hectares of the 'Kangara Estate Undeveloped Land' ('New Orchard').

23. Growers will enter into a Licence Agreement whereby TSL will grant each Grower a licence to use and occupy parcels of land for a period of 22 years. Each parcel of land, referred to in this Project as a 'Citruslot', is an allotment of 0.25 hectares of land. Each 'Citruslot' will comprise of an area of approximately 0.194 hectares of the 'Existing Orchard' ('Existing Citruslot') and approximately 0.056 hectares of the 'New Orchard' ('New Citruslot').

Constitution

24. The Constitution establishes the Project and operates as a deed binding all Growers and TSL. The Constitution sets out the terms and conditions under which TSL agrees to act as 'Responsible Entity' and thereby manage the Project.

25. Under clause 4 of the Constitution TSL holds the 'Application Money' on bare trust. TSL accounts for the 'Application Money' in a special trust account and deposits the money into a bank account solely for 'Application Money' for this Project. Once TSL is satisfied that all documents have been executed and any finance has been approved for an applicant, the 'Application Money' is released and applied against the fees due to TSL (clause 9.3).

26. In summary, the Constitution also sets out provisions relating to:

- invitations and offers under the PDS (clause 2);
- the irrevocable appointment of TSL as the Grower's agent, representative and attorney (clause 3);
- procedures relating to 'Applications' (clause 6);
- the absolute discretion of TSL to refuse an 'Application' (clause 7);
- the effect of an 'Application' being accepted by TSL (clause 8);
- preparation and execution of the Licence Agreement and Citruslot Management Agreement by TSL and release of the 'Application Money' (clause 9);

- preparation and issuing of 'Citruslot Statements' to Growers and the setting up and maintenance of a 'Register' (clause 10);
- TSL's powers (clause 11);
- the keeping of a separate 'Agency Account' for the holding of 'Proceeds' and any other money, apart from 'Application Money' and interest thereon, that TSL may hold for the Grower (clause 12);
- the appointment of TSL as agent and attorney to deal with the processing of 'Citrus' and sale of the 'Product' and distributions from the 'Agency Account' of 'Proceeds' to Growers and insurance proceeds (clause 13);
- the right of TSL to be paid fees and other expenses (clause 14);
- the status, the retention by TSL, and termination by TSL or the Growers, of the Citruslot Management Agreement and Licence Agreement (clause 18). This includes the right of Growers to obtain a copy of the above agreements by written request to TSL (clause 18.2) and the consequences of termination of these agreements (clause 18.4);
- the right of Growers to inspect certain documents related to their participation in the Project and to offer and give opinions to TSL (clause 19.1);
- the assignment and transmission of 'Citruslots' (clause 20) and restrictions on such assignments and transmissions (clause 21);
- resolution of complaints made by the Grower in relation to the Project or TSL (clause 25); and
- termination of the Project (clause 26).

27. Although clause 6.5 provides that Growers may pay the 'Application Money' by instalments **this Product Ruling does not apply to any Grower who enters into an arrangement to pay their 'Application Money' by instalments.**

Joint Venture

28. The Constitution allows two persons to enter into a 'Joint Venture'. Clause 29 of the Constitution deals with the rights and obligations of Growers who constitute themselves as 'Joint Venturers' ('Joint Venture Growers'). First Joint Venture Growers can either be individuals or non-individuals while the Second Joint Venture Growers must be non-individuals.

29. Under this 'Joint Venture':

- the First Joint Venture Grower is responsible for all fees payable (other than any incentive fees) under the Citruslot Management Agreement and the 'Initial Licence Fee' (clause 29.5(a));
- the Second Joint Venture Grower is responsible for all fees payable under the Licence Agreement other than the 'Initial Licence Fee' (clause 29.5(b)); and
- both Joint Venture Growers will be responsible for any incentive fees payable to TSL in their respective 'Prescribed Proportions'.

30. The 'Prescribed Proportions' of each Joint Venture Grower which represent their respective entitlements to the 'Citrus', 'Proceeds' and any other rights of the 'Joint Venture' are:

- the First Joint Grower – 70%; and
- the Second Joint Grower – 30% (clause 29.4).

31. For purposes of constructing and interpreting the Constitution, the Licence Agreement and Citruslot Management Agreement, each set of Joint Venture Growers comprises a particular Grower under these agreements (clause 1.2(l)).

Minimum application

32. Clause 6.1 specifies the minimum number of 'Citruslots' that must be applied for to be accepted as participant in the Project. **This Product Ruling does not apply if the number of 'Citruslots' licensed to a Grower is:**

- for individual Growers not in 'Joint Ventures', less than 15 'Citruslots'; and
- for 'Joint Ventures' which have individuals as First Joint Venture Growers, less than 22 'Citruslots'. As noted in paragraph 28 above, individuals can not participate as Second Joint Venture Growers.

Compliance Plan

33. As required by the *Corporations Act 2001*, TSL has prepared a Compliance Plan. The purpose of the Compliance Plan is to ensure that TSL manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Licence Agreement

34. Under the Licence Agreement, each Grower will be granted a licence by TSL to use 'Citruslots' allotted to the Grower for the sole purpose of growing, cultivating and harvesting of 'Citrus' for commercial gain (clause 3.1).

35. Under this Agreement, TSL warrants and represents to the Grower that in respect of 'Existing Citruslots', to its knowledge, all establishment and capital works have been carried out (clause 2.2) and in respect of 'New Citruslots', TSL covenants that it will procure the Land Owner or Timbercorp Limited to complete these works in full on or about 30 September 2005 (clause 2.1). These establishment and capital works include as follows:

- preparation of that part of the 'Land' on which 'Citruslots' are located to ensure that the 'Citrus' can grow satisfactorily;
- installation of appropriate irrigation equipment and carrying out the necessary irrigation works to ensure proper reticulation of water to the 'Citrus Trees' on each 'Citruslot';
- carrying out drainage work and other works to help prevent soil erosion on all 'Land';
- eradication as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of 'Citrus Trees';
- planting 'Citrus Trees' on each 'Citruslot'; and
- providing or undertaking, as the case requires, such other capital works, services or things which, in the reasonable opinion of TSL, are incidental or ancillary to the effective establishment and provision of the works referred to above.

36. The Licence Agreement also sets out:

- the water requirements for which water licences will be purchased and maintained by the Land Owner (clause 3.2);
- its Term (clause 4.1);
- the fees payable by Growers (clause 7);
- provisions dealing with damage to or reduction in the viability of the Grower's 'Citruslots' (clauses 10.3 and 10.4);
- the obligations and rights of the Grower (clauses 4.2 and 8), TSL (clause 5), the 'Land Owner' (clause 9.1) and Timbercorp Limited (clause 9.2); and

- provisions relating to early termination of this Agreement by the Grower or TSL and the effects of such termination (clause 10).

37. The Licence Agreement is conditional on the Grower entering into the Citruslot Management Agreement with TSL and the 'Sub-Lease' being entered into by TSL, Timbercorp Ltd and the Land Owner (clause 6.1).

Citruslot Management Agreement

38. The Citruslot Management Agreement sets out the terms and conditions of TSL's appointment by the Grower as an independent contractor to manage the 'Citruslot'. This Agreement will commence on the date TSL accepts the Grower's 'Application' under the PDS for the Project and the Agreement is executed under the Power of Attorney. It will continue until the termination of the Project on 30 June 2026 (clause 2.1). Other grounds for termination by either TSL or the Grower and the procedures to be followed following such termination are set out in the Agreement. These grounds include default by one party in the performance of its duties (clause 15).

39. The 'Citrus' and 'Product' from the relevant 'Citruslots' will be pooled with the 'Citrus' and 'Product' from other 'Citruslots' and Growers will be entitled to their pro rata proportion of the 'Citrus' and 'Product' sold (clause 7.3).

40. Under the Agreement, the Grower engages TSL to manage and cultivate the 'Citruslots' on behalf of the Grower in accordance with the 'Management Plan' and 'Best Horticultural Practice', harvest the 'Citrus' and procure the processing of the 'Citrus' into 'Product'. Clause 5 sets out some of the services that TSL is required to perform under the Agreement. These include:

- prune the 'Citrus Trees' by mechanical or other methods;
- keep the relevant 'Citruslots' free from vermin;
- operate the irrigation system and apply fertilisers and nutrients at the appropriate times;
- in its absolute discretion destroy any of the 'Citrus Trees' which a reasonable horticulturist would destroy having regard to the best interests of the remaining unaffected 'Citrus Trees';
- keep the improvements in good and substantial repair;
- maintain fire breaks;
- protect the 'Citrus Trees' from insect infestation and competition from competing growth;
- regularly inspect and repair all stakes, fences and irrigation equipment;

- in its absolute discretion replant any of the 'Citrus Trees' in need of replacement in accordance with the terms of any agreement made with suppliers of the 'Citrus Trees';
- comply with the Grower's obligations under the Licence Agreement (except for those relating to payment of fees);
- if water in excess of that available under the 'Required Water Licences' is required from time to time procure such additional water and supply it to all Growers;
- not discriminate in the supply of water under the 'Required Water Licences'; and
- prior to establishing the 'New Citruslots', protect the 'Kangara Estate Undeveloped Land' from insect infestation, vermin disease and weeds, maintain windbreaks, monitor nutrient and salinity levels, apply herbicides or pesticides as required, regularly inspect and repair all fences, maintain the soil in accordance with 'Best Horticultural Practice'.

41. The Citruslot Management Agreement also sets out:

- the requirement for TSL to provide regular reports and annual statements of income and expenses (clauses 13.5 & 13.6); and
- dispute resolution procedures (clause 18).

42. Under clause 1.5 of the Citruslot Management Agreement, TSL can delegate its obligations under this Agreement. Pursuant to this right to delegate, TSL will enter into a Management Agreement with Citruscorp Management Pty Ltd, an associate of TSL, who in turn will enter into a Citrus Orchard Management Agreement with a number of parties.

Pooling of amounts and distribution of 'Proceeds'

43. Both the Constitution (clause 13) and the Citruslot Management Agreement (clause 7.3) set out provisions relating to the pooling of amounts held by TSL on behalf of Growers. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed 'Citrus', the 'Product' or insurance proceeds to the pool making up the 'Proceeds' are entitled to benefit from distributions from those 'Proceeds'; and
- any pooled 'Citrus', the 'Product' or other 'Proceeds' must consist only of 'Citrus', the 'Product' or other 'Proceeds' contributed by Growers from this Project.

Project Fees

44. The fees payable by a Grower are specified in the Licence Agreement (clause 7) and Citruslot Management Agreement (clause 11). 'Early Growers' who are not in 'Joint Venture' will pay the following fees on a per 'Citruslot' basis:

- a management fee of **\$4,370** for the period from the 'Commencement Date' until 30 June 2004, payable on or before the 'Commencement Date';
- a management fee of **\$1,440** for the period 1 July 2004 to 30 June 2005, payable on 31 October 2004 plus a **deferred amount of 2.25%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' in each 'Financial Year', payable at the time any 'Proceeds' are received by TSL;
- a management fee of **\$1,640** for the period 1 July 2005 to 30 June 2006, payable on 31 October 2005 plus a **deferred amount of 2.25%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' in each 'Financial Year', payable at the time any 'Proceeds' are received by TSL;
- a management fee in each 'Financial Year' from and including the 'Financial Year' ending 30 June 2007 which is the **estimated operating costs** (see paragraph 49) payable on 31 October each year plus **2%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' payable at the time any 'Proceeds' are received by TSL;
- a management fee of 25% of so much of the annual 'Net Proceeds' in a 'Financial Year' as exceeds the 'Incentive Fee Threshold' ('Incentive Fee');
- 'Initial Licence Fee' of **\$130** for the period from 'Commencement Date' until 30 June 2004, payable on or before 'Commencement Date'; and
- Annual 'Licence Fee' of **\$1,560** for 'Financial Years' ending 30 June 2005 to 2009, payable on 31 October 2004, 2005, 2006, 2007 and 2008 respectively. For subsequent 'Financial Years', the annual 'Licence Fee' will be the annual 'Licence Fee' on the immediately preceding 31 October, 'Indexed', payable on 31 October each year.

45. 'Early Growers' who are First Joint Venture Growers will pay per 'Citruslot' the 'Initial Licence Fee' and all of the management fees (other than the Incentive Fee) outlined in paragraph 44. 'Early Growers' who are Second Joint Venture Growers will pay the annual 'Licence Fees' specified in paragraph 44 (but not the 'Initial Licence Fee').

46. 'Post 30 June Growers' who are not in 'Joint Venture' will pay the following fees on a per 'Citruslot' basis:

- a management fee of **\$5,820** for the period from the 'Commencement Date' until 30 June 2005, payable on or before the 'Commencement Date';
- a management fee of **\$1,640** for the period 1 July 2005 to 30 June 2006, payable on 31 October 2005 plus a **deferred amount of 4.5%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' in each 'Financial Year', payable at the time any 'Proceeds' are received by TSL;
- a management fee in each 'Financial Year' from and including the 'Financial Year' ending 30 June 2007 which is the **estimated operating costs** (see paragraph 49) payable on 31 October each year plus **2%** of the 'Gross Proceeds' from the sale of the 'Citrus' and 'Product' payable at the time any 'Proceeds' are received by TSL;
- a management fee of 25% of so much of the annual 'Net Proceeds' in a 'Financial Year' as exceeds the 'Incentive Fee Threshold' ('Incentive Fee');
- 'Initial Licence Fee' of **\$780** for the period from 'Commencement Date' until 30 June 2005, payable on or before 'Commencement Date'; and
- Annual 'Licence Fee' of **\$1,560** for 'Financial Years' ending 30 June 2006 to 2009, payable on 31 October 2005, 2006, 2007 and 2008 respectively. For subsequent 'Financial Years', the annual 'Licence Fee' will be the annual 'Licence Fee' on the immediately preceding 31 October, 'Indexed', payable on 31 October each year.

47. 'Post 30 June Growers' who are First Joint Venture Growers will pay per 'Citruslot' the 'Initial Licence Fee' and all of the management fees (other than the Incentive Fee) outlined in paragraph 46. 'Post 30 June Growers' who are Second Joint Venture Growers will pay the annual 'Licence Fee' specified in paragraph 46 (but not the 'Initial Licence Fee').

48. Joint Venturer Growers will be responsible for any Incentive Fees payable to TSL in their respective 'Prescribed Proportions'.

49. As noted in paragraphs 44 and 46, from the 2007 'Financial Year', the annual management fee will consist of an amount for the estimated costs of operating the 'Citruslot' plus a management fee equal to 2% of the Grower's 'Gross Proceeds'. The estimated costs of operating the 'Citruslot' for a 'Financial Year' will include an adjustment for the difference between the actual costs and the estimated costs of managing the 'Citruslot' during the preceding 'Financial Year'.

Finance

50. Growers can fund their involvement in the Project by borrowing from independent sources or from Timbercorp Finance Pty Ltd ('the Financier'), a lender associated with TSL.

51. The Financier will provide Growers with loans on a full recourse basis and will pursue legal action against any defaulting borrowers. Details of the loans that will be offered to Growers by the Financier are set out in the Loan Application Form and Loan Explanation and Loan Terms. These documents are summarised as follows:

- the Financier will, generally, lend up to 80% of the Grower's application amount;
- the Grower will pay a 'Loan Application Fee' of \$250 which will be added to the amount borrowed;
- the Grower may choose from a 3, 4, or 5 year 'Loan Term' with an interest rate, which is fixed for the 'Loan Term';
- the fixed rate of interest will depend on whether the Grower chooses a 3, 4, or 5 year loan;
- the loan is repayable over the 'Loan Term' by equal monthly instalments of principal and interest and to be deducted from the borrower's bank account under a direct debit authority;
- in the event that any amount is overdue, the Financier may charge interest at the 'Higher Interest Rate';
- the Grower is entitled to repay the whole or any part of the 'Total Amount Owing' without penalty for early repayment; and
- during the 'Loan Term' the Grower will assign and transfer over to the Financier by way of fixed charge all its rights, title and interest at any time in the Project including 'Citruslots' and the 'Project Agreements'.

52. It should be noted that TSL has stated in its application for this Product Ruling that the Financier, at its discretion may lend up to 100% of the 'Application Money' and up to 90% of the second and third year fixed management fees and 'Licence Fees' on terms up to 7 years.

53. Growers cannot rely on this Product Ruling if they enter into a finance agreement with the Financier that materially differs from that set out in the Loan Application Form and Loan Explanation and Loan Terms provided to the Tax Office by TSL with the application for this Product Ruling.

54. Furthermore, 'Early Growers' cannot rely on this Product Ruling if 'Application Money' otherwise remains unpaid by 15 June 2004. Where an application is accepted subject to finance approval by any lending institution, 'Early Growers' cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by 15 June 2004.

55. 'Post 30 June Growers' also can not rely on this Product Ruling if 'Application Money' otherwise remains unpaid by 15 June 2005. Where an application is accepted subject to finance approval by any lending institution, 'Post 30 June Growers' cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by 15 June 2005.

56. This Ruling does not apply if the finance arrangement entered into by the Grower with the Financier or any other lender includes or has any of the following features:

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

- entities associated with the Project, other than Timbercorp Finance Pty Ltd, are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

57. This Ruling applies only to Growers who are accepted to participate in the Project and who have executed a Citruslot Management Agreement and a Licence Agreement:

- on or before 15 June 2004 ('Early Growers'); and/or
- on or after 1 July 2005 and on or before 15 June 2005 ('Post 30 June Growers').

58. Growers who are individuals should note that for this Ruling to apply to them, they should have at least **15 'Citruslots'** (if they are not in 'Joint Venture') and at least **22 'Citruslots'** if they participate as First Joint Venture Growers.

59. The Grower's participation in the Project must constitute the carrying on of a business of primary production. 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. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:

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

Qualification

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. A Grower who is not an 'STS taxpayer' recognises ordinary income from carrying on the business of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale at the time that income is derived.

64. A Grower who is an 'STS taxpayer' recognises ordinary income from carrying on the business of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale at the time that income is received (paragraph 328-105(1)(a)).

Deductions for management fees, 'Licence Fees', interest and borrowing cost**Section 8-1, section 328-105 and section 25-25**

65. An 'Early Grower' (who is not a Joint Venture Grower) may claim, on a per 'Citruslot' basis, for the following expenditure.

Fee Type	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Management fee	\$4,370 See Notes (i), (ii) & (iii)	\$1,440 plus 2.25% of any 'Gross Proceeds' See Notes (i), (ii), (iii) & (vii)	\$1,640 plus 2.25% of any 'Gross Proceeds' See Notes (i), (ii), (iii) & (vii)
Licence Fee	\$130 See Notes (i), (ii) & (iii)	\$1,560 See Notes (i), (ii) & (iii)	\$1,560 See Notes (i), (ii) & (iii)
Interest on loans with Timbercorp Finance Pty Ltd	As incurred (Non-STS taxpayers) Or as paid (STS taxpayers) See Notes (iii) & (iv)	As incurred (Non-STS taxpayers) Or as paid (STS taxpayers) See Notes (iii) & (iv)	As incurred (Non-STS taxpayers) Or as paid (STS taxpayers) See Notes (iii) & (iv)
Borrowing costs for loans with Timbercorp Finance Pty	Must be calculated - See Note (v)	Must be calculated - See Note (v)	Must be calculated - See Note (v)

PR 2004/51

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66. A 'Post 30 June Grower' (who is not a Joint Venture Grower) may claim, on a per 'Citruslot' basis, for the following expenditure.

Fee Type	Year ended 30 June 2005	Year ended 30 June 2006
Management fee	\$5,820 See Notes (i), (ii) & (iii)	\$1,640 plus 4.5% of any 'Gross Proceeds' See Notes (i), (ii), (iii) & (vii)
Licence Fee	\$780 See Notes (i), (ii), (iii) & (vi)	\$1,560 See Notes (i), (ii) & (iii)
Interest on loans with Timbercorp Finance Pty Ltd	As incurred (Non-STC taxpayers) Or as paid (STC taxpayers) See Notes (iii) & (iv)	As incurred (Non-STC taxpayers) Or as paid (STC taxpayers) See Notes (iii) & (iv)
Borrowing costs for loans with Timbercorp Finance Pty Ltd	Must be calculated - See Note (v)	Must be calculated - See Note (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 Example 1 at paragraph 106;
- (ii) The management fees and 'Licence Fees' shown in the Citruslot Management Agreement and the Licence Agreement, respectively, are deductible under section 8-1 in full in the year that they are incurred (where the Grower is not an 'STC taxpayer') or, under paragraph 328-105(1)(b) in the year in which they are paid (where the Grower is an 'STC taxpayer');
- (iii) This Ruling does not apply to Growers who choose to prepay fees or who choose, or who are required to prepay interest under a loan agreement (see paragraph 98). Amounts that are prepaid for a period

- that extends beyond the income year in which the expenditure is incurred may be subject to the prepayment provisions in sections 82KZME to 82KZMF of the ITAA 1936. Any Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project;
- (iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd is outside the scope of this Ruling. Growers who borrow from lenders other than Timbercorp Finance Pty Ltd may request a private ruling on the deductibility of the interest incurred;
- (v) The 'Loan Application Fee' payable to Timbercorp Finance Pty Ltd is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing moneys that are used or are to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd is outside the scope of this Ruling;
- (vi) For a 'Post 30 June Grower' accepted on or after 1 February 2005 and on or before 15 June 2005, the deduction for 'Licence Fee' is \$130 per month for each month or part month that the Grower is licensed to use the land. This will mean that for 'Post 30 June Growers' accepted on or after 1 February 2005, the full \$780 payable for the year ended 30 June 2005, will not be deductible. See paragraphs 93 and 94; and
- (vii) In any year where 'Citrus' is not harvested and sold 'Gross Proceeds' will be zero and therefore, no amount based on the percentages shown above will be payable. 'Gross Proceeds' is a defined term in the Project Agreements.

Joint Venture Growers

67. A Joint Venture Grower (as explained in paragraphs 28 to 31) in the Project who is **not** an 'STS taxpayer' may claim deductions for the following amounts set out in the tables and Notes above:

- the **First Joint Venture Grower** referred to in paragraph 29 may claim deductions under section 8-1 for amounts incurred for management fees, 'Initial Licence Fee', any interest on funds borrowed from Timbercorp Finance Pty Ltd, and under section 25-25 for borrowing costs payable to Timbercorp Finance Pty Ltd; and

- the **'Second Joint Venture Grower'** referred to in paragraph 29 may claim deductions under section 8-1 for amounts incurred for ongoing 'Licence Fees', any interest on funds borrowed from Timbercorp Finance Pty Ltd, and under section 25-25 for borrowing costs payable to Timbercorp Finance Pty Ltd.

68. For a Joint Venture Grower who **is** an 'STS taxpayer', the deductions referred to in paragraphs 65 & 66, other than the borrowing expenses, are deductible in the income year in which they are paid by, or paid on behalf of the Joint Venture Grower (paragraph 328-105(1)(b)). Borrowing costs for a Joint Venture Grower who is an 'STS taxpayer' remains deductible under section 25-25 in the years shown in the tables above. Each Joint Venture Grower may also claim deductions for its proportional share of the horticultural plant write-off explained below.

Deductions for horticultural plant

Division 40

69. A Grower will also be entitled to tax deductions relating to the 'Citrus Trees' planted on that Grower's 'Citruslot'. If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See example at paragraph 106.

70. Each variety of citrus planted or proposed to be planted on the 'Citruslot' is considered to be a 'horticultural plant' as defined in subsection 40-520(2). As a Grower holds the 'Citruslot' 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 is allowable when the 'Citrus Trees' enter their first commercial season (section 40-530, item 2). TSL will notify Growers when their 'Citrus Trees' enter their first commercial season and the amount that may be claimed.

71. The deduction is determined using the formula in section 40-545. The establishment expenditure that can be written-off by a Grower is limited to the capital expenditure incurred that is attributable to the establishment of the 'Citrus Trees'. The write-off rates of the varieties of 'Citrus Trees' planted or proposed to be planted are shown in the table below.

Variety	Write-off rate
Navels	7%
Valencia	7%
Lemons	13%
Mandarins	13%

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

72. Subject to paragraphs 57 to 59, a Grower who is an individual is expected to satisfy the assessable income test in section 35-30 of Division 35 in each income year during the term of the Project. The assessable income test requires that a Grower derives at least \$20,000 of assessable income from their business of citrus growing in an income year. For the purposes of the assessable income test in the income year in which the Grower commences to carry on their business of citrus growing the Grower can use a reasonable estimate of what would have been the amount of their assessable income if they had carried on their business of citrus growing throughout the whole of that financial year.

73. Where a Grower satisfies the assessable income test in an income year the Grower will not be required to defer any loss attributable to their business activity to a later year. Instead, this loss can be offset against other assessable income of the Grower for the year in which the loss arises. Accordingly, it is not necessary to consider the application or otherwise of the Commissioner's discretion in paragraph 35-55(1)(b). However, if a Grower fails to pass the assessable income test in an income year, or fails to pass one of the other tests in Division 35, they should seek a private ruling on how Division 35 will apply to their business activity for that income year.

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

74. For a Grower who participates in the Arrangement described above and incurs expenditure as required by the Citruslot Management Agreement, the Licence Agreement and any loan agreement with the Financier, 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?

75. For the amounts set out in the tables above to constitute allowable deductions the Grower's activities of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale as a participant in the 2004 Timbercorp Citrus Project must amount to the carrying on of a business of primary production.

76. Where there is a business, or a future business, the 'Gross Proceeds' from the sale of 'Citrus' 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.

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

78. Generally, a Grower will be carrying on a business of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale, and hence primary production, if:

- the Grower has an identifiable interest in the land (by lease) or rights over the land (by licence) on which the Grower's 'Citrus Trees' are established;
- the Grower has a right to harvest and sell the 'Citrus';
- the cultivating of the 'Citrus Trees' and harvesting the 'Citrus' are carried out on the Grower's behalf;
- the activities of the Grower are typical of those associated with a business of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale; and
- the weight and influence of general indicators point to the carrying on of a business.

79. In this Project, each Grower enters into a Citruslot Management Agreement and a Licence Agreement.

80. Under the Licence Agreement, each individual Grower will have rights over a specific and identifiable area of 0.25 hectares or more of land. The Licence Agreement provides the Grower with an ongoing interest in the specific trees on the licensed area for the term of the Project. Under the Licence Agreement, the Grower must use the land in question for the purpose of carrying out activities of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale and for no

other purpose. The Licence Agreement allows TSL to come onto the land to carry out its obligations under the Citruslot Management Agreement.

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

82. TSL is also engaged to harvest the 'Citrus' grown on the Grower's 'Citruslot' on the Grower's behalf.

83. 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.

84. 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 'Citrus' 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.

85. The pooling of 'Citrus' from trees grown on the Grower's 'Citruslot' with the 'Citrus' of other Growers is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled 'Citrus' will reflect the proportion of the trees contributed from their 'Citruslot'.

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

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

88. The activities of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale, 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 activities of cultivating 'Citrus Trees' and harvesting the 'Citrus' for sale in the 2004 Timbercorp Citrus Project will constitute the carrying on of a business.

The Simplified Tax System***Division 328***

89. 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.

90. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

Deductibility of management fees and 'Licence Fees'***Section 8-1***

91. Consideration of whether the 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.

92. The management fee and, subject to paragraphs 93 and 94, the 'Licence Fees' associated with the activities of cultivating 'Citrus Trees' and harvesting 'Citrus' for sale will relate to the gaining of income from the Grower's business of cultivating 'Citrus Trees' and harvesting 'Citrus' for sale (see above), and hence have a sufficient connection to the operations by which income (from harvesting 'Citrus' for sale) 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. Subject to paragraphs 93 and 94, there is no capital component of this fee. The tests of deductibility under the first limb of section 8-1 are met. Subject to paragraphs 93 and 94, the exclusions do not apply.

93. One of the exclusions under section 8-1 relates to expenditure that is capital, or is capital in nature. Any part of the expenditure of a Grower entering into a horticulture business which is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and hence will not be deductible under section 8-1. The Commissioner is of the view that depending upon when they are accepted to participate in the Project, a portion of the 'Initial Licence Fee' payable by a 'Post 30 June Grower' will be capital expenditure. Therefore, the amount allowed as a deduction for 'Licence Fee' under section 8-1 will be allowed as follows.

94. If a 'Post 30 June Grower' enters the Project on or before 31 January 2005 the 'Licence Fee' of \$780 payable on application for the period from the 'Commencement Date' to 30 June 2005 will be deductible in full. However, 'Post 30 June Growers' accepted to participate in the Project on or after 1 February 2005 and on or before 15 June 2005, will not be entitled to the full deduction. The deduction will be calculated on a pro-rata monthly basis of \$130 for each month or part month that the 'Post 30 June Grower' is licensed to use the land from TSL.

Interest deductibility

Section 8-1

(i) Growers who use Timbercorp Finance Pty Ltd as the finance provider

95. Some Growers may finance their participation in the Project through a loan facility with Timbercorp Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the management fees and 'Licence Fees'.

96. The interest incurred for the year ended 30 June 2004 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing of 'Citrus Trees' and the licence to use the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

(ii) Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider

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

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

98. 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.

Application of the prepayment provisions to this Project

99. Under the Arrangement to which this Product Ruling applies management fees and 'Licence Fees' are incurred annually and interest payable to Timbercorp Finance Pty Ltd is incurred monthly. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF have no application to this Arrangement. A Grower who is an 'STS taxpayer' can, therefore, claim a deduction for each of the relevant amounts in the income year in which the amount is paid, or paid on their behalf. A Grower who is not an 'STS taxpayer' can claim a deduction for each of the relevant amounts in the income year in which the fee is incurred.

100. However, sections 82KZME and 82KZMF may have relevance if a Grower in this Project prepays all or some of the expenditure payable under the Citruslot Management Agreement and/or the Licence Agreement or prepays interest under a loan agreement (including loan agreements with lenders other than Timbercorp Finance Pty Ltd). 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.

101. As noted in the Ruling section above, Growers who prepay fees or 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.

Section 82KL – recouped expenditure

102. 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

103. 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).

104. The 2004 Timbercorp Citrus Project 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, 66 and 69 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.

105. 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 'Citrus'. 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**

106. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2003, Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

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

*Taxable supply

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

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

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

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

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

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

In preparing her income tax return for the year ended 30 June 2004, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

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

Detailed contents list

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

	Paragraph
What this Product Ruling is about	1
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
Date of effect	11
Withdrawal	13
Arrangement	14
Overview	18
Interest in land	22
Constitution	24
<i>Joint Venture</i>	28
<i>Minimum application</i>	32
Compliance Plan	33
Licence Agreement	34
Citruslot Management Agreement	38
Pooling of amounts and distribution of 'Proceeds'	43

Project Fees	44
Finance	50
Ruling	57
Application of this Ruling	57
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 management fees, 'Licence Fees', interest and borrowing cost	65
<i>Section 8-1, section 328-105 and section 25-25</i>	65
Joint Venture Growers	67
Deductions for horticultural plant	69
<i>Division 40</i>	69
Division 35 - Deferral of losses from non-commercial business activities	72
Sections 82KZME – 82KZMF, 82KL, and Part IVA	74
Explanation	75
Is the Grower carrying on a business?	75
The Simplified Tax System	89
<i>Division 328</i>	89
Deductibility of management fees and 'Licence Fees'	91
<i>Section 8-1</i>	91
Interest deductibility	95
<i>Section 8-1</i>	95
<i>(i) Growers who use Timbercorp Finance Pty Ltd as the finance provider</i>	95
<i>(ii) Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider</i>	97
Prepayment provisions	98
<i>Sections 82KZL – 82KZMF</i>	98
<i>Application of the prepayment provisions to this Project</i>	99
Section 82KL - recouped expenditure	102
Part IVA - general anti-avoidance provisions	103
Example	106

Example – Entitlement to GST input tax credits	106
Detailed contents list	107

Commissioner of Taxation

5 May 2004

<i>Previous draft:</i>	– ITAA 1936 Pt IVA
Not previously released in draft form	– ITAA 1936 177A
	– ITAA 1936 177C
	– ITAA 1936 177D
<i>Related Rulings/Determinations:</i>	– ITAA 1936 177D(b)
PR 1999/95; TR 92/1; TR 97/16;	– ITAA 1936 318
TR 92/20; TD 93/34; TR 97/11;	– ITAA 1997 6-5
TR 98/22; TR 2000/8; IT 360	– ITAA 1997 8-1
	– ITAA 1997 17-5
<i>Other Rulings/Determinations:</i>	– ITAA 1997 25-25
TR 2001/14	– ITAA 1997 Div 27
	– ITAA 1997 Div 35
<i>Subject references:</i>	– ITAA 1997 35-30
– carrying on a business	– ITAA 1997 35-55(1)(b)
– commencement of business	– ITAA 1997 Div 40
– fee expenses	– ITAA 1997 40-515(1)(b)
– interest expenses	– ITAA 1997 40-520(2)
– management fees	– ITAA 1997 40-525(2)
– non commercial losses	– ITAA 1997 40-530 item 2
– producing assessable income	– ITAA 1997 40-545
– product rulings	– ITAA 1997 Div 328
– public rulings	– ITAA 1997 328-105
– taxation administration	– ITAA 1997 328-105(1)(a)
– tax avoidance	– ITAA 1997 328-105(1)(b)
– tax benefits under tax avoidance schemes	– ITAA 1997 Subdiv 328-F
– tax shelters	– ITAA 1997 Subdiv 328-G
– tax shelters project	– TAA 1953 Pt IVAAA
	– Copyright Act 1968
	– Corporations Act 2001
<i>Legislative references:</i>	<i>Case references:</i>
– ITAA 1936 Div 3 Subdiv H Pt 3	– Commissioner of Taxation v. Lau (1984) 6 FCR 202;
– ITAA 1936 82KL	84 ATC 4929;
– ITAA 1936 82KZL	(1984) 16 ATR 55
– ITAA 1936 82KZME	
– ITAA 1936 82KZMF	

ATO references

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