



PR 2007/62 - Income tax: Great Southern Plantations 2007 Project - Post 30 June Growers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *20 June 2007*



Product Ruling

Income tax: Great Southern Plantations 2007 Project – Post 30 June Growers

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	9
Ruling	18
Scheme	28
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	81
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.

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. 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.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. In this Product Ruling this scheme is referred to as the Great Southern Plantations 2007 Project or simply as 'the Project'.

Class of entities

2. This part of the Product Ruling specifies which entities can rely on the tax benefits set out in the Ruling section of this Product Ruling and which entities cannot rely on those tax benefits. In this Product Ruling, those entities that can rely on the tax benefits set out in this Ruling are referred to as Growers or Post 30 June Growers.

3. The class of entities who can rely on those tax benefits consists of entities that are accepted to participate in the scheme specified below on or after 1 July 2007 and on or before 31 March 2008, and which execute the Land and Management Agreement (LMA) on or before 30 April 2008. They must 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.

4. The class of entities who can rely on the tax benefits set out in the Ruling section of this Product Ruling does **not** include entities who:

- intend to terminate their involvement in the scheme prior to its completion, or who otherwise do not intend to derive assessable income from it;
- elect to market their own produce;
- are accepted into this Project before 1 July 2007 or after 31 March 2008;
- participate in the scheme through offers made other than through the Product Disclosure Statement;
- enter into finance arrangements with Great Southern Finance Pty Ltd (the Financier) that do not comply with the written assurance given to the Tax Office by the Responsible Entity, Great Southern Managers Australia Limited (GSMAL), dated 25 January 2007; or
- enter into finance arrangements with the Financier or ABL Nominees Pty Ltd (the Preferred Financier) other than those specified in paragraphs 73 to 77 of this Ruling.

Superannuation Industry (Supervision) Act 1993

5. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Tax Office gives no assurance that the product is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this product may contravene the provisions of SISA 1993.

Qualifications

6. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 28 to 80 of this Ruling.

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

- this Product 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 Product Ruling may be withdrawn or modified.

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Date of effect

9. This Product Ruling applies prospectively from 1 July 2007. It applies to the specified class of entities that enter into the scheme during the period from 1 July 2007 to on or before 31 March 2008. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities up to 30 June 2009.

10. However the Product Ruling only applies to the extent that:

- there is no change in the scheme or in the entity's involvement in the scheme;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. 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)).

12. 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.

13. 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).

Changes in the law

14. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

15. Entities who are considering participating in the scheme 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

16. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes 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 Product Ruling is issued.

Goods and Services Tax

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

Ruling

Application of this Ruling

18. Subject to the stated qualifications, this part of the Product Ruling sets out in detail the taxation obligations and benefits for a Grower in the defined class of entities who enters into the scheme described at paragraphs 28 to 80 of this Ruling.

19. The Grower's participation in the Project must constitute the carrying on of a business of primary production. Provided the Project is carried out as described below, the Grower's business of primary production will commence at the time of execution of their LMA.

20. 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

21. 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 was an 'STS taxpayer' prior to 1 July 2005 and 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*.

22. 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

23. 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**Sections 6-5 and 17-5**

24. 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.

Deduction for Establishment Services fee, insurance premiums, interest and borrowing expenses**Section 8-1, section 25-25 and Division 27 of the ITAA 1997 and section 82KZMG of the Income Tax Assessment Act 1936**

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

Fee Type	Year ended 30 June 2008	Year ended 30 June 2009
Fee for Establishment Services or discounted fee for Establishment Services	\$3,300 or \$2,970 See Notes (i) & (ii)	Nil
Insurance premiums	Nil	As incurred See Note (i)
Interest on loans with the Financier or the Preferred Financier	As incurred See Note (iii)	As incurred See Note (iii)
Loan establishment fee	Must be calculated – See Note (iv)	Must be calculated – See Note (iv)

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) Under section 82KZMG of the *Income Tax Assessment Act 1936* (ITAA 1936) the fee for Establishment Services is expenditure for 'seasonally dependent agronomic activities' (see paragraphs 97 to 99 of this Ruling) and is deductible in the income year in which it is incurred. Accordingly, an amount of \$3,300 is deductible in the year ended 30 June 2008 or, in the case of Growers who initially invested in any of the Great Southern Plantations 1995, 1996 and 1997 Projects, and who have retained their interests in one or more of those Projects, an amount of \$2,970 is deductible in the year ended 30 June 2008.

- (iii) The deductibility or otherwise of interest arising from agreements entered into with financiers other than the Financier or the Preferred Financier is outside the scope of this Ruling. Prepayments of interest to any lender, including the Financier or the Preferred Financier, are also not covered by this Product Ruling. Growers who enter into agreements with other financiers and/or prepay interest may request a private ruling on the deductibility of the interest incurred.
- (iv) The loan establishment fee payable to either the Financier 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 expenses arising from loan agreements entered into with financiers other than the Financier or the Preferred Financier is outside the scope of this Ruling.

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

Section 35-55 – exercise of Commissioner’s discretion

26. A Grower who is an individual accepted into the Project on or after 1 July 2007 and on or before 31 March 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 below, the Commissioner will exercise the discretion in paragraph 35-55(1)(b) for Growers for the income years ending **30 June 2008 to 30 June 2018**. 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.

Prepayment provisions and anti-avoidance provisions

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

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

- expenditure by a Grower does not fall within the scope of sections 82KZME and 82KZMF;
- section 82KL does not apply to deny the deductions otherwise allowable; and

- the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

Scheme

28. The scheme that is the subject of this Ruling is identified and described in the following documents:

- Application for a Product Ruling as constituted by documents received on 29 November 2006 and additional correspondence from the applicant received on 29 January 2007, 20 February 2007, 7 March 2007, 8 March 2007, 9 March 2007 and 19 March 2007;
- Draft Product Disclosure Statement for the Great Southern Plantations 2007 Project and the Great Southern Plantations 2008 Project (PDS), undated, to be issued by GSMAL, received on 29 November 2006, 20 February 2007, 8 March 2007 and 19 March 2007;
- Draft **Constitution** of the Great Southern Plantations 2007 Project, received on 29 November 2006 and 29 January 2007;
- **Deed of Variation** varying scheme constitution for the Great Southern Plantations 2007 Project, received on 7 March 2007;
- Draft Compliance Plan for the Great Southern Plantations 2007 Project, received on 29 November 2006;
- Draft **Land and Management Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006 and 29 January 2007;
- Draft **Standard Terms for Land and Management Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006 and 29 January 2007;
- Draft **Lease** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006;
- Draft **Standard Terms for Lease** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006 and 29 January 2007;

- Draft **Forest Right Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006;
- Draft **Standard Terms for Forest Right Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006 and 29 January 2007;
- Draft **Forest Right Lease Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006;
- Draft **Standard Terms for Forest Right Lease Agreement** between GSMAL (as both the Landholder and Responsible Entity) and each Grower, received on 29 November 2006 and 29 January 2007;
- Draft Lease between GSMAL (as the Lessee) and Great Southern Property Holdings Limited as trustee for the Great Southern Property Trust No. 2 (GSPHL) (as the Lessor), received on 29 January 2007;
- Draft Plantation Management Agreement between GSMAL and Great Southern Limited (GSL), received on 29 November 2006;
- Draft Management Services Agreement between GSMAL and GSL, received on 29 November 2006;
- Draft Marketing Services Agreement between GSMAL and Great Southern Securities Pty Limited, received on 29 November 2006; and
- Draft Application for Term Finance, which includes the **Loan Deed** between the Financier or the Preferred Financier (as the Lender) and the Grower (as the Borrower), received on 29 January 2007 and 8 March 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.

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

30. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

31. Following is a summary of the scheme:

Location	Any area of Australia deemed suitable for the commercial growing of Hardwoods
Type of business to be carried on by each Grower	Commercial growing of Hardwood species for the production of short fibre hardwood woodchips for use in the paper industry
Term of the Project	Approximately 12 years
Number of hectares offered for cultivation	5,000 hectares Oversubscriptions may be accepted
Size of each interest (Woodlot)	0.5 hectares on the Tiwi Islands in the Northern Territory or 0.33 hectares in all other areas
Minimum allocation per Grower	1 Woodlot
Minimum subscription	None
Number of trees per hectare	Average of 1,000
Initial cost per Woodlot	\$2,970 or \$3,300
Other costs	<ul style="list-style-type: none"> • ongoing management fee of 3.3% of Net Proceeds of Sale • rent/lease fee of 2.75% of Net Proceeds of Sale • insurance premiums • costs of chipping • costs of felling, and • costs of sale

32. The Project will be a registered managed investment scheme under the *Corporations Act 2001*. GSMAL has been issued with Australian Financial Service Licence Number 240787 and will be the Responsible Entity for the Project.

33. An offer to participate in the Project will be made through the PDS. The offer under the PDS is for 5,000 hectares which corresponds to approximately 15,000 Woodlots in the Project, although GSMAL has the right to accept oversubscriptions. There is no minimum amount that must be raised under the PDS.

34. To participate in the Project, Applicants must complete the Application Form attached to the PDS and lodge the completed Application Form together with the relevant Application Moneys on or before 31 March 2008. By signing the Application Form, Applicants are agreeing to appoint GSMAL as their Power of Attorney. Under the Power of Attorney, GSMAL will execute a LMA and either a Lease, Forest Right Agreement or Forest Right Lease Agreement (a Land Interest) on behalf of Applicants who are accepted to participate in the Project as Growers.

35. Applicants who are accepted to participate in the Project during the period from on or after 1 July 2007 to on or before 31 March 2008 and who execute the LMA on or before 30 April 2008 will commence participation as a Post 30 June Grower. **This Ruling only applies in respect of Post 30 June Growers. Note that a separate Product Ruling PR 2007/27 has issued for Growers accepted into the Project from 28 March 2007 to on or before 30 June 2007.**

36. A Grower that participates in the Project will do so by acquiring an interest in the Project which will consist of a minimum of 1 Woodlot. Each Woodlot located on the Tiwi Islands in the Northern Territory will comprise of an area of approximately 0.50 hectares in size, and each Woodlot not located on the Tiwi Islands in the Northern Territory will comprise of an area of approximately 0.33 hectares in size.

37. The majority of the land on which a Grower will be growing Hardwoods (the 'Project Land') has been, or will be, purchased by GSPHL, a wholly owned subsidiary of GSMAL. GSPHL (or any other entity of GSMAL's parent company, GSL, (Related Entity)), may lease, or may be granted other similar interests in land under relevant State or Territory laws which are sufficient for the purposes of carrying on the Project, from third parties. GSMAL will lease the land, or be granted other similar interests in land under relevant State or Territory laws which are sufficient for the purposes of carrying on the Project, from GSPHL or the other Related Entity. The Project Land must meet the requirements set out by the Independent Forester in the PDS.

38. Under the relevant Land Interest, GSMAL will grant each Grower a 'sub-lease' or other similar interest in land under relevant State or Territory laws to use and occupy one or more Woodlots together with all improvements thereon for the Term of the Project.

39. Growers will enter into the LMA with GSMAL to engage GSMAL to cultivate, develop, manage and maintain the Woodlots for the purpose of eventual felling and sale in approximately 9 to 13 years. Unless the Grower elects to take possession of their Collectable Produce, GSMAL will also be responsible for marketing and selling all of the Grower's Forest Produce.

Constitution

40. The Constitution establishes the Project and operates as a deed binding all Growers and GSMAL, as 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. Upon acceptance into the Project, Growers are bound by the Constitution by virtue of their participation in the Project.

41. All Application Moneys payable by Applicants shall be delivered directly to the Responsible Entity. The Responsible Entity will deposit those moneys in the Application Fund and hold them as the bare trustee for the Applicants (clause 5.1). When an Applicant enters into a LMA which has been executed by all parties to the agreement the Application Money will be released from the Application Fund by the Responsible Entity into the Suspense Fund (clause 6.9). Once the Responsible Entity is reasonably satisfied that certain specified criteria in the Constitution have been met, the moneys in the Suspense Fund will be released and applied against the fees payable by the Grower (clauses 7 and 8).

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

- the appointment of the Responsible Entity as the Responsible Entity of the Project, the creation of the Application Fund and the Proceeds Fund, and the interests of Applicants and Growers in those Funds (clause 3);
- applications for a LMA and the absolute discretion of the Responsible Entity to refuse applications (clauses 4.2 and 4.3);
- the preparation and execution of the Agreements by the Responsible Entity (clause 6);
- the Grower's right to request withdrawal from the scheme and a refund if a Land Interest cannot be granted (clause 11);
- the Responsible Entity's powers of investment of the money standing in the Proceeds Fund (clause 12.1);
- the general functions, powers and duties of the Responsible Entity (clause 13);
- procedures relating to the making and responding of complaints (clause 14);
- the provision of Forester's Reports to Growers (clause 19);
- the assignment and transmission of a Grower's interests (clauses 21 and 23);
- the right of the Responsible Entity to be paid fees (clause 27);

- procedures for calling a meeting of Growers (clause 30);
- procedures relating to the collection of proceeds of sale, the Responsible Entity's entitlement to reimbursement of particular costs and expenses out of the Proceeds Fund, and the payment of Project expenses by the Responsible Entity (clause 31);
- procedures relating to distributions out of the Proceeds Fund (clause 32); and
- the termination of the Project (clause 36).

Compliance Plan

43. As required by the *Corporations Act 2001*, GSMAL has prepared a Compliance Plan. The purpose of the Compliance Plan is to ensure that GSMAL, as 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.

Head Land Interest

44. GSMAL will lease the Project Land under a 'Head Lease', or be granted other similar interests in the Project Land under relevant State or Territory laws which are sufficient for the purposes of carrying on the Project, from GSPHL or a Related Entity.

45. The 'Head Land Interests' set out the terms and conditions under which GSPHL or a Related Entity, as the Lessor or Grantor, will lease or grant the Project Land to GSMAL for the purpose of planting, tending and harvesting a plantation of Hardwoods for commercial production.

46. The Plantation Crop and Wood are and will remain the property of GSMAL, or any third parties to whom a 'sub-lease' or similar interest in the Project Land has been granted by GSMAL, and may be sold or otherwise dealt with by GSMAL or those third parties (clause 8(s)).

Land Interest

47. Within the period of 9 months commencing on and including the Commencement Date of the LMA, Growers will, pursuant to the terms of the LMA, be granted an interest in a Woodlot or Woodlots by GSMAL (as the Landholder) in the form of a lease, Forest Right or Forest Right Lease to use their Woodlot(s) for the purpose of conducting their long term commercial afforestation business (clause 2 of the LMA).

48. Growers with Woodlots situated in Western Australia, Victoria, South Australia or New South Wales will be granted a lease in the form of the Lease. Growers with Woodlots situated in Queensland will be granted a Forest Right in the form of the Forest Right Agreement, and Growers who are allotted Woodlots situated in Tasmania will be granted a Forest Right Lease in the form of the Forest Right Lease Agreement. Growers with Woodlots situated in any other State or Territory will be granted a similar interest in land in accordance with the relevant State/Territory laws. Where this Ruling uses the terms 'Lease' and 'Lessor' it is intended to also include the respective terms 'Forest Right' and 'Grantor' or similar terms used in a document granting any similar interest in land.

49. The Land Interest will have a Term commencing on its Commencement Date and ending on the date on which harvesting and removal of the Forest Produce from the Woodlot(s) is completed or the date on which the Project is terminated pursuant to the provisions of the Constitution, whichever is the earlier.

50. The Grower's obligations are set out in detail in clause 5 under which the Grower agrees to manage, cultivate and work the Woodlot(s) so as to maintain and develop the Woodlot(s) for the purpose of long term commercial silviculture in a proper and skilful manner and according to approved methods at all times during the Term. Pursuant to the LMA, the Responsible Entity agrees to observe and perform all of the obligations to be observed and performed by the Grower under the Land Interest, except for the payment of rent (clause 18.1 of the LMA).

51. The Grower will at all times have full right, title and interest in the Forest Produce and the right to have the Forest Produce sold for the benefit of the Grower (clause 11.3).

52. The Responsible Entity will use its reasonable endeavours to arrange insurance on behalf of the Growers annually so as to provide cover in respect of the interest and obligations of the Growers with one or more reputable insurers against destruction or damage to the Forest Produce on the Woodlot by fire and/or other usual risks (clause 12).

53. Among other things, the Land Interest also sets out details of the following:

- the rent payable by a Grower (clause 3);
- the events which may trigger default and early termination of the Land Interest by the Grower (clause 9);
- the covenants of the Landholder (clause 10); and
- the appointment of the Responsible Entity as the Grower's attorney (clause 13).

Land and Management Agreement

54. Each Grower appoints GSMAL for the Term of the Project to manage the Grower's business of the commercial growing of Hardwood species by performing the Establishment Services and the Services in a proper and efficient manner.

55. GSMAL will carry out the Establishment Services during the Establishment Period, being a period of 12 months from the Commencement Date (clauses 3.1 and 5.2). The Establishment Services are all commercial silvicultural activities to be carried out on the Woodlot to establish a Hardwood plantation according to good silvicultural and forestry practices. These services are specified in clause 1.1 and include:

- (a) ripping and mounding the Woodlot as necessary from the Commencement Date;
- (b) otherwise preparing the Woodlot for planting as necessary from the Commencement Date;
- (c) procurement of sufficient Hardwood seedlings or trees of appropriate size as is reasonably required to complete the Planting Services;
- (d) fertilising and spraying the Woodlot as necessary from the Commencement Date;
- (e) maintaining the Woodlot according to good silvicultural and forestry practices; and
- (f) the Planting Services.

56. GSMAL will commence the provision of the Services after the completion of the Establishment Services and shall continue to provide the Services until the Termination Date. The Services are all commercial silvicultural activities (excluding the Establishment Services) required to be carried out on the Woodlot to manage and maintain a Hardwood plantation according to good silvicultural and forestry practices. These services are specified in clause 1.1 and include, but are not limited to:

- (a) cultivating, tending, culling, fertilising, replanting, spraying and otherwise caring for the trees;
- (b) keeping in good repair and condition any access road or roads within the Plantation;
- (c) undertaking pest control measures as required to control rabbits and other vermin by fumigating and poisoning;
- (d) keeping in good repair and condition adequate fire-breaks;
- (e) obtaining a Report by 31 October in each year following the year in which trees are planted and then by 31 October in each year thereafter, to be furnished to Growers; and

- (f) organising and arranging for the trees to be clearfelled when they have reached maturity or have otherwise become marketable.

57. Among other things, the LMA also sets out details of the following:

- the duration of the Responsible Entity's term of appointment and the events which may trigger an early termination of the LMA (clauses 4 and 22);
- the rights of a Grower to the Forest Produce (clause 10);
- the remuneration payable to the Responsible Entity for the provision of Establishment Services and Services (clauses 12 and 13);
- the performance by the Responsible Entity of the Grower's covenants under the Land Interest (clause 18); and
- the appointment of the Responsible Entity as the Grower's attorney (clause 19).

Planting

58. GSMAL will be responsible for planting Hardwood seedlings on the Woodlots. The species to be planted will generally be *Eucalyptus globulus* for Woodlots located in Western Australia, South Australia and Victoria, *Eucalyptus dunnii*, *Eucalyptus grandis* or selected hybrids of *Eucalyptus camaldulensis* and *Eucalyptus grandis* hybrids for Woodlots located in Queensland and northern NSW, *Eucalyptus globulus* or *Eucalyptus nitens* in Tasmania and *Acacia mangium* for Woodlots located on the Tiwi Islands in the Northern Territory.

59. Other appropriate Hardwood species may also be established in locations where it is considered they will achieve the necessary yields and quality required for this Project, as well as meeting other appropriate silviculture and economic parameters. Therefore these species will have similar characteristics in regard to growth, colour and fibre pulp yield per Woodlot to the eucalyptus species referred to above and will be preferred species for pulp and paper manufacture. A sufficient number of trees will be planted which would reasonably be expected to meet the projected timber production.

60. As is the case with all other Establishment Services, GSMAL must complete the Planting Services within 12 months of the Grower's Commencement Date. GSMAL will then maintain the trees in accordance with good silvicultural practice and will furnish Reports prepared by either the Independent or Professional Forester to Growers regarding the progress of the trees.

Plantation Management Agreement

61. GSMAL engages GSL as a contractor for the Term of the Project to perform the Establishment Services and Services on the Project Land as specified in the Management Plans, in a proper and efficient manner and in accordance with good silvicultural and environmental practices adopted within the forestry industry.

Harvesting and sale

62. GSMAL must arrange for the harvesting of the Forest Produce. Harvesting is to take place within 12 months of the Forest Produce reaching harvest maturity (as reasonably determined by GSMAL and, in any event, not later than 13 years from the Commencement Date) unless GSMAL reasonably believes that it would be in the best interest of the Growers for harvesting to be deferred and the Growers resolve to do so by ordinary resolution (clause 7 of the LMA).

63. Growers may elect, within 6 years from the Commencement Date, to become an 'Electing Grower' and take their own Collectable Produce by giving written notice to GSMAL (clause 8.1 of the LMA). This Ruling does not apply to Electing Growers.

64. GSMAL must also use its best endeavours to arrange for the processing and sale of either all forest produce or woodchips (other than the Collectable Produce taken or to be taken by Electing Growers). The Grower will be deemed to have appointed GSMAL as the Grower's agent for the purpose of negotiating and making at the maximum practicable price available sales of its Forest Produce and Woodchips including entering into a sale agreement with a purchaser on such terms and conditions as GSMAL considers appropriate (clause 9.1 of the LMA).

65. GSMAL will ensure that the Gross Proceeds of Sale are paid into the Proceeds Fund. The Grower's Proportional Share of the Costs of Felling, the Costs of Sale and, if applicable, the Costs of Chipping will be paid out of the Proceeds Fund to the Responsible Entity by way of reimbursement, or directly to the relevant contractor (clause 11.1 of the LMA).

66. Following the payment of particular fees from the Net Proceeds of Sale by Growers to GSMAL under the LMA and the Land Interest (see paragraphs 68 and 69 of this Ruling), the balance of the Net Proceeds of Sale in the Proceeds Fund will be held on trust for the Growers in accordance with the provisions of the Constitution (clause 11.3 of the LMA). The Responsible Entity will then distribute out of the Proceeds Fund each Grower's Proportional Interest of the Proceeds Fund relating to the last Accounting Period (clause 32 of the Constitution).

Pooling of amounts and distribution of proceeds

67. The Constitution (clauses 31.1 and 32.1) sets out provisions relating to the pooling of proceeds from the sale of the Grower's Forest Produce and the distribution of the proceeds from that sale or from insurance proceeds. This Product Ruling only applies where the following principles apply to those pooling and distribution arrangements:

- only Growers who have contributed Forest Produce or insurance proceeds to the pool making up the proceeds are entitled to benefit from distributions of those proceeds from the pool; and
- any pool of Forest Produce or other proceeds must consist only of Forest Produce or other proceeds contributed by Growers in the Project.

Fees

68. The fees payable by a Grower under the LMA **per Woodlot** are as follows:

- for the Establishment Services to be provided in the Establishment Period, **\$3,300** is payable on application. However, Growers in this Project who initially invested in any of the Great Southern Plantations 1995, 1996 and 1997 Projects, and who have retained their interests in any one or more of those Projects are entitled to a discount of 10% of the fee payable on application. Therefore, the fee payable on application by such Growers for the Establishment Services to be provided in the Establishment Period is **\$2,970**; and
- for the Services to be provided from the expiry of the Establishment Period to the Termination Date, a fee calculated as **3.3% of the Net Proceeds of Sale**.

69. The rent payable by a Grower under the Land Interest **per Woodlot** is calculated as **2.75% of the Net Proceeds of Sale**.

70. Fees/rent calculated as a percentage of the Net Proceeds of Sale will be paid out of the Net Proceeds of Sale at the time the Net Proceeds of Sale are payable by the Responsible Entity to the Grower.

71. Annual insurance premiums against destruction or damage to the Forest Produce on the Woodlot by fire and/or other usual risks will also be payable by the Grower.

Finance

72. Growers can fund their involvement in the Project themselves or borrow from an independent lender external to the Project, the Financier, or the Preferred Financier.

73. The Financier and the Preferred Financier will offer loan terms on a commercial basis and approve loan amounts up to 100% of the GST exclusive portion of the Application Money payable by Growers plus the loan establishment fee, where applicable. The Financier or the Preferred Financier will provide a Grower with the loan on a full recourse basis and will pursue normal debt recovery procedures, including legal action, against any defaulting borrowers.

74. Finance is available from the Financier and the Preferred Financier under the following arrangements:

Option A – 12 months interest free

- equal monthly principal instalments are payable over a period of 12 months;
- instalments paid by direct debit commencing within 1 month of the commencement of the loan term;
- the GST component is invoiced on execution of the LMA; and
- no interest is applicable.

Option B – Principal and interest finance

(as set out in the Loan Deed enclosed within the Application for Term Finance)

- Minimum loan amount of \$15,000 (may include other Great Southern projects);
- equal monthly principal and interest repayments over the term of the loan;
- interest rates will be fixed for the period of the loan;
- in the event that any amount is overdue, the Financier may charge interest at the overdue rate;
- the GST component is invoiced on execution of the LMA;
- a loan establishment fee, comprising an application fee of 1.1% of the loan advance and a fee to cover legal costs and expenses of \$275 may be charged; and
- as security for the due and punctual payment of all Moneys Payable, the Grower will charge, by way of a fixed charge, all of the Grower's interest in the Project to the Financier or the Preferred Financier, including all of the Grower's right, title, estate and benefit in and to the LMA, the Grower's Woodlots, all timber to be grown or growing on the Woodlots and the proceeds of disposal of all Timber Produce.

75. The terms specific to the Option B finance offered by the Financier and the Preferred Financier are summarised below.

- 3 year term with an interest rate of 10.50% pa;
- 4 year term with an interest rate of 10.50% pa;
- 5 year term with an interest rate of 10.50% pa;
- 7 year term with an interest rate of 11.00% pa; and
- 9 year term with an interest rate of 11.50% pa.

76. Finance is also available from the Preferred Financier pursuant to the Loan Deed enclosed within the Application for Term Finance under the following arrangement.

- minimum loan amount of \$15,000 (may include other Great Southern projects);
- loans with interest only payments for up to 2 years followed by principal and interest repayments for the remainder of the term of the loan;
- where an interest only period is applicable, equal monthly interest payments during the interest only period, followed by equal monthly principal and interest repayments for the remainder of the term of the loan;
- interest rates will be fixed for the period of the loan;
- in the event that any amount is overdue, the Preferred Financier may charge interest at the overdue rate;
- the GST component is invoiced on execution of the LMA;
- a loan establishment fee, comprising an application fee of 1.1% of the loan advance and a fee to cover legal costs and expenses of \$275 may be charged; and
- as security for the due and punctual payment of all Moneys Payable, the Grower will charge, by way of a fixed charge, all of the Grower's interest in the Project to the Preferred Financier, including all of the Grower's right, title, estate and benefit in and to the LMA, the Grower's Woodlots, all timber to be grown or growing on the Woodlots and the proceeds of disposal of all Timber Produce.

77. The terms specific to the additional finance offered by the Preferred Financier, as outlined in paragraph 76 of this Ruling, are summarised below.

- 2 years interest only, then 3 years principal and interest at a rate of 10.50% pa;
- 2 years interest only, then 5 years principal and interest at a rate of 11.00% pa; and
- 2 years interest only, then 7 years principal and interest at a rate of 11.50% pa.

78. Only the finance arrangements set out above are covered by this Product Ruling. A Grower cannot rely on this Product Ruling if they procure a loan from the Financier with an interest only period (as offered under the Application for Term Finance), or enter into a finance arrangement with the Financier or with the Preferred Financier that materially differs from that set out in the documentation provided to the Tax Office by GSMAL with the application for this Product Ruling.

79. Growers cannot rely on this Product Ruling if the Application Moneys, including all loan moneys, are not paid in full to GSMAL on or before 31 March 2008 by the Grower or, on the Grower's behalf by a lending institution. Where an application is accepted subject to finance approval by any lending institution other than the Financier, Growers cannot rely on this Ruling if written evidence of that approval has not been given to GSMAL by the lending institution by 31 March 2008.

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

- there are split loan features of a type referred to in Taxation Ruling TR 98/22;
- there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
- 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL 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 the Financier or the Preferred Financier, are involved or become involved in the provision of finance to a Grower for the Project.

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?

81. For the amounts set out in paragraph 25 of this Ruling to constitute allowable deductions, the Grower's afforestation activities as a participant in the Great Southern Plantations 2007 Project must amount to the carrying on of a business of primary production.

82. Two Taxation Rulings are relevant in determining whether a Grower will be carrying on a business of primary production.

83. The general indicators used by the Courts are set out in Taxation Ruling TR 97/11 Income tax: am I carrying on a business of primary production?

84. Taxation Ruling TR 2000/8 Income tax: investment schemes, particularly paragraph 89, is more specific to arrangements such as the Great Southern Plantations 2007 Project. As Taxation Ruling TR 2000/8 sets out, the relevant principles have been established in court decisions such as *Commissioner of Taxation v. Lau* (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55.

85. Having applied these principles to the arrangement set out above, a Grower in the Great Southern Plantations 2007 Project is accepted to be carrying on a business of growing and harvesting Forest Produce for sale.

The Simplified Tax System

Division 328

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

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

Deductibility of Establishment Services fee, insurance premiums and interest**Section 8-1**

88. The Establishment Services fee and insurance premiums are deductible under section 8-1 (see paragraphs 43 and 44 of TR 2000/8). A 'non-income producing' purpose (see paragraphs 47 and 48 of TR 2000/8) is not identifiable in the scheme and there is no capital component evident in the Establishment Services fee or insurance premiums (see paragraphs 49 to 51 of TR 2000/8).

89. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply. Subject to the prepayment provisions (see paragraphs 92 to 99 of this Ruling) a deduction for these amounts can be claimed in the year in which they are incurred. (Note: the meaning of incurred is explained in Taxation Ruling TR 97/7.)

90. Some Growers may finance their participation in the Project through a Loan Deed with the Financier or the Preferred Financier. Applying the same principles as that used for the Establishment Services fee and the insurance premiums, interest incurred under such a loan has sufficient connection with the gaining of assessable income to be deductible under section 8-1.

91. Other than where the prepayment provisions apply (see paragraphs 92 to 99 of this Ruling), a Grower can claim a deduction for such interest in the year in which it is incurred.

Prepayment provisions**Sections 82KZL to 82KZMG**

92. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (for example, the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same income year, then it is not expenditure to which the prepayment rules apply.

93. For this Project, the only prepayment provisions that are relevant are section 82KZL of the ITAA 1936 (an interpretive provision) and section 82KZMG of the ITAA 1936 (an operative provision). References to sections 82KZME and 82KZMF of the ITAA 1936 are made only in respect of their interaction with section 82KZMG and to confirm that these provisions have no application to expenditure incurred by Growers who participate in the scheme set out in this Ruling.

Application of the prepayment provisions to this Project

Sections 82KZME and 82KZMF

94. Other than the fee for Establishment Services (see paragraph 99 of this Ruling) the fees/premiums payable under the scheme to which this Product Ruling applies are incurred either annually for services to be wholly provided in the year in which those fees are incurred or are payable out of the Net Proceeds of Sale, and the interest payable to the Financier or to the Preferred Financier is incurred monthly in arrears. Accordingly, the prepayment provisions in sections 82KZME and 82KZMF of the ITAA 1936 have no application to expenditure incurred by Growers under this scheme.

95. However, sections 82KZME and 82KZMF of the ITAA 1936 may have relevance if a Grower in this Project prepays interest under a loan agreement (including loan agreements with lenders other than the Financier or the Preferred Financier). Where such a prepayment is made these prepayment provisions will also apply to 'STS taxpayers' because there is no specific exclusion in section 82KZME that excludes them from the operation of section 82KZMF.

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

Section 82KZMG

97. Expenditure that meets the requirements of section 82KZMG of the ITAA 1936 is excluded from the application of the prepayment rules in sections 82KZME and 82KZMF of the ITAA 1936 that would otherwise apply. Section 82KZMG provides a '12 month rule' that, in effect, facilitates an immediate deduction for certain prepaid expenditure incurred under a plantation forestry managed agreement. The 12 month rule applies to expenditure for 'seasonally dependent agronomic activities' that will be carried out during the establishment period of a particular planting of trees. Seasonally dependent agronomic activities are explained in Taxation Determination TD 2003/12. Whilst the establishment period itself may exceed 12 months, each seasonally dependent agronomic activity must be completed within 12 months of commencement of its eligible service period (as defined in subsection 82KZL(1) of the ITAA 1936), and by the end of the following income year.

98. Under the LMA each Grower incurs a fee for Establishment Services of \$3,300 or \$2,970 per Woodlot for 'seasonally dependent agronomic activities' that will be carried out during the 'establishment period' of the Trees.

99. The expenditure for 'seasonally dependent agronomic activities' meets all other requirements of section 82KZMG of the ITAA 1936 and, therefore, a deduction is allowable in the income year ended 30 June 2008 for the full amount of expenditure incurred by the Grower for the Establishment Services fee.

Sections 35-10 and 35-55 – deferral of losses from non-commercial business activities and the Commissioner’s discretion

100. In deciding to exercise the discretion in paragraph 35-55(1)(b) on a conditional basis for the income years **30 June 2008 to 30 June 2018**, the Commissioner has determined that for those income years:

- it is because of its nature the business activity of a Grower will not satisfy one of the four tests in Division 35; and
- there is an objective expectation that within a period that is commercially viable for the afforestation industry, a Grower’s business activity will satisfy one of the four tests set out in Division 35 or produce a taxation profit.

101. 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 deductions 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).

PR 2007/62

105. The Great Southern Plantations 2007 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 25 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 Forest 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 at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) of the ITAA 1936 it cannot be concluded, on the information available, that Growers 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
Class of entities	2
Superannuation Industry (Supervision) Act 1993	5
Qualifications	6
Date of effect	9
Changes in the law	14
Note to promoters and advisers	16
Goods and Services Tax	17
Ruling	18
Application of this Ruling	18
The Simplified Tax System (STS)	21
<i>Division 328</i>	21
25% entrepreneurs' tax offset	23
<i>Subdivision 61-J</i>	23
Assessable income	24
<i>Sections 6-5 and 17-5</i>	24
Deduction for Establishment Services fee, insurance premiums, interest and borrowing expenses	25
<i>Section 8-1, section 25-25 and Division 27 of the ITAA 1997 and section 82KZMG of the Income Tax Assessment Act 1936</i>	25
Division 35 – deferral of losses from non-commercial business activities	26
<i>Section 35-55 – exercise of Commissioner's discretion</i>	26
Prepayment provisions and anti-avoidance provisions	27
<i>Sections 82KZME, 82KZMF and 82KL and Part IVA</i>	27
Scheme	28
Overview	31
Constitution	40
Compliance Plan	43
Head Land Interest	44
Land Interest	47
Land and Management Agreement	54

Planting	58
Plantation Management Agreement	61
Harvesting and sale	62
Pooling of amounts and distribution of proceeds	67
Fees	68
Finance	72
Appendix 1 – Explanation	81
Is the Grower carrying on a business?	81
The Simplified Tax System	86
<i>Division 328</i>	86
Deductibility of Establishment Services fee, insurance premiums and interest	88
<i>Section 8-1</i>	88
Prepayment provisions	92
<i>Sections 82KZL to 82KZMG</i>	92
Application of the prepayment provisions to this Project	94
<i>Sections 82KZME and 82KZMF</i>	94
<i>Section 82KZMG</i>	97
Sections 35-10 and 35-55 – deferral of losses from non-commercial business activities and the Commissioner’s discretion	100
Section 82KL – recouped expenditure	103
Part IVA – general tax avoidance provisions	104
Appendix 2 – Detailed contents list	107

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/7; TR 97/11; TR 98/22;
TR 2000/8; TR 2002/6;
TR 2002/11; TD 2003/12

Subject references:

- advance deductions and expenses for certain forestry expenditure
- carrying on a business
- commencement of business
- fee expenses
- forestry agreement
- interest expenses
- management fees
- non-commercial losses
- primary production
- primary production expenses
- producing assessable income
- product rulings
- public rulings
- seasonally dependent agronomic activity
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZMF
- ITAA 1936 82KZMG
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C
- ITAA 1936 177D
- ITAA 1936 177D(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5
- ITAA 1997 25-25
- ITAA 1997 Div 27
- ITAA 1997 Div 35
- ITAA 1997 35-10
- ITAA 1997 35-10(2)
- ITAA 1997 35-55
- ITAA 1997 35-55(1)(b)
- ITAA 1997 Subdiv 61-J
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- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Corporations Act 2001
- SISA 1993

Legislative references:

- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZM

Case references:

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

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