



PR 2005/64 - Income tax: Environinvest Cropping Project - 2005 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: Environinvest Cropping Project – 2005 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 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 referred to as the 'Environinvest Cropping Project' or simply as 'the Project'.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 8-1 of the ITAA 1997;
- section 17-5 of the ITAA 1997;
- Division 27 of the ITAA 1997;
- Division 35 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 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 '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 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 '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;
- do not intend to derive assessable income from it;
- elect to manage their own Lots;
- participate in the Project through offers made other than through the Product Disclosure Statement;
- enter into this arrangement after 31 May 2005; or
- enter into 'Further Farmer Lease' of 'Further Lots' after 31 May 2005.

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

Arrangement

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

- Application for a Product Ruling dated 14 December 2004 as constituted by documents provided on 18, 19, 20, 28 and 31 of January 2005, 2 and 3 of February 2005, 1, 9, and 16 of March 2005, and 5, 12, 14, 15 and 17 of April 2005 and additional correspondence dated 8, 9, 16, and 24 of March 2005, and 6, 7, 12, 14, 15, 17, 18 and 19 of April 2005;

- Product Disclosure Statement of the Environinvest Cropping Project dated 7 April 2005 and received 18 April 2005;
- Draft **Constitution** of the Environinvest Cropping Project received 14 April 2005;
- Constitution of Environinvest Limited received 20 January 2005;
- Draft **Farmer Lease** between Environinvest Limited ('Responsible Entity') and the Farmer received 14 April 2005;
- Draft **Management Agreement** between the 'Responsible Entity' and the Farmer received 14 April 2005;
- Draft Compliance Plan of the Environinvest Cropping Project received 15 December 2004;
- Draft Agreement between Aurora Agriculture Pty Ltd, James Keen, William Brown, Peter Robberds, and Environinvest Limited for carrying out cropping operations received 15 December 2004;
- Draft proforma of the Head Lease Agreement between the Landowner and Environinvest Limited received 9 March 2005;
- Draft Leases (undated) between named parties and Environinvest Limited received 9 March 2005;
- Draft Licence (undated) between named parties and Environinvest Limited received 10 March 2005;
- Draft 'Environinvest Ltd Loan Agreement' between the Responsible Entity and the Borrower received 9 March 2005; and
- Draft 'Environinvest Finance Pty Ltd Loan Agreement' between Environinvest Finance Pty Ltd and the Borrower received 16 March 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 Farmers 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 Farmer, or any associate of a Farmer, 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 Environinvest Cropping Project are as follow:

Location	The Project land is expected to be spread across 3 geographically different regions, within the recognised grain growing regions of Queensland, New South Wales, and Victoria.
Type of business to be carried on by each participant	Commercial growing and cultivation of 'Crops' for the purpose of harvesting and selling the produce. The 'Crops' will consist principally of wheat, barley, canola, sorghum and chickpeas ('Standard Crops'). Other 'Crops', such as oats, faba beans, soy beans, lupins, triticale, maize and sunflower ('Opportunity Crops') may also be grown in the Project.
Term of the Project	5 years
Number of hectares offered for cultivation	18,000
Size of each Farmer Lot	0.5 hectares
Minimum allocation per Farmer	30 × 0.5 hectare lots
Minimum subscription	2 Farmers and 740 lots
Initial cost	\$6,682.50
Ongoing costs	'Crop Fees', 'Opportunity Crop Fees', 'Rent'
Other costs	'Performance Bonus Fees', 'Sales Management Fee'; 'Harvest Expenses', 'Sales Expenses', 'Crop Maintenance Expenses', 'Risk Management Expenses', 'Additional Spraying Expenses', and 'Out of Pocket Expenses' where incurred by the Manager.

18. The Project will be a registered managed investment scheme under the Corporations Act 2001. Environinvest Limited ('Environinvest') is the Responsible Entity for this Project. Offers for interests in the Project will be made under a Product Disclosure Statement ('PDS').

19. The Project involves establishing, planting, cultivating and harvesting crops for sale. An entity that participates in the project will do so by acquiring an interest in the Project which will consist of a minimum of 30, 0.5 hectare Lots.
20. Under terms of the PDS the interests in 'Farmer's Lots' will be issued after a minimum subscription of 2 Farmers and 740 lots has been achieved.
21. The Responsible Entity is making arrangements to lease the Land for the Project within the recognised grain growing regions of Queensland, New South Wales, and Victoria.
22. This Land will then be divided into 0.5 hectare lots and sub-leased to the Farmers accepted in the Project.
23. It is anticipated that 18,000 hectares will be developed which corresponds to 36,000 Farmer Lots in the Project.
24. Applicants execute a Power of Attorney contained in the PDS. The Power of Attorney irrevocably appoints Environinvest to enter into, on behalf of the Farmer, a Farmer Lease, Management Agreement and any other documents required to hold an interest in the Project.
25. It is anticipated that 18,000 hectares will be developed which corresponds to 36,000 Farmer Lots in the Project.
26. For the purposes of this Ruling Applicants who are accepted into the Project and who execute the Farmer Lease and the Management Agreement on or before 31 May 2005 will become '2005 Farmers'. The 2005 Farmers are referred to in this Product Ruling as 'Farmers'.
27. Each Farmer will use the Farmer Lots for the purpose of carrying on a business of cultivating and harvesting crops and the sale of harvested produce.

Constitution

28. The Constitution establishes the Project and operates as a deed binding all Farmers and Environinvest. The Constitution sets out the terms and conditions under which Environinvest agrees to act as Responsible Entity and thereby manage the Project. Upon acceptance into the Project, Farmers are bound by the Constitution by virtue of their participation in the Project.
29. Under clause 7.4 of the Constitution, Environinvest holds the 'Application Money' on bare trust. Environinvest will deposit all 'Application Moneys' received from applicants in a 'Project Account' (clause 4). Once Environinvest has accepted the application and all of the 'Project Documents' have been executed and remain in force (clause 5.1) the 'Application Money' may be transferred and applied against the fees due to Environinvest (clause 8).

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

- the irrevocable appointment of Environinvest as the Farmer's agent, representative and attorney (clause 3);
- the holding of interests in the Project (clause 5);
- procedures relating to 'Applications' (clause 7);
- the issue of interests in the Project and the transfer of 'Application Money' paid by an applicant from the 'Project Account' to the Responsible Entity (clause 8);
- the Responsible Entity's powers and duties relating to the management of the Project (clause 14);
- the keeping and maintenance of a register of Farmers who hold an interest in the Project (clause 15);
- the appointment of agents to perform tasks (clause 16);
- the right of the Responsible Entity to be paid fees and other expenses and the duty to make payments in respect of the Project from its own assets in relation to certain expenses (clause 17);
- the keeping of a 'Project Account' for the holding of proceeds and any other amounts held by the Responsible Entity on behalf of the Farmers and the manner in which the proceeds are to be distributed (clause 18);
- resolution of complaints made by the Farmer in relation to the Responsible Entity's management of the Project (clause 19);
- the liabilities and indemnities of the Responsible Entity (clause 20) and the Farmers (clause 21);
- the assignment of a Farmer's interest in the Project (clause 22);
- the retirement and removal of the Responsible Entity (clause 24); and
- termination of the Project (clause 30) and the winding up of the Project (clause 31).

Acceptance of Applications

31. In order to acquire an interest in the Project, the Farmer must make an application for Lots. Such applications must be:

- in a form approved by the Responsible Entity;
- signed by or on behalf of the applicant;

- lodged at the registered office of the Responsible Entity or such other place as the Responsible Entity nominates from time to time or transmitted to the Responsible Entity electronically if approved by the Responsible Entity;
- accompanied by an executed Power of Attorney and other such documents, information or evidence as the Responsible Entity may require; and
- accompanied by payment of the 'Application Money' in a form acceptable to the Responsible Entity, by including with the application:
 - a) a cheque or money order for the full amount of the 'Application Money';
 - b) a credit card or direct debit authorisation, approved by the Responsible Entity, for the full amount of the 'Application Money';
 - c) an application for finance from the Responsible Entity or financial institution approved by the Responsible Entity, for the full amount of the 'Application Money';
 - d) a letter of confirmation from a financial institution acceptable to the Responsible Entity for the full amount of the 'Application Money'; or
 - e) a combination of (a) to (d) above, provided that such combination equals the full amount of the 'Application Money'.

32. Under clause 8 of the Constitution, the Responsible Entity will accept an 'Applicant' and an 'Applicant' will be issued an interest in the Project and become a Farmer where, amongst other things, the following conditions are satisfied:

- all relevant approvals for finance have been received (if required);
- the Responsible Entity has accepted the applicant's application;
- the minimum subscription for the Project is reached;
- the Responsible Entity is ready, willing and able to commence performing its duties pursuant to the Project Documents; and
- the Compliance Officer of the Project has not notified the directors of the Responsible Entity that there is an outstanding material breach of any of the provisions of the Constitution or the *Corporations Act 2001* which is detrimental to the interests of the 'Applicants'.

33. The Responsible Entity may accept applications under the PDS after 30 June 2005. However, this Ruling only applies to Farmers who commence participation in the Project during the period on or after the date of this Ruling and on or before 31 May 2005.

Compliance Plan

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

Head Lease

35. The Responsible Entity will enter into a Head Lease Agreement(s) with the Lessor(s) in respect of Land required for the Project.

Farmer Lease

36. A Farmer as a Lessee will execute a Farmer Lease with the Responsible Entity as the Lessor. The Responsible Entity will grant to the Farmer the right to exclusively possess, occupy, use and enjoy the 'Farmer Lots', for cultivating, planting, tending, growing, caring for, and the harvesting of and selling the 'Crops' for a commercial profit.

37. The Farmer Lease sets out the rights and obligations of the parties to the Agreement. Under the terms of the Agreement a Farmer will lease half hectare Lots from the Responsible Entity. The Farmer Lease shall operate on and from the 'Commencement Date' until terminated in accordance with the terms under clause 3.

38. The Farmer's obligations are set out in detail in clause 8.1 under which the Farmer agrees to use the Farmer Lots for the purpose of establishing, maintaining, harvesting the Crops in accordance with best practices of the cropping industry.

39. Under clause 9 the Responsible Entity agrees that the Farmer may enjoy the Farmer Lots without any interruption or disturbance. This is subject to the Farmer paying the Rent and performing and observing all its covenants.

Lease of further Lots

40. A Farmer may lease additional lots after 31 May 2005 to carry on cropping activities. **However, this Product Ruling does not rule on deductions and other tax outcomes in relation to expenses incurred by a Farmer on any 'Further Lots' leased after 31 May 2005.**

41. Farmers who lease additional lots after 31 May 2005 may apply for a Private Ruling on how the taxation legislation applies in relation to expenses incurred on leasing additional Lots. These are contingencies relating to the circumstances of individual Farmers that cannot be accommodated in this Ruling.

Management Agreement

42. Under the Management Agreement the Farmer appoints the Responsible Entity (as 'Manager') to manage the Farmer Lots and to carry out the management services subject to the terms and conditions of the Agreement. This Agreement shall commence on the date the Responsible Entity accepts the Farmer application under the PDS and shall continue until termination under clause 4 of this Agreement.

43. The Manager shall commence the provision of the 'Initial Services' on or after the 'Commencement Date' and shall use all reasonable endeavours to complete the 'Initial Services' before the end of the 'Application Year'.

44. The 'Initial Services' include the 'Cultivation and Preparation Services' in respect of the 'Farmer Lots' and, if necessary spraying of herbicides, pesticides, and insecticides, and the sowing of the 'Crops' in accordance with good agronomic practice.

45. The Manager shall commence the provision of the 'Services' after the completion of the 'Initial Services' and shall continue to provide the 'Services' until the termination of this Agreement.

46. The Services include 'Cultivation and Preparation Services', 'Sowing Services', 'Maintenance Services', 'Harvesting Services' and 'Sales Management Services', and 'Risk Management Services'.

47. The Manager may provide 'Additional Spraying Services' in respect of Crops, where the spraying activities conducted as part of the 'Cultivation and Preparation Services' are insufficient. This may include the spraying of herbicides, pesticides, and insecticides taking into account the type of soil and climatic conditions.

48. The Manager will not undertake any work on behalf of a Farmer prior to the Farmer being issued an interest in the Project.

Pooling of 'Crops' and 'Farmer's Entitlement' to 'Net Harvest Proceeds'

49. The Management Agreement sets out provisions relating to the 'Farmer's Entitlement' to 'Harvest Proceeds'. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Farmers who have contributed 'Crops' or 'Insurance Proceeds' or 'Net Risk Management Profit/Loss' to the sales pool in a 'Subsequent Year' are entitled to benefit from distributions of 'Harvest Proceeds' from the pool;

- Farmer's that do not contribute to a pool of a specific crop will not have any interest in the net harvest proceeds from that pool; and
- any pooled 'Crops must consist only of 'Crops' or 'Insurance Proceeds' contributed by Farmers of the same Project 'Class'.

50. A 'Farmer's Interest' is determined in accordance with the following formula:

$$FI = A/B$$

where FI is the Farmer's Interest;

'A' is the aggregate number of 'Farmer's Lots' at the date the Manager calculates the 'Farmer's Interest'; and

'B' is the total number of 'Class Lots', at the date the Manager calculates the 'Farmer's Interest'.

Provided that where the Farmer does not contribute proceeds from the sale of 'Crops' or proceeds from any crop insurance, the 'Farmer's Interest' shall be equal to zero.

51. Further, 'Farmers Interests' in the Project will be classed based on the 'Application Year' that Farmers are accepted into the Project.

52. The Class to which a Farmer belongs determines which group of Farmers will collectively pool their Crops for sale, and the amount of fees charged to each Farmer.

53. The Manager shall determine the Farmer's Entitlement, in respect of a Harvest in accordance with the following formula:

$$FE = (HP + RMP/L + IP) \times FI$$

where: FE is the Farmer's Entitlement;

RMP/L is the Risk Management Profit/Loss;

FI is the Farmer's Interest;

IP is any insurance proceeds received by the Manager;
and

HP is the Harvest Proceeds.

54. Under clause 6.3 the 'Farmer's Entitlement' will be paid to the Farmer but may be reduced by deduction of the fees and expenses set out in clause 5.2.

Heads of Agreement

55. Environinvest intends to enter into an agreement with Aurora Agriculture Pty Ltd (Aurora), James Keen, William Brown, Peter Robberds for carrying out the cropping operations. Under this agreement the Responsible entity will appoint Aurora as the Operations Manager of the Project.

Fees

56. Under the terms of the Management Agreement and the Farmer Lease a Farmer will make payments as described below.

57. The **Application Money** is to be paid by each Farmer on application for the provision of Initial Services in the Application Period. The Initial Services are to be provided in the period commencing on the Commencement Date and expiring on 30 June 2005. The Application Moneys comprise of the **Initial Crop Fee of \$222.75** per Lot.

58. Following the Application Year, ongoing '**Crop Fees**' and '**Opportunity Crop Fees**' are payable to the Manager for performing the 'Cultivation and Preparation Services' and 'Sowing Services'. 'Crop Fees' and 'Opportunity Crop Fees' are payable in respect of 'Crops' if they are actually planted for each individual Farmer. These fees are payable in advance in respect of the sowing of 'Winter Crops' and in arrears in respect of 'Summer Crops'. In addition, each Farmer shall be liable to pay the Farmer's share of '**Harvest Expenses**', '**Sales Expenses**', '**Risk Management Expenses**', '**Crop Maintenance Expenses**', and '**Additional Spraying Expenses**' in respect of each 'Harvest'.

59. Following the 'Application Year' on or before 31 December **Rent of \$55 per lot per annum** is payable in respect of the first 'Subsequent Year'. The 'Rent' is indexed thereafter for future 'Subsequent Years' and payable on every 31 December of the Term.

60. '**Out of Pocket Expenses**', if any, are payable by the Farmer to the Manager. The Manager shall notify the Farmer of any 'Out of Pocket Expenses' incurred or to be incurred by the Manager. The 'Out of Pocket Expenses' will be due and payable to the Manager within 15 Business Days of the date of a 'Notice' outlining the Farmer's share of any 'Out of Pocket Expenses'.

Finance

61. Farmers can fund their involvement in the Project themselves or borrow from independent sources or from Environinvest Ltd (Lender) or Environinvest Finance Pty Ltd (Lender).

62. Each of the Lenders will provide Farmers with loans on a full recourse basis and will pursue legal action against any defaulting borrowers. Details of the loans that will be offered to Farmers by a Lender are set out in the 'Loan Application Form' and 'Loan Agreement'. The types of loan to which this Product Ruling will apply are as follow:

63. A '**Principal Only Loan**' with the following features:

- the principal is repayable in 12 equal monthly instalments, in arrears;

- a loan establishment fee of no more than \$100 is payable; and
- security by fixed charge over the Farmer's interest in the lease and the 'Crops'.

64. The following **'Interest Bearing Loans'**:

- a **'Principal and Interest Loan'** with a term of up to 5 years, the principal being repaid in 'Instalment Amounts' on each 'Date for Payment'; and
- a **'Cropping Loan Facility'** for up to 5 years, repayable after each harvest or 13 months (whichever is the earlier). The Cropping Loan Facility may only be drawn down up to the maximum stated in clause 2.4 of the Loan Agreement.

65. **Interest Bearing Loans** have the following features:

- the rate of interest per annum of not more than 10% above the prevailing cash rate or swap rate;
- the Loan must be repaid in full on or before the 'Final Repayment Date' or on termination of all the 'Project Documents' (or in respect to the Cropping Loan Facility, before any request for a further drawdown or within 13 months);
- a loan establishment fee of no more than \$100 is payable; and
- security by fixed charge over the Farmer's interest in the lease and the 'Crops'.

66. Farmers may pay **interest in advance** for interest bearing loans on the following basis:

- (i) for the **'Principal and Interest Loan'** annually from the next 'Date for Payment' after a Borrower requests this method of payment in writing; and
- (ii) for the **'Cropping Loan Facility'** on the 'Commencement Date' in respect of the period from the 'Commencement Date' to the following Date for Payment, and then annually in advance on each Date for Payment.

67. Farmers may pay **interest in arrears** for interest bearing loans on the following basis:

- (i) for the **'Principal and Interest Loan'** monthly on each Date for Payment; and
- (ii) for the **'Cropping Loan Facility'** monthly on the first 'Business Day' of each calendar month upon written request by the Borrower to pay in this way.

68. Farmers cannot rely on this Product Ruling if they enter into a finance agreement with 'the Lender' that materially differs from the terms and conditions of the loans set out in the above paragraphs.

69. Any loans other than those described in paragraphs 63 to 67 of this Product Ruling with a 'Lender' or a related party are not covered by this Product Ruling.

70. Farmers also cannot rely on this Product Ruling if the Application Fee otherwise remains unpaid at 31 May 2005. Where an application is accepted subject to finance approval by any lending institution, Farmers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by 31 May 2005.

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

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

Ruling

Application of this Ruling

72. Subject to exclusions set out in paragraph 8, this Ruling applies only to Farmers who are accepted to participate in the Project on or before 31 May 2005, and who have executed Project Documents on or before that date. The Farmer's participation in the Project must constitute the carrying on of a business of primary production.

Minimum subscription

73. 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 2 Farmers and 740 Farmer Lots is achieved.

The Simplified Tax System ('STS')

Division 328

74. 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 under the STS where the Farmer uses the cash accounting method.

Qualification

75. 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

76. 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.

Assessable income**Section 6-5**

77. That part of the Harvest Proceeds from the Project attributable to the Farmer, less any GST payable on those proceeds (section 17-5), will be assessable income of the Farmer under section 6-5.

78. Other than Farmers referred to in paragraph 79, for the 2005-06 income year and later years, a Farmer will be assessable on ordinary income from carrying on their business of afforestation in the income year in which that income is derived.

79. 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 afforestation in the income year in which that income is received.

Goods and Services Tax (GST)**Division 27**

80. If a 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 the Example at paragraph 126.

Deductions for the Initial Crop Fee and other fees and expenses payable under the Project**Section 8-1**

81. For the year ending 30 June 2005 Farmers can claim a deduction for the **Initial Crop Fee of \$222.75** per 'Farmer Lot'. However, if a Farmer who is an STS taxpayer does not pay the Initial Crop in the year ending 30 June 2005 the amount is only deductible in that year to the extent to which it has been paid by, or paid for the Farmer. For Farmers who are 'STS taxpayers' any amount of the Initial Crop fee which is not paid in the year ending 30 June 2005 will be deductible in the year in which it is actually paid.

82. Other than Farmers referred to in paragraph 83, for the years ending 30 June 2006 and 30 June 2007, Farmers can also claim deductions for expenditure incurred on:

- Rent (see paragraph 59);
- Crop Fees;
- Opportunity Crop Fees;
- Sales Management Fees;
- Performance Bonus Fees;
- the Farmer's share of Out of Pocket Expenses;

- the Farmer's share of Additional Spraying Expenses;
- the Farmer's share of Crop Maintenance Expenses;
- the Farmer's share of Harvest Expenses;
- the Farmer's share of Risk Management Expenses; and
- the Farmer's share of Sales Expenses

83. Farmers who are 'STS taxpayers' using the cash accounting method can also claim the deductions set out in paragraph 82 in the years ending 30 June 2006 and 2007. However, if, for any reason, any of these fees and expenses is not fully paid in the year in which they are incurred then they are only deductible to the extent to which they have been paid by, or have been paid for the Farmer. For a Farmer who is an 'STS taxpayer' using the cash accounting method fees and expenses which are not paid in the year in which they are incurred will be deductible in the year in which they are actually paid.

84. This Ruling does not rule on the deductibility of any portion of the Out of Pocket Expenses that relate to the cost of bringing or defending any third party legal proceedings for and on behalf of Farmers. If such expenditure is incurred Farmers may request a private ruling on the deductibility or otherwise of the expenditure.

85. This Ruling does not apply to Farmers who choose to prepay fees and expenses payable under the Project. Amounts that are prepaid for a period that extends beyond the income year in which the expenditure is incurred may be subject to the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936. Any Farmer who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.

Deductions for interest payable under a Loan Agreement with Environinvest Ltd and Environinvest Finance Pty Ltd

Section 8-1

86. For the years ending 30 June 2005 to 30 June 2007, the deductions available to Farmers who enter into an interest bearing loans as described in paragraphs 64 to 67 of this Product Ruling are provided below.

	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
Interest incurred monthly in arrears	As incurred (Non-STS taxpayers) or as paid (STS taxpayers) See Notes (i) & (ii)	As incurred (Non-STS taxpayers & STS taxpayers using accruals accounting) or as paid (STS taxpayers using cash accounting) See Notes (i) & (iii)	As incurred (Non-STS taxpayers & STS taxpayers using accruals accounting) or as paid (STS taxpayers using cash accounting) See Notes (i) & (iii)
Interest incurred annually in advance	Amount must be calculated – See Notes (i), (iv) & (v)	Amount must be calculated – See Notes (i), (iv) & (vi)	Amount must be calculated – See Notes (i), (iv) & (vi)

Notes:

- (i) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Environinvest Ltd and Environinvest Finance Pty Ltd is outside the scope of this Ruling. Farmers who borrow from lenders other than Environinvest Ltd and Environinvest Finance Pty Ltd may request a private ruling on the deductibility of the interest incurred.
- (ii) For Farmers who are '**STS taxpayers**' for the year ending 30 June 2005, interest incurred **monthly in arrears** is only deductible in that year to the extent to which it has been paid by, or paid for the Farmer. For such Farmers any amount of interest which is not paid in the year ending 30 June 2005 will be deductible in the year in which it is actually paid.
- (iii) For Farmers who are '**STS taxpayers**' using the **cash accounting method** for the years ending 30 June 2006 and 30 June 2007, interest incurred **monthly in arrears** is only deductible to the extent to which it has been paid by, or paid for the Farmer in those years. For such Farmers any amount of interest which is not paid in the year in which it is incurred will be deductible in the year in which it is actually paid.

- (iv) Farmers who incur interest **annually in advance** cannot claim such interest in full in the year in which it is incurred, unless the amount of the interest is 'excluded expenditure' (see paragraph 118). Where the amount of interest is not 'excluded expenditure' the deduction for the interest paid in advance each year must be determined using the formula in subsection 82KZMF(1) (see paragraph 115).
- (v) For the year ending 30 June 2005 interest deductions for Farmers who are **'STS taxpayers'** are also limited to the amount paid by, or paid for the Farmer. For a Farmer who is an 'STS taxpayer' interest that is calculated under the prepayments provisions (see Note (iv)) but not paid in that year will be deductible in the year in which it is actually paid.
- (vi) For the years ending 30 June 2006 and 30 June 2007 interest deductions for Farmers who are **'STS taxpayers' using the cash accounting method** are also limited to the amount paid by, or paid for the Farmer. For those years, for a Farmer who is an 'STS taxpayer' using the cash accounting method, interest that is calculated under the prepayments provisions (see Note (iv)) but not paid will be deductible in the years in which it is actually paid.

Deductions for the loan establishment fee payable under the Loan Agreement

Section 25-25

87. Borrowing expenses are deductible under subsection 25-25(1) where the borrowed moneys are used or will be used during that income year for income producing purposes. In respect of borrowing expenses of \$100 or less, these are deductible in the year in which they are incurred (subsection 25-25(6)).

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

Section 35-55 – exercise of Commissioner's discretion

88. A Farmer, who is an individual accepted into the Project by 31 May 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 year ending **30 June 2005**. 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.

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

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

- fees and expenses payable under the Management Agreement and the Farmer Lease and interest payable monthly in arrears under the Loan Agreement is not within the scope of sections 82KZME and 82KZMF;
- interest payable annually in advance is subject to sections 82KZME and 82KZMF;
- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Explanation**Is the Farmer carrying on a business?**

90. For the amounts set out in the Ruling section above to constitute allowable deductions the Farmer's Cropping activities as a participant in the Environinvest Cropping Project must amount to the carrying on of a business of primary production.

91. Where there is a business, or a future business, the gross proceeds from the sale of the Crops will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.

92. For schemes such as the Environinvest Cropping 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.

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

- the Farmer has an identifiable interest (by lease) or rights over (by licence) cattle held for breeding purposes;

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- the Farmer has a right to harvest and sell the harvested Crops from the leased Farmer Lots;
- the Cropping activities are carried out on the Farmer's behalf;
- the Cropping activities of the Farmer are typical of those associated with a Cropping business; and
- the weight and influence of general indicators point to the carrying on of a business.

94. In this Project, each Farmer enters into a Management Agreement and a Farmer Lease (or Licence).

95. Under the Farmer Lease (or Licence) each individual Farmer will have rights over a specific and identifiable area of 15 hectares of land or more. The Farmer Lease (or Licence) Agreement provides the Farmer with an ongoing interest in the specific Crops on the leased (or licensed) area for the term of the Project. Under the lease (or licence) the Farmer must use the land in question for the purpose of carrying out Cropping activities, and for no other purpose. The lease (or licence) allows the Responsible Entity to come onto the land to carry out its obligations under the Management Agreement.

96. Under the Management Agreement the Responsible Entity is engaged by the Farmer to establish and maintain the Farmer Lots 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 Farmer Lots on the Farmer's behalf.

97. The Responsible Entity is also engaged to harvest and sell, on the Farmer's behalf, the harvested Crops grown on the Farmer's Lots.

98. 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.

99. 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 the harvested Crops 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.

100. The pooling of harvested Crops grown on the Farmer's Lots with the harvested Crops of other Farmers is consistent with general agricultural practices. Each Farmer's proportionate share of the sale proceeds of the pooled Crops will reflect the proportion of the Crops harvested from their Farmer Lots and contributed to the pool.

101. The Responsible Entity's services are also consistent with general agricultural practices. They are of the type that would be found in Cropping ventures and be said to be businesses. The 30 Farmer Lots (15 hectares) that a Farmer is required to subscribe for is of a size and scale to allow it to be commercially viable.

102. The Farmer's degree of control over the Responsible Entity as evidenced by the Management Agreement, and supplemented by the *Corporations Act 2001*, is sufficient. During the term of the Project, the Responsible Entity will provide the Farmer with regular progress reports on the Farmer's Lots 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.

103. The Cropping 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 Cropping activities in the Environinvest Cropping Project will constitute the carrying on of a business.

The Simplified Tax System

Division 328

104. 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.

105. 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 and lease rental

Section 8-1

106. Consideration of whether the fees and expenses payable under the Management Agreement and the Farmer Lease 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.

107. Any part of the expenditure of a Farmer entering into the cropping business 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, a portion of the Out of Pocket Expenses may be paid in relation to the cost of the Manager bringing or defending any third party legal proceedings for and on behalf of Farmers. In some instances the bringing and defending of third party legal proceedings may be properly characterised as capital expenditure and cannot be deducted under section 8-1.

108. The fees payable under the Management Agreement and the Farmer Lease Agreement other than any possible cost of bringing and defending a third party legal proceeding that is properly characterised as capital expenditure, are associated with the Farmer's leasing and cropping activities and the sale of the harvested Crops and will relate to the gaining of income from the Farmer's business (see above), and hence have a sufficient connection to the operations by which income (from the sale of harvested Crops) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fees is identifiable from the arrangement. The fees appear to be reasonable and the fees have no capital component. The tests of deductibility under the first limb of section 8-1 are met and the exclusions do not apply.

Interest deductibility

Section 8-1

(i) Farmers who use Environinvest Ltd, or Environinvest Finance Pty Ltd, as the finance provider

109. Some Farmers may finance their participation in the Project through a loan facility with Environinvest Ltd or Environinvest 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 fees payable under the Management Agreement and the Farmer Lease.

110. The interest incurred by Farmers from the Commencement Date and in subsequent years of income will be in respect of a loan to finance the Farmer's business operations – the leasing, cropping, harvesting and selling of the harvested Crops – that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

(ii) Farmers who DO NOT use Environinvest Finance Pty Ltd as the finance provider

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

Prepayment provisions

Sections 82KZL to 82KZMF

112. 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 services under the Management Agreement or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.

Application of the prepayment provisions to this Project

113. Under the Arrangement to which this Product Ruling applies fees payable under the Management Agreement and the Farmer Lease are incurred annually. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF have no application to this expenditure. A Farmer who is an 'STS taxpayer' (for the year ending 30 June 2005) or is an 'STS taxpayer using the cash accounting method (for the years ending 30 June 2006 and 30 June 2007) can, therefore, claim a deduction for each of the relevant amounts in the income year in which the amount is paid, or paid on their behalf. All other Farmers can claim a deduction for each of the relevant amounts in the income year in which the fee is incurred.

114. The prepayment provisions in sections 82KZME and 82KZMF also have no application to interest incurred monthly in arrears. However, sections 82KZME and 82KZMF may have relevance if a Farmer in this Project enters into interest bearing loans and the interest is incurred annually in advance. The interest incurred annually in advance may need to be apportioned under section 82KZMF.

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

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

116. 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.

117. Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes them from the operation of section 82KZMF.

118. 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.

119. As noted in the Ruling section above, Farmers who prepay fees or interest, other than prepaid interest that may be payable under the interest bearing loans discussed above (see paragraphs 64 to 67), are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

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

Section 35-55 – exercise of Commissioner's discretion

120. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income year **30 June 2005**, 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 the income year ended 30 June 2005:

- 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 Cropping 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.

121. 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

122. 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

123. 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).

124. The Environinvest Cropping Project 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 81 to 87 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.

125. 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 Crops. 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.

Example

Entitlement to GST input tax credits

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

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

*Taxable supply

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

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

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

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

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

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

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

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

Detailed contents list

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Entitlement to GST input tax credits

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Detailed contents list**127**

Commissioner of Taxation27 April 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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

Subject references:

- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- non-commercial losses
- 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(7)
- ITAA 1936 82KZMF
- ITAA 1936 82KZMF(1)
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 25-25(1)
- ITAA 1997 25-25(6)
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Subdiv 61-J
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

Case references:

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

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