


PR 2005/93 - Income tax: Australian Growth Timber Project No. 6

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 June 2005*



Product Ruling

Income tax: Australian Growth Timber Project No. 6

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

Preamble

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

No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products and how the product fits an existing portfolio. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling this arrangement is sometimes referred to as the 'Australian Growth Timber Project N^o 6' 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;
- sections 82KZME to 82KZMG of the ITAA 1936; and
- Part IVA of the ITAA 1936.

Goods and Services Tax

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

Changes in the Law

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

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

Note to promoters and advisers

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

Class of persons

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

8. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it. This Ruling does not apply to Growers who elect to take their own Wood Harvested under the Management Agreement ('Electing Growers').

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 8 June 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 Product Ruling as constituted by documents provided on 23 March 2005 and additional correspondence, including e-mails received 23 March 2005, 17 April 2005, 18 April 2005, 28 April 2005, 5 May 2005, 6 May 2005, 9 May 2005, 18 May 2005, 25 May 2005 and 31 May 2005;
- Draft Product Disclosure Statement for the Australian Growth Timber Project No. 6, received 31 May 2005;
- Draft **Constitution** of the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and the Grower, received 5 May 2005;
- Draft **Management Agreement** for the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and the Grower, received 31 May 2005;

- Draft Plantation Management Agreement for the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and Ruralaus Plantation Management Pty Ltd (as the Plantation Manager), received 31 May 2005;
- Agreement to Sub-lease for the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and Australian Growth Landholdings Ltd (as the Head Lessor), received 31 May 2005;
- Lease for the Australian Growth Timber Project No. 6 between Australian Growth Landholdings Ltd (AGLL)(as the Lessee) and the Owner (as the Lessor), received 23 March 2005;
- **Grower's Agreement to Sub-lease** for the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and the Grower, received 31 May 2005;
- **Woodlot Sub-lease** for the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and the Grower, received 31 May 2005;
- Umbrella Sub-Lease for the Australian Growth Timber Project No. 6 between Primary Securities Ltd (as the Responsible Entity) and the Project Custodian, received 23 March 2005;
- **Rules** for the Australian Growth Timber Project No. 6 by Primary Securities Ltd (as the Responsible Entity), received 23 March 2005;
- Compliance Plan for the Australian Growth Timber Project No. 6 (as the Plantation Manger), received 23 March 2005;
- **Terms Agreement** for the Australian Growth Timber Project No. 6 between the Terms Grower (as the Terms Grower named in Item 1 of the Schedule) and Primary Securities Ltd (as the Responsible Entity), received 18 April 2005; and
- Draft Finance Application for the Australian Growth Timber Project No. 6, received 23 March 2005 and updated 18 April 2005.

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

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

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

Overview

17. The salient features of the Australian Growth Timber Project No. 6 are as follows:

Location	Kangaroo Island in South Australia and the South West of Western Australia near Bremer Bay
Type of business to be carried on by each participant	Commercial growing and cultivation of Tasmanian blue gum, <i>Eucalyptus globulus</i> , trees for the purpose of harvesting and selling wood for woodchips
Number of hectares offered for cultivation	250 with the right to accept oversubscriptions
Minimum allocation	1 Woodlot
Size of each Woodlot	1 Hectare
Minimum subscription	50
Number of trees per hectare	900
Term of the Project	Approximately 11-13 years
Initial cost	Standard option \$6,600 Terms Payment option \$7,128
Ongoing costs	Deferred Management Service Fee of 6.6% of the Gross Proceeds of Sale per Woodlot; Rent of 4.4% of the Gross Proceeds of Sale.
Other costs	Wood Production Costs

18. The Project will be a registered Managed Investment Scheme under the *Corporations Act 2001*. Primary Securities Ltd is the Responsible Entity for this Project and has an Australian Financial Services Licence. The Land will be situated either on Kangaroo Island in South Australia and/or in South West Western Australia near Bremer Bay.

19. Growers accepted under the Product Disclosure Statement will enter into a Grower's Agreement to Sub-Lease and a Management Agreement with the Responsible Entity.

20. The Responsible Entity will grant a sub-lease to the Grower to enable the Grower to carry on the business of afforestation for the commercial production of Tasmanian blue gum (*Eucalyptus globulus*) trees when Suitable Land has been procured.

21. The Land must be certified by the Independent Forester as being suitable for the establishment of Tasmanian blue gum (*Eucalyptus globulus*) plantations.

22. Under the PDS the Responsible Entity will offer 250 Woodlots of 1 hectare with the right to accept oversubscriptions. The minimum subscription for this project is 50 Woodlots. No less than 900 trees will be planted per Woodlot. The term of the Project is between 11 and 13 years. Each participant may subscribe to one or more Woodlots at the cost outlined in the table at paragraph 17.

Constitution

23. The Constitution and Rules establishes the Project and operates as a deed binding on all of the Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which Primary Securities Ltd agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. The Responsible Entity will keep a register of Growers.

24. Under the terms of the Constitution each Grower agrees that the Responsible Entity shall have irrevocable power as the agent of the Grower. All moneys received from applications shall be paid to the Responsible Entity, in its capacity as a bare trustee, and held in the Trust Account (clause 6).

Compliance Plan

25. As required by the Corporations Act, a Compliance Plan has been prepared by Primary Securities Ltd. Its purpose is to ensure that the Responsible Entity manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Interest in Land

26. When a Grower's application is accepted under the Product Disclosure Statement they enter into a Grower's Agreement to Sub-Lease, the Woodlot Allocation takes place at this time. The Grower's Agreement to Sub-Lease binds the Grower to enter a Woodlot Sub-Lease once land is procured. Woodlot Allotment takes place when the Woodlot Sub-Lease is entered into.

27. Australian Growth Landholdings Ltd will lease or purchase property in the South West of Western Australia near Bremer Bay and/or on Kangaroo Island in South Australia. The Land must be certified by the Independent Forester as being suitable of the establishment of Tasmanian blue gum (*Eucalyptus globulus*) plantations. If the Land is not purchased by Australian Growth Landholdings Ltd, the owner of the Land will lease the Land to Australian Growth Landholdings Ltd who will in turn lease the land to the Primary Securities (being the Responsible Entity).

28. Under the Grower's Agreement to Sub-lease and the Management Agreement, the Responsible Entity has 9 months from the Grower's application being accepted under the Product Disclosure Statement in which to find Suitable Land to subdivide into Woodlots. Two hundred and fifty hectares of Suitable Land has already been identified.

29. Once land is procured the Grower's Agreement to Sub-Lease will be superseded by the Woodlot Sub-Lease. Under the Woodlot Sub-Lease the Grower will have an identifiable area of land known as a 'Woodlot'.

30. The Woodlot Sub-Lease sets out the roles and obligations of Primary Securities Ltd (as Lessor) and the Grower (as Lessee). Under the terms of the Lease the Grower may only use the Land for the purpose of carrying out Tree Farming and the Harvesting of the Trees.

31. Each Grower must pay Rent to the Lessor being an amount set out in clause 4 of the Woodlot Sub-Lease.

Management Agreement

32. Each Grower enters into a Management Agreement with the Responsible Entity. The term of the Project is from the date this Agreement comes into effect until the earliest of the date the Harvest of the trees and sale of all Wood and receipt of all proceeds and provision with all accounts is completed, the termination of the Grower's interest under the Woodlot Sub-Lease or 30 June 2018, or such later date as determined by the Responsible Entity.

33. Growers contract with the Responsible Entity to establish, maintain and manage the Grower's Woodlot and perform the harvest, processing and sale of the Wood from the Trees. On application Growers pay an initial Management Fee for Plantation Establishment Services and Planting Services.

34. The Grower will engage the Responsible Entity to provide the following services:

- select Suitable Land within 9 months of a Grower being accepted under the Product Disclosure Statement;
- Allotment of Woodlots within 9 months of Growers contracting;
- prepare and grade Woodlots for the planting of Trees in a proper and skilful manner pursuant to the Plantation Management Plan, within 12 months of Allocation of Woodlots;
- select and purchase plant-stock which, to the best of the knowledge and belief of the Responsible Entity or its contractors or consultants, are high yielding and being of the specie or species as set out in the Plantation Management Plan;
- plant on each Woodlot an average of 900 Trees per Woodlot;
- if at 13 months from the completion of planting, the average number of Trees per Woodlot is less than an average of no less than 900 Trees per Woodlot, the Responsible Entity will plant additional Trees so that there is an average no less than 900 Trees per Woodlot on the Plantation;
- complete the Planting Establishment Services in relation to the Grower's Woodlots within 12 months of Allocation of Woodlots to the Grower; and
- complete the Planting Services in relation to the Grower's Woodlots by 30 September 2006.

35. Ongoing Services include:

- tend to the Trees according to the principles of good forestry, including watering, pruning, fertilising and fumigating as the Responsible Entity deems appropriate to promote Tree growth and yields;
- establish, maintain and keep the roads, fences and gates and all other improvements on the Land in good and substantial repair and condition and if and when necessary, to replace and repair those improvements;

- do such things as may reasonably be required to eradicate, exterminate and keep the Woodlots and the Land free from disease, rodents, vermin, noxious weeds, rabbits, kangaroos, insects and all other pests of any kind, that may impact on the growth and performance of the Trees; and
- keep the Woodlots and immediate surroundings in a thorough state of cleanliness.

Fees

Management Fees

36. The initial Management Fee payable under the Management Agreement is:

- i. for Growers who pay in full on Application (Standard Option):
 - \$6,380 per Woodlot for Plantation Establishment Services, payable on Application; and
 - \$220 per Woodlot for Planting Services, payable on application.
- ii. for Growers who pay under the Terms Payment Option (refer paragraph 49):
 - \$6,890.40 per Woodlot for Plantation Establishment Services; and
 - \$237.60 per Woodlot for Planting Services.

The Terms payment option is only available to those participants who hold five or more Woodlots.

37. The Management Fee for the period commencing on the date of completion of the Planting Services to completion of Harvest is 6.6% of the average Gross Proceeds of Sale per Woodlot.

Rent

38. Rent is payable once the Harvest has been undertaken. Rent is 4.4% of the Gross Proceeds of Sale.

Planting

39. Under the Management Agreement the Responsible Entity is required to prepare the land for planting and supply the necessary seedlings of Tasmanian blue gum (*Eucalyptus globulus*). The Grower will engage the Responsible Entity to provide these services and to plant the seedlings on the Woodlots by 30 September 2006. Each Woodlot will be planted with seedlings at the average rate of no less than 900 seedlings per hectare.

Harvesting and Sale

40. The Responsible Entity must Harvest or procure a suitably qualified person to Harvest the trees at market rates (clause 8, Management Agreement).

41. A Grower may elect to sell and market the Wood Harvested from the Grower's Woodlot. This election must be made by 30 June 2006. An electing Grower must collect their Wood when advised by the Responsible Entity. This Product Ruling does not apply to electing Growers.

42. All other Growers irrevocably appoint the Responsible Entity to sell the Wood Harvested from their Woodlots. The Responsible Entity will use all reasonable endeavours to arrange for the sale of the Wood Harvested from the Woodlot (clause 10, Management Agreement). The Responsible Entity will pool and sell all Wood from the Plantation.

43. The Responsible Entity will place into the Trust Account the Gross Proceeds of Sale from the sale of the Wood. The Responsible Entity is entitled to deduct from the Trust Account prior to a Grower receiving a distribution:

- Wood Production Costs (includes the Harvest Costs, marketing costs, delivery costs and any other associated costs necessary to prepare the Grower's Wood for sale and if applicable, includes the cost of chipping the Wood);
- Rent; and
- Management Fees.

44. In any agreement for sale of the Wood, the Responsible Entity shall ensure that the agreement provides that the purchase price is to be paid without deduction to the Responsible Entity.

45. Upon the winding up of the Project, the Responsible Entity may retain from the proceeds of realisation of Project Property, money to meet future payment obligations which the Responsible Entity reasonably believes will fall due after a distribution is made to Growers and to pay its own remuneration and expenses for work to be done following the realisation of Project Property.

46. The Net Proceeds of Sale and other receipts and any other money in the Trust Account of the Grower must be paid to the Growers within 2 months of receipt.

Finance

47. Growers may fund their participation in the Project:

- themselves;
- using a finance package from an independent lender;
- using the finance package provided by Australian Growth Finance Ltd (a lender associated with the Responsible Entity); or
- using the Terms Payment Option offered by the Responsible Entity.

48. The finance package provided by Australian Growth Finance Ltd is offered under the following conditions:

- an application fee of \$50;
- Term of the loan is 5 years;
- Principal and interest is payable in 60 equal monthly instalments; and
- the interest rate is 10.95% p.a.

49. The Terms Payment Option is offered under the following conditions:

- Deposit of \$1,128 per Woodlot on application; and
- 24 monthly instalments of \$250 per Woodlot, first payable on the last business day of July 2005.

The deposit will be applied first to \$648 for GST in relation to the Management Fees for Plantation Establishment Services and Planting Services and to \$216 to the Management Fee for Planting Services, and the remainder to the Management Fee for Plantation Establishment Services. The total amount payable under the Terms Payment Option is \$7,128 per Woodlot.

50. Under the Terms Payment Option provided by the Responsible Entity or the finance facility provided through Australian Growth Finance Ltd, normal debt recovery procedures, including legal action will be taken in the case of defaulting borrowers.

51. Growers cannot rely on this Product Ruling if a different finance arrangement is entered into with Australian Growth Finance Ltd or if application monies otherwise remain unpaid by 30 June 2005.

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

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

Ruling

Application of this Ruling

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

- have entered into a Management Agreement on or before 30 June 2005;
- have entered into a Grower's Agreement to Sub-Lease on or before 30 June 2005;
- have an application accepted subject to finance approval by any lending institution, written evidence has been given to the Responsible Entity on or before 30 June 2005; and
- are not 'Electing Growers' (refer paragraph 41).

54. The Grower's participation in the Project must constitute the carrying on of a business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

Minimum subscription

55. Under the terms of the Product Disclosure Statement, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 50 interests is achieved.

The Simplified Tax System ('STS')

Division 328

56. To be a 'STS taxpayer' a Grower must be eligible to be a 'STS taxpayer' and must have elected to be a 'STS taxpayer'. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different under the STS where the Grower uses the cash accounting method.

Qualification

57. This Product Ruling assumes that a Grower who is a 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become a 'STS taxpayer' at a later point in time. Also, a Grower who is a 'STS taxpayer' may choose to stop being a 'STS taxpayer', or may cease to be eligible to be a 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

25% Entrepreneurs tax offset

Subdivision 61-J

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

Tax outcomes for Growers who are not cash 'STS taxpayers'

Assessable income

Section 6-5

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

60. Other than Growers referred to in paragraph 61, for the 2005-06 income year and later years, a Grower will be assessable on ordinary income from carrying on their business of afforestation in the income year in which that income is derived.

61. For the 2005-06 income year and later years, a Grower who is a '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.

Deductions for Management Fees, Planting Fee and Interest

Section 8-1 and section 328-105

62. All Growers except cash 'STS taxpayers may claim tax deductions under section 8-1 of the ITAA 1997 for the expenses in the following Table on a 'per Woodlot' basis.

Fee Type	ITAA 1997 Section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
<u>Standard Option</u>				
Management Fee for Plantation Establishment Services	8-1	\$6,380 See Notes (i) & (ii)		
Planting Fee	8-1	To be calculated See Notes (i), (iii) & (iv)		
<u>Terms Payment Option</u>				
Management Fee for Plantation Establishment Services	8-1	\$6,890.40 See Notes (i) & (ii)		

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Planting Fee	8-1	To be calculated See Notes (i) and (iii)		
<u>All Growers</u>				
Interest Australian Growth Finance Ltd	8-1	As incurred See Note (v)	As incurred See Note (v)	As incurred See Note (v)

Notes:

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example input tax credits): Division 27. See Example 1 at paragraph 122.
- (ii) Under section 82KZMG the fee for plantation establishment services is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 100 to 104) and is deductible in the income year in which it is incurred.
- (iii) If a Grower prepays for the doing of a thing (for example the provision of planting services) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraphs 94 to 99. Growers who acquire 5 or more Woodlots must use the formula at paragraph 98.
- (iv) 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000. Excluded expenditure will apply to Growers who acquire 4 or less Woodlots.
- (v) Interest is deductible under a loan agreement with Australian Growth Finance Ltd as described at paragraph 48. The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Australian Growth Finance Ltd, the internal financier, is outside the scope of this Ruling. However all Growers who finance their participation in the Project should read the discussion of the prepayment rules in paragraphs 92 to 93 as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply where the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Tax outcomes for Growers who are cash 'STS taxpayers'

Assessable income

Section 6-5

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

64. For the 2004-05 income year, a Grower who is a 'STS taxpayer' will be assessable on ordinary income from carrying on their business of afforestation in the income year in which that income is received.

65. For the 2005-06 income year and later years, a Grower who is a '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.

Deductions for Management Fees, Planting Fee and Interest

Section 8-1 and section 328-105

66. All Growers who are cash 'STS taxpayers' may claim tax deductions under section 8-1 of the ITAA 1997 for the expenses in the following Table on a 'per Woodlot' basis.

Fee Type	ITAA 1997 Section	Year ended 30 June 2005	Year ended 30 June 2006	Year ended 30 June 2007
<u>Standard Option</u>				
Management Fee for Plantation Establishment Services	8-1	\$6,380 See Notes (vi) & (vii)		
Planting Fees	8-1	To be calculated See Notes (vi), (viii) & (ix)		
<u>Terms Payment Option</u>				
Management Fee for Plantation Establishment Services	8-1	When paid See Notes (vi) & (vii)	When paid See Notes (vi) & (vii)	When paid See Notes (vi) & (vii)

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Planting Fees	8-1	When paid See Notes (vi) & (viii)	When paid See Notes (vi) & (viii)	When paid See Notes (vi) & (viii)
<u>All Growers</u>				
Interest Australian Growth Finance Ltd	8-1	As paid See Note (x)	As paid See Note (x)	As paid See Note (x)

Notes:

- (vi) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (for example input tax credits): Division 27. See Example 1 at paragraph 122.
- (vii) Under section 82KZMG the fee for plantation establishment services is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 100 to 104) and is deductible in the income year in which it is incurred.
- (viii) If a Grower prepays for the doing of a thing (for example the provision of planting services) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraphs 94 to 99. Growers who acquire 5 or more Woodlots must use the formula at paragraph 98.
- (ix) 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000. Excluded expenditure will apply to Growers who acquire 4 or less Woodlots.
- (x) Interest is deductible under a loan agreement with Australian Growth Finance Ltd as described at paragraph 48. The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Australian Growth Finance Ltd, the internal financier, is outside the scope of this Ruling. However all Growers who finance their participation in the Project should read the discussion of the prepayment rules in paragraphs 94 to 99 as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

Section 25-25 of the ITAA 1997 – deductibility of the Application Fee as a borrowing expense

67. Subsection 25-25(1) of the ITAA 1997 allows a deduction for expenditure incurred by the taxpayer for borrowing money to the extent that the borrowed money is used for the purpose of producing assessable income.

68. The Application Fee is an expense of borrowing money. Under subsections 25-25(1) and 25-25(3) of the ITAA 1997, it will be deductible to the extent that the Loan proceeds are used to purchase the interests in the Project. For instance, if 60% of the Loan is used to purchase interests, then 60% of the Loan application fee will be allowable as a deduction over the relevant period.

69. As the Application Fee does not exceed \$100.00, it is fully deductible. As with the initial Management Fee, in the absence of any application of the prepayment provisions (see paragraphs 92 to 93), the timing of the deduction will again depend upon whether the Grower is a cash 'STS taxpayer' or is not a cash 'STS taxpayer'.

70. If the Grower is not a cash 'STS taxpayer', the expense is deductible in the year in which it is incurred.

71. If the Grower is a cash 'STS taxpayer' the expense is not deductible until they have been both incurred and paid, or is paid for the Grower. If the expense is properly incurred in an income year and remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

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

72. A Grower who is an individual accepted into the Project by 30 June 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 Growers for the income years ending **30 June 2005 to 30 June 2016**. This conditional exercise of the discretion will allow those losses to be offset against the Grower's other assessable income in the income year in which the losses arise.

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

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

- expenditure by a Grower who participates in the Project does not fall within the scope of 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 Grower carrying on a business?

74. For the amounts set out in the Tables above to constitute allowable deductions the Grower's afforestation activities as a participant in the Australian Growth Timber Project No. 6 must amount to the carrying on of a business of primary production.

75. Where there is a business, or a future business, the gross proceeds from the sale of the Wood 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.

76. For schemes such as that of the Australian Growth Timber Project No. 6, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's trees are established;
- the Grower has a right to Harvest and sell the Wood from those trees;
- the afforestation activities are carried out on the Grower's behalf;

- the afforestation activities of the Grower are typical of those associated with a afforestation business; and
- the weight and influence of general indicators point to the carrying on of a business.

78. In this Project, each Grower enters into a Management Agreement, a Grower's Agreement to Sub-Lease and a Woodlot Sub-Lease Agreement.

79. Under the Woodlot Sub-Lease each individual Grower will have rights over a specific and identifiable area of land. The Woodlot Sub-Lease provides the Grower with an ongoing interest in the specific trees on the leased area for the term of the Project. Under the lease the Grower must use the land in question for the purpose of carrying out afforestation activities, and for no other purpose. The Sub-Lease allows the Responsible Entity to come onto the land to carry out its obligations under the Management Agreement.

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

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

82. 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.

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

84. The pooling of Wood from trees grown on the Grower's Woodlot with the Wood of other Growers is consistent with general afforestation practices. Each Grower's proportionate share of the sale proceeds of the pooled Wood will reflect the proportion of the trees contributed from their Woodlot.

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

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

87. The afforestation activities, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' afforestation activities in the Australian Growth Timber Project No. 6 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

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

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

Deductibility of Management Fees and Planting Fees

Section 8-1

90. Consideration of whether the initial Management Fees and Planting Fee 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.

91. The Management Fees associated with the afforestation activities will relate to the gaining of income from the Grower's business of afforestation (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of Wood) 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 82KZMG

92. 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.

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

Sections 82KZME and 82KZMF

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

95. 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.

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

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

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

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

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

Section 82KZMG

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

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

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

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

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

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

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

Application of the prepayment provisions to this Project

105. Under the Management Agreement, a Grower incurs a Management Fee consisting of expenditure of \$6,380 for Standard Option and \$6,890.40 for Terms Payment Option for 'seasonally dependent agronomic activities'.

106. As the requirements of section 82KZMG have been met, a deduction is allowable in the income year ended 30 June 2005 for the expenditure incurred under the Management Agreement for 'seasonally dependent agronomic activities'.

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

108. On application the Grower pays a Planting Fee which is a prepayment. As such the prepayment exclusions apply. 'Excluded Expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred or paid for cash 'STS taxpayers'. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000. Excluded expenditure will apply to Growers who acquire 4 or less Woodlots. Where the Grower has acquired more than 4 Woodlots a deduction must be calculated using the formula in paragraph 98.

Interest deductibility

Section 8-1

(i) Growers who use Australian Growth Finance Ltd as the finance provider

109. Some Growers may finance their participation in the Project through a loan facility with Australian Growth Finance Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of lease and management fees.

110. The interest incurred for the year ended 30 June 2005 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations – the cultivation and growing trees and the lease of the land on which the trees will have been planted – that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

111. As with the management fees, in the absence of any application of the prepayment provisions (see paragraphs 92 to 99), the timing of deductions for interest will again depend upon whether a Grower is a 'STS taxpayer' or is not a 'STS taxpayer'.

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

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

(ii) Growers who DO NOT use Australian Growth Finance Ltd as the finance provider

114. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Australian Growth Finance 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.

115. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 92 to 99).

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

Section 35-55 – exercise of Commissioner’s discretion

116. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2005 to 30 June 2016** 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 2005 up to and including 30 June 2016:

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

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

Section 82KL – recouped expenditure

118. 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

119. 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).

120. The Australian Growth Timber Project N^o. 6 will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 59 to 66 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.

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

Example

Entitlement to GST input tax credits

122. 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).

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Commissioner of Taxation

8 June 2005

<i>Previous draft:</i>	- tax shelters
Not previously issued as a draft	- tax shelters project
	- taxation administration
<i>Related Rulings/Determinations:</i>	<i>Legislative references:</i>
PR 1999/95; TR 92/1; TR 92/20;	- ITAA 1936 82KL
TR 97/11; TR 97/16; TR 98/22;	- ITAA 1936 Pt III Div 3 Subdiv H
TR 2000/8; TR 2001/14;	- ITAA 1936 82KZL
TD 93/34; TD 2003/12	- ITAA 1936 82KZL(1)
<i>Subject references:</i>	- ITAA 1936 82KZM
- advance deductions and	- ITAA 1936 82KZMA
expenses for certain forestry	- ITAA 1936 82KZMB
expenditure	- ITAA 1936 82KZMC
- carrying on a business	- ITAA 1936 82KZMD
- commencement of business	- ITAA 1936 82KZME
- fee expenses	- ITAA 1936 82KZME(1)
- forestry agreement	- ITAA 1936 82KZME(2)
- interest expenses	- ITAA 1936 82KZME(3)
- management fees	- ITAA 1936 82KZME(4)
- non-commercial losses	- ITAA 1936 82KZME(7)
- producing assessable income	- ITAA 1936 82KZMF
- product rulings	- ITAA 1936 82KZMF(1)
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	- 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(3)
- 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 328-105
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

Case references:

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

ATO references

NO: 2005/2972
ISSN: 1441-1172
ATOlaw topic: Income Tax ~~ Product ~~ timber