



PR 2006/107 - Income tax: Lake Powell Almond Project No. 3 - Early Growers (to 15 June 2006)

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 This document has changed over time. This is a consolidated version of the ruling which was published on *7 June 2006*



Product Ruling

Income tax: Lake Powell Almond Project No. 3 – Early Growers (to 15 June 2006)

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	12
Withdrawal	16
Scheme	17
Ruling	55
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	72
Appendix 2:	
Detailed contents list	103

ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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 scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document.

If the scheme 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 scheme 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 scheme has been implemented as described below and to ensure that the participants in the scheme 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 entity(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 Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates. In this Ruling this arrangement is referred to as the Lake Powell Almond Project No. 3 or simply as 'the Project'.

Relevant provision(s)

2. The relevant provision(s) dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 8-1 of the ITAA 1997;
 - section 17-5 of the ITAA 1997;
 - Division 27 of the ITAA 1997;
 - Division 35 of the ITAA 1997;
 - Division 40 of the ITAA 1997
 - Subdivision 61-J of the ITAA 1997;
 - section 108-5 of the ITAA 1997;
 - section 110-25 of the ITAA 1997;
 - Division 328 of the ITAA 1997;
 - Division 328 of the *Income Tax (Transitional Provisions) Act 1997*;
 - section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 82KZL of the ITAA 1936;
 - sections 82KZME and 82KZMF of the ITAA 1936;
 - Part III Division 6 of the ITAA 1936; and
 - Part IVA of the ITAA 1936.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

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 entities

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

8. The class of entities to whom this Ruling applies does not include:

- entities who intend to terminate their involvement in the scheme prior to its completion, or who otherwise do not intend to derive assessable income from it;
- entities who participate in the Project through offers made other than through the Product Disclosure Statement;
- entities who are accepted to participate in the Project after 15 June 2006; or
- SAITeysMcMahon AgInvest Limited or its associates.

Qualifications

9. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 17 to 54 of this Ruling.

10. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

12. This Ruling applies prospectively from 7 June 2006, 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

13. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

14. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

15. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

16. This Product Ruling is withdrawn and ceases to have effect after 30 June 2008. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the scheme specified below. Thus, the Ruling continues to apply to those entities, even following its withdrawal, who entered into the specified scheme prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entity's involvement in the scheme.

Scheme

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

- Application for a Product Ruling as constituted by documents received on 6 March 2006 and additional correspondence received from the applicant's representative dated 3, 4, 11, 12, 13, 21 and 28 April 2006, 2 and 8 May 2006;
- Draft **Product Disclosure Statement** (PDS) for the Project received 28 April 2006;
- Draft **Constitution** for the Project (Project Constitution) received 28 April 2006;
- Draft Compliance Plan for the Project received 6 March 2006;
- Draft **Constitution** for the Lake Powell Almond Property Trust No. 2 (Landing Trust Constitution) received 6 March 2006;
- Draft Compliance Plan for the Lake Powell Almond Property Trust No. 2 received 6 March 2006;
- Draft **Allotment Agreement** between SAITeysMcMahon AgInvest Limited (the Responsible Entity) and the Grower received 28 April 2006;
- Draft **Management Agreement** between the Responsible Entity and the Grower received 6 March 2006;
- Draft Almond Orchard Management Agreement for the Project between the Responsible Entity and Select Harvests Limited (Select) received 4 April 2006;
- Draft Custodian Agreement between the Responsible Entity and the Custodian received 6 March 2006;

- Draft Lease between the Custodian as Lessor and the 'Responsible Entity' as Lessee received 6 March 2006;
- Draft Management Agreement and Declaration of Trust between SAITEYSMcMAHON AgINVEST Limited as the Responsible Entity of the Trust and SAITEYSMcMAHON AgINVEST Limited in its corporate capacity received 6 March 2006; and
- Draft Lake Powell Almond Project No. 3 Water Supply Agreement between SAITEYSMcMAHON AgINVEST Limited as Responsible Entity of the Trust and SAITEYSMcMAHON AgINVEST Limited in its corporate capacity received 6 March 2006.

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

18. The documents highlighted are those that a Grower may enter into. For the purposes of describing the scheme 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 scheme. The effect of these agreements is summarised as follows.

19. 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

20. The main features of the Project are as follows:

Location	Robinvale, Victoria
Type of business to be carried on by each participant	Commercial growing and cultivation of almond trees for the purpose of harvesting and selling the almonds
Nature of each Grower's participation in the Project	Dual interest – interest as a Grower in the Project and an interest as a Landowner by acquiring Units in the Lake Powell Almond Property Trust No. 3
Number of hectares offered for cultivation	214 hectares
Size of each interest	0.4 hectares
Minimum allocation	1 Allotment
Minimum subscription	10 Allotments
Number of plants per Allotment	120
Term of the Project	14 years

Initial cost	\$3,939.00 per Allotment \$2,500.00 per parcel of units in Landowners Trust
Ongoing costs	Management fees; Maintenance fees; Land Licence fees; and Water Licence fees.
Other fees and costs	Processing fees; Marketing fees; Irrigation; and Insurance.

21. The project will be registered as a managed investment scheme under the *Corporations Act 2001*. SAITEysMcMahon AgInvest Limited has been issued with an Australian Financial Services Licence and will be the Responsible Entity for the Project and for the associated Landowning Trust.

22. An offer to participate in the Project will be made through the PDS. The offer has two components and will invite:

- the participant to subscribe as a Grower for a minimum of 1 Allotment in the Project; and
- the participant or its associate to subscribe as a Landowner for each parcel of 2,500 Units in the Landowning Trust at \$1.00 per unit.

23. Payment of \$3,939 for an interest as a Grower and \$2,500 for Units in the Landowning Trust must be made at the time of submitting the following documents:

- the Application for an interest in the Project;
- the Application to acquire Units in the Landowning Trust; and
- 'Power of Attorney Form'.

24. Each Grower will enter into an Allotment Agreement with the Responsible Entity which will comprise contractual rights in relation to parcels of land of 0.4 hectares each called Allotments. Each Grower will be granted a licence over a minimum of one Allotment.

25. Under the Management Agreement each Grower will engage the Responsible Entity as an independent contractor to manage their Business during the term of the Project.

26. For the purposes of this Ruling, Growers whose applications are accepted on or before 15 June 2006 will become Early Growers. This Ruling only applies to Early Growers. **Note that a separate Product Ruling will issue for Late Growers who are accepted into the Project from 1 July 2006 to 15 June 2007.**

Project Constitution

27. The Constitution for the Project sets out the general functions, powers and duties under which the Responsible Entity agrees to act for the Growers and to manage the Project. The Allotment Agreement and the Management Agreement are Schedules to the Constitution. These Agreements will be executed on behalf of each Grower who has signed the Application and Power of Attorney Form attached to the PDS and who is accepted into the Project. After acceptance and execution of the Agreements, Growers are bound by the Constitution, the Management Agreement and the Allotment Agreement. The Responsible Entity will keep and maintain a Register of all Growers that are accepted to participate in the Project.

28. Among the other things, the Constitution sets out details summarised as follows:

- procedures relating to applications for interests in the Project and the Application Money (clause 13);
- conditions for the transfer of money from the Application Fund (clause 14);
- procedures relating to the collection of all proceeds, and a Grower's entitlement to a distribution of the proceeds (clause 15);
- the Responsible Entity's duties (clause 18), powers (clause 19) and rights (clause 20);
- resolution of complaints made by the Growers in relation to the Project or the Responsible Entity (clause 21);
- retirement and removal of the Responsible Entity (clause 23.2);
- procedures for calling a meeting of Growers (clause 25); and
- winding up the Project (clause 28).

Constitution of the Landowning Trust

29. The Constitution of the Landowning Trust sets out the general functions, powers and duties under which the Responsible Entity agrees to act for the Landowners and to manage the Trust.

30. Among the other things, the Landowning Trust's Constitution sets out details summarised as follows:

- conditions for the transfer of money from the Application Fund (clause 8);
- use of the Contribution funds (clause 9);

- the requirement that the Responsible Entity keeps and maintains a Register of Landowners (clause 10);
- the interests of Landowners in the Trust and in the Application Fund (clause 11);
- the Responsible Entity's duties and powers (clause 12);
- the income of the Trust and its distribution to Landowners (clause 15);
- the Landowner's right to transfer Units (clause 18);
- winding up of the Trust (clause 21);
- procedures for calling a meeting of Landowners (clause 25); and
- resolution of complaints made by the Landowners in relation to the Trust or the Responsible Entity (clause 26).

Compliance Plans

31. As required by the *Corporations Act 2001*, the Responsible Entity has prepared Compliance Plans for both the Project and the Landowning Trust. The purpose of each Compliance Plan is to ensure that the Responsible Entity manages both the Project and the Landowning Trust in accordance with its obligations and responsibilities contained in each Constitution and that the interests of Growers and the Landowners are protected.

Custodian Agreement

32. The Responsible Entity will appoint Sandhurst Trustees Limited as Custodian of assets. All assets and property delivered to the Custodian will be held and dealt with in accordance with this Agreement. The Custodian agrees to exercise all due care, act honestly in good faith, and without negligence or default in carrying out obligations under this Agreement.

Lease Agreement

33. The Lessor (Custodian) leases the Land to the Lessee (Responsible Entity) for the term of the Project. The Agreement sets out the terms and conditions under which the Lessor will lease the Land to the Lessee (clause 7(a)). In addition to this lease, the Lessor grants licences to the Lessee (clause 7(c)):

- of the almond trees to be grown, cultivated and harvested on the Allotments in accordance with the Management Agreement;

- to draw water made available under the Water Licences and use the water to irrigate the Allotments; and
- to use the horticulture infrastructure on the Land.

Allotment Agreement

34. Each Grower will execute an Allotment Agreement with the Responsible Entity. The Responsible Entity will grant a non-exclusive licence to a Grower for the right to occupy, use and enjoy the Grower's Allotments, together with all improvements (including the almond Trees), for growing, maintaining, and the harvesting of the almonds (clause 2).

35. The Allotment Agreement sets out the rights and obligations of the parties to the Agreement (clauses 4 and 5) and operates on and from the Commencement Date. Among the Responsible Entity's obligations is a requirement to ensure that the Landowner has, or will:

- prepare the Allotment for the planting and cultivation of the Trees;
- develop and install the mainline irrigation works up to the boundary of the Grower's Allotment and develop and install the Allotment Irrigation System on the Grower's Allotment;
- ensure the Allotment has adequate drainage;
- plant the optimum number of Trees on the Allotment; and
- construct and continue access roads and perform other works and services as required (clause 5(a)(ii)).

36. The Allotment Agreement also:

- sets out the fees that the Grower pays for the land and water licences and the development and installation of Allotment Irrigation System (clause 7); and
- provides for termination by either the Grower or the Responsible Entity (clause 8) and sets out assignment procedures (clause 9).

Management Agreement

37. Under the Management Agreement the Grower appoints the Responsible Entity as an independent contractor to manage the Grower's Allotment (clause 2). This Agreement commences on the date the Responsible Entity accepts the Grower application under the PDS and continues until termination under clause 3(b).

38. On or after the Commencement Date the Responsible Entity will commence and complete the provision of the initial management services set out in clause 4.1 before 30 June 2006 (clause 4.3(a)).

39. After the completion of the initial management services the Responsible Entity will commence the provision of subsequent management services (clause 4.2) before 30 June 2007 (clause 4.3(b)).

40. After the completion of the subsequent management services the Responsible Entity will commence the provision of ongoing management and harvesting duties (clause 4.4) and processing duties relating to the harvested almonds (clause 4.5) and will provide these services until the termination of the Project (clause 4.6).

Pooling of Almonds and Grower's entitlement to harvest proceeds

41. Each Grower's almonds may be pooled with the almonds of other Growers in the Project and the Grower will be entitled to a proportionate share of the net proceeds of sale of the accumulated almonds produced by all Growers in the Project. The Management Agreement sets out provisions relating to the Grower's entitlement and to adjustments to that entitlement if the Grower's Allotment is partially or totally destroyed (clause 4.7).

42. This Product Ruling only applies where the following principles apply to the pooling and distribution arrangements:

- only Growers who have contributed almonds to the sales pool are entitled to benefit from distributions of harvest proceeds from the pool; and
- any pooled almonds must consist only of almonds contributed by Growers who are participants in the same Project.

Insurance

43. The Responsible Entity will ensure or cause to be insured the Landowner, the Grower, the Custodian, itself and such other persons it deems necessary against public risk for an amount of not less than \$5,000,000, and against risks and damage to the Trees and Almonds attributable to the Grower's Allotment. The Responsible Entity may charge the cost of insurance in respect of the latter to the Grower at cost and in proportion to the Grower's interest in the Project.

Almond Orchard Management Agreement

44. The Responsible Entity will subcontract its obligations under the Management Agreement by entering into an Almond Orchard Management Agreement with Select. In consideration for payment of the fees set out in clauses 10, 11 and 12 of the Agreement, Select will commence the orchard management services on notification in writing by the Responsible entity. Subject to the terms and conditions set out in this Agreement Select will carry out the management services during the term of the Project.

Fees

45. To participate in the scheme a Grower or an Associate of the Grower must acquire an Interest in the Project and Units in the Landowning Trust. For every one Interest in the Grower Project a parcel of 2,500 units in the Landowning Trust must be acquired. A Grower or its associate will make payment as described below:

Units in the Landowners Trust

- on application for an interest in the Project a Grower, or an associate of the Grower, will acquire 2,500 units at \$1.00 per unit for each Allotment, payable on or before 15 June 2006 (per the PDS Application Form).

46. Under the terms of the Management Agreement (clause 6) a Grower will make payments as described below:

Management fees

- for the period from Commencement Date until 30 June 2006, \$1,555.00 per Allotment, payable on or before the 30 June 2006 (Schedule 2 of the Management Agreement); and
- for the period 1 July 2006 to 30 June 2007, 2008 and 2009, a fixed 6 monthly management fee of \$275.00 per Allotment payable on or before the 31 December and 30 June of each year (Schedule 2 of the Management Agreement).

Maintenance fees

- for the period from 1 July 2006 until 30 June 2007, two fixed fees of \$2,532.00 per Allotment, each payable on or before the 31 December 2006 and 30 June 2007 respectively (Schedule 2 of the Management Agreement);
- for the period from 1 July 2007 until 30 June 2008, two fixed fees of \$1,210.00 per Allotment, each payable on or before the 31 December 2007 and 30 June 2008 respectively (Schedule 2 of the Management Agreement); and

- for the period from 1 July 2008 until 30 June 2009, \$1,457.50 per Allotment, payable on or before the 31 December 2007 and \$2,216.50 payable on or before 30 June 2008 (Schedule 2 of the Management Agreement).

Management and Maintenance fees

- for the period 1 July 2009 to 30 June 2010 the Management and Maintenance fees will be the sum of:
 - the cost the Responsible Entity reasonably expects to incur for the year, multiplied by 110%; and
 - an amount equal to 5% of net income from the sale of almonds attributable to the Grower's Allotment for the year; and
- for the period 1 July 2010 to the termination of the Project the Management and Maintenance fees for each 12 month period will be the sum of:
 - the cost the Responsible Entity reasonably expects to incur for the year, multiplied by 110%;
 - where the actual cost incurred in the immediate previous 12 month period exceeds the figure used in the calculations then the amount of the excess, multiplied by 110%; and
 - an amount equal to 5% of net income from the sale of almonds attributable to the Grower's Allotment for the year.

47. Under the terms of the Allotment Agreement (clause 7) a Grower will make payments as described below:

Land licence fees

- for the period from 1 July 2006 until 30 June 2007, two fixed fees of \$833.50 per Allotment, each payable on or before the 31 December 2006 and 15 June 2007 respectively (Schedule 2 of the Allotment Agreement);
- for the period from 1 July 2007 until 30 June 2008, two fixed fees of \$982.50 per Allotment, each payable on or before the 31 December 2007 and 30 June 2008 respectively (Schedule 2 of the Allotment Agreement);
- for the period from 1 July 2008 until 30 June 2009, two fixed fees of \$982.50 per Allotment, each payable on or before the 31 December 2008 and 30 June 2009 respectively (Schedule 2 of the Allotment Agreement); and

- for the period 1 July 2009 to the termination of the Project the Land licence fees for each 12 month period will be the previous year's fee increased by 5 percent.

Water licence fees

- for the period from 1 July 2006 until 30 June 2007, two fixed fees of \$17.50 per Allotment, each payable on or before the 31 December 2006 and 15 June 2007 respectively (Schedule 2 of the Allotment Agreement);
- for the period from 1 July 2007 until 30 June 2008, two fixed fees of \$29.50 per Allotment, each payable on or before the 31 December 2007 and 30 June 2008 respectively (Schedule 2 of the Allotment Agreement);
- for the period from 1 July 2008 until 30 June 2009, two fixed fees of \$50.50 per Allotment, each payable on or before the 31 December 2008 and 30 June 2009 respectively (Schedule 2 of the Allotment Agreement); and
- for the period 1 July 2009 to the termination of the Project the water licence fees for each 12 month period will be the greater of:
 - the actual water usage and supply costs incurred by the Responsible Entity in the previous year; or
 - the water licence fee current at the time the new fee is being calculated (indexed for CPI beginning from the year ended 30 June 2009).

Development and installation of Allotment Irrigation System

- for the period from Commencement Date until 30 June 2006, \$2,384.00 per Allotment, payable on or before the 30 June 2006 (Schedule 2 of the Allotment Agreement); and
- for the period from 1 July 2006 until 30 June 2007, two fixed fees of \$2,384.00 per Allotment, payable on or before the 31 December 2006 and 15 June 2007 respectively (Schedule 2 of the Allotment Agreement).

Processing fees

48. The Responsible Entity will charge a fee for processing of almonds in each production period in which processing occurs. The fee in the first Production Period will be calculated on the basis that it is \$871.00 per tonne at the commencement date of the Management Agreement and it will be increased annually in accordance with the CPI. For each subsequent Production Period the processing fee will be the processing fee for the previous Production Period increased in accordance with CPI.

49. However, if the Almonds Attributable to the Grower's Allotment have a hull moisture of 15% or more, then there will be a corresponding increase in the processing fee in accordance with clause 6.3(c) of the Management Agreement.

50. A drying fee of \$0.07 per kilogram will be payable by the Grower to the Responsible Entity if the moisture content of the kernel is more than 6% but less than 10%. If the moisture content of the kernel is 10% or more, then the Grower will pay the Responsible Entity the fee that the Responsible Entity is charged by its contractor or agent for carrying out the drying.

Marketing fees

51. The Responsible Entity will charge the Grower a marketing fee equal to 100% of the costs actually incurred by it for the marketing of Almonds Attributable to the Growers Allotment under clause 6.4 of the Management Agreement.

Finance

52. A Grower can fund their involvement in the Project themselves or borrow from an independent lender.

53. Growers cannot rely on any part of this Product Ruling if the application money is not paid in full on or before 15 June 2006 by the Grower or, on the Grower's behalf, by any lending institution. Where an application is accepted subject to finance approval by any lending institution, Growers cannot rely on this Ruling if written evidence of that approval has not been given to the Responsible Entity by 15 June 2006. Where an application has been accepted on the basis of written evidence of finance approval the lending institution must provide the full amount of the loan monies to the Responsible Entity no later than 30 June 2006.

54. This Ruling also 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 of the ITAA 1936 or the funding arrangements transform the Project into a 'scheme' to which Part IVA of the ITAA 1936 may apply;
- the loan or rate of interest is non-arm's length;

- repayments of the principal and payments of interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
- lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
- entities associated with the Project are involved or become involved in the provision of finance to Growers for the Project, other than where the Responsible Entity or its associates are acting as an intermediary for an independent financier.

Ruling

Application of this Ruling

55. Subject to paragraph 8, this Ruling applies only to Growers who are accepted to participate in the Project on or before 15 June 2006 and who have executed a Management Agreement and an Allotment Agreement on or before that date. The Grower's participation in the Project must constitute the carrying on of a business of primary production. Provided the Project is carried out as described above, the Grower's business of primary production will commence at the time of execution of their Management Agreement and an Allotment Agreement.

Minimum subscription

56. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced. Under the terms of the Prospectus, a Grower's application will not be accepted and the Project will not proceed until the minimum subscription of 10 Allotments is achieved.

The Simplified Tax System (STS)

Division 328

57. To be an STS taxpayer a Grower must be eligible to be an STS taxpayer and must have elected to be an STS taxpayer (Division 328 of the ITAA 1997). For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grower who was an STS taxpayer prior to 1 July 2005 continues to use the cash accounting method (called the STS accounting method) – see sections 328-120 and 328-125 of the *Income Tax (Transitional Provisions) Act 1997*.

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

25% entrepreneurs tax offset

Subdivision 61-J

59. For the first income year starting on or after 1 July 2005, Subdivision 61-J 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.

Assessable income

Section 6-5

60. 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.

Deductions for Management, Maintenance, Land licence and Water licence fees

Section 8-1

61. A Grower may claim tax deductions for each Allotment under section 8-1 for the fees and expenses set out in the Table.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Management fee	\$1,555 See Notes (i), (ii), & (iii)	\$550 See Notes (i), (ii), & (iii)	\$550 See Notes (i), (ii), & (iii)
Maintenance fee	Nil	\$5,064 See Notes (i), (ii), & (iii)	\$2,420 See Notes (i), (ii), & (iii)
Land licence fee	Nil	\$1,667 See Notes (i), (ii), & (iii)	\$1,965 See Notes (i), (ii), & (iii)
Water licence fee	Nil	\$35 See Notes (i), (ii), & (iii)	\$59 See Notes (i), (ii), & (iii)

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 (Division 27).
- (ii) The Management fees, the Maintenance fees, the Land licence Fees and the Water licence fees are deductible in the income year that the relevant fee is incurred.
- (iii) This Ruling does not apply to Growers who choose to prepay fees. Subject to certain exclusions, 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 Grower who prepays such amounts may request a private ruling on the taxation consequences of their participation in the Project.

Deductions for capital expenditure (non-STs taxpayers)***Division 40***

62. A Grower who is not an 'STs taxpayer' will also be entitled to tax deductions relating to water facilities (for example irrigation) and 'almond trees'. All deductions shown in the following Table are determined under Division 40.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Water facility (eg dam, irrigation)	\$2,384 See Notes (iv) & (v)	\$2,384 See Notes (iv) & (v)	\$2,384 See Notes (iv) & (v)
Establishment of horticultural plants (almond trees)	Nil See Notes (iv) & (vi)	Nil See Notes (iv) & (vi)	Nil See Notes (iv) & (vi)

Notes:

- (iv) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted for GST (for example input tax credits): Division 27.

- (v) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. A deduction is available under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one third in each of the next 2 years of income (section 40-540).
- (vi) 'Almond trees' are a 'horticultural plant' as defined in subsection 40-520(2). As Growers holds a non exclusive licence over the land, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the 'almond trees' is determined using the formula in section 40-545. If the 'almond trees' have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the 'almond trees' enter their first commercial season (section 40-530, item 2). The Responsible Entity will inform Growers of the amount and when the 'almond trees' enter their first commercial season.

Deductions for capital expenditure (STS taxpayers)

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

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

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

PR 2006/107

65. Under Division 328, if the 'cost' of a 'depreciating asset' at the end of the income year is less than \$1,000 (a 'low-cost asset'), it can be claimed as an immediate deduction when first used or 'installed ready for use'. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income.

Fee Type	Year ended 30 June 2006	Year ended 30 June 2007	Year ended 30 June 2008
Water facility (eg dam, irrigation)	\$2,384 See Notes (vii),& (viii)	\$2,384 See Notes (vii),& (viii)	\$2,384 See Notes (vii),& (viii)
Establishment of horticultural plants (almond trees)	Nil See Notes (vii) & (vi)	Nil See Notes (vii) & (vi)	Nil See Notes (vii) & (vi)

Notes:

- (vii) If the Grower is registered or required to be registered for GST, amounts of capital expenditure would need to be adjusted for GST (for example input tax credits): Division 27.
- (viii) Any irrigation system, dam or bore is a 'water facility' as defined in subsection 40-520(1), being used primarily and principally for the purpose of conserving or conveying water. If the expenditure is on a 'depreciating asset' (the underlying asset), the Grower may choose to claim a deduction under either Division 328 or Subdivision 40-F. For the purposes of Division 328, each Growers interest in the underlying asset is deemed to be a 'depreciating asset'. If the 'cost' apportionable to that deemed 'depreciating asset' is less than \$1,000, the deemed asset is treated as a 'low-cost asset' and that amount is deductible in full when the underlying asset is first used or 'held' ready for use. This is so provided the Grower is an 'STS taxpayer' for the income year in which it starts to 'hold' the asset and the income year in which it first uses the asset or has it 'installed ready for use' to produce assessable income. If the deemed asset is not treated as a 'low-cost asset', the tax deduction allowable in the year ended 30 June 2006 is determined by multiplying its 'cost' by half the relevant STS pool rate. At the end of the year, it is allocated to the relevant STS pool and in subsequent years the full pool rate will apply. If the expenditure is not on a 'depreciating asset', or if they choose to use Subdivision 40-F, Growers must claim

deductions under Subdivision 40-F, paragraph 40-515(1)(a). This deduction is equal to one-third of the capital expenditure incurred by each Grower on the installation of the 'water facility' in the year in which it is incurred and one-third in each of the next 2 years of income (section 40-540).

Interest

66. The deductibility or otherwise of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or other financier is outside the scope of this Ruling. However, all Growers who borrow funds in order to participate in the Project, should read the discussion of the prepayment rules in paragraphs 90 to 93 of this Ruling 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.

Units in Landowners Trust

67. The units in the Lake Powell Almond Property Trust No. 3 are CGT assets (section 108-5) and the amount of \$2,500 payable upon subscription by a Grower constitutes an outgoing of capital and is not an allowable deduction.

68. The amount paid for each unit will represent the first element of the cost base of the unit (subsection 110-25(2)). Any disposal of the unit(s) by a Grower will be a CGT event and may give rise to a capital gain or loss.

69. Distributions by the Lake Powell Almond Property Trust No. 3 are included in the assessable income of a Grower or an associate of the Grower who is a unit holder, in accordance with Division 6 of Part III of the ITAA 1936.

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

Section 35-55 – exercise of Commissioner's discretion

70. A Grower who is an individual accepted into the Project by 15 June 2006 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 2006 to 30 June 2010**. 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

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

- expenditure by a Grower 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.

Commissioner of Taxation

7 June 2006

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Is the Grower carrying on a business?

72. For the amounts set out in the Table above to constitute allowable deductions the Grower's horticultural activities as a participant in the Lake Powell Almond Project No. 3 must amount to the carrying on of a business of primary production.

73. Where there is a business, or a future business, the gross proceeds from the sale of the Almonds 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.

74. For schemes such as that of the Lake Powell Almond Project No. 3, 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.

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

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

76. In this Project, each Grower enters into an Allotment Agreement and a Management Agreement.

77. Under the Allotment Agreement each individual Grower will have rights over a specific and identifiable area of 0.4 hectares of land, referred to as an Allotment. The Agreement provides the Grower with an ongoing interest in the specific almond trees on the licensed area for the term of the Project. Under the Allotment Agreement the Grower must use the land in question for the purpose of cultivating almond trees and harvesting the almonds, and for no other purpose. The Allotment Agreement allows the Responsible Entity or its agents to come onto the land to carry out its obligations under the Allotment Agreement and the Management Agreement.

78. Under the Management Agreement the Responsible Entity is engaged by the Grower to establish and maintain the almond orchard on the Grower's Allotment during the term of the Project. The Responsible Entity has sub-contracted management services to Select under the Almond Orchard Management Agreement. Select holds the appropriate professional skills and credentials to provide the services to establish and maintain the Allotment during the term of the Project.

79. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the almonds grown on the Grower's Allotment(s).

80. 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.

81. 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 almonds 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.

82. The pooling of almonds grown on the Grower's Allotment with the almonds of other Growers in the Project is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled almonds will reflect the proportion of the almonds contributed from their Allotment.

83. The management services are also consistent with general horticultural practices. They are of the type ordinarily found in horticulture ventures that would commonly be said to be businesses. While the size of a Grower's Allotment is relatively small, it is of a size and scale to allow it to be commercially viable.

84. 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 Allotment 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.

85. The horticulture activities of cultivating almond trees and harvesting almonds, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Growers' horticultural activities of cultivating almond trees and harvesting almonds for eventual sale in the Lake Powell Almond Project No. 3 will constitute the carrying on of a business.

The Simplified Tax System

Division 328

86. 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.

87. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (but refer to Taxation Ruling TR 2002/6 and Taxation Ruling TR 2002/11). Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

Deductibility of management fees and licence fees

Section 8-1

88. Consideration of whether the management fees and licence fees are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:

- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
- the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
- where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.

89. The management and maintenance fees and land and water licensing fees associated with the horticulture activities will relate to the gaining of income from the Grower's business of growing almonds and hence have a sufficient connection to the operations by which income (from the harvesting and sale of the almonds) 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 scheme. The fee appears to be reasonable. There is no capital component of the fees. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

Prepayment provisions

Sections 82KZL to 82KZMF

90. 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 licensing 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

91. Under the Scheme to which this Product Ruling applies management and maintenance fees and land and water licensing fees are incurred on a six monthly basis. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this Scheme

92. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project prepays all or some of the expenditure payable under the Management and/or Allotment Agreements the Grower Lease, or prepays interest under a loan agreement. 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.

93. As noted in the Ruling section above, Growers who prepay fees are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in this Project.

Expenditure of a capital nature***Division 40 and Division 328***

94. Any part of the expenditure of a Grower that is attributable to acquiring an asset or advantage of an enduring kind is generally capital or capital in nature and will not be an allowable deduction under section 8-1. In this Project, expenditure attributable to the irrigation system and the establishment of the almond trees is of a capital nature. This expenditure falls for consideration under Division 40 or Division 328.

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

96. The tax treatment of capital expenditure has been dealt with in a representative way in paragraphs 62 to 65 of this Ruling.

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

97. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2006 to 30 June 2010** 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 years ended 30 June 2006 up to and including 30 June 2010:

- 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 almond 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.

98. 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

99. The operation of section 82KL of the ITAA 1936 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 of the ITAA 1997.

Part IVA – general tax avoidance provisions

100. For Part IVA of the ITAA 1936 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).

101. The Lake Powell Almond Project No. 3 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 61 to 66 of this Ruling 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.

102. 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 almonds. 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) of the ITAA 1936 it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

Appendix 2 – Detailed contents list

103. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Goods and Services Tax	3
Changes in the Law	4
Note to promoters and advisers	6
Class of entities	7
Qualifications	9
Date of effect	12
Withdrawal	16
Scheme	17
Overview	20
Project Constitution	27
Constitution of the Landowning Trust	29
Compliance Plans	31
Custodian Agreement	32
Lease Agreement	33
Allotment Agreement	34
Management Agreement	37
Pooling of Almonds and Grower's entitlement to harvest proceeds	41
Insurance	43
Almond Orchard Management Agreement	44
Fees	45
<i>Processing fees</i>	48
<i>Marketing fees</i>	51
Finance	52
Ruling	55
Application of this Ruling	55
Minimum subscription	56
The Simplified Tax System (STS)	57
<i>Division 328</i>	57
25% entrepreneurs tax offset	59

<i>Subdivision 61-J</i>	59
Assessable income	60
<i>Section 6-5</i>	60
Deductions for Management, Maintenance, Land licence and Water licence fees	61
<i>Section 8-1</i>	61
Deductions for capital expenditure (non-STS taxpayer)	62
<i>Division 40</i>	62
Deductions for capital expenditure (STS taxpayer)	63
<i>Subdivision 328-D and Subdivisions 40-F and 40-G</i>	63
<i>Interest</i>	66
<i>Units in Landowners Trust</i>	67
Division 35 – deferral of losses from non-commercial business activities	70
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	70
Sections 82KZME, 82KZMF and 82KL and Part IVA	71
Appendix 1 – Explanation	72
Is the Grower carrying on a business?	72
The Simplified Tax System	86
<i>Division 328</i>	86
Deductibility of management fees and lease fees	88
<i>Section 8-1</i>	88
Prepayments provisions	90
<i>Sections 82KZL to 82KZMF</i>	90
<i>Application of the prepayment provisions to this Project</i>	91
Expenditure of a capital nature	94
Division 40 and Division 328	94
Division 35 – deferral of losses from non-commercial business activities	97
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	97
Section 82KL – recouped expenditure	99
Part IVA – general tax avoidance provisions	100
Appendix 2 – Detailed contents list	103

References

Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations:*TR 97/11; TR 98/22; TR 2000/8;
TR 2001/14; TR 2002/6;
TR 2002/11*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
- taxation administration
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project

Legislative references:

- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 Pt III Div 6
- 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 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 Div 40
- ITAA 1997 Subdiv 40-F
- ITAA 1997 40-515(1)(a)
- ITAA 1997 40-515(1)(b)
- ITAA 1997 40-520(1)
- ITAA 1997 40-520(2)
- ITAA 1997 40-525(2)
- ITAA 1997 40-530
- ITAA 1997 40-540
- ITAA 1997 40-545
- ITAA 1997 Subdiv 61-J
- ITAA 1997 108-5
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 Div 328
- ITAA 1997 Subdiv 328-D
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- IT(TP)A 1997 Div 328
- IT(TP)A 1997 328-120
- IT(TP)A 1997 328-125
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- 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

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