

PR 2006/129 - Income tax: Great Southern 2007 Wine Grape Income Project - 2007 Growers

 This cover sheet is provided for information only. It does not form part of *PR 2006/129 - Income tax: Great Southern 2007 Wine Grape Income Project - 2007 Growers*

 This document has changed over time. This is a consolidated version of the ruling which was published on *30 May 2007*



Product Ruling

Income tax: Great Southern 2007 Wine Grape Income Project – 2007 Growers

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	12
Withdrawal	16
Scheme	17
Ruling	58
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	68
Appendix 2:	
Detailed contents list	107

ⓘ 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.

[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates. In this Ruling, the scheme is sometimes referred to as the 'Great Southern 2007 Wine Grape Income Project' or simply as 'the Project'.

Relevant provision(s)

2. The relevant provisions 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;
 - section 25-25 of the ITAA 1997;
 - Division 27 of the ITAA 1997;
 - Division 35 of the ITAA 1997;
 - Division 40 of the ITAA 1997;
 - Subdivision 61-J of the ITAA 1997;
 - Division 328 of the ITAA 1997;
 - 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; and
 - Part IVA of the ITAA 1936.

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

Goods and Services Tax

3. In this Ruling all fees and expenditure referred to 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 taxation legislation enacted at the time it was issued, later tax changes 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. Entities who are considering investing 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 entities in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that potential entities are fully informed of any changes in tax laws that take place after the Ruling is issued.

Class of entities

7. The class of entities to which 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 as set out in the description of the scheme. 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 arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it;
- are accepted into this Project before the date of this Ruling or after 15 June 2007;
- enter into finance arrangements with Great Southern Finance Pty Ltd, or with any associate of Great Southern Finance Pty Ltd, that do not comply with the written undertakings given to the Tax Office by Great Southern Finance Pty Ltd dated 14 March 2006 and 11 May 2006 (the word 'associate' has the meaning given in section 318 of the ITAA 1936); or

- enter into finance arrangements with Great Southern Finance Pty Ltd, the Preferred Financier or entities associated with this Project other than those specified in paragraph 53(ii) of this Ruling (the word 'associate' has the meaning given in section 318 of the ITAA 1936).

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 57 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.

11. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Attorney General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

Date of effect

12. This Ruling applies prospectively from 13 September 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 2009. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. 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 entities' 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 provided on 16 September 2005, 19 October 2005, 11 and 14 November 2005, 9, 21 and 22 December 2005, 16, 17, 24, 27 and 31 January 2006, 2, 7, 16 and 23 February 2006, 3, 14, 16, 20, 22 and 29 March 2006, 6, 19 and 20 April 2006, 4, 8, 10, 11, 15, and 24 May 2006, and 29 August 2006;
- **Product Disclosure Statement (PDS)** for the Great Southern 2007 Wine Grape Income Project, to be issued by Great Southern Managers Australia Ltd (GSMAL), received 29 August 2006;
- **Supplementary Product Disclosure Statement (PDS)** for the Great Southern 2007 Wine Grape Income Project, to be issued by Great Southern Managers Australia Ltd (GSMAL), received 29 August 2006;
- Constitution of the Great Southern 2007 Wine Grape Income Project, received 29 August 2006;

- **Lease and Management Agreement** between GSMAL (as both the 'Lessor' and 'Responsible Entity') and the Grower, received 29 August 2006;
- Pro forma lease between GSMAL and Great Southern Vineyard Holdings Pty Ltd (GSVH) (as the 'Landholder'), received 22 December 2006;
- Compliance Plan for Great Southern 2007 Wine Grape Income Project, received 29 August 2006;
- Draft Management Services Agreement between GSMAL and Great Southern Plantations Ltd (GSPL), received 16 September 2005;
- Loan Deed between Great Southern Finance Pty Ltd (as the 'Lender') and a Borrower, received 16 September 2005;
- Loan Deed between Great Southern Finance Pty Ltd (as the 'Lender') and the Preferred Financier, received 16 September 2005; and
- Additional correspondence, received 3 April 2007, 4 and 11 May 2007.

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 in **bold** are those that Growers 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.

20. The salient features of the Great Southern 2007 Wine Grape Income Project are as follows:

Location	Vineyards located in Victoria (Millewa, Grampian View and Freemans Bridge), South Australia (Chapel Gate, Sovereign, Galerita and Woodside) and Western Australia (Rowe Road, Ferndale, Landsdale, Riverdale and Jindawarra)
Type of business each participant will be carrying on	Commercial growing of wine grapes

Number of hectares offered for cultivation	635 hectares
Size of each Vinelot	0.05 hectares consisting of: <ul style="list-style-type: none"> • 0.025 hectares of mature vines; • 0.0075 hectares of young vines; and • 0.0175 hectares of newly established vineyards planted in the 2007 income year.
Number of vines per hectare	1,100 to 2,500, depending on the variety planted
Term of the Project	20 years and 2 weeks (or 22 years and 2 weeks if certain conditions are met)
Initial cost	\$4,290 (includes an amount for prepaid fees)
Ongoing costs	<ul style="list-style-type: none"> • Management fee of 52.8% of Net Proceeds of Sale for the Second Period. • Management fee of 36.3% of Net Proceeds of Sale Third and Fourth Periods. • Management fee of 41.8% of Net Proceeds of Sale for the Fifth Period, (Years 4 to 20). • Rent of 13.2% of Net Proceeds of Sale for all years after the Initial Management Period.
Other costs	Growers will be charged for the cost of all insurance except Public Liability Insurance

21. Under the Product Disclosure Statement (PDS), Great Southern Managers Australia Ltd (GSMAL) proposes to offer 12,700 interests called 'Vinelots' of 0.05 hectares. This Product Ruling is limited to the remaining unsold area of the specific vineyards named below where the Grower's 'Vinelots' are allocated as follows:

- 0.025 hectares of mature vines located at either the Galerita, Chapel Gate, Millewa, Landsdale, Freemans Bridge, Grampian View, Woodside and/or Jindawarra vineyards that are at least 6 years old;
- 0.0175 hectares of vines at the Sovereign, Rowe Road, and/or Woodside vineyards that were planted prior to 15 June 2007; and

- 0.0075 hectares of vines at the Millewa, Chapel Gate, Sovereign, Ferndale and/or Riverdale vineyards that are less than 3 years old.

22. Chapel Gate Vineyard (formerly known as Step Road) is located in Step Road, Langhorne Creek, South Australia. More specifically, it is described as the whole of Certificate of Titles Volume 5384, Folio 899; Volume 5795, Folio 681; Volume 5795, Folio 683; and Volume 5838 Folio 933.

23. Grampian View Vineyard (formerly known as Hyde Park) is described as Stage 1 and 2, Sugarloaf Road, Great Western, Victoria, Lot 85b, Volume 7573 Folio 094, Western Victoria, Grampians.

24. Freemans Bridge Vineyard (formerly known as Ormonhill) is located on Jeffreys Road, Corup, Victoria, and is more specifically described as the whole of Lot 2 on PS 124390, Volume 9668 Folio 796.

25. Millewa is located at Cullulleraine in Victoria and is more specifically described as the whole of Lot 3 on PS 341996R, Volume 10237, Folio 332.

25A. Other property locations are:

- Sovereign is located at Loxton, in South Australia and is more specifically described as the whole of certificates of title Volume 5873, Folio 347 and Volume 5255, Folio 807;
- Galerita is located at Waikerie in South Australia and is more specifically described as Allotment 4 on DP48912, being the whole of certificate of title Volume 5569, Folio 549;
- Woodside is located in the Adelaide Hills in South Australia and is more specifically described as the whole of certificates of title Volume 5526, Folio 980 and Volume 5526, Folio 985;
- Rowe Road is located at Margaret River in Western Australia and is more specifically described as the whole of Lot 2604 on DP153473; Volume 1412, Folio 476; whole of Lot 3157 on DP162425, Volume 1335, Folio 881; whole of Lot 4206 on DP162425, Volume 1238, Folio 522 and Sussex location 2804 and 2805, Volume 1471, Folio 386;
- Jindawarra is located at Margaret River in Western Australia and is more specifically described as Lot 3874 on diagram 201618 being the whole of certificate of title, Volume 2162, Folio 906;
- Ferndale is located at Frankland in Western Australia and is more specifically described as Lot 21 on Plan 22229, Volume 2127, Folio 929; Lot 5 on Plan 22230, Volume 2169, Folio 961 and Lot 4 on Plan 22230, Volume 2134, Folio 902;

- Riverdale is located at Frankland in Western Australia and is more specifically described as the whole of Lot 9 on Plan 69595, Volume 1724, Folio 821 and the whole of Lot 10 on Plan 69595, Volume 1724, Folio 822; and
- Landsdale is located at Mt Barker in Western Australia and is more specifically described as the whole of Lot 10 on diagram 93476, Volume 2110, Folio 847.

26. The Project is registered as a Managed Investment Scheme under the *Corporations Act 2001*. The Responsible Entity for the Project is GSMAL.

27. The land for the Project has been purchased by Great Southern Vineyard Holdings Pty Ltd (GSVH), a wholly owned subsidiary of GSMAL, which will lease the land to GSMAL. GSVH will be responsible for the construction and installation of all of the Vineyard Infrastructure and the planting of the 'New Area' prior to the 'Commencement Date' of the Project. The 'Commencement Date' for the Project will be on or before 15 June 2007. There is no minimum subscription for this Project and there is no provision for oversubscription.

28. In the event that additional land is acquired by GSMAL for use in the Project, an addendum to this Product Ruling may be issued by the Commissioner to reflect this change and ensure that Growers allocated Vinelots on the additional land are covered by this Product Ruling.

29. Growers lease their Vinelots from GSMAL from the 'Commencement Date' of the Project. Growers enter into a contract with GSMAL to manage their Vinelots for the eventual harvest and sale of their grape produce. GSMAL will manage and cultivate the vines and be responsible for harvesting and selling the grapes. GSMAL will arrange the marketing and sale of the grape produce.

30. Upon application, Growers will execute a Power of Attorney enabling GSMAL to act on their behalf as required. Each Grower is provided with an ownership certificate and a copy of the vineyard grid map from which their land and vines can be identified.

31. The Term of the Project is 20 years and 2 weeks but can be extended by an additional two years if the Grower's Internal Rate of Return over the original Term of the Project does not equal or exceed an average of 9% per annum.

Constitution

32. The Constitution establishes the Project and operates as a deed binding on all of the Project's Growers and the Responsible Entity. The Constitution sets out the terms and conditions under which GSMAL agrees to act as Responsible Entity and thereby manage the Project. Growers are bound by the Constitution by virtue of their participation in the Project. Pursuant to clause 28 of the Constitution, the Responsible Entity will keep a register of Growers.

33. Under the terms of the Constitution, all moneys received from applications shall be paid to the Responsible Entity which will deposit those moneys into an Application Fund in the name of the Responsible Entity as bare trustee for the applicants (clause 5). The application moneys will be released by the Responsible Entity when it is reasonably satisfied that certain specified criteria in the Constitution have been met (clauses 7 and 8 of the Constitution).

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

- the functions, powers and duties of the Responsible Entity (clause 12);
- the complaints procedure (clause 13);
- the provision of an Independent Expert Report to Growers by specific dates (clause 18);
- transfer of a Grower's interests (clause 20);
- the issue to each Grower of a 'Certificate' setting out details including the name of the Grower, and the number and description of the Grower's 'Vinelots' (clause 27);
- the requirement for the Responsible Entity to keep an up-to-date register of Growers (clause 28);
- procedures relating to distributions from the 'Proceeds Fund'; and
- termination of the Project (clauses 35 and 36).

Compliance Plan

35. As required by the *Corporations Act 2001*, a Compliance Plan has been adopted by GSMAL for the Project. The purpose of the Compliance Plan is to ensure that GSMAL manages the Project in accordance with its obligations and responsibilities contained in the Constitution and that the interests of Growers are protected.

Lease and Management Agreement

36. Growers participating in the arrangement will enter into a Lease and Management Agreement (LMA) between GSMAL and the Grower.

Sub-lease (Part 1 of the LMA)

37. Growers are granted a sub-lease of their 'Vinelot', including the 'Vines' and the 'Viticulture Infrastructure' for the 'Term' of the Project (clause 2). The 'Vinelot' must only be used for the purpose of conducting their viticultural business (clause 5).

38. The sub-lease gives the Grower a sub-lease over an identifiable area of land for a period commencing on 15 June 2007

and ending 20 years after the end of the Initial Management Period or until the Project is terminated. If the sub-lease has not been terminated pursuant to the provisions of the Constitution, the sub-lease can be extended to the 'Extended Termination Date', being an additional two years if the Grower's Internal Rate of Return over the original 'Term' of the Project does not equal or exceed an average of 9% per annum (clause 37).

39. On or before 15 June 2007 the Lessor will:

- procure the construction of the 'Viticulture Infrastructure' on the 'Vinelot', which includes, 'Fixtures' for the purposes of conducting proper and efficient viticulture; and
- procure the planting of the Vines on the Vinelot, including the installation of all associated irrigation and trellising (clause 10.4(a)).

40. Each Grower must pay Rent to the Lessor in an amount specified in Item 6 of Schedule 1. No rental is payable for the period 15 June 2007 to 30 June 2007. For each financial year commencing from 1 July 2007, the amount of Rent is determined as a percentage of the 'Net Proceeds of Sale'.

41. Under the sub-lease the Grower must:

- pay annual insurance premiums (clause 5.4);
- keep the 'Vinelot' in good and substantial repair (clause 6.1); and
- not install upon or remove anything from the 'Vinelot' (clause 8).

Management services (Part 2 of the LMA)

42. Each Grower appoints GSMAL to perform the 'Initial Management Services' and the 'Ongoing Management Services' from the Commencement Date of 15 June 2007, being the date of execution of the Agreement (clause 14). GSMAL will supervise and manage all viticultural activities on behalf of the Grower. The services to be performed are set out in detail in Schedules 2 and 3.

43. The Initial Management Services will be performed during the Initial Management Period, being the period from 15 June 2007 to 30 June 2007. The services include:

- (a) all inspection, supervision and management activities as necessary from the 'Commencement Date' in respect of the services listed in Schedule 2 that are carried out by subcontractors;
- (b) the obtaining of formal verification by 30 June 2007 from an 'Independent Viticulture Expert' that the Vinelot is of an appropriate standard and all required services have been performed and to an appropriate standard;

- (c) cultivating, tending, culling, watering, pruning, replanting, spraying and otherwise caring for the 'Vines', as necessary;
- (d) keeping in good repair and condition any access road or roads within the 'Vineyard', keeping in good repair and condition all waterways, dams, irrigation and pumping equipment within the 'Vineyard', as necessary; and
- (e) undertaking pest control, fungicide control and vine disease measures as necessary.

44. Provision of the 'Ongoing Management Services' will commence on 1 July 2007. 'Ongoing Management Services' is defined to mean all commercial viticultural activities required to be carried on to manage and maintain the 'Vines' according to good viticultural and vineyard practice, including but not limited to:

- (a) cultivating, tending, culling, watering, pruning, replanting, spraying and otherwise caring for the 'Vines' as and when required;
- (b) keeping in good order and condition any access road or roads within the 'Vineyard', keeping in good repair and condition all waterways, dams, irrigation and pumping equipment within the 'Vineyard', as required;
- (c) undertaking pest control, fungicide control and vine disease measures as required on the 'Vinelots';
- (d) controlling rabbits and other vermin by fumigating and poisoning and complying with the provisions of all statutes, regulations and by-laws (and all amendments) thereto with respect to the same, and any other statutes, rules or regulations and by-laws relating to or affecting the 'Vinelot' or the Grower in respect thereof;
- (e) keeping in good repair and condition all fences, trellising, irrigation and adequate fire-breaks within the 'Vineyard'; and
- (f) obtaining a 'Report' from the 'Independent Viticulture Expert' within 6 months after the completion of planting of all vines within the Project, at least six monthly for the first year thereafter and then annually, to be provided to the Grower.

Harvesting and sale

45. Commencing from the date of the first harvestable grape crop, or at such other time or times as the Responsible Entity in its absolute discretion considers appropriate, the Responsible Entity will harvest, or arrange for the harvest of, the pooled 'Grape Produce' of Growers in the Project (clause 18).

46. Each Grower has appointed GSMAL, as agent, to sell their 'Grape Produce' for the maximum practicable price available (clause 19 of the LMA). At all times the Grower has full right, title and interest in the 'Grape Produce' and the right to have the 'Grape Produce' sold for their benefit (clause 11.3).

47. GSMAL will ensure that the 'Gross Proceeds of Sale' are paid into the 'Proceeds Fund' trust bank account (clause 21.1). The Grower's 'Proportional Share of the Costs of Harvesting' will be paid from the Gross Proceeds of Sale to GSMAL, or the relevant third party (clause 21.2). GSMAL will pay the Rent and Management Fee from the Net Proceeds of Sale. On or before each 'Distribution Date', GSMAL will distribute to the Growers, out of the Proceeds Fund, each 'Grower's Proportional Interest' of the 'Proceeds Fund' relating to the last Accounting Period. The terms 'Proceeds Fund' and 'Grower's Proportional Interest' are defined in clause 1.

Pooling of 'Grape Produce'

48. Each Grower's 'Grape Produce' will be pooled with the 'Grape Produce' of other Growers in the Project and the Grower will be entitled to a proportionate share of the 'Net Proceeds of Sale' of the total Grape Produce produced by all Growers in the Great Southern 2007 Wine Grape Income Project. The Constitution (clause 31) and the LMA (clause 21) set out provisions relating to the 'Grower's entitlement' to 'Net Proceeds of Sale'.

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

- only Growers who have contributed Grape Produce to the sales pool in a 'Financial Year' are entitled to benefit from distributions of 'Net Proceeds of Sale' from the pooled 'Grape Produce; and
- any pooled 'Grape Produce' must consist only of 'Grape Produce' contributed by Growers in the Great Southern 2007 Wine Grape Income Project.

Fees

50. The fees payable under the Lease and Management Agreement per Vinelot are as follows:

- the 'Application Fee' of \$4,290 payable on application. This amount is made up of \$3,432 for the 'Initial Management Services', \$429 being part payment for the 'Ongoing Management Services' in the 'Second Period' and \$429 being part payment for the 'Ongoing Management Services' in the 'Third Period';
- an additional Fee of 52.8% of a Grower's 'Net Proceeds of Sale' (if any) is payable for the 'Second Period';

- an additional Fee of 36.3% of a Grower's 'Net Proceeds of Sale' (if any) for the 'Third Period' and the 'Fourth Period';
- a Fee of 41.8% of a Grower's 'Net Proceeds of Sale' for each year in the 'Fifth Period', (Years 4 to 20); and
- Rent of 13.2% of a Grower's 'Net Proceeds of Sale' (if any) in each year in which the 'Vinelot' is harvested.

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

Finance

52. Growers can fund their participation in the Project themselves, borrow from Great Southern Finance Pty Ltd (a lender associated with GSMAL), borrow from the Preferred Financier, or borrow from an independent lender.

53. Details of the loans that will be offered to Growers by Great Southern Finance Pty Ltd and the Preferred Financier are set out in the Application for Term Finance form and the Terms of Loan Deed. Normal debt recovery procedures, including legal action, will be taken in the case of defaulting borrowers. These options are summarised as follows:

(i) *Great Southern Finance Pty Ltd*

Option A – 12 months terms payments – 1 or more 'Vinelots':

- equal monthly principal instalments are payable over a period of 12 months;
- instalments are paid by direct debit commencing 15 July 2007;
- the GST component is not payable under the terms instalment arrangement and is payable by the applicant on execution of the Lease and Management Agreement; and
- no interest is applicable.

Option B – Principal and Interest Finance – Minimum of 4 'Vinelots':

- principal and interest loans with a repayment term of two years up to a term of no more than 15 years;
- equal monthly principal and interest repayments over the term of the loan, commencing from 31 July 2007; and

- interest rates will be fixed for the period of the loan and are set on an arms length basis with reference to a commercial margin over the inter bank SWAP rate for that term.

For loans under Option B, the following will apply:

- the GST component is not part of the finance arrangement and is payable by the applicant on execution of the Lease and Management Agreement;
- a Loan Establishment Fee, comprising an application fee of up to 1.1% of the loan advance and a fee to cover legal costs and expenses of up to \$275 (GST inclusive) may be charged; and
- the security for the loan is taken over the Grower's interest under the Lease and Management Agreement.

(ii) Preferred Financier

Option A – 12 months terms payments – 1 or more 'Vinelots':

- equal monthly principal instalments over a period of 12 months;
- instalments paid by direct debit commencing from 15 July 2007;
- the GST component is not part of the finance arrangement and is payable by the applicant on execution of the Lease and Management Agreement; and
- no interest is applicable.

Option B – Principal and Interest Finance – Minimum of 4 Vinelots:

- principal and interest loans from 2 years up to no more than 15 years; or
- interest only loans of up to three years followed by principal and interest for the remainder of the term;
- equal monthly interest payments followed by equal monthly principal and interest repayments over the term of the loan, commencing from 31 July 2007; and
- interest rates will be fixed for the period of the loan and are set on an arms length basis with reference to a commercial margin over the inter bank SWAP rate for that term.

For loans under Option B, the following will apply:

- the GST component is not part of the finance arrangement and is payable by the applicant on execution of the Lease and Management Agreement;
- a Loan Establishment Fee, comprising an application fee of up to 1.1% of the loan advance and a fee to cover legal costs and expenses of up to \$275 may be charged; and
- the security for the loan is taken over the Grower's interest under the Lease and Management Agreement.

54. This Ruling will not apply to Growers who enter into any other finance arrangement offered to Growers by Great Southern Finance Pty Ltd, or by an 'associate' of the Responsible Entity (the word 'associate' has the meaning given in section 318 of the ITAA 1936).

55. This Ruling will not apply to Growers who enter into finance arrangements with Great Southern Finance Pty Ltd, or with any associate of Great Southern Finance Pty Ltd, that do not comply with the written undertakings given to the Tax Office by Great Southern Finance Pty Ltd dated 14 March 2006 and 11 May 2006.

56. Growers cannot rely on any part of this Ruling if the 'Application Fee' is not paid in full to the Responsible Entity on or before 15 June 2007 whether by the Grower or on the Growers behalf by a lending institution. Where an application is accepted by the Responsible Entity, and that application is 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 the relevant lending institution on or before 15 June 2007.

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

- entities associated with the Project, other than Great Southern Finance Pty Ltd, are involved in the provision of finance for the Project;
- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' will be granted to the borrowers for the purpose of section 82KL 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 terms or rate of interest are of a non-arm's length nature;

- repayments of the principal and interest are linked to the derivation of income from the Project;
- the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism) back to the lender or any associate;
- 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 Great Southern Finance Pty Ltd are involved or become involved in the provision of finance to Growers for the Project.

Ruling

Application of this Ruling

58. Subject to paragraph 8 and the specific exclusions set out in paragraphs 54, 55, 56, and 57, this Ruling applies only to Growers who are accepted to participate in the Project on or before 15 June 2007, where the Grower has executed a Lease and Management Agreement on that date.

59. The Grower's participation in the Project must constitute the carrying on of a business of primary production (see Explanation at paragraphs 68 to 80 of this Ruling). A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

The Simplified Tax System (STS)

Division 328

60. 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*.

61. 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**

62. 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**

63. That part of the 'Gross Harvest Proceeds' from the Project attributable to the Grower's produce and any additional amounts paid to the Grower by the Responsible Entity, less any GST payable on these proceeds (section 17-5), will be assessable income of the Grower under section 6 5.

64. The Grower recognises ordinary income from carrying on the business of viticulture at the time that income is derived.

Deduction for management fees, rent, borrowing expenses, interest and capital expenditure**Section 8-1, section 25-25 and section 40-515**

65. A Grower may claim tax deductions for the following fees and expenses on a per Vinelot basis, as set out in the Tables below.

One Vinelot Only

Fee Type	Year ending 30 June 2007 (‘Initial Period’)	Year ending 30 June 2008 (‘Second Period’)	Year ending 30 June 2009 (‘Third Period’)
Management fees	\$4,290 See Notes (i) & (ii)	Amount incurred (if any) See Notes (i), (ii) & (iii)	Amount incurred. (if any) See Notes (i), (ii) & (iii)
Rent	Nil	Amount incurred (if any) See Notes (i) & (iii)	Amount incurred (if any) See Notes (i) & (iii)
Interest on loans with Great Southern Finance or the Preferred Financier	As incurred See Note (iv)	As incurred See Note (iv)	As incurred See Note (iv)

Loan Establishment Fee	Must be calculated See Notes (i) & (v)	Must be calculated See Notes (i) & (v)	Must be calculated See Notes (i) & (v)
Establishment of horticultural plants	Amount notified by GSMAL See Notes (i) & (vi)	Amount notified by GSMAL See Notes (i) & (vi)	Amount notified by GSMAL See Notes (i) & (vi)

Two or more Vinelots

Fee Type	Year ending 30 June 2007 ('Initial Period')	Year ending 30 June 2008 ('Second Period')	Year ending 30 June 2009 ('Third Period')
Management fees	\$3,432 See Note (i)	\$429 plus other amount incurred (if any) See Notes (i), (ii) and (iii)	\$429 plus other amount incurred (if any) See Notes (i) (ii) and (iii)
Rent	Nil	Amount incurred (if any) See Notes (i) & (iii)	Amount incurred (if any) See Notes (i) & (iii)
Interest on loans with Great Southern Finance or the Preferred Financier	As incurred See Note (iv)	As incurred See Note (iv)	As incurred See Note (iv)
Loan Establishment Fee	Must be calculated See Notes (i) & (v)	Must be calculated See Notes (i) & (v)	Must be calculated See Notes (i) & (v)
Establishment of horticultural plants	Amount notified by GSMAL See Notes (i) & (vi)	Amount notified by GSMAL See Notes (i) & (vi)	Amount notified by GSMAL See Notes (i) & (vi)

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).
- (ii) A Grower who acquires one 'Vinelot' only will incur prepaid Management Fees of \$858. This amount will be deductible in full in the year paid as it is 'excluded'

expenditure'. Refer to paragraphs 85 to 94 of this Ruling for a discussion of the prepayment provisions. However, if more than one 'Vinelot' is acquired by a Grower then the prepaid amounts will not be 'excluded expenditure' and will have to be apportioned according to the formula in subsection 82KZMF(1) of the ITAA 1936 (see paragraph 88 of this Ruling). This section operates to apportion expenditure over the eligible service period or 10 years, whichever is the lesser. The 'eligible service period' in respect of the prepaid Management Fees commences on 1 July 2007 and ends on 30 June 2009. Applying this formula to the prepaid amount a deduction of \$429 per 'Vinelot' is allowable in each of the years ending 30 June 2008 and 30 June 2009.

- (iii) From the year ended 30 June 2008 (the 'Second Period') Growers may be required to pay the Responsible Entity an additional 'Fee' for management services and an amount for Rent. These amounts will be based on a percentage of the 'Net Harvest Proceeds'. GSMAL will notify Growers of these amounts (if any) and the year in which the amounts are incurred.
- (iv) The deductibility or otherwise of interest arising from agreements entered into with financiers other than Great Southern Finance Pty Ltd or the Preferred Financier, is outside the scope of this Ruling. Prepayments of interest to any lender, including Great Southern Finance Pty Ltd and the Preferred Financier, are not covered by this Product Ruling. Growers who prepay interest may request a private ruling on the deductibility of the interest incurred.
- (v) The Loan Establishment Fee payable to either Great Southern Finance Pty Ltd or to the Preferred Financier is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing money that is used or is to be used during that income year solely for income producing purposes. The deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing costs arising from loan agreements entered into with financiers other than Great Southern Finance or the Preferred Financier is outside the scope of this Ruling.
- (vi) Grapevines are a 'horticultural plant' as defined in subsection 40-525(2). As Growers hold the land under a lease, the condition in item 3 of subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value. The deduction for the Grapevines is determined using the formula in section 40-545 and is based on the capital expenditure incurred that is attributable to their establishment. If the Grapevines have an 'effective life' of

greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the Grapevines enter their first commercial season (section 40-530, item 2). Growers are entitled to a deduction at the write off rate of 13% for the balance of the establishment expenditure for vines situated on the 'Mature Area' of their 'Vinelot'. They can also claim a deduction for write off of the vines that are situated on the 'New Area' and on the 'Young Area' of their 'Vinelot', when those vines enter their first commercial season. The Responsible Entity will inform Growers of the amount that is deductible for the vines on the 'Mature Area' (see section 40-575) and will inform Growers when the Grapevines on the 'New Area' and the 'Young Area' of their 'Vinelots' enter their first commercial season and the amount that is deductible for the write off of those vines.

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

Section 35-55 – exercise of Commissioner's discretion

66. A Grower who is an individual accepted into the Project in the year ended 30 June 2007 may have losses arising from their participation in the Project that would be deferred to a later income year under section 35-10. Subject to the Project being carried out in the manner described above, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers for the income years ended **30 June 2007 to 30 June 2009**. This conditional exercise of the discretion will allow those losses to be offset against the Grower's other assessable income in the income year in which the losses arise.

Section 82KL and Part IVA

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

- section 82KL does not apply to deny the deductions otherwise allowable; and
- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

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?

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

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

70. For schemes such as those of the Great Southern 2007 Wine Grape Income Project, Taxation Ruling TR 2000/8 sets out in paragraph 90 the circumstances in which the Grower’s activities can constitute the carrying on of a business. As TR 2000/8 sets out, these circumstances have been established in court decisions such as *Commission of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

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

- the Grower has an identifiable interest (by lease) or rights over (by licence) the land on which the Grower’s vines are established;
- the Grower has a right to harvest and sell the ‘Grape Produce’ from those vines;
- the viticultural activities are carried out on the Grower’s behalf;
- the viticultural activities of the Grower are typical of those associated with a viticultural business; and
- the weight and influence of general indicators point to the carrying on of a business.

72. In this Project, each Grower enters into a Lease and Management Agreement. Under the agreement each individual Grower will have rights over a specific and identifiable area of land, called a vinelot, which will be sited on no more than three specifically identified vineyards. For the term of the Project the agreement provides the Grower with an ongoing interest in the specific vines on the leased area of those vineyards. Under the agreement, the Grower must use the land in question for the purpose of carrying out viticultural activities, and for no other purpose. The agreement allows Great Southern Managers Australia Ltd, as the Landholder and the Responsible Entity, to come onto the land to carry out its obligations.

73. Under the agreement, the Responsible Entity is engaged by the Grower to maintain a 'Vinelot' on the Grower's identifiable leased area of land during the term of the Project. The Responsible Entity has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the Vinelot on the Grower's behalf.

74. The Responsible Entity is also engaged as agent to harvest and sell, on the Grower's behalf, the 'Grape Produce' grown on the Grower's 'Vinelot'.

75. 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.

76. 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 grape produce that will return a before-tax profit, that is, a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.

77. The pooling of 'Grape Produce' from vines grown on the Grower's 'Vinelot' with the 'Grape Produce' of other Growers is consistent with general viticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled 'Grape Produce' will reflect the proportion of the produce contributed from their 'Vinelot(s)'.

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

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

80. The viticultural 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' viticultural activities in the Project will constitute the carrying on of a business commencing at the time of execution of the Grower's LMA.

The Simplified Tax System

Division 328

81. 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.

82. Changes to the STS rules apply from 1 July 2005. The question of whether a 'Grower' is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling (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 project fees

Section 8-1

83. Consideration of whether the management fees, rent, and interest (the 'project 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.

84. The project fees associated with the viticultural activities will relate to the gaining of income from the Grower's business of viticulture (see above), and hence has a sufficient connection to the operations by which income (from the harvesting and sale of 'Grape Produce') is to be gained from this business. The fees will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring these amounts is identifiable from the arrangement. There is no capital component of the management fee or the Rent. 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

85. 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.

86. For this Project, only section 82KZL of the ITAA 1936 (an interpretive provision) and sections 82KZME and 82KZMF of the ITAA 1936 are relevant. 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

87. Subject to certain exceptions, where the requirements of subsections 82KZME(2) and (3) of the ITAA 1936 are met, the formula in subsection 82KZMF(1) of the ITAA 1936 applies to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997.

88. Section 82KZMF of the ITAA 1936 uses the formula below to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided:

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

89. Of the exceptions applying to these rules, only the 'excluded expenditure' exception in subsection 82KZME(7) of the ITAA 1936 is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1) of the ITAA 1936. 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.

90. In the formula 'eligible service period' (defined in subsection 82KZL(1) of the ITAA 1936) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

Application of the prepayment provisions to this Project

91. The expenditure incurred by a Grower in the Project for that part of the Management Fees payable at the time of Application that are for the provision of services for the years ended 30 June 2007 and 30 June 2008 is expenditure to which these prepayment provisions apply. The expenditure meets the requirements of subsections 82KZME(1) and (2) of the ITAA 1936 and is incurred under an 'agreement' as described in subsection 82KZME(3). Therefore, unless one of exceptions is section 82KZME applies, the amount and timing of tax deductions for that expenditure will be determined under the formula in section 82KZMF of the ITAA 1936.

92. For Growers who acquire one 'Vinelot' only the prepaid Management Fees incurred by Growers in the initial year are less than \$1,000 and will be 'excluded expenditure' as defined in subsection 82KZL(1) of the ITAA 1936. Under subsection 82KZME(7) of the ITAA 1936, 'excluded expenditure' is specifically excluded from the operation of section 82KZMF of the ITAA 1936 and therefore deductible in the year incurred.

93. However, Growers who acquire two or more 'Vinelots' will incur prepaid Management Fees exceeding \$1,000. Those Growers will need to calculate the deduction for each year using the formula in subsection 82KZMF(1) of the ITAA 1936. Section 82KZMF will apportion the deduction for prepaid Management Fees over the eligible service period which commences on 1 July 2007 and ends on 30 June 2009.

94. Other fees, Rent and the interest payable under loan agreements with Great Southern Finance or the Preferred Financier are not subject to the prepayment provisions.

Interest deductibility**Section 8-1***(i) Growers who use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider*

95. Some Growers may finance their participation in the Project through a loan facility with Great Southern Finance Pty Ltd or the Preferred Financier. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the management fees and the Rent.

96. The interest incurred by these Growers will be in respect of a loan to finance the Project business operations of growing grapes and is therefore directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

97. In the absence of any application of the prepayment provisions (see Note (iv)) interest is deductible in the year in which it is incurred.

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

98. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Great Southern Finance Pty Ltd or the Preferred Financier 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.

Expenditure of a capital nature**Division 40**

99. 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 establishment of the grapevines as horticultural plants is of a capital nature. This expenditure falls for consideration under Division 40.

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

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

Section 35-55 – exercise of Commissioner’s discretion

101. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for Growers for the income year 30 June 2007, the Commissioner has applied the principles set out in Taxation Ruling TR 2001/14 Income tax: Division 35 – non-commercial business losses. Accordingly, based on the evidence supplied, the Commissioner has determined that for the income years ended **30 June 2007 to 30 June 2009:**

- 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 viticultural 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.

102. 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

103. The operation of section 82KL of the ITAA 1936 depends, among other things, on the identification of a certain quantum of ‘additional benefit(s)’. Insufficient ‘additional benefits’ will be provided to trigger the application of section 82KL of the ITAA 1936. It will not apply to deny the deduction otherwise allowable under section 8-1 of the ITAA 1997.

Part IVA

104. 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).

105. The Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraph 65 of this Ruling that would not have been obtained but for the scheme. However, it is not possible to conclude that the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

106. 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 grape produce. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There are no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing with each other at arm's length, or, if any parties are not at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) 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

107. 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
Constitution	32
Compliance Plan	35
Lease and Management Agreement	36
<i>Sub-lease (Part 1 of the LMA)</i>	37
<i>Management services (Part 2 of the LMA)</i>	42
Harvesting and sale	45
Pooling of 'Grape Produce'	48
Fees	50
Finance	52
Ruling	58
Application of this Ruling	58
The Simplified Tax System (STS)	60
<i>Division 328</i>	60
25% entrepreneurs tax offset	62
<i>Subdivision 61-J</i>	62
Assessable income	62
<i>Section 6-5</i>	63
Deduction for management fees, rent, borrowing expenses, interest and capital expenditure	65
<i>Section 8-1, section 25-25 and section 40-515</i>	65
Division 35 – deferral of losses from non-commercial business activities	66

<i>Section 35-55 – exercise of Commissioner’s discretion</i>	66
Section 82KL and Part IVA	67
Appendix 1 – Explanation	68
Is the Grower carrying on a business?	68
The Simplified Tax System	81
<i>Division 328</i>	81
Deductibility of project fees	83
<i>Section 8-1</i>	83
Prepayment provisions	85
<i>Sections 82KZL to 82KZMF</i>	85
<i>Sections 82KZME and 82KZMF</i>	87
Application of the prepayment provisions to this Project	91
Interest deductibility	95
Section 8-1	95
<i>(i) Growers who use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider</i>	95
<i>(ii) Growers who DO NOT use Great Southern Finance Pty Ltd or the Preferred Financier as the finance provider</i>	98
Expenditure of a capital nature	99
<i>Division 40</i>	99
Division 35 – deferral of losses from non-commercial business activities	101
<i>Section 35-55 – exercise of Commissioner’s discretion</i>	101
Section 82KL	103
Part IVA	104
Appendix 2 – Detailed contents list	107

References

<i>Previous draft:</i>	- ITAA 1936 82KZMF(1)
Not previously issued as a draft	- ITAA 1936 Pt IVA
	- ITAA 1936 177A
<i>Related Rulings/Determinations:</i>	- ITAA 1936 177C
IT 360; TR 97/11; TR 98/22;	- ITAA 1936 177D
TR 2000/8; TR 2001/14;	- ITAA 1936 177D(b)
TR 2002/6; TR 2002/11	- ITAA 1936 318
	- ITAA 1997 6-5
<i>Subject references:</i>	- ITAA 1997 8-1
- carrying on a business	- ITAA 1997 17-5
- commencement of business	- ITAA 1997 25-25
- fee expenses	- ITAA 1997 25-25
- interest expenses	- ITAA 1997 Div 27
- management fees	- ITAA 1997 Div 35
- non-commercial business	- ITAA 1997 35-10
activities	- ITAA 1997 35-10(2)
- primary production	- ITAA 1997 35-55
- primary production expenses	- ITAA 1997 35-55(1)(b)
- producing assessable income	- ITAA 1997 Div 40
- product rulings	- ITAA 1997 40-515
- public rulings	- ITAA 1997 40-515(1)(a)
- tax avoidance	- ITAA 1997 40-515(1)(b)
- tax benefits under tax avoidance	- ITAA 1997 40-525(2)
schemes	- ITAA 1997 40-530
- tax shelters	- ITAA 1997 40-545
- tax shelters project	- ITAA 1997 40-575
- taxation administration	- ITAA 1997 Subdiv 61-J
	- ITAA 1997 Div 328
<i>Legislative references:</i>	- ITAA 1997 Subdiv 328-F
- ITAA 1936 82KL	- ITAA 1997 Subdiv 328-G
- ITAA 1936 Pt III Div 3 Subdiv H	- IT(TP)A 1997 Div 328
- ITAA 1936 82KZL	- IT(TP)A 1997 328-120
- ITAA 1936 82KZL(1)	- IT(TP)A 1997 328-125
- ITAA 1936 82KZM	- TAA 1953
- ITAA 1936 82KZMA	- TAA 1953 Sch 1 357-75(1)
- ITAA 1936 82KZMB	- Copyright Act 1968
- ITAA 1936 82KZMC	- Corporations Act 2001
- ITAA 1936 82KZMD	
- ITAA 1936 82KZME	<i>Case references:</i>
- ITAA 1936 82KZME(1)	- Commission of Taxation v. Lau
- ITAA 1936 82KZME(2)	(1984) 6 FCR 202; 84 ATC 4929;
- ITAA 1936 82KZME(3)	(1984) 16 ATR 55
- ITAA 1936 82KZME(7)	
- ITAA 1936 82KZMF	

ATO references

NO: 2005/14544
ISSN: 1441-1172
ATOlaw topic: Income Tax ~~ Product ~~ vineyards & wineries