



# ***PR 2004/66 - Income tax: Australasian Firewood Project No. 1***

 This cover sheet is provided for information only. It does not form part of *PR 2004/66 - Income tax: Australasian Firewood Project No. 1*

 This document has changed over time. This is a consolidated version of the ruling which was published on *25 August 2004*



## Product Ruling

### Income tax: Australasian Firewood Project No. 1

Contents	Para
<b>What this Product Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Arrangement</b>	<b>14</b>
<b>Ruling</b>	<b>48</b>
<b>Explanation</b>	<b>60</b>
<b>Example</b>	<b>114</b>
<b>Detailed contents list</b>	<b>115</b>

#### **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.*

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

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

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(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

## What this Product Ruling is about

---

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the 'Australasian Firewood Project No. 1' 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 328 ITAA 1997;
- Section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- Section 82KZL ITAA 1936;
- Sections 82KZME to 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 more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (that is, being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement as set out in the description of the arrangement. 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. Growers who elect to market their own produce are also excluded from the class of persons to whom this Ruling applies.

**Qualifications**

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

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

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

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

## Date of effect

---

11. This Ruling applies prospectively from 26 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).

Note: The Addendum to this Ruling that issued on 25 August 2004, applies on and from 25 August 2004.

## Withdrawal

---

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

## Arrangement

---

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

- Application for a Product Ruling, deemed valid by this Office on 20 February 2004, as constituted by documents provided on 16 February 2004, 20 February 2004, 23 February 2004, 26 March 2004,

13 April 2004, 13 May 2004 and 14 May 2004 and additional correspondence dated 26 March 2004, 13 April 2004, 10 May 2004, 11 May 2004, 13 May 2004 and 14 May 2004;

- Draft Product Disclosure Statement of the Australasian Firewood Project No. 1 dated March 2004;
- **Draft Constitution of the Australasian Firewood Project No. 1 received by the ATO on 13 April 2004;**
- **Draft Management Agreement between Australian Hardwood Management Ltd (the 'Responsible Entity') and the Grower received by the ATO on 13 April 2004;**
- Draft Agreement to Lease between Pinewood Resources Pty Ltd (the 'Lessor') and Australian Hardwood Management Ltd (the 'Lessee') received by the ATO on 13 April 2004;
- Draft Lease between Pinewood Resourced Pty Ltd (the 'Lessor') and Australian Hardwood Management Ltd (the 'Lessee') received by the ATO on 16 February 2004;
- Draft Operational Management Agreement – Australasian Firewood Project No. 1 between Australian Hardwood Management Limited (the 'Responsible Entity') and Ausforest Management Pty Ltd (the 'Operational Manager') received by the ATO under covering email dated 17 August 2004;
- Draft Compliance Plan for the Australasian Firewood Project No. 1 received by the ATO on 16 February 2004; and
- **Draft Finance Application prepared by Ausforest Finance Pty Ltd (the "Lender") for the Australasian Firewood Project No. 1 received by the ATO on 16 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.

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

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

**PR 2004/66****Overview**

17. The salient features of the Australasian Firewood Project No. 1 are as follows:

Location	South east New South Wales
Type of business to be carried on by each participant	Commercial growing and cultivation of eucalyptus trees for the purpose of harvesting and selling timber
Number of hectares offered for cultivation	2,500 hectares
Size of each interest	0.5 of a hectare
Minimum allocation	1 woodlot
Minimum subscription	100 woodlots
Number of trees per hectare	1,000
Term of the Project	12 years
Initial cost	\$3,877.50 being Plantation Fee of \$3,410, Initial Management Fee of \$330 and Woodlot Occupation Fee of \$137.50
Initial cost per hectare	\$7,755
Ongoing costs	Continuing Management Fees, Woodlot Occupation Fees and Harvesting Fees

**The Project**

18. The Project involves establishing, planting, cultivating and harvesting eucalyptus trees for firewood. The maximum number of Woodlots on offer is 5,000 and the minimum subscription for the Project is 100 Woodlots. There is no minimum number of Woodlots an applicant must apply for. Unless otherwise stated, all references to fees in this Product Ruling refer to the level of fees associated with 1 Woodlot.

19. Growers are invited to enter the Project by applying under a Product Disclosure Statement registered with the Australian Securities and Investment Commission. Each Grower shall complete an Application Form and Power of Attorney attached to a current Product Disclosure Statement. The Power of Attorney appoints Australian Hardwood Management Ltd ('the Responsible Entity') to do everything necessary to execute the Management Agreement on behalf of the Growers.

20. The Project land is currently owned, or will be leased, by Pinewood Resources Pty Ltd, a company associated with the Responsible Entity. Upon reaching minimum subscription, the owner

will lease the land to the Responsible Entity who will, via the Management Agreement, grant a licence to each Grower to occupy an identifiable area of land, being approximately 0.50 hectares, called a 'Woodlot' for the purpose of growing eucalyptus trees for the duration of the Project. The Project is to terminate in 12 years on 30 June 2016.

21. The fees payable on application for a Woodlot(s) are the Plantation Fee, the Initial Management Fee and the Woodlot Occupation Fee for the Initial Period. The 'Initial Period' means the period beginning on the date of issue of each Participant's interest and ending 12 months from the date thereof.

22. In the Accrual Periods (as defined in paragraph 23) following the Initial Period the Growers are required to pay Continuing Management Fees, Woodlot Occupation Fees and Harvesting Fees. The Responsible Entity may sue for and recover any monies required to be paid under the Constitution which have not been so paid by a Grower, together with interest at the rate of 17% per annum. Notwithstanding this, the Responsible Entity may deduct from any amounts owing to the Grower from the Project any outstanding Plantation Fee, Woodlot Occupation Fees, Initial Management Fees, Continuing Management Fees and/or Harvest Fees.

23. An Accrual Period means either:

- the period from the expiration of the Initial Period up to and including the next following last day of June; or
- each twelve monthly period ending on the last day of the month of June in each year during the term of the Project.

24. Two harvests are planned as follows:

- the first harvest at year 7, being year ended 30 June 2010 for Growers who enter the Project on or before 30 June 2004 ('2004 Growers') and year ended 30 June 2011 for Growers who enter the Project after 30 June 2004 ('2005 Growers'); and
- the second and final harvest at year 12, being year ended 30 June 2015 for Growers who enter the Project on or before 30 June 2004 ('2004 Growers') and year ended 30 June 2016 for Growers who enter the Project after 30 June 2004 ('2005 Growers').

25. The Responsible Entity is authorised to pool the timber harvested from each Woodlot. Growers who enter the Project on or before 30 June 2004 ('2004 Growers') will be in Pool No. 1 and will have their produce accumulated with the produce from other Woodlots in Pool No. 1 and the proceeds will be divided between the Growers who make up that pool. Growers who enter the Project after 30 June 2004 ('2005 Growers') will be in Pool No. 2 and will have their produce accumulated with the produce from other Woodlots in

Pool No. 2 and the proceeds will be divided between the Growers who make up that pool.

26. Proceeds of pooled sales, after deduction of all amounts as provided under the Constitution and Management Agreement will be paid into the Scheme Bank Account for crediting to each Grower who has contributed to the pool. The amount of each Grower's share is calculated on a proportional basis determined by the number of Woodlots held in the Project in comparison to all the Woodlots issued for the Project. If however, a Grower's Woodlot is partially or totally destroyed, then the Grower's share of the sale proceeds will be adjusted to reflect the reduced number of trees on the Grower's Woodlot.

27. [Deleted]

## **Constitution**

28. The primary object of the Project is for Growers to conduct the business of planting, growing and cultivation of eucalyptus trees for the production of timber, and the harvesting, marketing and sale of the products produced therefrom.

29. The Project will commence when the minimum subscription is reached. Application Forms will not be accepted until the minimum subscription is reached. Each Grower on acceptance of his or her Application Form by the Responsible Entity must enter into the Management Agreement.

30. The Responsible Entity must on receipt of application monies and the completed and signed Application Form, pay those monies as soon as practicable after their receipt, but not later than the close of business on the next working day after the day of receipt, into the Applications Bank Account.

31. Upon acceptance of an Application Form, the Responsible Entity shall transfer relevant application monies from the Applications Bank Account to the Scheme Bank Account.

32. A Grower's Business Income (being the total amount received for the sale of the Grower's Timber) received with respect to the Scheme must be paid by the Responsible Entity into the Scheme Bank Account.

33. The Responsible Entity shall be entitled to pay all monies required to be paid by or for and on behalf of the Members pursuant to the Constitution or the Management Agreement in accordance with the relevant provisions out of the Scheme Bank Account including without limitation, the Plantation Fee, Initial and Continuing Management Fees, Woodlot Occupation Fees and the Harvest Fees.

34. The Constitution lists all fees payable by Growers namely, Woodlot Occupation Fees (clause 4.2), Plantation Fee (clause 4.3), Initial Management Fees (clause 4.4), Continuing Management Fees (clause 4.5) and Harvest Fees (clause 4.6).

**Management Agreement**

35. Under this Agreement the Grower appoints the Responsible Entity to manage the Grower's business and the Responsible Entity hereby agrees to so act.

36. The Initial Services provided by the Responsible Entity, for which the Growers pay the Plantation Fee, comprise the following:

- (a) ploughing, ripping and other soil preparation works;
- (b) procurement of seedlings;
- (c) tending seedlings prior to planting;
- (d) planting of the seedlings;
- (e) applying fertiliser, herbicide or pesticide in conjunction with planting of the seedlings;
- (f) vegetation, disease, vermin and other pest reduction and eradication activities (to the extent that they are part of the establishment of the Grower's Timber plantation on the Woodlot); and
- (g) procurement and delivery of necessary supplies and materials for each such eligible activity and supervision of that activity.

37. The Management Services provided by the Responsible Entity, for which the Growers pay the Initial Management Fee, comprise the following:

- (a) grow and tend the trees on the Woodlot in accordance with good silvicultural practice;
- (b) as far as reasonably possible and in accordance with good silvicultural practice, keep the Woodlot free from competitive weeds which may affect the growth or yield of the trees;
- (c) build any roads, tracks or fences or maintain existing roads tracks and fences that are required for managing and protecting the Woodlot;
- (d) embark on such operations as may be required to prevent or combat land degradation on the Grower's Woodlot or land surrounding the Grower's Woodlot;
- (e) provide suitable fertilisation to the trees as and when required in order to minimise tree loss, promote growth and maximise yield;
- (f) eradicate, as far as reasonably possible, any pests that may affect the growth or yield of the trees;
- (g) replant such trees as are necessary to ensure that each Woodlot has sufficient healthy trees to enable the yield projections in the PDS to be met;

- (h) carry out pruning of the trees as required by good silvicultural practices;
- (i) carry out selective culling of the trees on the Woodlot in a prudent, proper and workmanlike manner in accordance with good silvicultural practice;
- (j) monitor and review the fire prevention program with a view to ensure the Grower's Woodlot is protected from the threat of fire;
- (k) maintain and/or build any roads, tracks or fences or maintain existing roads tracks and fences that are required for managing and protecting the Grower's Woodlot;
- (l) manage any pests that may affect the growth or yield of the trees;
- (m) maintain and, if necessary, embark on new operations as may be necessary to prevent or combat land degradation on the Grower's Woodlot or land surrounding the Grower's Woodlot; and
- (n) doing all other things that are necessary or incidental to the carrying out the Grower's Business in accordance with good silvicultural practice.

38. The Responsible Entity grants to the Grower a licence to occupy and carry out the Grower's Business upon the Woodlot and to do all other things upon the Woodlot that may be necessary to be carried out upon the Woodlot pursuant to this Agreement. The term of the licence shall be for the same term as the Grower's business.

39. The Responsible Entity shall have the right of entry upon the Woodlot in order to carry out the Initial Services, Management Services and Harvest Services on behalf of the Grower.

40. The Grower may elect to market the logs grown on the Grower's Woodlot by giving notice in writing to the Responsible Entity on or before 30 June 2012. If the Grower so elects, then:

- (i) the Responsible Entity will notify the Grower in writing of the harvest date;
- (ii) the Responsible Entity will harvest the trees on the relevant Woodlot consistent with its plan for harvesting the Plantation as a whole;
- (iii) the Responsible Entity will arrange for the harvested logs to be stored at a location suitable for transportation; and
- (iv) the Grower must arrange for removal of the logs within two weeks of the harvest date otherwise the Responsible Entity is entitled to dispose of the logs as it sees fit.

41. The Responsible Entity is authorised by the Grower to pool the timber harvested from the Woodlot with timber harvested from Woodlots of other Growers in the same Pool.

42. Where the harvested timber is pooled, the sale proceeds therefrom will be divided pro-rata between the Growers according to the timber contributed by the Grower to the pooled product. If the Grower's Woodlot is partially or totally destroyed, then the Grower's share of the sale proceeds will be adjusted to reflect the reduced number of trees on the Grower's Woodlot.

### **Fees Payable by the Grower**

43. Under the Constitution and Management Agreement, the following amounts are payable per Woodlot:

#### ***Plantation Fee***

- \$3,410 payable on application for a Woodlot(s).

#### ***Initial Management Fees***

- \$330 payable on application for a Woodlot(s).

#### ***Continuing Management Fees***

- For the Accrual Period following the Initial Period, \$9.17 per Woodlot per month or part thereof; and
- For each succeeding Accrual Period, the amount which is the greater of either, \$110 adjusted for the CPI or the amount of the Continuing Management Fee of the prior Accrual Period increased by 3%.

#### ***Woodlot Occupation Fees***

- For the Initial Period, \$137.50 payable on application for a Woodlot(s);
- For the Accrual Period following the Initial Period, \$11.46 for each month payable in advance; and
- For each succeeding Accrual Period, the amount which is the greater of, either \$137.50 adjusted for CPI or the amount of the Occupation Fee for the prior Accrual Period increased by 3%.

#### ***Harvesting Fees***

- An amount equal to 16.5% of the total amount received for the sale of the Grower's Timber.

### **Finance**

44. Growers can fund their involvement in the Project by borrowing from Ausforest Finance Pty Ltd (a lender associated with the Responsible Entity). Loan funds made available by Ausforest

Finance Pty Ltd to Growers must be paid by that entity to Australian Hardwood Management Ltd before the Grower's application will be accepted.

45. The finance made available by Ausforest Finance Pty Ltd is offered on the following terms contained in the Finance Application:

- A loan application fee of \$250.00, which is incorporated in the amount borrowed is payable by the Grower;
- A deposit of \$767.50, representing approximately 20% of the amount borrowed, is payable by the Grower;
- Growers have the option to repay the balance of the loan over 12, 24, 36 or 48 months;
- Repayments of principal and interest are payable monthly in advance;
- The interest rate payable by Growers is 12.50% per annum;
- If Growers choose to repay the balance due over 12 months, no interest will be charged on the loan;
- Growers seeking finance may be required by the Lender to nominate a Guarantor to become a party to the loan contract;
- Interest is charged on any overdue repayments at the rate of 16.5% per annum and any such interest charges that remain unpaid may be added to the loan;
- If a Grower is in breach of, or defaults in relation to, the loan contract, the Lender will cancel the contract and seek payment of any outstanding amounts through any rights available to it; and
- A fee, determined by the Lender, is payable if the loan contract ends early.

46. Growers cannot rely on this Product Ruling if a different finance arrangement is entered into with Ausforest Finance Pty Ltd or if Project application monies have not been made available to Australian Hardwood Management Ltd before acceptance of a Grower's application for a Woodlot(s).

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

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

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

## **Ruling**

---

### **Application of this Ruling**

48. This Ruling applies only to Growers who are accepted to participate in the Project on or before 30 June 2004 ('2004 Growers') or 30 June 2005 ('2005 Growers') and who have executed a Management Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

### **Minimum subscription**

49. 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. Under the terms of the Product Disclosure Statement, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 100 interests is achieved.

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

#### ***Division 328***

50. 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**

51. 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***

52. 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.

53. 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.

54. 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 Plantation Fee, Woodlot Occupation Fees, Initial Management Fees, Continuing Management Fees, Interest and Borrowing Costs*****Section 8-1 and section 328-105***

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

56. 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 Table which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

<b>Fee Type</b>	<b>Year ended 30 June 2004</b>	<b>Year ended 30 June 2005</b>	<b>Year ended 30 June 2006</b>
<b>Plantation Fee</b>	\$3,410 See Notes (i) & (ii)		
<b>Initial Management Fees</b>	Must be calculated See Notes (i) & (iii)		
<b>Woodlot Occupation Fees</b>	\$137.50 See Notes (i) & (iii)	Must be calculated See Notes (i) & (iv)	Must be calculated See Notes (i) & (v)
<b>Ongoing Management Fees</b>		Must be calculated See Notes (i) & (iv)	Must be calculated See Notes (i) & (v)
<b>Interest</b>	As incurred <b>(Non-ST taxpayers)</b> Or as paid <b>(ST taxpayers)</b> See Note (vi)	As incurred <b>(Non-ST taxpayers)</b> Or as paid <b>(ST taxpayers)</b> See Note (vi)	As incurred <b>(Non-ST taxpayers)</b> Or as paid <b>(ST taxpayers)</b> See Note (vi)
<b>Borrowing costs for loan from Ausforest Finance Pty Ltd</b>	Must be calculated See Note (i)	Must be calculated See Note (i)	Must be calculated See Note (vii)

**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 (for example, input tax credits): Division 27. See Example 1 at paragraph 114.
- (ii) The Plantation Fee is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 86 to 90) 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) Although the Management Agreement requires the Woodlot Occupation Fees for the Initial Period and the Initial Management Fees to be prepaid, for a Grower who acquires the minimum allocation, the amount of the prepaid Woodlot Occupation Fees for the Initial Period and the Initial Management Fees are less than \$1,000. For the purposes of this Project, an amount of less than \$1,000 is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and, for a Grower who is not an 'STS taxpayer', is deductible in full in the year in which it is incurred. However, where a Grower acquires more than one Woodlot in the Project, the amount of the Grower's prepaid Woodlot Occupation Fees for the Initial Period and the Initial Management Fees may be \$1,000 or more. Such Growers MUST determine the deduction for the prepaid Woodlot Occupation Fees for the Initial Period and the Initial Management Fees using the formula shown in paragraph 84.
- (iv) The deductions for the Continuing Management Fees and the Woodlot Occupation Fees for the Year Ended 30 June 2005 depend upon the date of entry of Growers into the Project. The Responsible Entity will inform Growers of the number of days in that income year that the Responsible Entity performed ongoing management services. This figure is necessary to calculate the deduction allowable for the fees incurred.
- (v) The deduction for the Continuing Management Fees and the Woodlot Occupation Fees for the Year Ended 30 June 2006 will be determined by the Responsible Entity and the Responsible Entity will inform Growers of the amount of the deduction.
- (vi) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Ausforest Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Ausforest Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 78 to 85 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.

- (vii) The Loan Application fee payable to Ausforest 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 Ausforest Finance Pty Ltd is outside the scope of this Ruling.

57. Where Growers enter the Project on or after 1 July 2004 and on or before 30 June 2005 ('2005 Growers'), the deductions available for the Years Ended 30 June 2005, 30 June 2006 and 30 June 2007 are those shown above for the Years Ended 30 June 2004, 30 June 2005 and 30 June 2006 respectively.

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

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

58. A Grower who is an individual accepted into the Project as a '2004 Grower' or a '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 these Growers for the income years ending 30 June 2004 to 30 June 2009 (for '2004 Growers') or 30 June 2005 to 30 June 2010 (for '2005 Growers'). 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**

59. For a Grower who participates in the Project and incurs expenditure as required by 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.

## Explanation

---

### Is the Grower carrying on a business?

60. For the amounts set out in the Table above to constitute allowable deductions the Grower's afforestation activities as a participant in the Australasian Firewood Project No. 1 must amount to the carrying on of a business of primary production.

61. 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.

62. For schemes such as that of the Australasian Firewood Project No. 1, 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.

63. 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.

64. In this Project, each Grower enters into a Management Agreement.

65. Under the Management Agreement each individual Grower will have rights over a specific and identifiable area of 0.5 of a hectare of land. The Management 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 the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The licence allows the Responsible Entity to come onto to the land to carry out its obligations under the Management Agreement.

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

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

68. 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.

69. 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, that is, a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

70. The pooling of wood produce from trees grown on the Grower's Woodlot 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 Woodlot.

71. 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 Woodlot is relatively small, it is of a size and scale to allow it to be commercially viable.

72. 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 Responsible Entity will provide the Grower with regular progress reports on the Grower's Woodlot and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Responsible Entity in certain instances, such as cases of default or neglect.

73. 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 Australasian Firewood Project No. 1 will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

74. 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.

75. 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 Plantation Fee, Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees**

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

76. Consideration of whether the Plantation Fee, Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest 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.

77. The Plantation Fee, Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation, 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 Fees is identifiable from the arrangement. The fees appear to be reasonable. There is no capital component of the Plantation Fee, Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees. 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***

78. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (for example, the performance of management services or the 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.

79. 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***

80. 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)).

81. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year;
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either :
  - a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

82. 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 Ausforest Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the resulting interest deductions are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

83. 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.

84. 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.

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

85. 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**

86. Under subsection 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).

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

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

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

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

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

90. 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. 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*

91. Under the Management Agreement, a Grower incurs a Plantation Fee consisting of expenditure of \$3,410 for 'seasonally dependent agronomic activities'.

92. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2004 for the expenditure incurred under the Management Agreement for 'seasonally dependent agronomic activities'.

93. The Management Agreement also requires that a Grower incurs Initial Management Fees and Woodlot Occupation Fees during the Initial Period and Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees during Years 2 to 12 for both the performance of services and the granting of a licence for the Woodlot during the term of the Project.

94. The prepaid Initial Management Fees and the Woodlot Occupation Fees for the Initial Period, being amounts of less than \$1,000 in each expenditure year, constitute 'excluded expenditure' as defined in subsection 82KZL(1). Under Exception 3 (subsection 82KZME(7)) 'excluded expenditure' is specifically excluded from the operation of section 82KZMF. A Grower who is an 'STS taxpayer' can, therefore, claim an immediate deduction for the Initial Management Fees and the Woodlot Occupation Fees for the Initial Period in the income year in which they are paid. A Grower who is not an 'STS taxpayer' can claim an immediate deduction for the Initial Management Fees and the Woodlot Occupation Fees in the income year in which they are incurred. However, where a Grower acquires more than one Woodlot in the Project, the amount of the Grower's prepaid Woodlot Occupation Fees for the Initial Period and the Initial Management Fees may be \$1,000 or more. Such Growers MUST determine the deduction for the prepaid Woodlot Occupation Fees and the Initial Management Fees using the formulae shown in paragraph 84 above.

95. The Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees incurred under the Management Agreement in Years 2 to 12 are not prepaid. These fees are charged for providing maintenance and harvesting services and the grant of a licence for the Woodlot to a Grower until 30 June of the year in which the fees are incurred.

96. 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 Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees in Years 2 to 12.

97. 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 Fees are 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 Fees are incurred.

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

98. Although not required under the Management Agreement or the Loan Agreement with Ausforest Finance Pty Ltd, 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 97 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

99. For these Growers, the amount and timing of deductions for any relevant prepaid Continuing Management Fees, prepaid Woodlot Occupation Fees, prepaid Harvest 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.

100. 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 Ausforest Finance Pty Ltd as the finance provider*

101. Some Growers may finance their participation in the Project through a loan facility with Ausforest 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 Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees.

102. The interest incurred for the year ended 30 June 2004 (for '2004 Growers') 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 and the licence of the land on which the trees will have been planted – that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

103. As with the Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees, in the absence of any application of the prepayment provisions (see paragraphs 78 to 85), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.

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

105. 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 Ausforest Finance Pty Ltd as the finance provider*

106. 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 Ausforest 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.

107. 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 78 to 85).

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

108. 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 2009 (for 2004 Growers) and 30 June 2005 to 30 June 2010 (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 ended 30 June 2004 up to and including 30 June 2009 (for 2004 Growers) and 30 June 2005 to 30 June 2010 (for 2005 Growers):

- 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.

109. 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***

110. 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**

111. 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).

112. The Australasian Firewood Project No. 1 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 paragraph 56 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.

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

**Example****Entitlement to GST input tax credits**

114. 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

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

	<b>Paragraph</b>
<b>What this Product Ruling is about</b>	<b>1</b>
Tax law(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of persons	7
Qualifications	9
<b>Date of effect</b>	<b>11</b>
<b>Withdrawal</b>	<b>13</b>
<b>Arrangement</b>	<b>14</b>
Overview	17
The Project	18
Constitution	28
Management Agreement	35
Fees payable by the Grower	43
Finance	44
<b>Ruling</b>	<b>48</b>
Application of this Ruling	48
Minimum subscription	49

The Simplified Tax System ('STS')	50
<i>Division 328</i>	50
Qualification	51
Assessable Income	52
<i>Section 6-5 and section 328-105</i>	52
Deductions for Plantation Fee, Woodlot Occupation Fees, Initial Management Fees, Continuing Management Fees, Interest and Borrowing Costs	55
<i>Section 8-1 and section 328-105</i>	55
Division 35 – Deferral of losses from non-commercial business activities	58
<i>Section 35-55 – Exercise of Commissioner's discretion</i>	58
Section 82KL and Part IVA	59
<b>Explanation</b>	<b>60</b>
Is the Grower carrying on a business?	60
The Simplified Tax System	74
<i>Division 328</i>	74
Deductibility of Plantation Fee, Initial Management Fees, Continuing Management Fees, Woodlot Occupation Fees and Harvest Fees	76
<i>Section 8-1</i>	76
Prepayment provisions	78
<i>Sections 82KZL to 82KZMG</i>	78
<i>Sections 82KZME and 82KZMF</i>	80
<i>Section 82KZMG</i>	86
<i>Application of the prepayment provisions to this Project</i>	91
<i>Growers who <u>choose</u> to pay fees for a period in excess of that required by the Project's agreements</i>	98
Interest deductibility	101
<i>Section 8-1</i>	101
<i>(i) Growers who use Ausforest Finance Pty Ltd as the finance provider</i>	101
<i>(ii) Growers who DO NOT use Ausforest Finance Pty Ltd as the finance provider</i>	106
Division 35 – Deferral of losses from non-commercial business activities	108
<i>Section 35-55 – Exercise of Commissioner's discretion</i>	108

<i>Section 82KL – recouped expenditure</i>	110
Part IVA – general tax avoidance provisions	111
<b>Example</b>	<b>114</b>
Entitlement to GST input tax credits	114
<b>Detailed contents list</b>	<b>115</b>

**Commissioner of Taxation**

26 May 2004

<i>Previous draft:</i>	– ITAA 1936 82KZME
Not previously released in draft form	– ITAA 1936 82KZME(1)
	– ITAA 1936 82KZME(2)
	– ITAA 1936 82KZME(3)
<i>Related Rulings/Determinations:</i>	– ITAA 1936 82KZME(4)
PR 1999/95; TR 92/1; TR 92/20;	– ITAA 1936 82KZME(7)
TR 97/16; TD 93/34; TR 97/11;	– ITAA 1936 82KZMF
TR 98/22; TR 2000/8;	– ITAA 1936 82KZMF(1)
TR 2001/14; TD 2003/12	– ITAA 1936 82KZMG
	– ITAA 1936 82KZMG(1)
<i>Subject references:</i>	– ITAA 1936 82KZMG(2)
– advance deductions and expenses for certain forestry expenditure	– ITAA 1936 82KZMG(3)
– carrying on a business	– ITAA 1936 82KZMG(4)
– commencement of business	– ITAA 1936 82KZMG(5)
– fee expenses	– ITAA 1936 Pt IVA
– forestry agreement	– ITAA 1936 177A
– interest expenses	– ITAA 1936 177C
– management fees	– ITAA 1936 177D
– non commercial losses	– ITAA 1936 177D(b)
– producing assessable income	– ITAA 1997 6-5
– product rulings	– ITAA 1997 8-1
– public rulings	– ITAA 1997 17-5
– seasonally dependent agronomic activity	– ITAA 1997 25-25
– taxation administration	– ITAA 1997 Div 27
– tax avoidance	– ITAA 1997 Div 35
– tax benefits under tax avoidance schemes	– ITAA 1997 35-10
– tax shelters	– ITAA 1997 35-10(2)
– tax shelters project	– 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
<i>Legislative references:</i>	– ITAA 1997 Subdiv 328-G
– ITAA 1936 Pt III Div 3 Subdiv H	– TAA 1953 Pt IVAAA
– ITAA 1936 82KL	– Copyright Act 1968
– ITAA 1936 82KZL	– Corporations Act 2001
– ITAA 1936 82KZL(1)	

*Case references:*

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

---

ATO references

NO: 2004/04121  
ISSN: 1441-1172