



# ***PR 2006/149 - Income tax: Rewards Group Berry Project 2007 - 2008 Growers***

 This cover sheet is provided for information only. It does not form part of *PR 2006/149 - Income tax: Rewards Group Berry Project 2007 - 2008 Growers*

 This document has changed over time. This is a consolidated version of the ruling which was published on *18 October 2006*



## Product Ruling

### Income tax: Rewards Group Berry Project 2007 – 2008 Growers

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**ⓘ 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

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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 scheme is referred to as the Rewards Group Berry Project 2007 or just 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.

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 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 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. Entities 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 is the entities who are more specifically identified in the Ruling part of this Product Ruling (refer to paragraph 55) and who enter into the scheme specified below during the period from 1 July 2007 to 29 February 2008 and execute a Sub-Lease and a Management Agreement on or before 29 February 2008. 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:

- are accepted to participate in the Project prior to 1 July 2007 or after 29 February 2008;
- intend to terminate their involvement in the scheme prior to its completion or who otherwise do not intend to derive assessable income from it;
- have their application conditionally accepted by Rewards Projects Limited subject to finance for the payment of the Initial Fee, where the finance has not been approved by the lender by 29 February 2008 or the finance has been approved and the funds have not been made available to Rewards Projects Limited by 15 March 2008; or
- enter into finance arrangements with Rewards Projects Limited or entities associated with Rewards Projects Limited other than the arrangements described at paragraphs 48 to 53 of this Ruling.

## 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

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12. This Ruling applies prospectively from 18 October 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**

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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**

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

- Application for Product Ruling as constituted by the following documents plus additional correspondence including emails dated 18 July 2006, 25 July 2006, 26 July 2006, 27 July 2006, 7 August 2006, 8 August 2006, 15 August 2006, 22 August 2006, 1 September 2006, 4 September 2006, 5 September 2006, 7 September 2006, 8 September 2006, 18 September 2006, 19 September 2006 and 20 September 2006;
- Draft Product Disclosure Statement for the Rewards Group Berry Project 2007, received 8 September 2006;
- Draft Constitution of the Rewards Group Berry Project 2007 between Rewards Projects Limited (Responsible Entity) and the Grower, received 19 July 2006;
- Draft **Management Agreement** for the Rewards Group Berry Project 2007 between the Responsible Entity and the Grower, received 8 September 2006;
- Draft Head Lease for the Rewards Group Berry Project 2007 between the Owner and the Responsible Entity, received on 19 July 2006;
- Draft **Sub-Lease** for the Rewards Group Berry Project 2007 between the Responsible Entity (as 'Sub-Lessor') and the Grower, received 15 June 2006;
- Draft Compliance Plan for the Rewards Group Berry Project 2007, received 19 July 2006;

- Draft Operations Agreement for the Rewards Group Berry Project 2007 between the Responsible Entity and Rewards Management Pty Limited (as 'Manager'), received 19 July 2006;
- Independent Experts Report dated 21 May 2006, received 15 June 2006;
- Draft Heads of Agreement Fruit Marketing Services (2007 Groves), received 24 August 2006;
- Draft Strawberry Project 2007 Independent Market Report, dated May 2006, received 18 July 2006;
- Draft Management Plan for the Strawberry Project 2007, received 18 July 2006;
- Draft Grower Licence Agreement between the owner of the Driscoll Plants and the Responsible Entity, received 16 August 2006;
- Draft **Grower Sub-Licence Agreement** between the Responsible Entity and the Grower, received 22 August 2006; and
- Draft Finance Package including Finance Application Form, **Debit Service Agreement** and **Finance Agreement**, received 22 August 2006.

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

18. The documents highlighted (in bold) are those that the Growers may enter into. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or an associate of the Grower will be a party to that are part of the scheme to which this Ruling applies.

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

**Overview**

20. This scheme is called the Rewards Group Berry Project 2007. The main features are as follows:

Location	Near Wamuran in the Shire of Caboolture, South East Queensland, 40 km north of Brisbane
Type of business each participant will be carrying on	Commercial growing and cultivation of Strawberry plants
Number of hectares offered for cultivation	50 hectares
Size of each Grove	0.05 hectares
Minimum allocation per Grower	1 Grove
Minimum subscription	150 Groves
The term of the Project	10 years
Initial minimum cost	\$9,680
Ongoing costs	<ul style="list-style-type: none"> <li>• Management Services Fees (fixed component and harvest proceeds component)</li> <li>• Rent</li> <li>• Harvest costs</li> <li>• costs of sale</li> <li>• optional insurance</li> </ul>

21. The Project will be registered as a Managed Investment Scheme under the *Corporations Act 2001*. Rewards Projects Limited has been issued with Financial Services Licence Number 224000 and will be the Responsible Entity for the Project.

22. The Project involves the cultivation of strawberry plants and the harvest and sale of the strawberries. The strawberry plants will include Driscoll varieties (which are obtained under licence from the owner of the plants) and public varieties.

23. The Project will be conducted on land located near Caboolture in Queensland which is situated 40 kilometres north of Brisbane in the Caboolture Shire. The property is comprised of three separate titles described as Lot 29 and Lot 30 on Registered Plan 35972 and Lot 102 on Crown Plan C311307. Water for irrigation of the strawberry plants will be supplied from dams established on the property.

24. A Grower who participates in the Project will do so by acquiring an interest in the Project which will consist of a minimum of one Grove of 0.05 hectares in size. The Groves will be planted at the rate of approximately 50,000 plants per hectare. Rewards Projects Limited reserves the right to accept oversubscriptions where sufficient land is able to be sourced and is verified by the independent expert as being suitable.

25. An offer to participate in the Project will be made through a Product Disclosure Statement (PDS). The offer made under the PDS is for 50 hectares which corresponds to 1,000 Groves in the Project. The term of the Project is a minimum of 10 years. The Project will not commence if the minimum subscription of 150 Groves has not been reached by 28 February 2007.

26. Applicants execute a Power of Attorney contained in the PDS. The Power of Attorney irrevocably appoints the Responsible Entity to enter into, on behalf of the Grower, a Sub-Lease, a Management Agreement, a Grower Sub-Licence Agreement and any other agreements required to hold an interest in the Project.

27. For the purposes of this Ruling, Applicants who are accepted to participate in the Project during the period from 1 July 2007 to 29 February 2008 and who execute a Sub-Lease and a Management Agreement on or before 29 February 2008 will become '2008 Growers'. **This Ruling only applies to '2008 Growers'**. Note that Product Ruling PR 2006/141 may apply to Growers who are accepted into the Project during the period from 27 September 2006 to 28 February 2007 ('2007 Growers').

## **Constitution**

28. The Constitution for the Project sets out the terms and conditions under which the Responsible Entity agrees to act for the Growers in the Project. Growers are bound by the Constitution by virtue of their participation in the Project. The Responsible Entity will maintain a register of all Growers that are accepted to participate in the Project.

29. Under the terms of the Constitution, the Responsible Entity must deposit all application moneys received from Growers into a trust account established for this purpose. This account is referred to as a Subscription Fund. The application moneys will be released from this fund when the Responsible Entity is satisfied that certain specified criteria in the Constitution have been met (clauses 3.3 and 3.8 of the Constitution).

30. The proceeds from the sale of the Fruit will be paid into a Proceeds Fund established by the Responsible Entity. The Responsible Entity will deduct the Grower's share of harvest and sale costs and any other outstanding Project fees and amounts owing by the Grower before distributing the balance to the Grower (clause 11 of the Constitution).

31. In the event that a Grower's Grove(s) is destroyed or partially destroyed, the Grower's proceeds of the sale from the Fruit will be reduced in accordance with clause 18 of the Constitution.

32. The Responsible Entity will arrange insurance for the Grower's plants on receiving notification each year from the Grower (clause 19).

33. Under clause 20, the Responsible Entity may accept applications from two Joint Venturers that wish to conduct an unincorporated joint venture to participate in the Project. Under the joint venture, the First Joint Venturer is entitled to a 34% share and the Second Joint Venturer is entitled to a 66% share of the proceeds of selling the Fruit.

### **Compliance Plan**

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

### **Grower Licence Agreement and Grower Sub-Licence Agreement**

35. Under the Grower Licence Agreement between the owner of the Driscoll Plants and the Responsible Entity, the owner grants the Responsible Entity the right to use the Driscoll Plants to produce and harvest Fruit.

36. Under the Grower Sub-Licence Agreement between the Responsible Entity and the Grower, the Responsible Entity sub-licences to the Grower the right to use the Driscoll Plants to produce and harvest Fruit.

### **Lease and Sub-Lease**

37. Under the Head Lease, the Responsible Entity will lease the Project land from the Owner of the land for a period of 10 years. The land is located in Wamuran in the Shire of Caboolture in Queensland. The property is comprised of three separate titles totalling 70.74 hectares. The Responsible Entity as Sub-Lessor, sub-leases the 0.05 hectare portions of this land ('Groves') to the Growers by entering into Sub-Lease agreements.

38. Under the terms of the Sub-Lease, the Sub-Lessor will give the Grower quiet possession of the Groves and pay all rates, taxes and other charges in respect of the land. The Sub-Lessor will also install (or procure the Owner to install) suitable irrigation systems on the Strawberry Plantation on or before 31 March 2008 (clause 5 of the Sub-Lease).

39. Growers are entitled to the Fruit derived from the plants on their Groves (clause 2.2 of the Sub-Lease and clause 1.2 of the Grower Sub-Licence Agreement).

40. As consideration for granting of the Sub-Lease, the Grower shall pay Rent to the Sub-Lessor for the term of the lease as set out in the Schedule to the Sub-Lease.

## **Management Agreement**

41. Under the Management Agreement, the Grower engages the Responsible Entity as an independent contractor and farm manager to carry out or cause to be carried out, the Management Services in accordance with sound agricultural practices adopted within the agricultural industry and in accordance with the Management Plan. The Responsible Entity will enter into the Operations Agreement to appoint Rewards Management Pty Limited (the 'Manager') to carry out its obligations to the Grower under the Management Agreement. The Management Services are comprised of the Initial Services (including Landcare Services) and the Ongoing Services.

42. The Initial Services will be undertaken and completed during the Initial Period which is the period from the date of the Management Agreement to 30 June 2008. These services are listed in Annexure A of the Management Agreement.

43. The Ongoing Services that will be provided from the end of the Initial Period and throughout the balance of the Term on an annual basis are listed in Annexure B of the Management Agreement. These include removing the strawberry plants after each Harvest Period, preparing the soil and planting new plants.

## ***Harvesting and sale***

44. A Grower will appoint the Responsible Entity to arrange for each Harvest to take place as and when deemed appropriate with the aim of producing the best overall result for the Grower (clause 6 of Management Agreement). The Grower will appoint the Responsible Entity to negotiate the sale of the harvested Fruit and the Responsible Entity will use its best endeavours to negotiate the sale of Fruit for the highest price practicable (clause 7 of the Management Agreement).

45. The Responsible Entity will negotiate the sale of the Fruit from each Harvest of the same Plantation. Public and Driscoll varieties will be pooled separately. A Grower's share of the proceeds from sale of the Fruit is based on the number of Groves held by the Grower, excluding any Groves held by the Grower that fail to produce Fruit.

**Fees**

46. The Initial Fee payable to the Responsible Entity on application is \$9,680 **per Grove**. This fee consists of:

- **Management Services Fee** of \$7,970 for Initial Services to be performed during the Initial Period (item 2 of the Schedule to the Management Agreement);
- **Landcare Services Fee** of \$1,650 for Landcare Services to be performed during the Initial Period (item 2 of the Schedule to the Management Agreement); and
- **Rent** of \$60 for the period from the Sub-Lease Commencement Date to 30 June 2008 (item 4 of the Schedule to the Sub-Lease).

47. The ongoing fees **per Grove** are:

Annual **Management Services Fees** (fixed component):

- \$2,948 for Ongoing Services to be performed from 1 July 2008 to 30 June 2009, payable on or before 1 October 2008;
- \$2,786.42 for Ongoing Services to be performed from 1 July 2009 to 30 June 2010, payable on or before 1 October 2009; and
- \$2,786.42 indexed at 2.8% per annum, for each financial year commencing from 1 July 2010, payable on or before 1 October of the relevant year, until the end of the Project (Item 2 of the Schedule to the Management Agreement).

Annual **Management Services Fees** (harvest proceeds component):

- 11% of the Grower's share of the sale proceeds of each harvest after deducting the Harvest costs and the costs of sale payable annually within one month of the end of the Harvest Period (Item 4 of the Schedule to Management Agreement).

Annual **Rent per Grove** of:

- \$248.78 for the period 1 July 2008 to 30 June 2009, payable on or before 1 October 2008; and
- an amount equal to the rent for the previous income year increased by 2.8% per annum, for each financial year commencing from 1 July 2009, payable on or before 1 October of the relevant year, until the end of the Project (Item 4 of the Schedule to the Sub-Lease).

## Other Fees per Grove:

- **Harvest costs**, being the Grower's share of all costs of and incidental to the harvest, payable out of the Grower's share of the proceeds of sale of the relevant harvest (clause 6.2 of Management Agreement and clause 11.1 of the Constitution);
- **Costs of sale**, being the Grower's Share of all costs of and incidental to the sale of the Fruit harvested including any Royalties and Sale Commissions, payable out of the Grower's share of the proceeds of sale of the relevant harvest (clause 7.4 of Management Agreement and clause 11.1 of the Constitution); and
- **Optional plant insurance costs** for the period after 30 June 2008. The Responsible Entity will be responsible for the cost of public risk insurance for the Term of the Project and will pay for plant insurance from the date of the Management Agreement to 30 June 2008.

## Joint venture:

- the First Joint Venturer will pay the Initial Fee of \$9,680 per Grove;
- the Second Joint Venturer will pay the annual Management Services Fees (fixed component), annual Rent, insurance costs if applicable; and
- both Joint Venturers will pay the Management Services Fees (harvest proceeds component), Harvest costs, costs of sale, and any other amounts that are due to the Responsible Entity pursuant to the terms of the Constitution, Sub-Lease or Management Agreement. The First Joint Venturer will pay 34% and the Second Joint Venturer will pay 66% of these costs.

## Finance

48. Growers can fund their investment in the Project themselves, enter into a 12 Month Terms Option with the Responsible Entity, borrow from the Responsible Entity or the Nominated Financier or borrow from an independent lender.

49. A Grower choosing to pay the Initial Fee of \$9,680 per Grove by entering into a Terms Option or loan arrangement with the Responsible Entity or a loan arrangement with the Nominated Financier, must complete the Finance Application which includes a Debit Service Agreement and a Finance Agreement. The Agreements will be executed by the Responsible Entity. All arrangements will be on a full recourse basis and recovery action will be taken in respect of any default.

50. Growers who enter into a Terms Option or Finance Agreement are required to pay a deposit of at least 10% of the Initial Fee (\$968 per Grove) on application. In addition, an Application Fee of 1% of the Finance Application Amount, subject to a minimum of \$100 and a maximum of \$500 is payable to the Provider on the first drawdown date which is 31 March 2008. Except for the Terms Option, the Interest Rate is fixed at 10.95% per annum.

51. The balance (Finance Application Amount) after the 10% deposit is repayable under the following payment options:

**12 Month Terms Option:**

- 12 monthly repayments of \$726.00.

**Finance from Rewards Projects Limited:**

- 5 years principal and interest – 60 monthly payments of \$189.20.

**Finance from the Nominated Financier:**

- 2 years principal and interest – 24 monthly payments of \$405.85;
- 5 years principal and interest – 60 monthly payments of \$189.20;
- 8 years principal and interest – 96 monthly payments of \$136.62; and
- 2 years interest only followed by 6 years principal and interest – 24 monthly payments of \$79.50 followed by 72 monthly payments of \$165.60.

52. The instalments are paid monthly in arrears commencing on the last business day of March following the acceptance of the Grower's application (31 March 2008).

53. The payment of the Instalment Amounts under the above arrangements are secured by a first ranking mortgage or charge over the Grower's right, title and interest in the Project.

54. This Ruling does not apply if any finance arrangements 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 other than Rewards Projects Limited and the Nominated Financier are involved or become involved, in the provision of finance for the Project.

## Ruling

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### Application of this Ruling

55. This Ruling applies only to Growers who:
- are accepted to participate in the Project during the period from 1 July 2007 to 29 February 2008;
  - have executed a Sub-Lease and a Management Agreement on or before 29 February 2008; and
  - have paid the Initial Fee or entered into a Terms Option or have had finance approved by 29 February 2008 and the funds are made available to the Responsible Entity by 15 March 2008.
56. The Grower's participation in the Project must constitute the carrying on of a business of primary production.

### Minimum subscription

57. 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 Product Disclosure Statement, a Grower's application will not be accepted and the project will not proceed until the minimum subscription of 150 interests is achieved.

**The Simplified Tax System (STS)*****Division 328***

58. To be an 'STS taxpayer', a Grower must be eligible to be an 'STS taxpayer' and must have elected to 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*.

59. 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***

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

**Assessable income*****Section 6-5***

61. 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.

62. In the case of Joint Venture Growers, the First Joint Venturer will be assessable on 34% of the gross sale proceeds and the Second Joint Venturer will be assessable on 66% of the gross sale proceeds (less any GST payable on those proceeds).

63. The Grower recognises ordinary income from carrying on the business of cultivation of strawberry plants at the time that income is derived.

**Deduction for the Management Services Fees, Rent, Credit Card Merchant Fee, Harvest and Sales costs, Interest and Borrowing Expenses**

**Section 8-1 and section 25-25**

64. A Grower may claim tax deductions for the following fees and expenses on a per Grove basis, as set out in the Table below.

<b>Fee Type</b>	<b>ITAA 1997 Section</b>	<b>2008 Income Year</b>	<b>2009 Income Year</b>	<b>2010 Income Year</b>
<b>Management Services Fee (Initial Services)</b>	8-1	\$7,970 see Notes (i) and (ii)		
<b>Management Services Fees (Ongoing Services – fixed component)</b>	8-1		\$2,948 See Notes (i), (ii) and (v)	\$2,786.42 See Notes (i), (ii) and (v)
<b>Management Services Fees (Ongoing Services - harvest proceeds component)</b>	8-1		Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
<b>Rent</b>	8-1	\$60 See Notes (i), (ii) and (v)	\$248.78 See Notes (i), (ii) and (v)	\$255.74 See Notes (i), (ii) and (v)
<b>Credit Card Merchant Fee</b>	8-1	As incurred – See Notes (i) and (iii)		
<b>Harvest Costs</b>	8-1		Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
<b>Costs of Sale</b>	8-1		Amount incurred See Notes (i), (ii) and (v)	Amount incurred See Notes (i), (ii) and (v)
<b>Interest</b>	8-1	As incurred – See Notes (iv) and (v)	As incurred – See Notes (iv) and (v)	As incurred – See Notes (iv) and (v)
<b>Borrowing Expenses</b>	25-25	See Note (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): Division 27.
- (ii) The Management Services Fees, Rent, Harvest costs and costs of sale are deductible under section 8-1 in the income year that the relevant fee is incurred.
- (iii) Growers who use their credit card to pay the fees for this Project will incur a merchant fee for the use of their credit card. This fee will be deductible under section 8-1.
- (iv) Interest payable to Rewards Project Limited or the Nominated Financier under the finance arrangements described at paragraph 51 of this Ruling is deductible in the income year in which it is incurred. The deductibility of interest incurred under any other finance arrangements (including finance arrangements entered into with financiers other than Rewards Projects Limited or the Nominated Financier) is outside the scope of this Ruling.
- (v) This Ruling does not apply to Growers who choose to prepay fees or rent or who choose to, or are required to prepay interest under a finance arrangement. 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.
- (vi) The Application Fee of 1% (and stamp duty, if applicable) relating to the finance arrangements is a borrowing cost and is deductible under section 25-25. It is incurred for borrowing funds that are to be used during the income year solely for income producing purposes. Borrowing expenses of \$100 or less are deductible in the year in which they are incurred. If the borrowing expenses are greater than \$100, the deduction is spread over the period of the loan or 5 years, whichever is the shorter. The deductibility or otherwise of borrowing expenses arising from finance arrangements other than the finance arrangements described at paragraph 51 of this Ruling with Rewards Projects Limited or the Nominated Financier is outside the scope of this Ruling.

*Joint Venture Growers*

65. A Joint Venture Grower may claim the following deductions per Grove as described in the above Table and accompanying notes:

- the First Joint Venturer may claim the Management Services Fee for Initial Services, the Rent for the 2008 income year, and if applicable the Credit Card Merchant Fee, interest and borrowing expenses;
- the Second Joint Venturer may claim the Management Services Fee for Ongoing Services (fixed component), Rent for the 2009 income year onwards and if applicable the Credit Card Merchant Fee; and
- both Joint Venturers may claim a deduction for the Management Services Fees (harvest proceeds component), Harvest costs and cost of sale. The First Joint Venturer may claim a deduction for 34% of these costs and the Second Joint Venturer may claim a deduction for 66% of these costs.

**Deductions for capital expenditure*****Division 40***

66. Growers will also be entitled to tax deductions for the Landcare Services Fee and the Application Fee for the 12 Month Terms Option. The deductions are shown (on a per Grove basis) in the following Table and accompanying notes:

<b>Fee type</b>	<b>ITAA 1997 Section</b>	<b>2008 Income Year</b>	<b>2009 Income Year</b>	<b>2010 Income Year</b>
<b>Landcare Services Fee</b>	40-630	\$1,650 See Notes (i) & (vii)	Nil	Nil
<b>Application Fee (12 Month Terms Option)</b>	40-880	Must be calculated See Note (viii)	Must be calculated See Note (viii)	Must be calculated See Note (viii)

**Notes:**

- (vii) Any capital expenditure incurred for a 'landcare operation' (as defined in section 40-635) is deductible in the year in which it is incurred under Subdivision 40-G, section 40-630.
- (viii) Under section 40-880 the Application Fee for the Terms Option is deductible on a straight line basis over five income years.

*Joint Venture Growers*

67. The First Joint Venturer is entitled to claim the deduction for the Landcare Services Fee (included in the Initial Fee) and the Application Fee for the Terms Option (if applicable).

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

68. A Grower who is an individual accepted into the Project in the period from 1 July 2007 to on or before 29 February 2008, 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 **2008 income year**. This conditional exercise of the discretion will allow the loss in the 2008 income year to be offset against the Grower’s other assessable income in that income year.

**Section 82KL and Part IVA**

69. For a Grower who participates in the Project and incurs expenditure as required by the Sub-Lease and the 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.

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**Commissioner of Taxation**18 October 2006

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## Appendix 1 – Explanation

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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?**

70. For the amounts set out in the Ruling above to constitute allowable deductions, the Grower's horticultural activities as a participant in the Rewards Group Berry Project 2007 must amount to the carrying on of a business of primary production. These horticultural activities will fall within the definitions of 'horticulture' and 'commercial horticulture' in section 40-535.

71. For schemes such as that of the Rewards Group Berry Project 2007, 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.

72. 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 by licence) in the land on which the Grower's strawberry plants are established;
- the Grower has a right to harvest and sell the strawberries each year from those plants;
- 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.

73. In this Project, each Grower enters into a Sub-Lease, a Management Agreement and a Grower Sub-Licence Agreement.

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

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

76. The Grower engages the Responsible Entity to maintain the strawberry plants on the Grove according to the principles of sound horticultural practice, which includes irrigation, fertilisation, weed control and pruning. The Responsible Entity is also engaged to harvest and sell, on the Grower's behalf, the Fruit grown on the Grower's Grove.

77. 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.

78. 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 its strawberries 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.

79. The pooling of strawberries grown on the Grower's Grove with the strawberries of other Growers is consistent with general horticultural practices. Each Grower's proportionate share of the sale proceeds of the pooled strawberries will reflect the proportion of the strawberries contributed from their Grove.

80. The Responsible Entity's services on the Grower's behalf are also consistent with general horticultural practices. The assets are of the type ordinarily used in carrying on a business of horticulture. While the size of a Grove is relatively small, it is of a size and scale to allow it to be commercially viable.

81. The Grower's degree of control over the Responsible Entity as evidenced by the 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 Grove 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 in cases of default or neglect.

82. The horticultural 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' horticultural activities in the Rewards Group Berry Project 2007 will constitute the carrying on of a business.

## **The Simplified Tax System**

### ***Division 328***

83. 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.

84. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

## **Deductibility of Management Services Fees, Rent, Harvest costs and cost of sale**

### ***Section 8-1***

85. Consideration of whether the Management Services Fees, Rent and other costs 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.

86. The Management Services Fees, Rent and other costs associated with the horticultural activities will relate to the gaining of income from the Grower's business of horticulture, and hence have a sufficient connection to the operations by which income (from the regular sale of Fruit) 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 fees appear to be reasonable. There is no capital component of the Management Services Fees, Rent and other costs. The expenditure incurred, in the circumstances of this Project, to acquire the rights to and plant the Strawberry Plants is revenue in nature. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

**Credit Card Merchant Fee****Section 8-1**

87. Some Growers in this Project may choose to pay all or part of their fees for the Project by credit card. In doing so, they will incur a merchant fee charge. Whether the resulting fee is deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of the Management Services Fees and Rent.

88. The merchant fee has been incurred in the gaining or producing of the Growers assessable income from the Project. It is not capital in nature and will be deductible on the same basis that the Management Services Fees and Rent are deductible.

**Interest deductibility****Section 8-1**

*(i) Growers who enter into finance arrangements with Rewards Projects Limited or the Nominated Financier*

89. Some Growers may finance their participation in the Project with finance arrangements with Rewards Projects Limited or the Nominated Financier as described in paragraph 51 of this Ruling. 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 Services Fees and Rent.

90. The interest incurred in the 2008 income year and subsequent years of income will be in respect of financing the grower's business operations that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.

*(ii) Growers who enter into other finance arrangements*

91. The deductibility of interest incurred by Growers who finance their participation in the Project through a finance arrangement other than the finance arrangements described at paragraph 51 of this Ruling with Rewards Projects Limited or the Nominated 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.

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

92. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 (sections 82KZL to 82KZMF) 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.

***Application of the prepayment provisions to this Project***

93. Under the scheme to which this Product Ruling applies, the Management Services Fees, Rent, Harvest and sale costs and interest are incurred in the same income year that the services for these costs are provided. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to this scheme.

***Growers who choose to pay fees or interest for a period in excess of that required by the Project's agreements***

94. Although not required under either the Management Agreement or the Sub-Lease, a Grower participating in the Project may choose to prepay fees for a period beyond the 'expenditure year'. Similarly, Growers who use financiers may either choose or be required to, prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 93 of this Ruling, section 82KZMF of the ITAA 1936 will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

95. For these Growers, the amount and timing of deductions for any relevant prepaid Management Services Fees, prepaid Rent, or prepaid interest will depend upon when the respective amounts are incurred and what the eligible service period is in relation to these amounts. The prepayment provisions will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not.

96. As noted in the Ruling section (at paragraph 64, Note (v)) of this Ruling, Growers who prepay fees or interest are not covered by this Product Ruling and may instead request a private ruling on the tax consequences of their participation in the Project.

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

97. 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, the Landcare Services Fee and the Application Fee for the Terms Option are of a capital nature. This expenditure falls for consideration under Division 40.

***Landcare Services Fee******Section 40-630***

98. Under section 40-630, any capital expenditure incurred for 'landcare operations' (as defined in section 40-635) is fully deductible in the year it is incurred. Accordingly the expenditure incurred on drainage works and the installation of measures to prevent soil erosion is deductible in the 2008 income year.

***Application Fee under the Terms Option******Section 40-880***

99. Growers who elect to pay the Initial Fee under the Terms Option must pay an Application Fee of 1% of the Initial Fee (subject to a minimum of \$100 and a maximum of \$500). This expenditure does not constitute a borrowing expense and is therefore not deductible under section 25-25. As it is capital in nature, it is also not deductible under section 8-1.

100. However, section 40-880 will allow the Application Fee to be deducted on a straight line basis over five income years. Section 40-880 applies to capital expenditure that is incurred in relation to a business and which is not taken into account elsewhere or denied deductibility under another provision of income tax law.

**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 the 2008 income year, 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 2008 income year:

- 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 horticultural 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 – recouped expenditure**

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 – general tax avoidance provisions**

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 Rewards Group Berry Project 2007 will be a scheme commencing with the issue of the Product Disclosure Statement. A Grower will obtain a tax benefit from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 64 to 67 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 their Fruit. 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:

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 97/11; TR 98/22; TR 2000/8;  
TR 2001/14, PR 2006/141

*Subject references:*

- borrowing expenses
- carrying on a business
- commencement of business
- fee expenses
- interest expenses
- management fees
- non-commercial losses
- producing assessable income
- product rulings
- public rulings
- tax avoidance
- tax benefits under tax avoidance schemes
- taxation administration

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
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- ITAA 1997 Div 40
- ITAA 1997 Subdiv 40-G
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