



PR 2005/118 - Income tax: Great Southern 2007 Organic Olives Income Project - 2007 Growers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 December 2005*



Product Ruling

Income tax: Great Southern 2007 Organic Olives Income Project – 2007 Growers

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Potential participants may wish to refer to the Tax Office website at www.ato.gov.au or contact the Tax Office directly to confirm the currency of this Product Ruling or any other Product Ruling that the Tax Office has issued.

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 IVA 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 Tax Office **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 and how the product fits an existing portfolio. 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 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, 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 Tax Office 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 'Great Southern 2007 Organic Olives Income Project', or just 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 of the ITAA 1997;
 - section 17-5 of the ITAA 1997;
 - Division 27 of the ITAA 1997;
 - Division 35 of the ITAA 1997;
 - Division 40 of the ITAA 1997;
 - Subdivision 61-J of the ITAA 1997;
 - Division 70 of the ITAA 1997;
 - Division 328 of the ITAA 1997;
 - section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 82KZL of the ITAA 1936;
 - sections 82KZME to 82KZMF of the ITAA 1936; and
 - Part IVA of the 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 potential participants are fully informed of any legislative changes after the Ruling is issued.

Class of persons

7. The class of persons to whom this Ruling applies is the persons more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (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.

Qualifications

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 The Ruling will be withdrawn or modified.

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Date of effect

11. This Ruling applies prospectively from 14 December 2005, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not commenced and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2009. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

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

- Application for Product Ruling dated and additional correspondence including emails, between the Tax Office and the Applicant; received 1 August 2005, 22 August 2005, 15 September 2005, 20 September 2005, 6 October 2005, 21 October 2005, 25 October 2005, 28 October 2005, 3 November 2005, 4 November 2005, 11 November 2005, 18 November 2005 and 1 December 2005;
- Draft Product Disclosure Statement ('PDS') for the Great Southern 2007 Organic Olives Income Project, to be issued by Great Southern Managers Australia Ltd ('GSMAL'), received 1 December 2005;

- Draft **Constitution** of the Great Southern 2007 Organic Olives Income Project, received 1 December 2005;
- Draft **Lease and Management Agreement** (LMA) between GSMAL (as both the 'Lessor' and 'Responsible Entity') and the Grower, received 1 December 2005;
- Draft **Lease and Management Agreement shortform** between GSMAL (as both the 'Lessor' and 'Responsible Entity') and the Grower, received 1 December 2005;
- Draft Lease between GSMAL and Great Southern Olive Holdings Pty Ltd (as the 'Owner'), received 1 August 2005;
- Compliance Plan for Great Southern 2007 Organic Olives Income Project, received 1 August 2005;
- Management Services Agreement between GSMAL and Great Southern Plantations Ltd ('GSPL'), received 1 August 2005;
- **Loan Deed** between Great Southern Finance Pty Ltd (as the 'Lender') and the Borrower, received 1 August 2005;
- Draft Independent Olive Expert Report received 15 September 2005; and
- Draft Marketing Services Agreement between GSMAL and Great Southern Securities Pty Limited received 1 August 2005.

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. The effect of these agreements is summarised as follows.

Overview

17. The salient features of the Great Southern 2007 Organic Olives Income Project are as follows:

Location	Any land verified as suitable by the independent expert, located in Australia.
Type of business each participant is carrying on	Commercial growing of organic olives
Number of hectares offered for cultivation	The PDS provides for 500 hectares, however oversubscriptions may be accepted
Size of each Grovelot	0.1 hectares with a maximum of 25% mature established trees (planted prior to 2004)
Number of olive trees per hectare	330
Term of the Project	20 years (or 22 years if certain conditions are met)
Initial cost	\$8,800 (includes an amount for prepaid Management Fees of \$2,640 for the years ending 30 June 2008 and 2009) plus 100% of net harvest proceeds, if any
Ongoing costs	<ul style="list-style-type: none"> • Management fee of 90% of Net Proceeds of Sale for the income years ending 30 June 2008 to 30 June 2011; • Management fee of 35% of Net Proceeds of Sale for the income years ending 30 June 2012 to 30 June 2027; and • Rent of 10% of Net Proceeds of Sale for all years after the Initial Management Period.

18. The Responsible Entity for the Project is Great Southern Managers Australia Ltd ('GSMAL'). Under the Product Disclosure Statement ('PDS'), GSMAL proposes to offer 5,000 interests called 'Grovelots' of 0.1 hectares, although GSMAL has the right to accept oversubscriptions. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*.

19. There is no minimum subscription for this Project and GSMAL has the right to accept oversubscriptions. Under the PDS, the date for acceptance of applications and the commencement of the Project is 15 June 2007. Upon application, Growers will execute a Power of Attorney enabling GSMAL to act on their behalf as required.

20. The land for the Project will be purchased by Great Southern Olive Holdings Pty Ltd ('GSOH'), a wholly owned subsidiary of GSMAL, which will lease the land to GSMAL. GSOH will be responsible for the construction and installation of all of the Olive Grove Infrastructure. GSOH will also be responsible for the planting of all of the olive trees on the leased land by 15 June 2007.

21. Under the Lease and Management Agreement ('LMA'), the Growers will lease their Grovelots from GSMAL from the Commencement Date of the Project. Each Grovelot will be 0.1 hectares with 33 trees, comprising a maximum of 25% mature established trees (planted prior to 2004) and a minimum 75% newly established trees.

22. Under the Lease and Management Agreement, the Growers enter into a contract with GSMAL to manage their Grovelots. GSMAL will cultivate the Olive Trees, maintain the Grovelot and be responsible for harvesting, marketing and sale of the olives.

Constitution

23. The Constitution establishes the Project and operates as a deed binding on all of the Project's Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which GSMAL 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. Pursuant to clause 28 of the Constitution, the Responsible Entity will keep a register of Growers.

24. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity, which will deposit those moneys in the Application Fund. The application monies will be released by the Responsible Entity when it is reasonably satisfied that criteria in the Constitution have been met (clauses 7 and 8).

Compliance plan

25. As required by the Corporations Act, a Compliance Plan has been adopted by GSMAL for the Project. The purpose of the Compliance Plan is to ensure that GSMAL manages the Project in accordance with the obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Lease and Management Agreement

26. Each Grower participating in the arrangement will enter into a Lease and Management Agreement with GSMAL.

27. Growers participating in the Project will be granted an interest in the form of a sub-lease to use a Grovelot for the purpose of conducting their olive production business.

28. The Lease gives the Grower a sub-lease over an identifiable area of land for a period commencing on the Commencement Date, 15 June 2007, and ending 20 years after the end of the Initial Management Period, or the date the Project is terminated, or the date of the final distribution of Proceeds to the Grower, whichever date is earlier. If the sub-lease has not been terminated pursuant to the provisions of the Constitution, the sub-lease can be extended to the 'Extended Termination Date', being an additional two years if the Grower's Internal Rate of Return over the original Term of the Project does not equal or exceed an average of 9% per annum.

29. Each Grower must pay Rent to the Lessor in an amount specified in Item 6 of Schedule 1 of the Lease and Management Agreement. The amount of Rent is determined as a percentage of the Net Proceeds of Sale. There is no rent payable for the Initial Management Period.

30. The LMA provides that each Grower appoints GSMAL to perform services under the agreement from the Commencement Date of 15 June 2007, being the date of execution of the Agreement. GSMAL will manage all horticultural activities on behalf of the Grower.

31. The Grower appoints the Responsible Entity to provide the Initial Management Services during the Initial Management Period, which is period from the 15 June 2007 to 30 June 2007. The Initial Management Services are specified in Schedule 2 and include:

- (a) all inspection, supervision and management activities from the Commencement Date in respect of the services listed in Schedule 2 of the Lease and Management Agreement that are carried out by subcontractors;
- (b) the obtaining of formal verification by 30 June from an Independent Olive Expert that the Grovelot is of an appropriate standard and all required services have been performed and to an appropriate standard;
- (c) cultivating, tending, culling, watering, pruning, replanting, spraying and otherwise caring for the Olive Trees;
- (d) keeping in good repair and condition any access road or roads, all waterways, dams, irrigation and pumping equipment within the Olive Grove;
- (e) undertaking pest control, fungicide control and other olive disease measures;

- (f) controlling rabbits and other vermin;
- (g) keeping in good repair and condition all fences, trellising, irrigation and adequate fire-breaks;
- (h) using reasonable endeavours to achieve and maintain organic certification;
- (i) carrying out any other obligation to be performed by the Responsible Entity pursuant to the terms of any agreement entered into by the Responsible Entity;
- (j) obtaining all necessary approvals and consents required in relation to the provision of the services listed in Schedule 2;
- (k) all marketing activities in respect of the sale or future sale of the Olive Produce as necessary from the Commencement Date;
- (l) activities in respect of arranging insurance of the Olive Produce;
- (m) all administrative services required in respect of providing the services; and
- (n) any other activity that may be required to generally maintain the Olive Grove in accordance with good horticultural practice or in respect of the provision of the services listed in Schedule 2.

32. The Grower appoints the Responsible Entity to provide the Ongoing Management Services in respect to their Grovelots for a 20 year period commencing on 1 July 2007. The Agreement defines Ongoing Management Services to mean all commercial activities required to be carried on to manage and maintain an Olive Grove according to good industry practices for the cultivation of olives, and including but not limited to the services listed in Schedule 3, as follows:

- (a) cultivating, tending, culling, watering, pruning, replanting, spraying and otherwise caring for the Olive Trees;
- (b) keeping in good order and condition any access road or roads, all waterways, dams, irrigation and pumping equipment within the Olive Grove;
- (c) undertaking pest control, fungicide control and other Olive Tree disease measures;
- (d) controlling rabbits and other vermin;
- (e) keeping in good repair and condition all fences, trellising, irrigation and adequate fire-breaks;
- (f) using reasonable endeavours to achieve and maintain organic certification;

- (g) obtaining a Report from the Independent Olive Expert within 6 months after the Commencement Date of completion of the Project, at least six monthly for the first year thereafter and then annually;
- (h) carrying out any other obligation to be performed by the Responsible Entity pursuant to the terms of any agreement entered into by the Responsible Entity;
- (i) obtaining all necessary approvals and consents required in relation to the provision of the services listed in Schedule 3; and
- (j) any other activity that may be required to generally maintain the Olive Grove in accordance with good industry practice.

Fees

33. The fees payable under the Lease and Management Agreement per Grovelot are as follows:

- a fee of \$8,800 is payable on application. This fee is made up of \$6,160 for the Initial Management Services, \$1,320 for the Ongoing Management Services for the income year ending 30 June 2008 and \$1,320 for the income year ending 30 June 2009 (total (\$2,640));
- Management fee of 100% of a Growers Net Proceeds of Sale for the period from 15 June 2007 to 30 June 2007;
- Management fee of 90% of a Growers Net Proceeds of Sale for the income years ending 30 June 2008 to 30 June 2011;
- Management fee of 35% of a Growers Net Proceeds of Sale for the income years ending 30 June 2012 to 30 June 2027; and
- Rent of 10% of the Growers Net Proceeds of Sale in each financial year from 1 July 2007.

34. GSMAL will use its best endeavours to arrange insurance of the Grovelot on behalf of the Grower to cover against fire and other usual risks. The insurance will be deducted from the Net Proceeds of Sale, however, such costs will not exceed the Net Proceeds of Sale in any financial year (clause 12.1 of the LMA).

Harvesting and Sale

35. Harvesting will commence when the Responsible Entity, in its absolute discretion, considers appropriate. The Responsible Entity will harvest the Olive Produce at such time or times as in the opinion of the Responsible Entity, is appropriate to optimise the selling price of Olive Produce (clause 18 of the LMA).

36. The Grower has appointed GSMAL to sell the Olive Produce on behalf of the Grower for the maximum practicable price available (clause 19 of the LMA). At all times the Grower has full right, title and interest in the Olive Produce and the right to have the Olive Produce sold for their benefit (clause 11.3 of the LMA). The Responsible Entity or any person associated with the Responsible Entity may purchase the Olive Produce if the price to be paid is the maximum practicable price available at the date of sale.

37. GSMAL, acting as agent on behalf of the Growers, will enter into an Olive Sale Agreement for the sale of the Olive Produce from each Grovelot for the term of the Project.

38. GSMAL will ensure that the Gross Proceeds of Sale are paid into the Proceeds Fund. The Growers' proportional share of the costs of harvesting will be paid from the Gross Proceeds of Sale to GSMAL. GSMAL will pay the Rent and Management Fee from the Net Proceeds of Sale.

39. GSMAL will distribute each Grower's Proportional Interest of the Proceeds Fund relating to the last Accounting Period, as defined in clause 31 of the Constitution. The terms 'Proceeds Fund' and 'Grower's Proportional Interest' are defined in clause 1 of the LMA.

Finance

40. Growers can fund their participation in the Project themselves, borrow from Great Southern Finance Pty Ltd (a lender associated with GSMAL) or borrow from an independent lender. The Great Southern group may also have arrangements in place with certain preferred financiers who may provide finance directly to Growers.

41. Finance is available from Great Southern Finance Pty Ltd under the following arrangements. Normal debt recovery procedures, including legal action, will be taken in the case of defaulting borrowers.

Option A – 12 months terms payments – 1 or more Grovelots

- equal monthly principal instalments over a period of 12 months;
- instalments paid by direct debit commencing July 2007;
- GST is payable on execution of the Lease and Management Agreement (\$800 per Grovelot); and
- no interest applicable.

Option B – Principal and Interest Finance – Minimum of 2 Grovelots.

- principal and interest loans from 2 years up to no more than 15 years;
- equal monthly principal and interest repayments over the term of the loan, commencing July 2007; and
- interest rates will be fixed for the period of the loan and are set on an arms length basis with reference to a commercial margin over the inter bank SWAP rate for that term.

For loans under Option B, the following will apply:

- GST is payable on execution of the Lease and Management Agreement (\$800 per Grovelot);
- a Loan Establishment Fee, comprising an application fee of up to 1.1% of the loan advance (GST inclusive) and a fee to cover legal costs and expenses of up to \$275 (GST inclusive) may be charged; and
- security taken over Lease and Management Agreement.

Where a preferred financier is utilized, the terms of the loans provided will be the same as those outlined above, other than interest only periods of up to a maximum of 20% of the loan term or 3 years (whichever is lesser) may be provided.

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

- entities associated with the Project, other than Great Southern Finance Pty Ltd, are involved in the provision of finance for the Project;
- 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' 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 terms or rate of interest are of a non-arm's length nature;
- repayments of the principal and 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) back to the lender or any associate; or
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers.

Ruling

Application of this Ruling

43. This Ruling applies only to Growers who are accepted to participate in the Project on 15 June 2007 and who have executed a Lease and Management Agreement on that date.

44. The Grower's participation in the Project must constitute the carrying on of a business of primary production (see Explanation at paragraphs 62 to 74). A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

The Simplified Tax System ('STS')

45. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether a Grower is an 'STS taxpayer' prior to 1 July 2005 continues to use the cash accounting method (called the 'STS accounting method' – see section 328-115).

46. For such Growers, a reference in this Ruling to an amount being deductible when 'incurred' will mean that amount is deductible when paid and a reference to an amount being included in assessable income when 'derived' will mean that amount is included in assessable income when received.

Qualification

47. 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.

25% Entrepreneurs tax offset

Subdivision 61-J

48. For the first income year starting on or after 1 July 2005, Subdivision 61-J of the ITAA 1997 provides for a tax offset of up to 25% of income tax liability related to the business income of a business in the STS with annual group turnover of less than \$75,000. Entitlement to the offset varies depending on the type of entity and is therefore outside the scope of this Ruling.

Tax outcomes for Growers

49. The following paragraphs outline the tax outcomes for all Growers.

Assessable income**Section 6-5**

50. That part of the gross sales proceeds from the Project attributable to the Grower's produce, less any GST payable on these proceeds (section 17-5), will be assessable income of the Grower under section 6-5 at the time that income is derived.

Deduction for Management Fees, Rent, Insurance Premiums, Interest and Capital Expenditure**Section 8-1**

51. All Growers may claim tax deductions for the following revenue expenses on a per Grovelot basis, as set out in the Table below.

Subdivision 40-F

52. All Growers will also be entitled to a tax deduction relating to Olive Trees, as set out in the Table below.

Fee Type	ITAA 1997 Section	Year ending 30 June 2007	Year ending 30 June 2008	Year ending 30 June 2009
Management Fee	8-1	\$6,160, plus 100% of Net Proceeds of Sale See Notes (i) & (ii)	\$1,320, plus 90% of Net Proceeds of Sale See Notes (i) & (ii)	\$1,320, plus 90% of Net Proceeds of Sale See Notes (i) & (ii)
Rent	8-1	Nil	10% of Net Proceeds of Sale See Note (i)	10% of Net Proceeds of Sale See Note (i)
Insurance premiums	8-1	Nil	As incurred See Note (i)	As incurred See Note (i)
Interest	8-1	As incurred See Note (iii)	As incurred See Note (iii)	As incurred See Note (iii)
Establishment of Olive Trees	40-515			See Notes (i) & (iv)

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 at paragraph 98.
- (ii) The amount of \$8,800 payable on application consists of an Initial Management Services fee of \$6,160 and a prepayment of the Management Fees for the income years ending 30 June 2008 and 2009 totalling \$2,640. The Initial Management Services fee of \$6,160 is payable on application for services to be provided in the Initial Management Period and is deductible in the year in which it is incurred.

However, the amount of \$2,640 prepaid in respect of the Ongoing Management Services is **NOT** deductible in the year in which it is incurred for non-'STS taxpayers'. Deductions for this amount **must** be determined using the formula in subsection 82KZMF(1) (see paragraphs 75 to 86). This section operates to apportion expenditure over the eligible service period or ten years, whichever is the lesser. The 'eligible service period' commences on 1 July 2007 and ends on 30 June 2009. Accordingly, an amount of \$1,320 is deductible in each of the years ended 30 June 2008 and 30 June 2009.
- (iii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than Great Southern 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 Great Southern Finance Pty Ltd, should read carefully the discussion of the prepayment rules in paragraphs 75 to 86 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.
- (iv) Olive trees are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a lease, the condition in item 3 of subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value.

The deduction for the Olive Trees is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment. If the Olive Trees have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the Olive Trees enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Growers of when the Olive Trees enter their first commercial season.

Tax outcomes that apply to all Growers

Trading stock

Section 70-35

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

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

Section 328-285

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

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

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

57. A Grower who is an individual accepted into the Project in the year ended 30 June 2007 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 Growers for the income years ending **30 June 2007 to 30 June 2012**. 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

58. For a Grower who commences participation in the 2007 Project and incurs expenditure as required by the Lease and 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?**

59. For the amounts set out in the Tables above to constitute allowable deductions, the Grower’s horticultural activities as a participant in the Great Southern 2007 Organic Olives Income Project must amount to the carrying on of a business of primary production.

60. Where there is a business, or a future business, the gross proceeds from the sale of the Olive Produce will constitute 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.

61. For schemes such as those of the Great Southern 2007 Organic Olives Income Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower’s activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *Commission of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

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

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

63. In this Project, each Grower enters into a Lease and Management Agreement. Under the agreement, each individual Grower will have rights over a specific and identifiable area of land. The agreement provides the Grower with an ongoing interest in the specific Olive Trees on the leased area for the term of the Project. Under the agreement, the Grower must use the land in question for the purpose of carrying out horticultural activities, and for no other purpose. The agreement allows the Landholder and the Responsible Entity to come onto the land to carry out their obligations.

64. Under the Lease and Management Agreement, the Responsible Entity is engaged by the Grower to maintain a Grovelot 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 maintain the Grovelot on the Grower's behalf.

65. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the Olive Produce grown on the Grower's Grovelot.

66. 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.

67. 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 Olive 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.

68. The pooling of Olive Produce from Olive Trees grown on the Grower's Grovelot with the Olive Produce of other Growers is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled Olive Produce will reflect the proportion of the produce contributed from their Grovelot(s).

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

70. The Grower's degree of control over the Responsible Entity as evidenced by the Lease and Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Responsible Entity will provide the Grower with regular progress reports on the Grower's Grovelot 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.

71. The horticultural 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' horticultural activities in the Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

72. 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.

73. Changes to the STS rules apply from 1 July 2005. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

Deductibility of management fees

Section 8-1

74. Consideration of whether the initial management 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.

75. The fee payable on application is associated with the horticultural activities that will relate to the gaining of income from the Grower's business of horticulture (see above), and hence has a sufficient connection to the operations by which income (from the harvesting and sale of Olive Produce) is to be gained from this business. It 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. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMF

76. 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.

77. For this Project, only section 82KZL (an interpretive provision) and sections 82KZME and 82KZMF are relevant. 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) (see paragraph 85). 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

78. If the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) 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)).

79. 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.

80. 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 Great Southern Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the 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.

81. 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.

82. 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.

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

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

Application of the prepayment provisions to this Project

84. Under the Lease and Management Agreement, a Grower incurs fees on application of \$8,800 per Grovelot. These fees are made up of:

- \$6,160 for the Initial Management Services to be provided in the Initial Management Period from the Commencement Date to 30 June 2007; and
- prepayment of \$2,640 for Ongoing Management Services to be provided in the Second Period and Third Period from 1 July 2007 to 30 June 2009.

85. The fee of \$6,160 for the Initial Management Services is for services to be provided within the year in which the fee is incurred or paid, and is therefore deductible in that year.

86. The expenditure incurred by a Grower in the Project for the Ongoing Management Services meets the requirements of subsections 82KZME(1) and (2) and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of the exceptions to 82KZME applies, the amount and timing of those deductions for those fees are determined under section 82KZMF.

87. The prepaid Ongoing Management fees do not fall within any of the five exceptions to section 82KZME. Therefore, the deduction for each year is determined using the formula in subsection 82KZMF(1). Section 82KZMF will apportion the deduction for prepaid Ongoing Management fees over the eligible service period which commences on 1 July 2007 and ends on 30 June 2009.

Interest deductibility***(i) Growers who use Great Southern Finance Pty Ltd as the finance provider***

88. Some Growers may finance their participation in the Project through a loan facility with Great Southern 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 management fees.

89. The interest incurred by these Growers will be in respect of a loan to finance the Project business operations of growing olives and is therefore 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.

90. In the absence of any application of the prepayment provisions (see paragraphs 79 to 90), interest is deductible in the year in which it is incurred.

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

91. 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 Great Southern 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.

92. 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 relevant prepayments provisions of the ITAA 1936 (see paragraphs 79 to 90).

Division 35 – deferral of losses from non-commercial business activities

Section 35-55 – exercise of Commissioner’s discretion

93. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for Growers for the income years **30 June 2007 to 30 June 2012**, 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 2007 up to and including 30 June 2012:

- it is because of its nature the business activity of a Grower that 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 horticultural 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.

94. 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

95. The operation of section 82KL depends, among other things, on the identification of a certain quantum of ‘additional benefit(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

96. 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).

97. The Project will be a ‘scheme’. A Grower will obtain a ‘tax benefit’ from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 51 and 58 that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

98. 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 Olive 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 are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not 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

99. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her horticulture 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 Olive Grove 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 Olive Grove 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).

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Related Rulings/Determinations:

IT 360; PR 1999/95; TD 93/34;
 TR 92/1; TR 92/20; TR 97/11;
 TR 97/16; TR 98/22; TR 2000/8;
 TR 2001/14

Subject references:

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- non-commercial business activities
- primary production
- primary production expenses
- producing assessable income
- product rulings
- public rulings
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- 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 Pt IVA
- ITAA 1936 177A
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- ITAA 1936 177D
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- 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
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- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 40-515
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- Commission of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

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