



# ***PR 2004/52 - Income tax: ITC Pulpwood Project 2004***

 This cover sheet is provided for information only. It does not form part of *PR 2004/52 - Income tax: ITC Pulpwood Project 2004*

 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: ITC Pulpwood Project 2004

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#### **Preamble**

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

#### **No guarantee of commercial success**

The 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(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.

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.

## What this Product Ruling is about

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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 'ITC Pulpwood Project 2004', the 'Pulpwood Project' or just simply as 'the Project'.

### Tax law(s)

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

### Goods and Services Tax

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

**Changes in the Law**

4. 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 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 'Growers'.

The class of persons to whom this Ruling applies does not include persons who:

- are accepted to participate in the Project before the date the Ruling is made;
- have their application conditionally accepted by the Responsible Entity subject to finance for the payment of the initial fee, where the finance has not been approved by the lender and the funds have not been made available to the Responsible Entity on or before 30 June 2004, for Growers accepted into the Project before this date or on or before 31 March 2005, for Growers accepted into the Project between 1 July 2004 and 31 March 2005;
- are accepted to participate in the Project after 3 March 2005;
- intend to terminate their involvement in the arrangement prior to Project's completion; and

- do not intend to derive assessable income from the Project.

## Qualifications

8. 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

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10. 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).

11. 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).

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## Withdrawal

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12. 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.

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## Arrangement

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

- Application for Product Ruling dated 20 February 2004 as constituted by documents provided on 23 February 2004, 7 April 2004, 8 April 2004, 22 April 2004, 23 April 2004 and 27 April 2004 and additional correspondence dated 6 April 2004, 7 April 2004, 21 April 2004 and 22 April 2004;
- Draft Product Disclosure Statement for the ITC Project 2004 (which includes the ITC Sandalwood Project 2004) issued by ITC Project Management Ltd ('ITCPM'), received 27 April 2004;
- Draft **Application Form** for the ITC Pulpwood Project 2004 and the ITC Sandalwood Project 2004, received 8 April 2004;
- Draft **Management Agreement** for the ITC Pulpwood Project 2004 between ITCPM and the Grower, received 23 February 2004;
- Draft **Memorandum (Management Agreement Provisions)** for the ITC Pulpwood Project 2004, received 22 April 2004;
- Draft Forestry Management Agreement between ITCPM and Integrated Tree Cropping Limited, received 23 February 2004;
- Sample tree farm Management Plan received 23 February 2004;
- Draft **Agreement to enter into Land Agreement** for the ITC Pulpwood Project 2004 between ITCPM and the Grower, received 23 February 2004;

- Draft **Land Agreement** for the ITC Pulpwood Project 2004 between ITCPM and the Grower, received 23 February 2004;
- Draft **Memorandum (Land Agreement Provisions)** for the ITC Pulpwood Project 2004, received 22 April 2004;
- Draft Scheme Constitution of the ITC Pulpwood Project 2004, received 22 April 2004;
- Draft **Tree Farm Loan** finance package for the ITC Pulpwood Project 2004, received 23 April 2004; and
- Draft Compliance Plan of the ITC Pulpwood Project 2004, received 23 February 2004.

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

14. The documents highlighted are those that Growers may enter into. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are a part of the arrangement to which this Ruling applies.

15. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

**Overview**

16. The salient features of the ITC Pulpwood Project 2004 arrangement are as follows:

Locations	<ul style="list-style-type: none"> <li>• The Esperance region on the Western Australian south coast;</li> <li>• the Green Triangle region of western Victoria and south-eastern South Australia; and</li> <li>• the Bundaberg/Gladstone region of central Queensland.</li> </ul>
Type of business to be carried on by each participant	<p>Commercial growing and cultivation of:</p> <ul style="list-style-type: none"> <li>• Tasmanian Blue Gum (<i>Eucalyptus globulus</i>);</li> <li>• Flooded Gum (<i>Eucalyptus grandis</i>); and/or</li> <li>• Flooded Gum/River Red Gum hybrid (<i>Eucalyptus grandis</i> x <i>Eucalyptus camaldulensis</i>), Spotted Gum (<i>Corymbia maculata</i>) and other eucalyptus or corymbia species;</li> </ul> <p>for the purpose of harvesting and selling timber.</p>
Number of hectares offered for cultivation	Approximately 5,000 hectares
Size of each interest (Plantation Unit)	Generally between 1 and 2 hectares
Minimum allocation	2 Plantation Units
Number of trees per hectare	Approximately 800
Term of the Project	Approximately 10 years
Initial minimum cost	\$2,750 per Plantation Unit
Ongoing and other costs	<p>Land and Forestry Services Fees, that maybe deferred until harvest. (The Grower can choose to pay an Annual Land and Forestry Fee in any or all of the Project years. Such payments will reduce the Land and Forestry Services Fees).</p> <p>Costs of Harvest, payable from Harvest Proceeds.</p> <p>Harvesting and Marketing costs, payable from Harvest Proceeds.</p> <p>Insurance Premiums.</p>

17. The Project will be a registered Managed Investment Scheme under the *Corporations Act 2001*. As such, a Responsible Entity for this Project has been appointed being ITC Project Management Ltd (ITCPM). ITCPM has been issued with Financial Services Licence Number 247019.

18. The Product Disclosure Statement offers the choice of 2 Projects to be managed by the Responsible Entity:

- The ITC Pulpwood Project 2004; and
- The ITC Sandalwood Project 2004.

19. This Ruling only applies to the Pulpwood Project. The land for the Project will be leased from ITC Timberlands Ltd, a related entity and from unrelated landowners. The Land that will be secured for the Project will be assessed by ITCPM as being suitable for the establishment of a Eucalyptus plantation in accordance with a methodology endorsed by the Independent Forester. There is no minimum subscription for the Project.

20. Under this offer, a Grower may enter the Project on or before 30 June 2004 (defined as a '2004 Grower' for the purposes of this Ruling), or on or after 1 July 2004 and on or before 31 March 2005 (2005 Grower).

21. Growers participating in the arrangement will enter into a Land Agreement with ITCPM. The Land Agreement is executed over an identifiable area of land called a 'Plantation Unit'. Each Plantation Unit will generally comprise an area of between one and two hectares depending on the assessed productivity of the property and will be identified on the Responsible Entity's plantation plan.

22. Growers will also enter into a Management Agreement with ITCPM for the management of their Plantation Units. ITCPM will be responsible for establishing, cultivating and harvesting the trees. The trees are expected to be harvested approximately 10 years after planting. ITCPM will arrange for the sale of the timber.

23. To participate in the Project, Growers must pay fees for Primary Services. The balance of the fees, including a Forestry Services Fee and Land Fee are payable from Harvest Proceeds. As an alternative to paying all or part of the Forestry Services and Land Fee from Harvest Proceeds, a Grower may choose to pay an Annual Forestry Services Fee and an Annual Land Fee in respect of all or any of the Project Years.

24. Each Grower is required to subscribe for a minimum of two Plantation Units.

25. Upon application, Growers will execute a Power of Attorney enabling ITCPM to act on their behalf as required. This will enable ITCPM to enter into Project agreements on behalf of the Growers.

**Constitution**

26. The Constitution establishes the Project and operates as a deed binding on all of the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which ITCPM agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project.

27. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity, which shall deposit those moneys into an Application Fund, held by the Custodian (ITC Timberlands Ltd) (clause 5.1 of the Constitution). The Application Moneys will be released when ITCPM is reasonably satisfied that certain specified criteria in the Constitution have been met (clauses 8 and 9 of the Constitution).

28. The proceeds from the sale of timber will be paid direct to the Responsible Entity who must deposit them into a Proceeds Fund (clause 3.3(c) of the Constitution). Each Grower will have a share in the Proceeds Fund, which will be distributed amongst them according to their Proportional Interest (clause 30 of the Constitution). The terms 'Proceeds Fund' and 'Proportional Interest' are defined in clause 1 of the Constitution.

29. The Responsible Entity will also:

- prepare the Management Agreement and the Land Agreement (clause 6);
- keep a register of Growers (clause 27); and
- appoint an auditor(s) of the Project (clause 32).

**Compliance plan**

30. ITCPM has prepared a Compliance Plan as required by the Corporations Act. Its purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

**Land Agreement**

31. Upon application, ITCPM will enter into an Agreement to enter into a Land Agreement with the Grower. This agreement will only be entered into if ITCPM can procure suitable land and provide Primary Services within 12 months of the Grower incurring the fees for these services. If the land is procured, ITCPM will execute a Land Agreement on behalf of the Grower.

32. Under the Land Agreement Growers acquire an interest in land called a Plantation Unit. The size of each Plantation Unit will generally be between one and two hectares. Growers will have a right to use their Plantation Area during the Term of the Project for the purpose of conducting their afforestation business.

33. The Land Agreement incorporates the provisions of the Memorandum (Land Agreement Provisions). Some of the conditions of the Memorandum are that the Grower will:

- not use the Plantation Units for a purpose other than growing and harvesting trees;
- comply with sound silvicultural and environment practices adopted within the forestry industry; and
- comply with all laws and regulations relating to the use and occupancy of the Grower's Plantation Units.

## **Management Agreement**

34. A Management Agreement will be entered into between ITCPM and the Grower. The Agreement provides that each Grower appoints ITCPM to perform services under the Agreement. ITCPM must perform the services in a proper and efficient manner and will maintain access to such staff, personnel, consultant and other specialist services as may be reasonably necessary. The provisions of the Memorandum (Management Agreement Provisions) are incorporated in the Management Agreement.

35. The services which ITCPM must perform are specified in Schedule 2 of the Memorandum. The services include the following:

### Item 1 – Primary Services

- procure sufficient Trees, to the specifications recommended in the Management Plan;
- prepare the land, in accordance with the Management Plan, for planting;
- plant Trees; and
- supervise and secure management of the works described above.

### Item 2 – Forestry Services, include:

- manage the Tree Crop in accordance with the Management Plan;
- maintain adequate stocking of the Grower's Plantation Area by replacing any contiguous area of dead or missing trees;
- maintain the planting mounds by appropriate cultivation and weed control;

- monitor nutrient status and apply fertiliser;
- control weeds;
- use all reasonable measures to keep the Plantation Area free from rabbits and other vermin;
- maintain access roads and fire breaks; and
- report on the growth of the trees.

Item 3 – Harvesting and Marketing Services, include

- prepare a Harvesting plan for the Tree Crop;
- arrange and provide supervision and administration of the Harvest; and
- use reasonable endeavours to arrange for the sale of the Tree Crop and enter into a purchase agreement as agent for the Grower.

36. For 2004 Growers, ITCPM will complete the delivery of all Primary Services within 12 months of the date the Primary Services fee is incurred by the Grower, or within 12 months after the Grower pays the fee, whichever is the earlier. For 2005 Growers, planting will be completed by 30 June 2005.

37. The Forestry Services will commence from 1 July 2004 or the date of the execution of the Management Agreement, whichever is later (clause 3.2 of the Management Agreement Memorandum).

### **Fees**

38. The following amounts are payable to ITCPM for each Plantation Unit:

- **Primary Services fee** of \$2,750 payable on or before the date of execution of the Management Agreement. The Primary Services for this fee will be completed within 12 months from the date the fee is incurred or from the date the fee is paid, whichever is the earlier (clause 3.2 and item 1 of Schedule 3 of the Management Agreement Memorandum);
- **Forestry Services Fee** equal to 13.2% of the Grower's Proceeds, deducted from these proceeds. This fee is for Forestry Services conducted from 1 July 2004 or the date of the execution of the Management Agreement (whichever is later) to Harvesting (clause 3.2 and Item 2 of Schedule 3 of the Management Agreement Memorandum);

- **Land Fee** equal to 41.8% of the Grower's Proceeds, deducted from these proceeds. This fee is for the occupancy of an area of land from the date of the execution of the Land Agreement to the Termination Date (clauses 1 and 2 of the Land Agreement and Schedule 2 to the Land Agreement Memorandum);
- **Cost of Harvest** equal to the Grower's proportion of the Harvesting costs, which may be deducted from the Proceeds Fund (clause 9 of the Management Agreement Memorandum). This fee is for 'Costs of Harvest' defined in clause 1 of the Management Agreement Memorandum;
- **Harvesting and Marketing Fee** equal to 5.5% of the Harvest Proceeds, deducted from these proceeds (item 3 of Schedule 3 to the Management Agreement Memorandum). This Fee is for the Harvesting and Marketing Services described in paragraph 35 above;
- **Insurance Premiums** to insure the Growers' Tree Crop, from the Harvest Commencement Date (the 30 June immediately before the *commencement* of the clearfell Harvest), against loss or damage caused by fire. These premiums will be paid by ITCPM and deducted from the Growers' Harvest Proceeds (clause 10 of the Management Agreement Memorandum);

A Grower who enters into the Tree Farm Loan finance package is liable for insurance premiums, as the Grower's Tree Crop must be insured for the Term of the loan (clause 7 of the Tree Farm Loan Deed); and

Growers who do not enter into the Tree Farm Loan finance package can choose to insure their Tree Crop.

### ***Option to pay Annual Fees in all or any years***

39. A Grower can elect to pay an Annual Forestry Services and Annual Land Fee in respect of any or all of the Project Years. Such a payment or payments will reduce the Forestry Services Fee and Land Fee, described above, in accordance with a formula set out at Item 2 of Schedule 3 to the Management Agreement Memorandum and at Schedule 2 to the Land Agreement Memorandum.

40. The **Annual Forestry Services Fee**, if the Grower elects to pay it, in respect of any Project Year will be \$88 (indexed) per Plantation Unit. The **Annual Land Fee**, if the Grower elects to pay it, in respect of any Project Year will be \$275 (indexed) per Plantation Unit.

41. If a Grower elects to pay an Annual Fee in any Project Year, both the Annual Forestry Services Fee and Annual Land Fee must be paid for that year. The Fees are payable on or prior to 31 May in the relevant Project Year. From 1 July 2005, the fees will be reviewed to reflect movements in the Consumer Price Index (CPI).

#### ***Credit card merchant service fee***

42. If the Responsible Entity provides facilities for Growers to pay any amount due in respect of the Project by credit card and the Responsible Entity incurs a merchant service fee or similar charge in connection with offering that facility, the Responsible Entity will be entitled to recover from the Grower the fee or charge, plus any GST applicable.

#### **Finance**

43. Growers can fund their initial fees (Primary Services fee) as follows:

- from their own financial resources;
- through finance offered by ITC Finance Pty Ltd (a lender associated with the Responsible Entity);
- through finance available through a Nominated Financier introduced by ITC Finance Pty Ltd; or
- borrow from an independent lender.

44. The finance provided by ITC Finance Pty Ltd and the Nominated Financier will be offered under the 'Tree Farm Loan' finance package. Apart from 1 year interest free loan, which is only offered by ITC Finance Pty Ltd and the 9 year interest only loan, which is only offered by the Nominated Financier, both financiers may provide loan terms of 3, 5, 7 and 10 years using the same repayment terms and conditions. Further details of the types of loans offered are:

#### ***1 Year Interest Free***

- no deposit required; and
- principal payable in 12 monthly instalments.

#### ***3 year Reducing Balance***

- deposit of 10% of the Primary Services fee;
- fixed interest calculated at 9.95% per annum; and
- 36 monthly instalments of principal and interest.

## ***5 year Reducing Balance***

- deposit of 10% of the Primary Services fee;
- fixed interest calculated at 9.95% per annum; and
- 60 monthly instalments of principal and interest.

## ***7 year Reducing Balance (2 year interest only and 5 year principal and interest)***

- deposit of 10% of the Primary Services fee;
- fixed interest calculated at 9.95% per annum; and
- 24 monthly instalments of interest then 60 monthly instalments of principal and interest.

## ***10 year Reducing Balance (3 year interest only and 7 year principal and interest)***

- deposit of 10% of the Primary Services fee;
- fixed interest calculated at 9.95% per annum; and
- 36 monthly instalments of interest then 84 monthly instalments of principal and interest.

## ***9 year Interest Only Loan***

- deposit of 50% of the Primary Services fee;
- fixed interest calculated at 9.95% per annum; and
- 107 monthly instalments of interest then 1 instalment of principal and interest.

45. The interest rate of 9.95% per annum above is fixed to 30 June 2004 but may be reviewed thereafter by the Nominated Financier on a commercial basis in accordance with interest rate movements and the financier's cost of funds. The interest rate offered by ITC Finance Pty Ltd will be the same as that offered by the Nominated Financier.

46. All loans have an application fee of \$250.

47. The deposit and the amount borrowed from ITC Finance Pty Ltd and the Nominated Financier will be paid into the Application Fund that is maintained by the Custodian (clause 5 of the Constitution and clause 1(b) of the Tree Farm Loan Deed).

48. The financiers will offer the finance on a full recourse basis. Security will be a fixed charge over the borrower's interest in the Project. Normal debt recovery procedures, including legal action, will be taken in the case of defaulting borrowers.

49. This Ruling will not apply to Growers who enter into finance arrangements with ITC Finance Pty Ltd or the Nominated Financier, with terms and conditions that differ in any way from those set out in paragraphs 44 to 48.

50. The Ruling does not apply to Growers whose applications have been conditionally accepted by the Responsible Entity subject to finance for the payment of the initial fee, where the finance has not been approved by the lender and the funds have not been paid by the Responsible Entity into the Application Fund:

- on or before 30 June 2004 for Growers applying to enter into the Project on or before this date; or
- on or before 31 March 2005 for Growers applying to enter into the Project between 1 July 2004 and 31 March 2005.

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

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

## **Ruling**

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### **Application of this Ruling**

52. This Ruling applies only to Growers who are accepted to participate in the Project:

- on or before 30 June 2004, where the Grower has executed a Land Agreement or an Agreement to enter into a Land Agreement and a Management Agreement on or before that date (2004 Growers); and/or
- on or after 1 July 2004 and on or before 31 March 2005, and where the Grower has executed a Land Agreement or an Agreement to enter into a Land Agreement and a Management Agreement on or between those dates (2005 Growers).

53. A 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.

54. This Ruling does not apply to Growers who:

- are accepted to participate in the Project before the date the Ruling is made;
- have their application conditionally accepted by the Responsible Entity subject to finance for the payment of the initial fee, where the finance has not been approved by the lender and the funds have not been paid by the Responsible Entity into the Application Fund on or before 30 June 2004 for 2004 Growers or on or before 31 March 2005 for 2005 Growers;
- are accepted to participate in the Project after 31 March 2005;
- intend to terminate their involvement in the arrangement prior to Project's completion; and
- do not intend to derive assessable income from the Project.

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

### ***Division 328***

55. 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**

56. 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***

57. 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.

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

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

**Deductions for Primary Services Fees, Forestry Services Fees, Land Fees and Interest*****Section 8-1 and 328-105***

60. A Grower may claim tax deductions under section 8-1 of the ITAA 1997, for the revenue expenses in the Tables below.

61. However, if for any reason, an amount shown or referred to in the Tables below is not fully paid in the year in which it is incurred by a Grower who **is an 'STS taxpayer'** then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the Tables below which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

**PR 2004/52****2004 Growers**

Fee Type	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Primary Services Fee	\$2,750 See Notes (i) & (ii)		
Annual Forestry Services Fee ( <u>only</u> if Grower elects to pay annually)		\$88 See Notes (i) & (iii)	\$88 (indexed) See Notes (i) & (iii)
Annual Land Fees ( <u>only</u> if Grower elects to pay annually)		\$275 See Notes (i) & (iii)	\$275 (indexed) See Notes (i) & (iii)
Interest	As incurred <b>(Non-STs taxpayers)</b> Or as paid <b>(STs taxpayers)</b> See Note (iv)	As incurred <b>(Non-STs taxpayers)</b> Or as paid <b>(STs taxpayers)</b> See Note (iv)	As incurred <b>(Non-STs taxpayers)</b> Or as paid <b>(STs taxpayers)</b> See Note (iv)

**2005 Growers**

Fee Type	Year ended 30 June 2004	Year ended 30 June 2005	Year ended 30 June 2006
Primary Services Fee		\$2,750 See Notes (i) & (ii)	
Annual Forestry Services Fee ( <u>only</u> if Grower elects to pay annually)		\$88 See Notes (i) & (iii)	\$88 (indexed) See Notes (i) & (iii)
Annual Land Fees ( <u>only</u> if Grower elects to pay annually)		\$275 See Notes (i) & (iii)	\$275 (indexed) See Notes (i) & (iii)

<b>Interest</b>		As incurred <b>(Non-STS taxpayers)</b> Or as paid <b>(STS taxpayers)</b> See Note (iv)	As incurred <b>(Non-STS taxpayers)</b> Or as paid <b>(STS taxpayers)</b> See Note (iv)
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**Notes:**

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g. input tax credits): Division 27. See the Example at paragraph 116.
- (ii) The Primary Services Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 90 to 94) and is deductible in the income year in which it is incurred (where the Grower is **not an 'STS taxpayer'**) or the year in which it is paid (where the Grower is an **'STS taxpayer'**).
- (iii) Where a Grower elects to pay the Annual Forestry Fee and the Annual Land in the relevant income years shown in the Management Agreement Memorandum and the Land Agreement Memorandum, those fees are deductible in full in the year that they are incurred (where the Grower is **not an 'STS taxpayer'**) or the year in which they are paid (where the Grower is an **'STS taxpayer'**).

However, if a Grower **chooses** to prepay fees for the doing of a thing (e.g. the provision of forestry services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 88 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; and

- (iv) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than ITC Finance Pty Ltd (the internal financier) and the Nominated Financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with ITC Finance Pty Ltd and the Nominated Financier, should read the discussion of the prepayment rules in paragraphs 82 and 89 as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

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

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

62. A Grower who is an individual accepted into the Project:

- on or before 30 June 2004 (2004 Grower); or
- on or after 1 July 2004 and on or before 31 March 2005 (2005 Grower);

may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for 2004 Growers for the income years ending **30 June 2004 to 30 June 2013** and for 2005 Growers for the years ending **30 June 2005 to 30 June 2013**. This conditional exercise of the discretion will allow those losses to be offset against the Grower's other assessable income in the income year in which the losses arise.

### **Section 82KL and Part IVA**

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

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

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## Explanation

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### Is the Grower carrying on a business?

64. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the ITC Pulpwood Project 2004 must amount to the carrying on of a business of primary production.

65. Where there is a business, or a future business, the gross proceeds from the sale of the wood produce 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.

66. For schemes such as that of the ITC Pulpwood Project 2004, 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.

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

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

68. In this Project, each Grower enters into a Management Agreement and a Land Agreement.

69. Under the Land Agreement each individual Grower will have rights over a specific and identifiable area of land called a Plantation Unit. The Agreement provides the Grower with an ongoing interest in the specific trees on the Plantation Unit for the Term of the Project. Under the Agreement the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The Agreement allows the Responsible Entity to come onto

to the land to carry out its obligations under the Management Agreement.

70. Under the Management Agreement the Responsible Entity is engaged by the Grower to establish and maintain the Grower'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 services to establish and maintain the Plantation Unit on the Grower's behalf.

71. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the wood produce grown on the Grower's Plantation Unit.

72. 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.

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

74. The pooling of wood produce from trees grown on the Grower's Plantation Unit with the wood produce of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled wood products will reflect the proportion of the trees contributed from their Plantation Unit.

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

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

77. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' afforestation activities in the ITC Pulpwood Project 2004 will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

78. 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.

79. 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 project fees**

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

80. Consideration of whether the initial management fees and lease 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.

81. The Primary Services Fee, Annual Forestry Services Fee, Annual Land Fee and interest associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of wood produce) 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 Primary Services Fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

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

82. 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 forestry 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.

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

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

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

85. 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.

86. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier other than ITC Finance Pty Ltd or the Nominated Financier. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the resulting interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

87. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

88. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

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

### **Section 82KZMG**

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

91. Subsection 82KZMG(2) requires that the expenditure is:
- incurred on or after 2 October 2001 and on or before 30 June 2006; and

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

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

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

93. Under subsection 82KZMG(4) the expenditure incurred by the taxpayer must be paid for 'seasonally dependent agronomic activities' undertaken by the manager during the 'establishment period' for the relevant planting of trees for felling. The term 'seasonally dependent agronomic activities' is explained in Taxation Determination TD 2003/12.

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

#### *Application of the prepayment provisions to this Project*

95. Under the Management Agreement, a Grower incurs a first year fee for Primary Services consisting of expenditure of \$2,750 for 'seasonally dependent agronomic activities'. As the requirements of section 82KZMG have been met, a deduction is allowable in the same income year as the expenditure is incurred.

96. The Management Agreement allows a Grower to incur Annual Forestry Services Fees for the performance of forestry services during the Term of the Project. Under the Land Agreement a Grower can incur Annual Land Fees for land during the Term of the Project.

97. The Annual Forestry Services and Land Fees are not prepaid. These Fees are charged for providing forestry services and land to a Grower until 30 June of the year in which the fees are incurred.

98. On this basis, the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application to the Annual Forestry Services and Land Fees.

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

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

100. Although not required under either the Management Agreement, the Land Agreement, or the Tree Farm Loan Finance Package, a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Where this occurs, contrary to the conclusion reached in paragraph 99, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

101. For these Growers, the amount and timing of deductions for any relevant prepaid Forestry Services Fees, prepaid Land 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.

102. 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.

## **Interest deductibility**

### **Section 8-1**

*(i) Growers who use ITC Finance Pty Ltd or the Nominated Financier as the finance provider*

103. Some Growers may finance their participation in the Project through a loan facility with ITC Finance Pty Ltd or the Nominated Financier. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of Forestry Services and Land Fees.

104. 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 trees - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

105. As with the Forestry Services Fees and the Land Fees, in the absence of any application of the prepayment provisions (see paragraphs 82 to 89), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

106. If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.

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

*(ii) Growers who DO NOT use ITC Finance Pty Ltd or the Nominated Financier as the finance provider*

108. 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 ITC Finance Pty Ltd or the Nominated Financier 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.

109. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 82 to 89).

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

***Section 35-55 – Exercise of Commissioner's discretion***

110. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2004 to 30 June 2013** for 2004 Growers and for the income years **30 June 2005 to 30 June 2013** for 2005 Growers, the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 *Income tax: Division 35 – non commercial business losses*.

Accordingly, based on the evidence supplied, the Commissioner has determined that for those income years that the discretion is exercised:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35;
- there is an objective expectation that within a period that is commercially viable for the afforestation industry, a Grower's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit; and
- a Grower who would otherwise be required to defer a loss arising from their participation in the Project under subsection 35-10(2) until a later income year is able to offset that loss against their other assessable income.

111. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) is conditional on the Project being carried on in the manner described in this Ruling during the income years specified. If the Project is carried out in a materially different way to that described in the Ruling a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

#### **Section 82KL – recouped expenditure**

112. 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**

113. 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).

114. The ITC Pulpwood Project 2004 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 in paragraphs 61 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.

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

## Example

### Example - Entitlement to GST input tax credits

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

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

\*Taxable supply

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

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

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

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

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

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

In preparing her income tax return for the year ended 30 June 2003, Susan is aware that the management fee is deductible in the year

incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

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

## Detailed contents list

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

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**Commissioner of Taxation**

5 May 2004

*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TR 92/1; TR 92/20; TD 93/34;  
 TR 97/11; TR 97/16; TR 98/22;  
 PR 1999/95; TR 2000/8; TR  
 2001/14; TD 2003/12

*Subject references:*

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

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZME
- ITAA 1936 82KZME(1)
- ITAA 1936 82KZME(2)
- ITAA 1936 82KZME(3)

- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 82KZMG
- ITAA 1936 82KZMG(1)
- ITAA 1936 82KZMG(2)
- ITAA 1936 82KZMG(3)
- ITAA 1936 82KZMG(4)
- ITAA 1936 82KZMG(5)
- ITAA 1936 Div 3 Pt III
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Div 328
- ITAA 1997 328-105
- ITAA 1997 328-105(1)(a)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

*Case references:*

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

## ATO references

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