

PR 2005/58 - Adelaide Hills Premium Vineyard - 2006 Farmers



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This document has changed over time. This is a consolidated version of the ruling which was published on *27 April 2005*



Product Ruling

Income tax: Adelaide Hills Premium Vineyard – 2006 Farmers

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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 IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

No guarantee of commercial success

The 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 Adelaide Hills Premium Vineyard Project', 'The Adelaide Hills Premium Vineyard Project – 2006 Farmers' 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 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 328 of the ITAA 1997;
 - section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 82KZL of the ITAA 1936;
 - section 82KZME and 82KZMF of the ITAA 1936; and
 - Part IVA of the ITAA 1936.

Goods and Service Tax

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

Changes in the Law

4. Although this Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.

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

Note to promoters and advisers

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

Class of persons

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

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 otherwise do not intend to derive assessable income from it;
- Farmers who are accepted into the Project before 1 July 2005 after 30 November 2005; or
- Farmers who were accepted into the Project prior to the date of issue of this Product Ruling. This includes Farmers who subscribed for Interests pursuant to a previous prospectus dated 24 May 2001.

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 27 April 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 that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2008. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

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

- Application for a Product Ruling received 10 January 2005 and further correspondence, including emails, received 8 February, 2 March, 22 March, 29 March; 5 April; 12 April, 14 April and 15 April 2005;
- The Adelaide Hills Premium Vineyard Project draft Product Disclosure Statement (PDS), undated, received 5 April 2005;
- **Third Replacement Constitution for the Adelaide Hills Premium Vineyard Project, between Australian Hardwood Management ('Responsible Entity') and each 'Farmer', received 12 April 2005 and updated on 14 and 15 April 2005. This contains the Farming Agreement;**
- Instrument Modifying Second Replacement Constitution for the Adelaide Hills Premium Vineyard Project, received 2 March 2005;
- Independent Viticulture Report dated 29 October 2004, received 10 January 2005;
- Deed between Australian Hardwood Management and various parties outlining various land options, received 10 January 2005; and
- Replacement Compliance Plan for The Adelaide Hills Premium Vineyard Project, received 10 January 2005.

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

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

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

17. This arrangement is called The Adelaide Hills Premium Vineyard Project.

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Location	Gumeracha in South Australia
Type of business each participant is carrying on	A commercial viticulture and wine production business for a period of 17 years.
Number of hectares under cultivation	35 hectares
Size of each Farm	0.1 hectares
Number of vines per Farm	247
Initial cost of a Farm	Maximum of \$9,388 (includes prepaid fees)
Subscription for one Share in the Landholder	\$1,600 payable on application with a further \$2,400 payable in 2010
Ongoing costs	Farm Occupation Fee Annual Management Fee
Other costs	Administration Fee Insurance Harvesting costs Grape levy

18. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. The Responsible Entity for this Project is Australian Hardwood Management. The Project land is situated in the Adelaide Hills near Gumeracha in South Australia.

19. The Project currently has 40 Interests issued to Farmers who subscribed for Interests pursuant to a previous prospectus dated 24 May 2001 equivalent to approximately 16 hectares. These Farmers are the subject of a separate Farming Agreement in the form set out in the Project's Constitution with respect to their allotments.

This Ruling does not apply to these Farmers.

20. Farmers accepted under the Product Disclosure Statement ('PDS') will enter into the Constitution, which contains the Farming Agreement, with the Responsible Entity. The Responsible Entity will grant a licence to the Farmer to enable them to carry on a business of producing wine grapes. Under the Farming Agreement, Farmers licence an area of land called a 'Farm' for a term of approximately 17 years. Each Farm consists of a minimum of one interest which is 0.1 hectares in size.

21. Under the Farming Agreement, Farmers appoint the Responsible Entity as Manager to manage their Farm. The Manager will perform the services required under the Farming Agreement and will be responsible for the establishment, cultivation, harvesting and sale of the grapes.

22. Applications may be accepted by the Responsible Entity on or before 31 May 2005 and between 1 July 2005 and 30 November 2005. Farmers accepted before 31 May 2005 may be covered by Product Ruling PR 2005/57.

23. Under the Product Disclosure Statement, the Responsible Entity will offer a maximum of 336 Farms. Minimum subscription for the Project is 80 Farms. Each participant may subscribe for one or more Farms at the cost outlined in the table at paragraph 17.

Constitution

24. The Constitution establishes the Project and operates as a deed binding on all of the Farmers and the Responsible Entity. The Constitution sets out the terms and conditions under which Australian Hardwood Management agrees to act as Responsible Entity and thereby manage the Project. The Farming Agreement contained within will be executed on behalf of a Farmer following acceptance of the application by the Responsible Entity. Farmers are bound by the Constitution by virtue of their participation in the Project.

25. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity. The Responsible Entity shall deposit those moneys into the Applications Bank Account in the name of the Responsible Entity. The application monies will be released by the Responsible Entity into the Project Bank Account if the application is accepted and minimum subscription is met (clause 15.7 of the Constitution).

Compliance plan

26. As required by the *Corporations Act 2001*, a Compliance Plan has been prepared by Australian Hardwood Management. Its purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Farmers are protected.

Licence

27. Farmers participating in the arrangement will enter into a Farming Agreement between the Farmer and Australian Hardwood Management in its capacity as Responsible Entity of the Project. Under clause 3 of this agreement, Farmers are granted a licence to use their Farm for the purpose of conducting their wine grape growing business upon terms and conditions as set out in the licence. The licence will commence on the date Farms are allotted to Farmers and will continue until 2022. A Farm Occupation Fee is charged to the Farmer for the use of the land for wine grape growing.

Farming Agreement

28. The Farming Agreement is between the Farmer and the Responsible Entity. Each Farmer agrees to engage the Responsible Entity of the Project to perform the Management Services under the Agreement. The Responsible Entity must engage the services of a reputable expert in the field of viticulture and wine production to provide advice and assistance to the Responsible Entity to carry out some or all of these duties.

29. Management Services include:

- cultivating, fertilising and planting out the Vineyard with cuttings or rootlings in a healthy condition;
- carrying out all work necessary for establishment of the Vineyard to enable the grapes to be grown in accordance with good viticulture practice for the area of the Project including without limitation establishment of any necessary dams or bores, irrigation trellising and land care;
- harvesting the wine grapes from the Vineyard; and
- arranging sales of the wine grapes from the Vineyard including entering into a contract or contracts to supply grapes harvested from the Vineyard.

Pooling of 'Grapes' and distribution of Business Income

30. The Constitution sets out the circumstances relating to the pooling of 'Farmers' Produce and the distribution of the Farmers Business Income. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Farmers who have contributed Produce from a harvest to the pool making up the harvested produce are entitled to benefit from distributions from the business income; and
- Produce can only be pooled with the Produce of Farmers accepted to participate in the Adelaide Hills Premium Vineyard from the date of this Ruling to 30 November 2005.

Fees

31. The fees payable under the Constitution on the Settlement Date are as follows. The amounts indicated are on a per Farm basis.

Service Period	For	Amount
From the application being accepted to 30 June 2006	Planting and preparation	\$360.00
	Trellising	\$1,344.00
	Irrigation	\$891.00
	Management Services	\$5,279.00
	Farm Occupation	\$31.17 per month
	Shares	\$1,600.00
	Administration	\$330.00
From 1 July 2006 to 30 June 2007	Management Services	\$1,421.00

32. Fees payable on 1 July 2006 on a per Farm basis are as follows:

Service Period	For	Amount
From 1 July 2006 to 30 June 2007	Farm Occupation Administration	\$374.00 indexed \$385.00

33. From 1 July 2007, the Annual Management Fee will be paid out of the Farmer's Business Income, where applicable. The fee is calculated in direct proportion to the total cost of providing the Management Services by the Responsible Entity (clause 5.1(a)(4) of the Farming Agreement).

34. An amount of \$2,400.00 is payable by 30 June 2010 as final payment for Shares in the Landholding company.

Finance

35. Farmers may fund their participation in the Project themselves. This Ruling does not apply if the finance arrangement entered into by the Farmer includes or has any of the following features:

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
- the loan or rate of interest is non-arm's length;
- repayments of the principal and payments of interest are linked to the derivation of income from the Project;

- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to Farmers for the Project.

Ruling

Application of this Ruling

36. Subject to paragraph 8, this Ruling applies only to Farmers who:

- are accepted to participate in the Project between 1 July 2005 and 30 November 2005; and
- have executed a Farming Agreement before 30 November 2005.

The Farmer's participation in the Project must constitute the carrying on of a business of primary production.

Minimum subscription

37. A Farmer is not eligible to claim any tax deductions until the Farmer's application to enter the Project is accepted and the Project has commenced. Under the terms of the Product Disclosure Statement, a Farmer's application will not be accepted and the Project will not proceed until the minimum subscription of 80 interests is achieved.

The Simplified Tax System ('STS')

Division 328

38. To be an 'STS taxpayer' a Farmer must be eligible to be an 'STS taxpayer' and must have elected to be an 'STS taxpayer'. For a Farmer participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Farmer is an 'STS taxpayer' and uses the cash accounting method.

Qualification

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

25% Entrepreneurs tax offset***Subdivision 61-J***

40. For the first income year starting on or after 1 July 2005, subdivision 61-J of the ITAA 1997 provides a 25% tax offset 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 Farmers who are not 'STS taxpayers'**Assessable income*****Section 6-5***

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

42. For the 2005-06 income year and later years, a Farmer who is an 'STS taxpayer' using the cash accounting method will be assessable on ordinary income from carrying on their business of viticulture at the time that income is received.

43. Other than Farmers referred to in paragraph 42, for the 2005-06 income and later years, a Farmer recognises ordinary income from carrying on the business of viticulture at the time that income is derived.

Deductions for Management Fees, Farm Occupation Fee and the Administration Fee***Section 8-1***

44. A Farmer who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses on a per Farm basis:

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Fee Type	ITAA 1997 Section	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Management Fee	8-1	\$5,279.00 See Note (i)	\$1,421.00 – See Notes (i) & (ii)	To be advised by the Responsible Entity – See Note (i)
Farm Occupation Fee	8-1	\$31.17 per month – See Note (i)	\$374.00 indexed – See Note (i)	\$374.00 indexed – See Note (i)
Administration Fee	8-1	\$330.00 See Note (i)	\$385.00 See Note (i)	

Notes:

- (i) If the Farmer 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 91.
- (ii) The Management Fees prepaid on the Settlement Date in respect of the financial year ended 30 June 2007 are NOT deductible in full in the year incurred.

Deductions for capital expenditure**Division 40**

45. A Farmer who is not an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (for example irrigation), and grapevines. All deductions shown in the following Table are determined under Division 40.

Fee type	ITAA 1997 section	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Trellising	40-25	Amounts must be calculated – See Notes (iii) and (iv)	Amounts must be calculated – See Notes (iii) and (iv)	Amounts must be calculated – See Notes (iii) and (iv)
Water facility (e.g. irrigation, dam, bore, etc)	40-515	Must be calculated – See Notes (iii) & (v)	Must be calculated – See Notes (iii) & (v)	Must be calculated – See Notes (iii) & (v)
Establishment of horticultural plants (grapevines)	40-515	Nil – see Notes (iii) & (vi)	Nil – see Notes (iii) & (vi)	Nil – see Notes (iii) & (vi)

Notes:

- (iii) If the Farmer is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (for example input tax credits): Division 27. See example 1 at paragraph 91.
- (iv) Trellising is a 'depreciating asset'. Each Farmer's interest in the trellising is a 'depreciating asset'. The 'cost' of the asset is the amount paid by each Farmer. The decline in value of the asset is calculated using the formula in either subsection 40-70(1) ('diminishing value method') or subsection 40-75(1) ('prime cost method'). Both formulas rely on the 'effective life' of the trellising.

Farmers can either self-assess the 'effective life' (section 40-105) or use the Commissioner's determination of 'effective life' (section 40-100). The Commissioner has determined that trellising has an 'effective life' of 20 years. Trellising will be installed and first used during the year ended 30 June 2006. The Responsible Entity will advise Farmers when that occurs to enable Farmers to calculate the deduction for the decline in value.
- (v) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Farmer on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).
- (vi) Grapevines are a 'horticultural plant' as defined in subsection 40-520(2). As Farmers hold the land under licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Farmer that is attributable to their establishment. If the grapevines 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 grapevines enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Farmers of when the grapevines enter their first commercial season.

Tax outcomes for Farmers who are 'STS taxpayers'**Assessable income****Section 6-5**

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

47. For the 2005-06 income year and later years, a Farmer who is an 'STS taxpayer' using the accruals accounting method will be assessable on ordinary income from carrying on their business of viticulture at the time that income is derived. However, if the Farmer uses the cash accounting method, income from carrying on the business of viticulture is recognised at the time the income is received.

Deductions for Management Fees, Farm Occupation Fee and Administration Fee**Section 8-1**

48. A Farmer who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses on a per Farm basis:

Fee Type	ITAA 1997 Sections	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Management Fee	8-1	\$5,279 – See Notes (vii) & (viii)	\$1,421.00 – See Notes (vii), (viii) & (ix)	To be advised by the Responsible Entity – See Notes (vii) & (ix)
Farm Occupation Fee	8-1	\$31.17 per month – See Note (vii)	\$374.00 indexed – See Note (vii)	\$374.00 indexed – See Note (vii)
Administration Fee	8-1	\$330.00 See Note (vii)	\$385.00 See Note (vii)	

Notes:

- (vii) If the Farmer 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). See Example 1 at paragraph 91.

- (viii) The Management Fees prepaid on the Settlement Date in respect of the financial year ended 30 June 2007 are NOT deductible in full in the year in which they are paid by, or on behalf of the STS taxpayer. The deduction for each year's fees must be determined using the formula in subsection 82KZMF(1) (see paragraph 81).
- (ix) For the 2007-08 income year and later years, where a Farmer pays the Management, then those fees are deductible in full in the year they are incurred for an 'STS taxpayer' using the accruals method. For an 'STS taxpayer' using the cash method, those fees are deductible in the year they are paid.

Deductions for capital expenditure

Subdivision 328-D and Subdivisions 40-F and 40-G

49. A Farmer who is an 'STS taxpayer' will also be entitled to tax deductions relating to trellising, water facilities (for example irrigation) and grapevines. Deductions relating to the 'cost' of trellising must be determined under Division 328. An 'STS taxpayer' may claim deductions in relation to water facilities under Subdivision 40-F. If the 'water facility' expenditure is on a 'depreciating asset' used to carry on the business, they may choose to claim deductions under Division 328. Deductions for the grapevines must be determined under Subdivision 40-F

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

51. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Farmer is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. The amounts shown in the Table below are on a per Farm basis:

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Fee type	ITAA 1997 section	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Trellising	328-185 & 328-190	\$201.60 – See Notes (x) & (xi)	\$342.72 – See Notes (x) & (xi)	\$239.90 – See Notes (x) & (xi)
Water facility (e.g. irrigation, dam, bore, etc)	40-515	Must be calculated – see Notes (x) & (xii)	Must be calculated – see Notes (x) & (xii)	Must be calculated – see Notes (x) & (xii)
Establishment of horticultural plants (grapevines)	40-515	Nil – see Notes (x) & (xiii)	Nil – see Notes (x) & (xiii)	Nil – see Notes (x) & (xiii)

Notes:

- (x) If the Farmer is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted as relevant for GST (for example input tax credits): Division 27: See example 1 at paragraph 91.
- (xi) Trellising is a 'depreciating asset'. Each Farmer's interest in the trellising is a 'depreciating asset' which can be allocated to a 'general STS pool'. The 'cost' of the asset is the amount paid by each Farmer. The tax deduction allowable is determined in the year ended 30 June 2006 by multiplying the 'cost' of the interest by half the 'general STS pool rate, that is, by 15%. Each Farmer's interest in the trellising is allocated to their 'general STS pool' at the end of the year ended 30 June 2006 and that part of the 'cost' not deducted in the first year is added to the pool balance. In subsequent years, the full pool rate of 30% will apply.
- (xii) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Farmer may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Farmer's interest in the underlying asset is itself deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Farmer is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not

treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2006 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Farmers must claim deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Farmer on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).

- (xiii) Grapevines are a 'horticultural plant' as defined in subsection 40-520(2). As Farmers hold the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred by the Farmer that is attributable to their establishment. If the grapevines 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 grapevines enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Farmers of when the grapevines enter their first commercial season.

Tax outcomes that apply to all Farmers

Interest

52. The deductibility or otherwise of interest incurred by Farmers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However all Farmers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 71 to 79 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 Farmer's choice.

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

53. A Farmer who is an individual accepted into the Project between 1 July 2005 and 30 November 2005 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 Farmers for the income years ending **30 June 2006 to 30 June 2007**. This conditional exercise of the discretion will allow those losses to be offset against the Farmer’s other assessable income in the income year in which the losses arise.

Section 82KL, and Part IVA

54. For a Farmer who participates in the Project and incurs expenditure as required by the Farming 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 Farmer carrying on a business?**

55. For the amounts set out in the Tables above to constitute allowable deductions the Farmer’s viticulture activities as a participant in the Adelaide Hills Premium Vineyard Project must amount to the carrying on of a business of primary production. These viticulture activities will fall within the definitions of ‘horticulture’ and ‘commercial horticulture’ in section 40-535 of the ITAA 1997.

56. For schemes such as that of the Adelaide Hills Premium Vineyard Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Farmer’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.

57. Generally, a Farmer will be carrying on a business of viticulture, and hence primary production, if:

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

58. In this Project, each Farmer enters into a Farming Agreement. Under the Farming Agreement each individual Farmer will have rights over a specific and identifiable area of land. The Farming Agreement provides the Farmer with an ongoing interest in the specific grapevines on the licenced area for the term of the Project. Under the licence the Farmer must use the land in question for the purpose of carrying out viticultural activities and for no other purpose. The licence allows the Responsible Entity come onto the land to carry out its obligations under the Farming Agreement.

59. Under the Farming Agreement the Responsible Entity is engaged by the Farmer to establish and maintain a Farm on the Farmer'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 Farm on the Farmer's behalf.

60. In establishing the Farm, the Farmer engages the Responsible Entity to purchase and install trellising and water facilities (for example irrigation) and to acquire and plant vine seedlings/rootlings on the Farmer's Farm. During the term of the Project, these assets will be used wholly to carry out the Farmer's viticulture activities. The Responsible Entity is also engaged to harvest and sell, on the Farmer's behalf, the grapes grown on the Farmer's Farm.

61. 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.

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

63. The pooling of grapes grown on the Farmer's Farm with the grapes of other Farmers is consistent with general viticulture practices. Each Farmer's proportionate share of the sale proceeds of the pooled grapes will reflect the proportion of the grapes contributed from their Farm.

64. The Responsible Entity's services and the installation of assets on the Farmer's behalf are also consistent with general viticulture practices. The assets are of the type ordinarily used in carrying on a business of viticulture. While the size of a Farm is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).

65. The Farmer's degree of control over the Responsible Entity as evidenced by the Farming Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Farmer with regular progress reports on the Farmer's Farm and the activities carried out on the Farmer's behalf. Farmers are able to terminate arrangements with the Responsible Entity in certain instances, such as cases of default or neglect.

66. The viticulture 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 Farmers' viticulture activities in the Adelaide Hills Premium Vineyard will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

68. Changes to the STS rules apply from 1 July 2005. The question of whether a Farmer is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Farmer 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, Farm Occupation Fees and Administration Fee**Section 8-1**

69. Consideration of whether the Management Fees, Farm Occupation Fees and Administration 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.

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

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

71. 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.

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

Sections 82KZME and 82KZMF

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

74. 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.

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

76. There are a number of exceptions to these rules, but for Farmers 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 Farmers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

77. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure.

78. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

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

79. 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

80. The expenditure incurred by a Farmer in the Project for the Management Fees 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 section 82KZME applies, the amount and timing of tax deductions for those fees are determined under section 82KZMF.

81. The prepaid Management Fees incurred by Farmers do not fall within any of the 5 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 Management fees over the period that the services for which the prepayment is made are provided.

Expenditure of a capital nature

Division 40 and Division 328

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

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

84. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 45 and 51 in the Tables and the accompanying Notes.

Deferral of losses from non-commercial business activities

Division 35

85. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2006 to 30 June 2007** 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 2006 up to and including 30 June 2007:

- it is because of its nature the business activity of a Farmer 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 viticulture industry, a Farmer's business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit; and
- a Farmer 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.

86. 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 Farmer will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

Section 82KL – recouped expenditure

87. 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

88. 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).

89. The Adelaide Hills Premium Vineyard will be a 'scheme'. A Farmer will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 44 to 51 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.

90. Farmers 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 grapes. There are no facts that would suggest that Farmers 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.

Examples**Example 1 – entitlement to GST input tax credits**

91. 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).

Example 2 – apportionment of fees

92. Murray decides to participate in the ABC Pineforest Prospectus which is offering 500 interests of 0.5ha in an afforestation project of 25 years. The management fees are \$5,000 in the first year and \$1,200 for years 2 and 3. From year 4 onwards the management fee will be the previous year's fee increased by the CPI. The first year's fees are payable on execution of the agreements for services to be provided in the following 12 months and thereafter, the fees are payable in advance each year on the anniversary of that date. The project is subject to a minimum subscription of 300 interests. Murray provides the Responsible Entity with a 'Power of Attorney' allowing the Manager to execute his Management Agreement and the other relevant agreements on his behalf. On 5 June 2004 the Responsible Entity informs Murray that the minimum subscription has been reached and the Project will go ahead. Murray's agreements are duly executed and management services start to be provided on that date.

Murray is an 'STS taxpayer' who is not registered, nor required to be registered for GST. He calculates his tax deduction for management fees for the **2004 income year** as follows:

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

$$\$5,000 \times \frac{26}{365}$$

= **\$356** (this is Murray's total tax deduction in 2004 for the Year 1 prepaid management fees of \$5,000. It represents the 26 days for which management services were provided in the 2004 income year).

In the **2005 income year** Murray will be able to claim a tax deduction for management fees calculated as the sum of two separate amounts:

$$\$5,000 \times \frac{339}{365}$$

= **\$4,644** (this represents the balance of the Year 1 prepaid fees for services provided to Murray in the 2005 income year).

$$\$1,200 \times \frac{26}{365}$$

= **\$85** (this represents the portion of the Year 2 prepaid management fees for the 26 days during which services were provided to Murray in the 2005 income year).

\$4,644 + \$85 = \$4,729 (The sum of these two amounts is Murray's total tax deduction for management fees in 2005).

Murray continues to calculate his tax deduction for prepaid management fees using this method for the term of the Project.

Example 3 – apportionment of fees where there is a contractual 'eligible service period' and the fees include expenditure that is 'excluded expenditure'

93. On 1 June 2004 Kevin applies for an interest into the Western Bluegum Project, a prospectus based afforestation project of 12 years. Kevin is accepted into the project and executes a lease and management agreement with the Responsible Entity for the provision of management services and the lease of his Woodlot. The terms of the lease and management agreement require Kevin to prepay the management fees and the lease fee on or before the 30 June each year for the lease of his Woodlot and the provision of management services between the 1 July and 30 June in the following income year. Kevin pays the first year management fee of \$3,600 and first year lease fee of \$500 on 15 June 2004.

Kevin, who is not an 'STS taxpayer' is not registered, nor required to be registered for GST.

He calculates his tax deduction for management fees and the lease fee for the **2004 income year** as follows:

Management fee

Even though he paid the \$3,600 in the 2004 income year, because there are no 'days of eligible service period' in that year, Kevin is unable to claim any part of his management fees as a tax deduction in his tax return for the year ended 30 June 2004.

Lease fee

Because the \$500 lease fee is less than \$1,000 it is 'excluded expenditure' and can be claimed in full as a tax deduction in Kevin's tax return for the year ended 30 June 2004.

In the **2005 income year** Kevin can claim a tax deduction for his first year's management fees calculated as follows:

$$\$3,600 \times \frac{365}{365}$$

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= **\$3,600** (this represents the whole of the first year's management fee prepaid in the 2004 income year but not deductible until the 2005 income year).

For the term of the Project Kevin continues to calculate his tax deduction for prepaid fees using this method.

Detailed contents list

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Commissioner of Taxation

27 April 2005

<i>Previous draft:</i>	- ITAA 1936 82KZME
Not previously issued as a draft	- ITAA 1936 82KZME(1)
	- ITAA 1936 82KZME(2)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZME(3)
PR 1999/95; PR 2005/57;	- ITAA 1936 82KZME(4)
TR 92/1; TR 92/20; TR 97/11;	- ITAA 1936 82KZME(7)
TR 97/16; TR 98/22; TR 2000/8,	- ITAA 1936 82KZMF
TR 2001/14; TD 93/34; IT 360	- ITAA 1936 82KZMF(1)
	- ITAA 1936 Pt IVA
<i>Subject references:</i>	- ITAA 1936 177A
- carrying on a business	- ITAA 1936 177C
- commencement of business	- ITAA 1936 177D
- management fee expenses	- ITAA 1936 177D(b)
- non-commercial losses	- ITAA 1997 6-5
- primary production	- ITAA 1997 8-1
- primary production expenses	- ITAA 1997 17-5
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- schemes and shams	- ITAA 1997 35-10(2)
- tax avoidance	- ITAA 1997 35-55
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- taxation administration	- ITAA 1997 40-25
	- ITAA 1997 40-70(1)
	- ITAA 1997 40-75(1)
<i>Legislative references:</i>	- ITAA 1997 40-100
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- ITAA 1936 Pt III Div 3 Subdiv H	- ITAA 1997 Subdiv 40-F
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NO: 2004/16892

ISSN: 1441-1172